**PLEASE NOTE - We welcome public comment on the items on the following agenda. To ensure maximum opportunity for participation, speakers representing themselves may speak for up to 2 minutes each, and those representing groups may speak for up to 4 minutes (1 speaker per group). Speakers' comments may address only items considered at today's meeting.**

**NEW YORK JOB DEVELOPMENT CORPORATION**

Meeting of the Members

Thursday
January 31, 2013 – 12:30 p.m.

**PROPOSED AGENDA**

**CORPORATE ACTIONS**

1. Approval of Minutes of the November 16, 2012 Directors' Meetings

2. Compensation for Outside Counsel – Approval of Compensation Rates for Outside Legal Counsel

3. JDA Procurement Guidelines – Adoption of Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Guidelines

**FOR INFORMATION**

4. JDA Loan underwriting Classification System

**FOR CONSIDERATION**

5. Loan Report for Giumenta Corp. d/b/a Architectural Grille

6. USDA Business & Industry Loan Guarantee Program – Approval for JDA to Apply as a Non-Traditional Lender Under the USDA B&I Loan Guarantee Program

**FOR INFORMATION**

7. Preliminary Report of Damage and Losses Incurred by Businesses in the JDA Portfolio as a Result of Hurricane Sandy

8. Hurricane Sandy Resources for Business Recovery & Mitigation (Oral Report)

**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
633 Third Avenue
New York, New York 10017

and

NYS Department of Labor
State Campus
Building 12, Room 500
Albany, New York 12240

November 16, 2012

MINUTES

**Members Present:**
Kenneth Adams, Commissioner of DED – Chairman
Adam Barsky
Andrew J. Maniglia
Emily Youssouf
Stephen McGrattan, Designee – NYS Superintendent of Agriculture and Markets
Mario Musolino, Designee – NYS Department of Labor

**JDA Staff:**
Maria Cassidy, Deputy General Counsel
Justin Ginsburgh, Executive Vice President and Chief Operating Officer
Eileen McEvoy, Corporate Secretary
Kathleen Mize, Controller
Frances A. Walton, Senior Vice President and Chief Financial Officer

**Present for ESD:**
Amit Nahalani, Financial Analyst
Antovk Pidedjian, Senior Counsel
Debbie Royce, Acting Secretary
Ray Salaberrios, Senior Director – Economic Revitalization
Susan Shaffer, Vice President – Loans and Grants

**DRAFT – SUBJECT TO REVIEW AND REVISION**

**Also Present:** The Press
The Public

The meeting was called to order at 1:40 p.m. by Chairman Adams. 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.

Chairman Adams then set forth the guidelines regarding comments by the public on matters on the Agenda.

Chairman Adams then entertained a motion to approve the Minutes of the September 28, 2012 Members' meeting.

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

APPROVAL OF MINUTES AND RATIFICATIONS OF ACTIONS TAKEN AT SEPTEMBER 28, 2012 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 September 28, 2012 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.

* * *

Ms. Cassidy then asked the Members to establish a Pre-Qualified Counsel List and to approve the Pre-Qualified Counsel.

Among other things, Ms. Cassidy explained that the purpose of the list is to make available firms with expertise in nine different areas of the law who have gone through a competitive solicitation process so that when the need arises for outside counsel, a firm can be selected from the list without the need to conduct an individual solicitation each time.

This, Ms. Cassidy continued, will allow staff to respond more flexibly and efficiently to business needs as they arise. Ms. Cassidy added that the list generally remains in effect for three years and at the option of the General Counsel, for an additional year.

Ms. Cassidy continued and explained that ESD recently concluded a new solicitation as its then current list was expiring. The solicitation, Ms. Cassidy added, was conducted on ESD's own behalf as well as for its subsidiaries and for JDA, as an affiliated entity.

As JDA expands its activities, Ms. Cassidy further explained, the need for outside counsel may arise. Staff recommends, therefore, that the list of firms presented in the Members' materials be adopted by the Board for the benefit of JDA as it has been for ESD and its subsidiaries.

Ms. Cassidy then explained in detail the process utilized in selecting the firms. Ms. Cassidy noted that with this item, the Members are not being asked to authorize the retention of any particular firm in connection with any matter.

Member Barsky asked when approval was provided with regard to the maximum rate and Ms. Cassidy thanked Member Barsky for the reminder that this had not been done and stated that the $400 maximum rate will be presented for approval at the next JDA meeting. Member Youssouf asked why there were two lists and Ms. Cassidy noted that the lists were identical and were merely contained in two places in the materials.

