

**RESOLUTION AUTHORIZING REFINANCING
501 BROADWAY TROY, LLC PROJECT**

A regular meeting of Rensselaer County Industrial Development Agency (the "Agency") was convened in public session in the 3rd Floor Conference Room at the Quackenbush Building located at 333 Broadway in the City of Troy, Rensselaer County, New York on March 14, 2019 at 4:00 o'clock p.m., local time.

The meeting was called to order by the (Vice) Chairman of the Agency and, upon roll being called, the following members of the Agency were:

PRESENT:

Michael Della Rocco	Vice Chairman
Cynthia A. Henninger	Secretary/Treasurer
Ronald Bounds	Assistant Secretary/Treasurer
Douglas Baldrey	Member
James Church	Member

ABSENT:

John H. Clinton, Jr.	Chairman
Renee Powell	Member

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Robin LaBrake	Assistant
Peter R. Kehoe, Esq.	Special Agency Counsel
A. Joseph Scott, III, Esq.	Special Counsel

The following resolution was offered by Ronald Bounds, seconded by James Church, to wit:

Resolution No. 0319-09

RESOLUTION AUTHORIZING THE EXECUTION BY RENSSELAER COUNTY INDUSTRIAL DEVELOPMENT AGENCY OF A CERTAIN MORTGAGE OR SUBORDINATION AND RELATED DOCUMENTS IN CONNECTION WITH THE 501 BROADWAY TROY, LLC PROJECT.

WHEREAS, Rensselaer County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 128 of the 1974 Laws of New York, as amended, constituting Section 903-d of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, and commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their 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, construct, reconstruct and install one or more "projects" (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, on June 14, 2016 (the "Closing"), the Agency granted certain financial assistance to 501 Broadway Troy, LLC (the "Company") in connection with a project (the "Project"), said Project consisting of the following: (A) (1) the acquisition of an interest in an approximately 1.29 acre parcel of land located at 501 Broadway (tax map no. 101.54-3-1) in the City of Troy, Rensselaer County, New York (the "Land"), together with an approximately 51,000 square foot building located thereon (the "Existing Facility"); (2) the potential construction of an approximately 70,000-110,000 square foot addition to the Existing Facility with potential for structure parking to provide for an additional 60-90 apartments (collectively, the "Addition") (the Existing Facility and the Addition being sometimes referred to as the "Facility"); (3) the renovation and reconstruction of the Facility, including, but not limited to, demolition of a portion of the Existing Facility; and (4) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property, including without limitation, tenant improvements and finishes (collectively, the "Equipment") (the Land, the Facility, and the Equipment being collectively referred to as the "Project Facility"); all of the foregoing to constitute a mixed use apartment complex, commercial/retail facility and associated uses and other directly and indirectly related activities; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from sales taxes, real property transfer taxes, mortgage recording taxes and real estate taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the Company pursuant to a lease agreement dated as of June 1, 2016 (the "Lease Agreement"), as modified pursuant to a modification agreement dated as of August 1, 2018 (the "Modification Agreement") by and between the Agency and the Company; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company executed and delivered to the Agency (1) a certain lease to agency dated as of June 1, 2016 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company leased to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises"), (2) a certain license agreement dated as of June 1, 2016 (the "License to Agency") by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company granted to the Agency (a) a license to enter upon the balance of the Land (the "Licensed Premises") for the purpose of undertaking and completing the Project and (b) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement, and (3) a bill of sale dated as of June 1, 2016 (the "Bill of Sale to Agency"), which conveyed to the Agency all right, title and interest of the Company in the Equipment; (B) the Company and the Agency executed and delivered (1) a payment in lieu of tax agreement dated as of June 1, 2016 (the "Original Payment in Lieu of Tax Agreement"), as amended pursuant to a first amendment to payment in lieu of tax agreement dated as of August 1, 2018 (the "First Amendment to Payment in Lieu of Tax Agreement" and collectively with the Original Payment in Lieu of Tax Agreement, the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company agreed to pay certain payments in lieu of taxes with respect to the Project Facility and (2) a certain recapture agreement (the "Section 875 GML Recapture Agreement") by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (C) the Agency filed with the assessor and mailed to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility

under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Original Payment in Lieu of Tax Agreement; (D) the Agency executed and delivered to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance; and (E) the Agency filed with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report"); and

WHEREAS, in order to finance a portion of the costs of the Project, the Company obtained a loan in the principal sum of \$18,750,000 (the "Loan") from Berkshire Bank (the "Lender"), which Loan was secured by (A) a mortgage and security agreement (the "Mortgage") from the Agency and the Company to the Lender and (B) an assignment of leases and rents (the "Assignment of Rents") from the Agency and the Company to the Lender; and

