

**DRAFT – SUBJECT TO REVIEW AND REVISION**

**NEW YORK JOB DEVELOPMENT AUTHORITY**  
d/b/a Empire State Development Corporation  
Meeting of the Members  
Empire State Development Corporation  
30 South Pearl Street  
Albany, New York 12245

and

633 Third Avenue  
New York, New York 10017

October 28, 2011

MINUTES

**Members Present:**

Justin Ginsburgh, Designee – Commissioner of DED,  
Acting Chair  
Adam Barsky  
Andrew J. Maniglia  
Emily Youssouf  
Matt Morgan, Designee – New York State Department of  
Agriculture and Marketing  
Regina Stone - Designee, Acting Superintendent – NYS  
Department of Banking

**JDA Staff:**

Eileen McEvoy, Secretary  
Kathleen Mize, Controller  
Frances A. Walton, Senior Vice President and Chief  
Financial Officer

**Present for ESD:**

Joseph Chan, Executive Vice President-Business  
Development  
Helen Daniels, Director – Affirmative Action  
Diana Lopez, Executive Vice President – Business Services  
Glendon McLeary, Senior Project Manager  
Antovk Pidedjian, Senior Counsel  
Sheila Robinson, Deputy to the Chief Financial Officer  
Susan Shaffer, Vice President – Loans and Grants  
Joseph Tazewell, Regional Director – New York City Region

**DRAFT – SUBJECT TO REVIEW AND REVISION**

**Also Present:**

Michael Bailkin, Counsel – Akerman Senterfitt, LLP  
Raizy Haas, Senior Vice President – Development Extell  
Jeff Torkin, Vice President – Development Extell  
The Press  
The Public

The meeting was called to order at 11:01 a.m. by Acting Chair Ginsburg. It was noted for the record that notice to the public and news media of the time and place of the meeting had been given in compliance with the New York State Open Meetings Law.

Acting Chair Ginsburg then set forth the guidelines regarding comments by the public on matters on the Agenda.

The Acting Chair then entertained a motion to approve the Minutes of the August 18, 2011 Members' meeting.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

**APPROVAL OF MINUTES AND RATIFICATIONS OF ACTIONS TAKEN AT AUGUST 18, 2011  
MEMBERS' MEETING OF THE NEW YORK JOB DEVELOPMENT AUTHORITY**

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RESOLVED, that the Minutes of the meeting of the Authority held on August 18, 2011 as presented to this meeting, are hereby approved and all actions taken by the Members present at such meeting, as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Authority.

\* \* \*

**DRAFT – SUBJECT TO REVIEW AND REVISION**

Acting Chair Ginsburgh explained that the Members were being asked to consider a JDA loan in connection with GEM Tower.

As background, Acting Chair Ginsburgh noted that JDA has approved \$100 million of its bonding capacity for a loan program for the GEM Tower which he described as a 750,000 square foot, 34 story tower located on West 47<sup>th</sup> Street in Manhattan.

The Tower, he continued, is still under construction and will be a state-of-the-art center designed specifically to meet the needs of the diamonds and precious gems industry.

Today's request, Acting Chair Ginsburg further noted, is for the first loan of the program to be made to A.S. Diamonds, a manufacturer and wholesaler of diamonds and top quality gems. A. S. Diamonds, Acting Chair Ginsburg explained, is seeking to purchase and fit out a 5,600 square foot condominium unit in the tower.

Acting Chair Ginsburgh noted that before the Members are asked to consider this item, there will be a presentation by Extell, the developer of GEM Tower.

Michael Bailkin, counsel to Extell, first addressed the meeting noting, in part, that said loan will provide the Company with the ability to move forward with the project. He also stated that the importance of the JDA commitment lies in the fact that the buyers will not sign anything other than non-conditional contracts with the developer unless they know they have

**DRAFT – SUBJECT TO REVIEW AND REVISION**

some type of take-out authority.

Ms. Haas and Mr. Torkin then provided a report accompanied by a PowerPoint presentation regarding the proposed project. Among other things, it was noted that construction on the Tower began in March and that in terms of steel, they are up to the 17<sup>th</sup> floor. Mr. Torkin added that there has also been an aggressive sales push and now that the Tower has come out of the ground they are getting lots of calls as people see that this project is actually underway.