Member Youssouf also asked if the asterisks represented minority firms and Ms. Cassidy stated that they represented certified minority or women-owned firms.

Member Barsky then asked if everything is based on time and hours or if there is any sort of repeating work that can be done on a per assignment basis with a dollar amount threshold cap as opposed to an hourly rate.

Ms. Cassidy stated that at the present time, only the bond work is done on an agreed upon amount regardless of the number of actual hours worked.

The Chair then called for any further questions or comments. Hearing none, and upon motion duly made and seconded, the following resolution was unanimously adopted:

NEW YORK STATE JOB DEVELOPMENT AUTHORITY– Approval of Pre-Qualified Counsel

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BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the New York Job Development Authority, the

law firms, listed in Attachment A be and each hereby is, approved as pre-qualified counsel in the various areas of expertise (and, in each case, related litigation), and in such other areas as the General Counsel or, in the General Counsel's absence, the Deputy General Counsel, may in his or her sole discretion may deem appropriate or advisable in connection with any particular project or matter, such approval to remain in effect until the meeting of the Directors first occurring after November 16, 2015 or, in the discretion of the General Counsel or, in the General Counsel's absence, the Deputy General Counsel, until the meeting of the Directors first occurring after November 16, 2016.

* * *

**Attachment A:**
**Pre-Qualified Legal Counsel**
**Adopted by the Board on November 16, 2012**

Real Estate and Land Use

Bond Schoeneck & King PLLC
* Brown & Hutchinson
Bryan Cave LLP
** Bryant Rabbino LLP
Carter Ledyard & Milburn LLP
Damon & Morey LLP
Day Pitney LLP
Law Offices of Donald J. Tobias
* Gonzalez Saggio & Harlan LLP
Harris Beach PLLC
Hawkins Delafield & Wood LLP
Herrick Feinstein LLP
Hiscock & Barclay LLP
Hodgson Russ LLP
Holland & Knight LLP
Ingram Yuzek Carroll & Bertolotti LLP
Jaeckle Fleischmann & Mugel LLP
Knauf & Shaw LLP
Kramer Levin Naftalis & Frankel LLP
Mentor Rudin & Trivelpiece PC
McNamee Lochner Titus & Williams
Nixon Peabody LLP
Phillips Lytle & * The Gibson Law Firm
Saunders Kahler LLP
Schiff Hardin LLP
* Schoeman Updike & Kaufman LLP
Shearman & Sterling LLP
Sidley Austin LLP
Skadden Arps Slate Meagher & Flom LLP
Venable LLP
Whiteman Osterman & Hanna LLP

Condemnation

Berger & Webb
Bond Schoeneck & King PLLC
Carter Ledyard & Milburn LLP
Damon & Morey LLP
Day Pitney LLP
Harris Beach PLLC
Hiscock & Barclay LLP
Kramer Levin Naftalis & Frankel LLP
McNamee Lochner Titus & Williams
Nixon Peabody LLP
Sidley Austin LLP

* Minority or Women-owned Business
** Certification Pending

**DRAFT – SUBJECT TO REVIEW AND REVISION**

Construction

Bond Schoeneck & King PLLC
Carter Ledyard & Milburn LLP
Damon & Morey LLP
Day Pitney LLP
* Gonzalez Saggio & Harlan LLP
Greenberg Trauig LLP
Harris Beach PLLC
Herrick Feinstein LLP
Hodgson Russ LLP
* Hoguet Newman Regal & Kenney LLP
Holland & Knight
Ingram Yuzek Carroll & Bertolotti LLP
Kilpatrick Townsend & Stockton LLP
Kramer Levin Naftlais & Frankel LLP
Mentor Rudin & Trivelpiece PC
McNamee Lochner Titus & Williams
Nixon Peabody LLP
Saunders Kahler LLP
Schiff Hardin LLP
Shearman & Sterling LLP
Sidley Austin LLP
Venable LLP
Wasserman Grubin & Rogers LLP
Whiteman Osterman & Hanna LLP
* Wilson & Chan LLP

Environmental

Bond Schoeneck & King PLLC
Bryan Cave LLP
Carter Ledyard & Milburn LLP
Damon & Morey LLP
Day Pitney LLP
* Gonzalez Saggio & Harlan LLP
Harris Beach PLLC
Herrick Feinstein LLP
Hodgson Russ LLP
Jaeckle Fleischmann & Mugel LLP
Knauf & Shaw LLP
Kramer Levin Naftalis & Frankel LLP
Mentor Rudin & Trivelpiece PC
McNamee Lochner Titus & Williams
Nixon Peabody LLP
Phillips Lytle & * The Gibson Law Firm
Shearman & Sterling LLP
Sidley Austin LLP
Sive Paget & Riesel PC
Venable LLP
Whiteman Osterman & Hanna LLP

