

**Final Authorizing Resolution
B240 LLC Facility**

Transcript Document No. []

Date: August 16, 2019

At a meeting of the Oneida County Industrial Development Agency (the "Agency") held at 584 Phoenix Drive, Rome, New York 13441 on the 16th day of August 2019, the following members of the Agency were:

Members Present: Michael Fitzgerald, David Grow, Eugene Quadraro, Steve Zogby, Kirk Hinman, Ferris Betrus, Mary Faith Messenger

EDGE Staff Present: S. DiMeo, S. Papale, M. Carney, J. Waters, Sokunthideth Chea, M. Kaucher

Others Present: Rome Mayor Jackie Izzo; Jenna Peppenelli, Levitt & Gordon; Dave Hill, Rome Sentinel; Bill Maxim, Northeast Regional Council of Carpenters; Nick Matt, Matt Brewing Co.; Steve Buck, Heartford Luxury Apartments; Kate Jarosh, B240 LLC/Bonacio Construction

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to proposed financial assistance to B240 LLC.

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Voting Aye

Voting Nay

Michael Fitzgerald
David Grow
Kirk Hinman
Eugene Quadraro
Steve Zogby
Ferris Betrus
Mary Faith Messenger

RESOLUTION AUTHORIZING THE AGENCY TO EXECUTE THE LEASE AGREEMENT, THE LEASEBACK AGREEMENT, THE PAYMENT-IN-LIEU-OF-TAX AGREEMENT, THE ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT, THE RECAPTURE AGREEMENT, THE LOAN DOCUMENTS AND RELATED DOCUMENTS WITH RESPECT TO THE B240 LLC FACILITY LOCATED IN THE CITY OF ROME, ONEIDA COUNTY.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 372 of the Laws of 1970 of the State of New York (collectively, the "Act"), the Agency was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, B240 LLC (the "Company") has requested that the Agency provide certain financial assistance, consisting of exemptions from mortgage recording taxes, abatement of real property taxes and exemptions from sales taxes (the "Financial Assistance"), for a project consisting of Phase 1 of a multi-phased mixed-use community which consists of the acquisition of a 4.00± acre parcel of land located at 1371 Floyd Avenue, bisected by entry street from Route 825/Hangar Road Roundabout, Griffiss Business and Technology Park, City of Rome, Oneida County, New York (the "Land"); construction on the Land of two, four-story mixed-use buildings comprised of 30,600± square feet of retail/commercial space on the first floor and 84 market rate residential one- and two-bedroom apartments on the second through fourth floors, together with sidewalks and infrastructure to service the same (collectively, the "Improvements"); and acquisition and installation of equipment in the Improvements (the "Equipment"), all for the purpose of providing housing and amenities within the community for existing employees of the Griffiss Business and Technology Park, and to enhance talent recruitment and economic development in the region (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the construction and equipping of the Improvements is referred to as the "Project"); and

WHEREAS, the Agency will acquire a leasehold interest in the Facility pursuant to a Lease Agreement from the Company to the Agency (the "Lease Agreement") and lease the Facility back to the Company pursuant to a Leaseback Agreement from the Agency to the Company (the "Leaseback Agreement"); and

WHEREAS, the Agency by resolution duly adopted on May 17, 2019 (the "Inducement Resolution") decided to proceed under the provisions of the Act to lease the Facility and directed that a public hearing be held and enter into the Lease Agreement and Leaseback Agreement; and

WHEREAS, the Agency conducted a public hearing on July 26, 2019 and has received all comments submitted with respect to the Financial Assistance and the nature and location of the Facility; and

WHEREAS, the value of the Financial Assistance is described below:

- Sales and use tax exemption estimated at \$620,000 but not to exceed \$682,000
- Mortgage recording tax exemption estimated at \$119,310 but not to exceed \$131,241
- Real property tax abatement estimated at \$2,397,782

WHEREAS, the Financial Assistance is a deviation from the Tier 1 benefits described in the Housing Policy; and

WHEREAS, by letter dated August 9, 2019 the Agency provided written notice to all affected taxing jurisdictions describing the Financial Assistance and the reasons it is deviating from the Housing Policy; and

WHEREAS, M&T Bank (the "Bank") has agreed to finance a portion of costs of the Project by making a loan to the Company in the principal sum of \$15,908,000.00 to be secured by a Mortgage (the "Mortgage") from the Agency and the Company to the Bank and any other documents the Bank may require to secure its lien (collectively, the "Loan Documents"); and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities which may arise in connection with the Project and the Agency's leasehold interest in the Facility; and