The Tower, Mr. Torkin further explained, will support the industry in its present incarnation much more so than the old buildings presently in the district. Mr. Torkin then expounded upon the proposed security measures that will be utilized as well as the quality and the architecture of the building.

Mr. Torkin went on to note that at the present time, the major focus is on floors eight through 20 and of that space, about 65% is committed.

Member Barsky asked if that was the higher level and Mr. Torkin explained that early buyers generally desire the best units for the lowest price which would be the highest floors. Mr. Torkin further explained that in order to prevent that from happening, Extell has released only this portion so that it can make deals that make sense and reserve its right to capitalize on the best views, etc. on the highest floors.

**DRAFT – SUBJECT TO REVIEW AND REVISION**

Member Youssouf asked what portion of the building the 65% referred to and Mr. Torkin stated that it was floors eight through 20 as previously referred to.

Member Barsky then asked what percent of the 65% were from local companies looking to expand or relocate versus from out of State. Mr. Torkin stated that it was a mixed development.

Member Maniglia asked for specific numbers in that regard and Mr. Haas stated that those numbers have not been tracked at this point. She added that those numbers will have to be tracked for the tax benefits that are given by the City. Ms. Haas further stated that it has been a combination of local companies that are expanding and new companies.

Member Barsky asked what the threshold is that the City requires and Ms. Haas stated that it is 85% which has to be industry from the total space and that 50% of that has to be either expansion or new.

Member Youssouf asked if it is correct that the retail shops are only on the lower level and Ms. Haas stated that that was correct. Member Youssouf stated that that was good as it would not set up competition leaving a lot of empty store fronts.

Mr. Bailkin mentioned and Ms. Haas confirmed that from the standpoint of keeping

**DRAFT – SUBJECT TO REVIEW AND REVISION**

business in the State, that GIA was seriously considering relocating the bulk of its operations to California. Ms. Haas further commented that GIA has now committed to approximately 60,000 square feet.

Following further details being provided by Mr. Torkin in his PowerPoint presentation, Member Youssouf noted that many of her initial concerns regarding the project have been addressed in this discussion.

Member Barsky stated that many questions have been answered however, he still had concerns regarding the mechanisms associated with mortgage foreclosures.

In that regard, Member Barsky asked what the restrictions are in terms of reselling if there is a mortgage foreclosure and Extell takes possession.

Ms. Haas stated that Extell does not have to use that restriction in the legal offering plan because it is only selling to the industry.

Mr. Bailkin added that the primary benefit that Extell is getting from the IDA will be the real estate tax abatement for the condo units that are qualified units. He further stated that Extell will be able to foreclose and put the property on the market and sell it for any use allowed under the zoning restrictions but the real estate tax benefit will be lost unless it is an industry tenant there.

**DRAFT – SUBJECT TO REVIEW AND REVISION**

Following the full presentation, the Acting Chair called for any further questions or comments. Member Maniglia noted that it was unique that the IDA deal is limited to the industry.

There being no further questions or comments, and upon motion duly made and seconded, the following resolution was unanimously adopted:

New York (New York City Region - New York County) – A.S. Diamonds, Inc. – New York Job Development Authority Special Purpose Fund Direct Loan Project – Real Estate Loan – Authorization to Make a Loan and to Take Related Actions; Determination of No Significant Effect on the Environment

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RESOLVED, that the Chairman of the Authority or his designee(s) be, and each of them hereby is, authorized to make a Special Purpose Fund Real Estate Loan to the Statewide Local Development Corporation for the benefit of the following Project Owner(s) for the amount(s) not to exceed, and the respective percent(s) of total Real Estate Project cost(s), whichever is less, set forth for each:

<b>Condo Unit #</b>	<b>Project Owner</b>	<b>Project Occupant</b>	<b>JDA Investment</b>	<b>% of Project Cost</b>
18M	A.S. Diamonds, Inc.	ASD Gem Realty, LLC	\$2,622,112	50%

to be funded from the proceeds of New York State Guaranteed Special Purpose Fund taxable bonds or notes, for the purposes and substantially on the terms and conditions set forth in the materials presented at this meeting, with such changes as the Chairman of the Authority or his designee(s) may deem appropriate; and be it further