Bankruptcy

Bond Schoeneck & King PLLC
Bryan Cave LLP
Damon & Morey LLP
Day Pitney LLP
Law Offices of Donald J. Tobias
Harris Beach PLLC
Herrick Feinstein LLP
Hodgson Russ LLP
Jaeckle Fleischmann & Mugel LLP
Mentor Rudin & Trivelpiece PC )
McNamee Lochner Titus & Williams LLP
Nixon Peabody LLP
Saunders Kahler LLP
Schiff Hardin LLP
Shearman & Sterling LLP
Sidley Austin LLP
Venable LLP
Whiteman Osterman & Hanna LLP

Labor

Bond Schoeneck & King PLLC
* Brown & Hutchinson
Clifton Budd & DiMaria LLP
Damon & Morey LLP
Day Pitney LLP
* Gonzalez Saggio & Harlan LLP
Harris Beach PLLC
Hiscock & Barclay LLP
Hodgson Russ LLP
* Hoguet Newman Regal & Kenney LLP
Jaeckle Fleischmann & Mugel LLP
Schroder Joseph & Associates LLP
McNamee Lochner Titus & Williams
Putney Twombly Hall & Hirson LLP
* Rao Tiliakos LLP
Saunders Kahler LLP
* Schoeman Updike & Kaufman LLP
Shearman & Sterling LLP
Sidley Austin LLP
Venable LLP
Whiteman Osterman & Hanna LLP

Foreclosure

Bond Schoeneck & King PLLC
Carter Ledyard & Milburn LLP
Damon & Morey LLP
Law Offices of Donald J. Tobias
* Gonzalez Saggio & Harlan LLP
Harris Beach PLLC
Herrick Feinstein LLP
Mentor Rudin & Trivelpiece PC
McNamee Lochner Titus & Williams
Nixon Peabody LLP
Sidley Austin LLP

Taxation

Bond Schoeneck & King PLLC
Carter Ledyard & Milburn LLP
Damon & Morey LLP
Day Pitney LLP
Harris & Beach PLLC
Herrick Feinstein LLP
Hodgson Russ LLP
Holland & Knight
Ingram Yuzek Carroll & Bertolotti LLP
Jaeckle Fleischmann & Mugel LLP
McNamee Lochner Titus & Williams
Nixon Peabody LLP
Schiff Hardin LLP
Shearman & Sterling LLP
Sidley Austin LLP
Whiteman Osterman & Hanna LLP

Bond

Senior Tier**:**
Harris Beach PLLC
Hawkins Delafield & Wood LLP
Holland & Knight
Mintz Levin Cohn Ferris Glovsky and Popeo
Nixon Peabody LLP
Orrick Herrington & Sutcliffe LLP
Squire Sanders LLP & * KnoxSeaton
Winston & Strawn LLP

Junior Tier**:**
Bond Schoeneck & King PLLC
Brown & Hutchinson
Chapman & Cutler LLP
Day Pitney LLP
Edwards Wildman Palmer LLP and * The Hardwick Law Firm LLC
* Gonzalez Saggio & Harlan LLP
Hiscock & Barclay LLP
* Law Office of Joseph C. Reid PA
* Lewis & Munday PC

Sidley Austin LLP

* * *

The Chairman then called upon Mr. Salaberrios to present the Happy Rock Partners, LLP JDA Loan item for the Members' consideration.

First, Mr. Salaberrios provided background information on the project and JDA's reasons for participating in the project.

Mr. Salaberrios then explained that the Members were being asked to approve a $483,000 JDA loan to assist in the renovation of an 85,000 square foot facility in Woodside, Queens to expand the availability of move-in ready and affordable manufacturing space in the area.

Mr. Salaberrios explained that this space will then be pre-leased to pre-signed manufacturing industrial companies at a total project cost of $854,000.

Mr. Salaberrios noted that there is currently one occupant in the building, Sequins International and that additional tenants are currently being sought. There are, Mr. Salaberrios explained, ten possible companies being looked at and only three are needed to fill the entire space.

Among other things, Mr. Salaberrios explained that the total JDA loan will not be funded

until all tenant improvements are executed and the applicant has executed and signed leases indicating a minimum rate of $11 per square foot. Without JDA financing, Mr. Salaberrios added, the project would not be completed.

