

**Final Authorizing Resolution
B240 LLC Facility**

Transcript Document No. 9(a)

Date: June 19, 2020

At a meeting of the Oneida County Industrial Development Agency (the "Agency") hosted at 584 Phoenix Drive, Rome, New York 13441 on the 19th day of June 2020, the following members of the Agency were:

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

EDGE Staff Present: Steven DiMeo, Shawna Papale, Jennifer Waters, Maureen Carney, Mark Kaucher, Bill VanShufflin

Others Present: Linda Romano & Laura Ruberto, Alexandra Romano, Bond, Schoeneck & King; Mark Levitt & Jenna Peppenelli, Levitt & Gordon; Rome Mayor Jackie Izzo; Michelle Kennedy, Whiteman Osterman & Hanna LLP; Kate Jarosh, B240 LLC; Joseph Mendelsohn, GSSP/Omni-Navitas Holdings, LLC; Kevin McAuliffe, Barclay-Damon, representing GSSP/Omni-Navitas Holdings; Dave Hill, Rome Sentinel

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

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

Voting Nay

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 (AIR CITY LOFTS PHASE 2) 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 2 of a multi-phased mixed-use community which consists of the acquisition of a 6.00± acre parcel of land located at 1371 Floyd Avenue, 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 26,000± square feet of retail/commercial space on the first floor and 72 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 Company will further sublease individual residential units to residential tenants, to be identified from time to time (each a "Residential Sublessee" and collectively, the "Residential Sublessees"); and

WHEREAS, the Company will further sublease individual commercial and/or retail units to commercial or retail tenants, to be identified from time to time (each a "Sublessee" and collectively, the "Sublessees"); and

WHEREAS, the Agency by resolution duly adopted on May 15, 2020 (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 June 16, 2020 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 \$598,993 but not to exceed \$658,892
- Mortgage recording tax exemption estimated at \$128,235 but not to exceed \$141,058
- Real property tax abatement estimated at \$1,425,899

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

WHEREAS, by letter dated June 10, 2020 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, the Company will finance a portion of the costs of the Facility by securing a loan in the approximate principal sum of \$17,098,000.00 from a lender to be selected at a later date (the "Bank") 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 its meeting on May 15, 2020 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 (or causing the Sublessees to maintain) 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.

The above resolution was AMENDED on July 17, 2020 as follows:

WHEREAS, the Company submitted a Supplemental Application for Financial Assistance dated July 9, 2020, which reflects an updated budget with increased Project Costs and amended Sources of Funds; and

WHEREAS, the Company is requesting the Agency increase the value of the financial assistance relating to the sales tax exemption and mortgage recording tax exemption, more particularly set forth below

- Exemptions from sales and use taxes on materials and/or equipment acquired and installed in connection with the Project, the value of which is estimated at \$752,364;

WHEREAS, the value of the increased financial assistance exceeds \$100,000 so a new public hearing is required.

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

1. The Agency hereby accepts the request of the Company to amend its Application for Financial Assistance, and amends the value of the proposed financial assistance accordingly, subject to the Agency conducting a new public hearing.

2. The Agency is hereby authorized to conduct a new public hearing.

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

F. Betrus voting aye;
M. Fitzgerald voting aye;
D. Grow voting aye;
K. Hinman voting aye;
M.F. Messenger voting aye;
E. Quadraro voting aye;
S. Zogby voting aye.

and, therefore, the amendment to the resolution was declared duly adopted

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 19th day of June 2020 and on the 17th day of July 2020 with the originals thereof on file in my office, and that the same are true and correct copies 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) because of the Novel Coronavirus (COVID-19) Emergency and State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo's Executive Order 220.1 issued on March 12, 2020, as continued by 202.29, 202.39, 202.49, 202.55, 202.60, 202.67, 202.72 and 202.79, suspending the Open Meetings Law, the meetings were held virtually instead of a public meeting open for the public to attend in person and public notices of the time, place of, and instructions to access, said meetings were duly given, (iii) the meetings in all respects were duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand as of December 28, 2020.

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Shawna M. Papale, Secretary