RESOLVED, that the Chairman of the Authority or his designee(s) be, subsequent to the making of the Loan(s), and each of them hereby is, authorized to take such actions and make such modifications to the terms of the Loan(s) as he or she may deem appropriate in the administration of the Loan(s); and be it further

RESOLVED, that the Chairman of the Authority, or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Authority to execute and deliver any and all

**DRAFT – SUBJECT TO REVIEW AND REVISION**

documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions; and be it further

RESOLVED, that the provision of financial assistance by the Authority is expressly contingent upon: (1) the approval of the Public Authorities Control Board, as applicable, and (2) the receipt of all other necessary approvals; and be it further

RESOLVED, that based on the materials submitted to the Members with respect to the Project Owner(s) and/or Project Occupant(s) listed above, the Authority hereby determines that the proposed action(s) will not have a significant effect on the environment.

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Acting Chair Ginsburg then asked Mr. Salaberrios to provide a report on a business and marketing plan to re-energize JDA. The Acting Chair noted that Mr. Salaberrios was formerly a 504 lender and has a great deal of knowledge regarding these types of lending programs.

Mr. Salaberrios set forth the details of the proposed plan for the Members' information.

Among other things, Mr. Salaberrios stated that part of the proposed plan involves JDA developing its relationship with the Banks. He added that there is presently enthusiasm with the banking community to revitalize the program and give the Banks another option besides SBA's.

One of his primary goals, Mr. Salaberrios explained, is to get the word out through the local development corporations. He added that JDA requires that all deals be done through a local development corporation.

**DRAFT – SUBJECT TO REVIEW AND REVISION**

Member Morgan then commented on the excellent job that Mr. Salaberrios has been doing not just in New York City but also in the very rural communities of the State.

Mr. Salaberrios went on to suggest ways of making the process more efficient and also of involving the Members in the process.

There was a discussion about making the Regional Councils aware of the benefit of utilizing JDA.

The varying interest rate charged on JDA loans was also discussed and overall it was noted that JDA has both fixed and variable rates but the rate is tied to the periodically updated current market conditions which would correspond to the issuance of commercial paper as it is used for individual loans.

Mr. Salaberrios then addressed the concept of creating a pipeline by marketing directly to the approximately 6,000 certified minority firms and businesses registered with ESD. There are many credit worthy MWBE firms, he continued, that do not have access to credit and utilizing JDA could be very helpful to those firms.

Mr. Salaberrios added that all of today's recommendations can be implemented fairly quickly and with minimal cost at the outset by utilizing existing ESD staff in New York City and the Regional Offices.

**DRAFT – SUBJECT TO REVIEW AND REVISION**

Member Maniglia inquired as to the volume cap and Ms. Walton noted that the statute reads \$900,000,000 but \$750,000,000 is the amount that is actually authorized. Of that amount, it was further noted that approximately \$30,000,000 is outstanding.

Member Barsky then voiced concern with regard to the fact that there has been no IDA legislation for the last several years as well as with regard to various issues regarding the creation of LDC's. He asked if there was any information in that regard.

Acting Chair Ginsburg stated that on civic facilities that that is a fairly sensitive issue at this point. He added that he will follow up on the matter.

Member Youssouf commented favorably with regard to the plans to make the Authority more active.

There being no further business, the meeting was adjourned at 12:04 p.m.