WHEREAS, by correspondence dated March 4, 2019 (the "Request"), which Request is attached hereto as Exhibit A, the Agency was informed that the Company intends to refinance the Loan in the amount of \$22,000,000 (the "Refinanced Loan") from TD Bank ("TD Bank"), which Refinanced Loan will be secured by a mortgage (the "Refinanced Mortgage") and certain other additional loan documents (collectively, with the Refinanced Mortgage, the "Refinanced Loan Documents"); and

WHEREAS, pursuant to the Request, the Company would like the Agency to either enter into the Refinanced Loan Documents or subordinate the Lease Agreement to the lien of the Refinanced Loan pursuant to a subordination agreement and certain other additional subordination documents (collectively, the "Subordination Documents"); and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the "Regulations" and collectively with the SEQR Act, "SEQRA"), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to proceed with the Request; and

WHEREAS, pursuant to SEQRA, the Agency has examined the Request in order to make a determination as to whether the Request is subject to SEQRA, and it appears that the Request constitutes a Type II action under SEQRA;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF RENSSELAER COUNTY INDUSTRIAL DEVELOPMENT AGENCY, AS FOLLOWS:

Section 1. Based upon an examination of the Request, the Agency hereby makes the following determinations:

(A) The Request constitutes a "Type II action" pursuant to 6 NYCRR 617.5(c)(23), and therefore that, pursuant to 6 NYCRR 617.6(a)(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Request.

(B) That the value of the mortgage recording tax exemption relating to the Request will not exceed \$100,000.

(C) That since compliance by the Agency with the Request will not result in the Agency providing more than \$100,000 of "financial assistance" (as such quoted term is defined in

the Act) to the Company, Section 859-a of the Act does not require a public hearing to be held with respect to the Request.

Section 2. Subject to (A) approval of the form of the Refinanced Loan Documents or the Subordination Documents, by Special Agency counsel and (B) receipt by the Executive Director of (1) the Agency's administrative fee relating to the Request, if any, and (2) counsel's fees relating to the Request, the Agency hereby authorizes (a) the execution by the Agency of the Refinanced Loan Documents or the Subordination Documents and (b) the execution and delivery by the Agency of an affidavit of exemption from mortgage recording taxes with respect to the Refinanced Loan Documents.

Section 3. Subject to the satisfaction of the conditions described in Section 2 hereof, the Chairman (or Vice Chairman) of the Agency is hereby authorized to execute and deliver the Refinanced Loan Documents or the Subordination Documents to the Company, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the form thereof presented to this meeting, with such changes, variations, omissions and insertions as the Chairman (or Vice Chairman) shall approve, the execution thereof by the Chairman (or Vice Chairman) to constitute conclusive evidence of such approval.

Section 4. 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 Refinanced Loan Documents or the Subordination Documents, and to execute and deliver all such additional certificates, instruments and documents, to 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 Refinanced Loan Documents or the Subordination Documents binding upon the Agency.

Section 5. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

John H. Clinton, Jr.	VOTING	<u>ABSENT</u>
Michael Della Rocco	VOTING	<u>YES</u>
Cynthia A. Henninger	VOTING	<u>YES</u>
Ronald Bounds	VOTING	<u>YES</u>
Douglas Baldrey	VOTING	<u>YES</u>
James Church	VOTING	<u>YES</u>
Renee Powell	VOTING	<u>ABSENT</u>

The foregoing Resolution was thereupon declared duly adopted.


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

I, the undersigned (~~Assistant~~) Secretary of Rensselaer County Industrial Development Agency (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on March 14, 2019 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of the whole of such proceedings of the Agency and of such Resolution set forth therein so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

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 hereunto set my hand and affixed the seal of the Agency this 14th day of March, 2019.


(~~Assistant~~) Secretary

(SEAL)

EXHIBIT A

REQUEST

- SEE ATTACHED -

Zeigler, Nadene

From: Ben Oevering <boevering@rosenblumcompanies.com>
Sent: Tuesday, March 5, 2019 11:41 AM
To: Zeigler, Nadene; Frank O'Connor; sbelcher@bsk.com; Bruno, Pier
Cc: LaBrake, Robin (RLaBrake@rensko.com)
Subject: RE: 501 Broadway Troy LLC-refinancing

Thank you, Nadene.

The \$3.25MM will be 'new money' with regard to an increase from \$18.75MM to the new loan amount of \$22MM.

I will reach out to Berkshire to discuss assignment of the existing mortgage.