NOW, THEREFORE, BE IT RESOLVED by the Oneida County Industrial Development Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Agency hereby finds and determines:

(a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(b) The Facility constitutes a "project", as such term is defined in the Act; and

(c) The acquisition, construction and equipping of the Facility, the leasing of the Facility to the Company and the Agency's Financial Assistance with respect thereto, will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Oneida County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(d) The acquisition, construction, equipping and financing of the Facility is reasonably necessary to induce the Company to maintain and expand its business operations in the State of New York; and

(e) Based upon representations of the Company and Company's Counsel, the Facility conforms with the local zoning laws and planning regulations of Oneida County and all regional and local land use plans for the area in which the Facility is located; and

(f) The SEQRA findings adopted by the Agency at this meeting encompassed the actions to be undertaken by this resolution and no changes have been made to the proposed action that would create new or increased adverse environmental impacts; and

(g) It is desirable and in the public interest for the Agency to undertake the Project; and

(h) The Lease Agreement is an effective instrument whereby the Company grants the Agency a leasehold interest in the Facility; and

(i) The Leaseback Agreement is an effective instrument whereby the Agency leases the Facility back to the Company; and

(j) The Payment-in-Lieu-of-Tax Agreement (the "PILOT Agreement") between the Company and the Agency, in form satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Agency and the Company set forth the terms and conditions of their Agreement regarding the Company's payments in lieu of real property taxes; and

(k) The Environmental Compliance and Indemnification Agreement (the "Environmental Compliance and Indemnification Agreement") between the Company and the Agency will be an effective instrument whereby the Company agrees to comply with all Environmental Laws (as defined therein) applicable to the Facility and will indemnify and hold harmless the Agency for all liability under all such Environmental Laws; and

(l) The Project Completion and Recapture Agreement (the "Recapture Agreement") between the Company and the Agency will be an effective instrument whereby the Company agrees that the Financial Assistance is conditioned upon maintaining certain employment levels as a result of the Project and the Company completing the Project substantially as presented to the Agency; and

(m) The Loan Documents will be effective instruments whereby the Agency mortgages and/or assigns to the Bank its interest in the Facility.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) acquire a leasehold interest in the Facility pursuant to the Lease Agreement, (ii) execute, deliver and perform the Lease Agreement, (iii) lease the Facility back to the Company pursuant to the Leaseback Agreement, (iv) execute, deliver and perform the Leaseback Agreement, (v) execute, deliver and perform the PILOT Agreement, (vi) execute and deliver the Environmental Compliance and Indemnification Agreement, (vii) execute, deliver and perform the Recapture Agreement, (viii) execute, deliver and perform the Loan Documents, and (ix) deviate from Housing Policy and provide the Financial Assistance to the Company in support of the Project.

Section 3. The Agency is hereby authorized to accept a leasehold interest in the real property described in Exhibit A to the Lease Agreement and the personal property described in Exhibit B to the Lease Agreement and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 4. The form and substance of the Lease Agreement, the Leaseback Agreement, the Environmental Compliance and Indemnification Agreement, the Recapture Agreement and the PILOT Agreement (each in substantially the forms presented to the Agency and which, prior to the execution and delivery thereof, may be redated) are hereby approved. The form and substance of the Loan Documents are hereby approved, subject to the inclusion of the Agency's standard financing provisions and subject to counsel review.

Section 5.

(a) The Chairman, Vice Chairman, Secretary or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Lease Agreement, the

Leaseback Agreement, the Environmental Compliance and Indemnification Agreement, the Recapture Agreement, the PILOT Agreement and the Loan Documents, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Secretary or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the "Closing Documents"). The execution thereof by the Chairman, Vice Chairman, or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Vice Chairman, Secretary or member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Leaseback Agreement).

Section 6. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Closing Documents, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Closing Documents binding upon the Agency.

Section 7. This resolution shall take effect immediately.

STATE OF NEW YORK)
) ss.:
COUNTY OF ONEIDA)

I, the undersigned Secretary of the Oneida County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Agency, including the resolutions contained therein, held on the 16th day of August 2019 with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Lease Agreement, the Leaseback Agreement, the Environmental Compliance and Indemnification Agreement, the Recapture Agreement, the PILOT Agreement and the Loan Documents contained in this transcript of proceedings are each in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, (ii) pursuant to Sections 103a and 104 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public and public notice of the time and place of said meeting was duly given in accordance with such Sections, (iii) the meeting in all respects was duly held, and (iv) there was a quorum present throughout.

Sept IN WITNESS WHEREOF, I have hereunto set my hand as of this 3 day of _____ 2019.

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Shawna M. Papale, Secretary