Respectfully submitted,

Eileen McEvoy  
Secretary

May 8, 2012

NEW YORK JOB DEVELOPMENT AUTHORITY-Re-adoption of the Mission Statement and Adoption of Revised Performance Measures; and Authorization to Take Related Actions

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BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is order filed with the records of the Authority (the "Materials"), the following Mission Statement, adopted by the Authority in January 2011 be and it hereby is re-adopted:

**The New York Job Development Authority spurs job growth and capital investment in New York State by using the authority granted to it and by leveraging State-guaranteed bonds to support low-interest loans to manufacturers and other targeted industries throughout New York State.**

And be it further

RESOLVED, that based on the Materials, the following revised Performance Measurements be and the same hereby are adopted:

- **Annual Number of transactions closed**
- **Aggregate value of bonds issued**
- **Number of jobs retained and created with each investment transaction**
- **Amount of private capital investment leveraged**
- **Number of transactions delinquent**
- **Number of transactions in default**

And be it further

RESOLVED, that the Chief Executive Officer of the Authority or his designee(s) be, and each of them hereby is, authorized and directed to post all of the above-referenced documents on the website of the Authority, to file such documents with the Authorities Budget Office in accordance with the requirements of the Public Authorities Law, as amended, and to take any and all such other actions as may be necessary or proper in connection with the foregoing.

FOR CONSIDERATION

May 8, 2012

TO: The Members

FROM: Kenneth Adams

SUBJECT: Mission Statement and Revised Performance Measurements

REQUEST FOR: Re-Adoption of Mission Statement and Revised Performance Measurements;  
Authorization to Take Related Actions

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I. Background

On January 11, 2011, the New York Job Development Authority (the "Authority") adopted the following Mission Statement and related Performance Measurements to assist the Authority to determine how well it is carrying out its mission.

Mission Statement (adopted January 2011):

The New York Job Development Authority spurs job growth and capital investment in New York State by using the authority granted to it and by leveraging State-guaranteed bonds to support low-interest loans to manufacturers and other targeted industries throughout New York State.

Performance Measurements (adopted January 2011):

- Number of transactions closed
- Aggregate value of bonds issued
- Number of jobs associated with each investment transaction
- Amount of private capital investment leveraged
- Number of transactions in default

The Authority's Governance Committee is annually required by the Public Authorities Law to reexamine the mission statement and performance measurements and recommend any necessary revisions to the full Board for adoption. On March 19, 2012, the Governance Committee met to discuss, among other things, whether the mission statement accurately reflects JDA's mission and whether the current performance measurements are appropriate to evaluate whether the Authority is fulfilling its mission.

## II. Mission Statement

At the March 19<sup>th</sup> meeting, the staff and Governance Committee thoughtfully and thoroughly discussed the current mission statement and concluded that the current statement succinctly articulates the purpose, goal and values of our organization and provides the guiding vision that is the purpose of the mission statement. The Governance Committee recommends that the current mission statement be re-adopted by the full board.

## III. Revised Performance Measurements

The staff and Governance Committee also thoroughly discussed the performance measurements and whether each is an appropriate tool to evaluate whether the Authority is fulfilling its mission. Upon deliberation, the Governance Committee recommends the following revisions to the measurements for adoption by the full board:

- Annual number of transactions closed
- Aggregate value of bonds issued
- Number of jobs retained and created with each investment transaction
- Amount of private capital investment leveraged
- Number of transactions delinquent
- Number of transactions in default

## IV. Requested Action

The Directors are requested to (1) re-adopt the Mission Statement; (2) adopt the revised Performance Measurements presented to this meeting; and (3) authorize the posting of each of the above on the Authority's website and filing of the same with the Authorities Budget Office, all in accordance with the requirements of the Public Authorities Law.

## V. Recommendation

Based upon the forgoing, I recommend approval of the requested action.

## VI. Attachments

Resolution

FOR CONSIDERATION

May 8, 2012

TO: Authority Members

FROM: Kenneth Adams

SUBJECT: New York (New York City Region-Kings County) - Inland Paper Products Corp.

REQUEST FOR: Finding and Considerations for Eligibility for Loan Involving Companies in Need of Special Assistance Pursuant to Section §1823. 7. (a) (ii) and §1823. 7. (b) *et seq.* of the New York Job Development Authority Act (the “Act”); Authorization to Make a Loan and to Take Related Actions

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I. Project Summary

Occupant: Inland Paper Products Corp.  
444 Liberty Ave  
Brooklyn, New York 11207

Contact: Daniel Weicher, President  
Phone: (718) 827-8150  
Fax: (718) 647- 9664

JDA Investment: \$840,000 JDA loan for the purchase of printing equipment. Total project costs are \$1.5MM. The loan term will not to exceed the term (currently estimated to be seven years) of senior bank debt and will fully amortize over such term. The interest rate is the tax exempt rate at time of closing (currently 3.43%). A co-first equal lien on equipment will be required.