Member Youssouf asked if the Company was using its own money on construction costs and Mr. Salaberrios said that it was using its own funds. Mr. Salaberrios added that there is no bank involved.

Member Youssouf then asked why JDA was in a second lien position if no bank was involved. Mr. Salaberrios explained that there is a mortgage on the property. Mr. Nahalani further explained that the Company has existing debt that is due in three years to Wells Fargo which is currently in a first lien position on the real estate.

Member Youssouf noted that she knows staff is always very thorough but she is surprised that there are no financials included in the materials.

Mr. Salaberrios stated that that was an oversight on his part. He added that the financials had been submitted to the Finance Committee but that they should have been included in the materials and will be provided to all Members.

Member Youssouf asked if there was a limitation on the type of additional tenants that are being sought as far as what type of business they are in.

Mr. Salaberrios stated that basically, manufacturing and industrial types of businesses are being looked at as possible tenants. He added that no retail will be allowed in the building.

Among other things, Member Youssouf expressed concern with regard to the anticipated refinancing of the Company's Wells Fargo loan once the balloon payment becomes due in approximately three years.

Member Youssouf suggested that JDA staff take steps to secure some refinancing because it is difficult for small businesses to get first lien mortgages and to refinance.

Mr. Pidedjian stated that staff would look into possible arrangements regarding refinance terms.

A discussion ensued regarding various aspects of the transaction.

Member Barsky suggested that in order for the Members to vote on the resolution at hand, they approve it subject to the terms and conditions satisfactory to the President and the Members will submit comments to staff regarding their concerns and as long as it meets the Chairman's satisfaction, the Project can move forward. The Members agreed to this proposal.

Ms. Cassidy added that staff will prepare a revised set of materials to provide to the

Members. These revised materials, she added, will be included in the Corporate Record. The revised materials, Ms. Cassidy continued, will also include the finance memo.

Ms. Cassidy further stated that if the Members determine something has not been added, they can let Kenneth Adams know and staff will further advise.

Ms. Cassidy recommended a motion to approve the proposed loan subject to the distribution of revised materials that incorporate the comments made by the Members at today's meeting.

Chairman Adams suggested to Mr. Salaberrios that going forward, materials for real estate matters such as this one should include maps and illustrations.

Member Barsky asked if JDA staff had selected the appraisal firm and Mr. Salaberrios stated that JDA is piggy backing on the bank's appraisal. Member Barsky stated that he wanted to make sure that the appraisal firm had not been selected by the borrower. A brief discussion was had with regard to using an updated appraisal to be provided by Wells Fargo.

Chairman Adams noted that a motion had been made. He asked if there were any further questions or comments. Hearing none, the Chairman called for a second, and the motion being seconded, the following resolution was unanimously adopted:

Woodside (New York City Region – Queens County) – Happy Rock Partners, L.P. – New

York Job Development Authority Special Purpose Fund Direct Loan Project – Real Estate Loan -- Authorization to Make Loan and to Take Related Action

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RESOLVED, that the Chief Executive Officer 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 Statewide Local Development Corporation for the benefit of the Happy Rock Partners, L.P. for an amount not to exceed $483,000 or 57% of total Project costs, whichever is less, (the "Loan") to be funded from the proceeds of New York State Guaranteed Special Purpose Fund 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 Chief Executive Officer of the Authority or his designee(s) may deem appropriate; and be it further

RESOLVED, that, the Loan is authorized subject to the distribution hereafter to the Members of a JDA Loan Underwriting Memorandum satisfactory to the Chief Executive Officer of the Authority; and

RESOLVED, that, the Loan is authorized subject to the distribution hereafter to the Members of revised Members' materials which to the satisfaction of the Chief Executive Officer of the Authority consistently reflect that the approved loan amount will not exceed 57% of total Project costs; that prior to disbursement of funds there shall be adequate insurance, including flood insurance if necessary, on the Premises; that there are no outstanding material building violations at the Premises; that there shall be no agreement by which the terms of payment of any principal or interest under the First Mortgage are waived, modified, deferred, delayed, increased or reduced in rate or amount, without the prior written consent of the Authority; and

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

* * *

Following the approval of the foregoing resolution, Member Barsky asked if there was anything JDA can do to assist the Governor with Hurricane Sandy relief efforts.

Chairman Adams thanked him for this concern and then outlined the various programs presently put forth by the Governor's Office. Chairman Adams noted that it is too early to determine whether or not JDA can be of assistance in these efforts.