From: Zeigler, Nadene <NZeigler@hodgsonruss.com>
Sent: Tuesday, March 5, 2019 11:38 AM
To: Ben Oevering <boevering@rosenblumcompanies.com>; Frank O'Connor <foconnor@gdwo.net>; sbelcher@bsk.com; Bruno, Pier <Pier.Bruno@td.com>
Cc: LaBrake, Robin (RLaBrake@rensko.com) <RLaBrake@rensko.com>
Subject: RE: 501 Broadway Troy LLC-refinancing

Good morning Ben:
Please see my responses in RED below

Nadene E. Zeigler
Partner
Hodgson Russ LLP
Tel: 518.433.2420
Fax: 866.505.9238



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677 Broadway, Suite 301 | Albany, NY 12207
Tel: 518.465.2333 | [map](#)

From: Ben Oevering <boevering@rosenblumcompanies.com>
Sent: Monday, March 4, 2019 11:50 AM
To: Zeigler, Nadene <NZeigler@hodgsonruss.com>; Frank O'Connor <foconnor@gdwo.net>; sbelcher@bsk.com; Bruno, Pier <Pier.Bruno@td.com>
Cc: LaBrake, Robin (RLaBrake@rensko.com) <RLaBrake@rensko.com>
Subject: RE: 501 Broadway Troy LLC-refinancing

Thank you, Nadene.

I've copied onto this email thread Frank O'Connor who is representing the bank, Sarah Belcher who is representing us, and Pier Bruno who is the Lender @ TD Bank. Nadene is counsel for the Rensselaer County IDA with respect to this transaction.

The new loan amount will be \$22MM.

The New Money will equity \$3.25MM. **IS THIS NEW MONEY PART OF THE NEW LOAN AMOUNT?**

The reason for refinancing is to recapitalize prior investments and provide liquidity for capital improvements.

The Lender is TD Bank (although they intend to sell down \$4.5MM to Pioneer post-closing and if this will effect anything on the IDA side now we can address up front)

We will get you a copy of the Mortgage document ASAP.

Will the IDA agreement cover 100% of the mortgage tax, including the Additional and Special Additional Tax on the full loan amount? I presume so based on my read, and if that is the case an assignment and modification will not be needed. Otherwise I will begin talking to Berkshire about providing. **NO, THE IDA MORTGAGE RECORDING TAX EXEMPTION IS 1%, AS THE IDA IS NOT EXEMPT FROM THE ¼% CAPITAL DISTRICT TRANSPORTATION AUTHORITY TAX**

Nadene, Frank had inquired as to whether or not the PILOT would be supported by a PILOT Mortgage and subordination agreement? Also, is the IDA holding title or will this be lease/leaseback? **THIS TRANSACTION CLOSED JUNE 14, 2016 WITH THE IDA HAVING A LEASEHOLD INTEREST IN THE PROPERTY. I DO NOT UNDERSTAND THE QUESTION ABOUT A PILOT MORTGAGE. THE IDA DID NOT REQUIRE A PILOT MORTGAGE AT THE TIME OF CLOSING. AND, IN CASE YOU WERE NOT AWARE, THE PILOT WAS AMENDED IN AUGUST, 2018.**

Thanks everyone, look forward to working with you all.

Ben

Benjamin J. Oevering

Controller

The Rosenblum Companies

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From: Zeigler, Nadene <NZeigler@hodgsonruss.com>

Sent: Monday, March 4, 2019 11:16 AM

To: Ben Oevering <boevering@rosenblumcompanies.com>

Cc: LaBrake, Robin (RLaBrake@renesco.com) <RLaBrake@renesco.com>

Subject: RE: 501 Broadway Troy LLC-refinancing

Good morning Ben:

As a recap, you obtained a loan in the amount of \$18,750,000 from Berkshire Bank in Aug., 2017. You plan on refinancing this loan?

The next scheduled IDA meeting is March 14, 2019. At this meeting we could provide the IDA with a resolution authorizing the refinancing. However, I will need the following prior to the meeting:

- *the new loan amount
- *the amount of any "new" money
- *the reason for the refinancing
- *the lender
- *the lender's counsel
- *a copy of the mortgage for my review

Let me know if you have any questions.

Nadene E. Zeigler

Partner

Hodgson Russ LLP

Tel: 518.433.2420

Fax: 866.505.9238



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From: Ben Oevering <boevering@rosenblumcompanies.com>

Sent: Monday, March 4, 2019 9:26 AM

To: Zeigler, Nadene <NZeigler@hodgsonruss.com>

Subject: 501 Broadway Troy LLC

Good Morning Nadene,

I hope this finds you well. We are working to refinance The News Apartments with an anticipated closing date of March 20 if that works for all parties. Please let me know what you will need from us and what we can do to make your life easiest.

Thanks for your help.

Benjamin J. Oevering

Controller

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