Project location: 444 Liberty Ave Brooklyn, New York 11207

Proposed project: Financing of art printing equipment which would allow company to improve the quality of its flexographic printing and improve its ability to compete in the market place.

Project Completion: June 2013

Number of Employees

at Company: Initial employment at time of Application to ESD: 10  
Current employment level: 10  
Minimum employment on January 1, 2014: 13

Local Dev. Corp.: Brooklyn Economic Development Corporation  
2001 Oriental Boulevard- Building T-4162  
Brooklyn New York 11235

Anticipated Funding

Source: JDA State Guaranteed Special Purpose Non Taxable Bonds

JDA Project Number:

Project Team: Origination Rafael Salaberrios  
Project Management Rafael Salaberrios  
Legal Antovk Pidedjian  
Affirmative Action Karanja Augustine  
Finance Ross Freeman  
Environmental Soo Kang

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Acquisition	\$1,500,000

Total Project Costs \$1,500,000

<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>	<u>Rate/Term/Lien</u>
JDA	\$840,000	56%	3.43%, 7yrs., co-equal 1st
Bank	\$420,000	28%	
Equity	\$240,000	16%	

Total Project Financing \$1,500,000 100%

### III. Project Description and Company Background

#### A. Background

Sidney Weicher and Albert Einbinder, following their respective tours of duty in WWII, founded Inland Paper Products in 1946. Owned and operated by sons Daniel Weicher and Joel Einbinder, Inland makes laminated films for form-fill-seal packaging. Its chief market is in liquid packaging film for single-serving condiments, including packets for Chinese condiments, sauces, ketchup, dressings, and ice pops. The business is in a designated Empire Zone in Brooklyn, New York and employs 10 fulltime employees. The company has always been located in the Borough of Brooklyn.

Since the Clean Air Act was enacted, Inland has converted to aqueous inks and adhesives while other companies in the industry have invested in incinerators designed to burn off printing solvents. Aqueous inks and adhesives pose difficulties in processing, including, slow line speeds, inferior print quality and high-energy requirements to dry aqueous products. These problems limit the company to lower margin down-market commodity driven applications.

#### B. Project Description

Beginning in the mid-1980s, Inland's management began implementing methods for reducing the environmental impact of its operations, and since 2003, the company has retooled its laminating and slitting departments, in order to achieve productivity enhancements and savings that significantly improved the company's ability to compete in the marketplace.

Inland Paper now needs to invest in additional equipment to improve the quality of its flexographic printing, and to that end, the company has identified a number of problems that must be resolved if Inland Paper is going to stay in business using the environmentally preferable non-solvent technology.

While the prevention of VOC's and their associated costs are an important part of this project, the prevention of solvent use can only be achieved if Inland Paper can compete with other printers, including those using solvent-based inks.

There have been advances in flexography over the last ten years that have all but eliminated issues that have traditionally impeded the printing industry and Inland Paper in particular. These advances have, among other things, reduced consumption of energy, time and materials.

Inland Paper proposes to acquire a new printing press that has all of the latest cutting edge technology (permitting the company to advance three generations in flexography, including:

- 1) enhanced drying capacity for water based inks - the drying ovens in this press are of the latest design, assuring complete coverage and high velocity and incorporate touch screen control of velocity and temperature so that Inland Paper would not have to resort to solvents;
- 2) automatic turret for roll changing - the machine does not need to stop in order to queue up new rolls or remove printed materials So that waste is averted and downtime is further minimized;
- 3) automatic viscosity control of ink pumps, maintaining color strength;
- 4) computer touch screen interface of all systems, permitting menu memory of registration and setup, web tension, oven temperature, job quantity and history, and running speed because the machine is connected via a modem for quicker diagnostics; and
- 5) reduced waste - Inland Paper estimates that a new press will reduce solid waste in the company's overall operations by 2% per year.

Inland Paper has had the opportunity to grow its printing business organically; many of its customers have asked repeatedly that the company do more printing for them and/or to grow this segment to take on referrals. This is in part, a direct result of the investment, which ESD's Environmental Services Unit made in Inland Paper's winning projects of the past.

#### IV. Basis for Recommendation

1. Financial analysis indicates that, as of the close of the last fiscal year, the Company would be able to support the debt service on this project.
2. The Company anticipates the addition of three new jobs within two years after completion of the project.
3. The Company has warranted that it complies and will comply with Federal and State legal requirements as to non-discrimination and equal opportunity in hiring and operational practices.
4. Pursuant to 1823.7 (a) (ii) and 1823.7 (b) *et seq.* of the New York Job Development Authority Act, regarding loans in excess of forty percent of the cost of a project, staff has ascertained that the company is unable to obtain a sufficient amount of financing at prevailing market rates of interest for businesses of similar size in the same industry in New York State and, as described above, staff has considered

- a) the applicant's potential for creating jobs in New York State;
  - b) the benefits derived from the project in the community in which the project is or will be located;
  - c) the interaction of the project with economic development programs administered by the Department of Economic Development and the New York State Urban Development Corporation.
  - d) the meaningful participation of minority and women-owned business enterprises and minority group members and women in a project;
  - e) the degree to which the project will support apprenticeship training;
  - f) compliance with the provisions of section eighteen hundred twenty-six of the Act with regard to the Project Occupant; and
  - g) In consultation with the Department of Economic Development, the eligibility of the applicant for assistance under the Industrial Effectiveness Program pursuant to article seven of the Economic Development Law.
5. The project has the support of local officials.
6. The project would not proceed without the participation of JDA.

If approved, this loan shall be subject to the usual JDA conditions and to such other conditions as the General Counsel may determine are in the best interest of JDA.

#### V. Financial Terms and Conditions

- 1. Receipt of the personal guarantees of Daniel Weicher and Joel Einbinder in form and substance satisfactory to JDA.
- 2. Borrower must maintain minimum debt coverage of 1.2:1.
- 3. Collateral review and appraisals acceptable to JDA.
- 4. Review or audited financial statements to be submitted at closing and on an annual basis.
- 5. A co-first lien on equipment with a cost of at least \$1.4 million and a useful life of seven years.

6. Bank loan rate must be comparable to JDA seven year taxable rate (currently 4.60%).
7. All certifications and permits for the operating purposes of this facility to be in full force and effect prior to closing of JDA loan.

#### VI. Environmental Review

ESD staff has determined that the project constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with the project.

#### VII. Affirmative Action

ESD's Non-discrimination and Affirmative Action policy will apply. Inland Paper Products is encouraged to include minorities and women in any job opportunities created by the project, and to solicit and utilize Minority and Women-owned Business Enterprises for any contractual opportunities generated in connection with the project.

#### VIII. Additional Submissions to Members

Resolutions  
New York State Map

May 8, 2012

New York Job Development Authority - New York (New York City Region-Kings County) – Inland Paper Products Corp. – Finding and Considerations for Eligibility for Loan Involving Companies in Need of Special Assistance Pursuant to Section §1823. 7. (a) (ii) and §1823. 7. (b) *et seq.* of the New York Job Development Authority Act (the “Act”); Authorization to Make a Loan and to Take Related Actions

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RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Authority (the “Materials”), relating to the loan to Inland Paper Products Corp. (the “Company”), the Members of the Authority hereby find that the company is unable to obtain a sufficient amount of financing at prevailing market rates of interest for businesses of similar size in the same industry in New York State, and the Members confirm that in making such finding they have considered:

the applicant's potential for creating jobs in New York State;

the benefits derived from the project in the community in which the project is or will be located;

the interaction of the project with economic development programs administered by the Department of Economic Development and the New York State Urban Development Corporation.

the meaningful participation of minority and women-owned business enterprises and minority group members and women in a project;

the degree to which the project will support apprenticeship training;

compliance with the provisions of section eighteen hundred twenty-six of the Act with regard to the Project Occupant; and

in consultation with the Department of Economic Development, the eligibility of the applicant for assistance under the Industrial Effectiveness Program pursuant to article seven of the Economic Development Law; and be it further

RESOLVED, that the Chairman of the Authority or his designee(s), be and each them hereby is, authorized to make to the Company a loan in an amount not to exceed \$840,000 (the “Loan”) for the purposes and substantially on the terms set forth in the Materials, with such changes as the Chairman of the Authority or his designee(s) may deem appropriate; and be it further

RESOLVED, that Chairman of the Authority or his designee(s) be, subsequent to the making of the Loan, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the Loan as he or she may deem appropriate in the administration of the Loan; and be it further

RESOLVED, that the Chairman of the Authority or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Authority to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary and proper to effectuate the foregoing resolutions; and be it further

RESOLVED, that the provision by the Authority of financial assistance is expressly contingent upon: (1) the approval of the Public Authorities Control Board, if applicable; (2) receipt of all other necessary approvals; and (3) the availability of funds and the approval of the State Division of the Budget, if applicable; and be it further

## **FOR CONSIDERATION**

May 8, 2012

**TO:** The Directors

**FROM:** Kenneth Adams

**SUBJECT:** Utica (Oneida County) – Payment of Operating Expenses

**RE:** Authorization to (i) Extend JDA's Agreement with the City of Utica IDA for a Period of Up To Four Additional Months, (ii) Allocate Corporate Funds in an Amount Not to Exceed \$77,500 for Payment of Operating Expenses For the Harza Building to City of Utica IDA, and (iii) Take All Related Actions.

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## **SUMMARY**

The Directors are asked to authorize JDA to extend its agreement with the City of Utica IDA (the "IDA") for a period of up to four months and allocate corporate funds in an amount not to exceed \$77,500 for the payment of operating expenses for the Harza Building in Utica, New York (the "Building"). This action will allow the IDA, through the Mohawk Valley EDGE ("EDGE"), to market and sell the Building.

## **BACKGROUND**

In March 1991, the New York Job Development Authority ("JDA") guaranteed a \$5,208,000 loan from Norstar Bank of Upstate NY to the IDA to help finance Building improvements. In the late 1990s, the beneficiary tenant, Stetson-Harza, defaulted on the loan and the IDA was unable to make payments. JDA began foreclosure proceedings against the IDA in 1998. Proceedings were stayed a year later when a temporary tenant was retained and made mortgage payments until 2004. When that tenant left, JDA tried to structure a more manageable mortgage for the IDA, reducing the outstanding balance to \$750,000 (the appraised value of the Building in 2005). Agreement with the IDA regarding this proposed modification of the mortgage was not reached. The principal balance stands at approximately \$3.7 million. An appraisal conducted by the city of Utica in March 2011 estimated the market value of the Building to be \$350,000.

In the intervening years the Building languished. In 2006, New York State offered a \$1 million City-by-City grant to Utica and its IDA for needed repairs and renovation.

The IDA loses a substantial amount of money each year. Carrying costs for the Building have crippled the agency and made it impossible for it to conduct a marketing initiative by itself. A review of the Annual Report for the IDA for the fiscal year 2010 (filed via the Public Authorities Reporting Information System) confirms that the IDA is indeed in very poor fiscal health.

JDA put forward a proposal in August to defray the IDA's Building -related expenses while an aggressive, six-month marketing and redevelopment initiative was undertaken. If the Building did not sell during that time, the Building would be sold to the IDA for the appraised amount (\$350,000), financed by JDA for \$25,000 down and a term of 15 years at zero interest.

Negotiations thereafter resulted in an agreement between JDA and the IDA. The agreement provided for a period of up to five months wherein the JDA would retain assistance in marketing the Building for sale to a private party, thus resolving a long-outstanding non-performing mortgage loan and returning the Building to productive use in Utica's Central Business District.

Specifically, the agreement and stipulation provided that:

- JDA would retain, at its sole expense, Mohawk Valley EDGE (hereinafter "EDGE") to market the Building for at least 60 days according to a plan agreed to and managed by JDA. Further, JDA would pay all costs associated with this marketing effort, not to exceed \$40,000 for the period of the agreement.
- Beginning December 1, 2011, JDA would pay up to \$9,000 for monthly operating expenses at the Building through March 2012. In the event that actual operating expenses exceeded \$9,000 per month during that time, the IDA was to pay all such additional charges. To meet IDA concerns about the impact of higher winter bills, JDA agreed to pay \$10,000 for operating expenses in April. JDA retained the option to extend the agreement until May 31, 2012, and also pay \$9,000 in that month, if the agency must extend to accommodate a purchaser or to complete a foreclosure.
- In the event that a prospective purchaser expressed willingness to buy the Building on terms and conditions acceptable to the JDA and to the IDA, both agreed to cooperate to realize such sale.
- If no purchaser were identified for the Building during the period of the agreement, or if a prospective purchaser failed to close on a sale agreement on or before May 31, 2012, JDA or its designee would accept title to the Building through a deed-in-lieu of foreclosure, pending JDA Board approval.

- JDA also reserved the right to, at any time, give notice to the IDA and proceed with a deed-in-lieu of foreclosure, with JDA Board approval.

### **CURRENT STATUS**

EDGE has marketed the Building for nearly four months by advertising in regional newspapers and offering tours of the Building to interested parties but EDGE has not received any offers at the price point of \$350,000. The biggest issue facing the Building always has been and continues to be that there is limited access to parking at or near the Building. EDGE is now exploring the sale of the Building at price points below \$350,000 and has recently received a conditional offer to buy the Building for \$250,000. If all of the buyer's conditions are met by the IDA and the City of Utica, then the buyer stated a willingness to close by July 20, 2012. The JDA Workout Committee will continue to review the conditions and terms of sale and make a final determination of any resolution.

The stipulation to reimburse the IDA for the Building's operating costs is set to expire on April 30, 2012 and JDA would like to extend the terms of the agreement for a term of up to four additional months and increase the contract amount from the current \$46,000 amount to \$77,500. The additional \$31,500 is broken down by a reimbursement of up to \$9,000 in May and up to \$7,500 in the remaining three months. This will allow JDA to reimburse the IDA for the Building's operating costs through August 31, 2012 and for the potential deal to close.

### **ENVIRONMENTAL REVIEW**

ESD staff has determined that the authorization for the extension of the stipulation agreement and payments described herein do not constitute an action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required in connection with the authorization. Any ultimate acquisition or disposition of the property will be subject to the necessary and appropriate SEQRA review.

### **FINANCE COMMITTEE REVIEW**

On April 27, 2012, the JDA Finance Committee reviewed and approved submission of the extension of the stipulation agreement and payments described herein to the Directors for authorization.

### **AFFIRMATIVE ACTION**

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority- and women-owned business in the performance of ESD contracts. For purposes of this Contract, however, goals will not be established due to the unavailability of minority and women-owned businesses for performance of this Contract.

**REQUESTED ACTION**

The Directors are requested to authorize JDA to (i) extend its agreement with the City of Utica IDA for a period of up to four months, (ii) allocate corporate funds in an amount not to exceed \$77,500 for the payment of operating expenses for the Building, and (iii) the taking of all related actions.

**RECOMMENDATION**

Based on the foregoing, I recommend approval of the attached resolution.

**ATTACHMENT**

Resolution

May 8, 2012

Utica (Oneida County) - Authorization to (i) Extend JDA's Agreement with the City of Utica IDA for a Period of Up To Four Additional Months, (ii) Allocate Corporate Funds in an Amount Not to Exceed \$77,500 for Payment of Operating Expenses For the Harza Building to City of Utica IDA, and (iii) Take All Related Actions.

RESOLVED, that on the basis of the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, relating to the extension of the stipulation agreement between the New York Job Development Authority, the Corporation be, and is hereby authorized to extend the said stipulation agreement for a period of up to four months and allocate an amount not to exceed \$77,500 from Corporate funds, for payment of the Harza Building's operating expense, and be it further

RESOLVED, that the Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing resolution.

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