Further discussion was had with regard to the devastating effects of the storm on small businesses and the City and on the State's effort to alleviate some of that devastation.

There being no further business, the meeting was adjourned at 2:37 p.m.

Respectfully submitted,

Eileen McEvoy
Secretary

New York Job Development Authority

FOR CONSIDERATION
January 31, 2013

**TO:** Authority Members

**FROM:** Kenneth Adams

**SUBJECT:** Compensation for Outside Counsel

**REQUEST FOR:** Approval of Compensation Rates for Outside Legal Counsel

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Background

As the New York Job Development Authority ("JDA") expands its portfolio of job creation loans, JDA may be required to call on the assistance of outside counsel in various areas of expertise. At their November 16, 2012 meeting, the Members approved a list of pre-qualified counsel to assist the JDA in responding to the needs of these projects expeditiously, while having available to the JDA the benefits of a broad solicitation of qualified outside law firms.

The proposed rate structure for maximum compensation for outside counsel is set forth below:

| | |
|---|---|
| Partner/Of Counsel | $400/hr |
| Senior Associate | |
| (5th year and up) | $375/hr |
| Mid-level Associate | |
| (3rd-4th year) | $350/hr |
| Junior Associate | |
| (passed bar exam – 2nd year) | $300/hr |
| Law Clerk | |
| (law student interns; | |
| first year associates pre-bar exam passage) | $220/hr |
| Legal Assistants | $90/hr |

These recommended rates would be applied unless a firm's regular billing rates would yield lower overall bills.

On occasion, it will be advisable to compensate firms at a blended rate, whereby all attorneys would be paid at the same rate per hour, regardless of their years out of law school or partner status. This structure is occasionally necessary as a way of attracting top-flight law firms to

work on specific matters where a firm's billing structure makes JDA's rates uneconomic for the firm. It is proposed that blended rates, up to $400 per hour for attorneys, be permitted, as determined on a case-by-case basis, in the discretion of the Chief Executive Officer or General Counsel or, in the General Counsel's absence, the Deputy General Counsel or their designee(s). The recommended blended rate would not apply to Law Clerks or Legal Assistants.

Moreover, where a third party has agreed to reimburse JDA's expenses in connection with JDA's participation in a particular project, it is proposed that JDA pay an outside law firm's full, undiscounted rates and reimbursables.

It has been ESD's experience that on certain occasions, the situation has arisen in which a private third party has retained outside counsel in connection with a proposed project for preliminary work prior to ESD's involvement in the project. When ESD's role was later defined and ESD entered into a direct contract with the same counsel for continuation of service in connection with the project, the law firm was then remunerated at a substantially lower rate for the same work in connection with the same project because of ESD's maximum rate limitation. When there is a third party willing to reimburse for the law firm's work at its full rate, the law firm may perceive the application of a maximum rate schedule as unfair. Indeed, for ESD it resulted in firms insisting on a higher, blended rate for all ESD matters.

Borrowing from this experience, staff believes that the need to agree to blended rates and other special arrangements in the future will be further reduced by allowing for an exception to the maximum rate schedule in those instances in which a third party has agreed to reimburse JDA for its expenses incurred in connection with its participation in a project. In those instances, the maximum rate permitted would be the firm's normal billing rates. This will eliminate any perceived unfairness in JDA's existing policy at no cost to JDA and may result in lower overall costs for outside legal services.

These rates will assist JDA in its efforts to attract and retain top quality legal counsel. Also, we expect that the rates will permit firms to address JDA's legal matters with more experienced attorneys.

These rates are in lockstep with ESD's current compensation rates for outside counsel. In the interest of efficiency, clarity and the aforesaid desire to attract and retain top notch specialists when needed, JDA rates will increase with any increase in ESD compensation rates for outside counsel. Any future rise in JDA rates will be presented to the Members as an informational item.

Environmental Review

ESD staff has determined that this determination does not constitute an action as defined by the New York State Environmental Quality Review Act and its implementing regulations. No further environmental review is required in connection with the requested approval.

Requested Action

The Members are requested to approve the proposed compensation rates for outside counsel and compensation of outside legal counsel at blended rates of up to $400.00 per hour for all attorneys, as determined to be necessary in the discretion of the Chief Executive Officer or General Counsel or, in the General Counsel's absence, the Deputy General Counsel or their designee(s) and permit a firm to charge its normal rates for legal services and expenses in those instances in which JDA will be fully reimbursed for such costs by a third party.

Recommendation

Based upon the foregoing, I recommend that the requested action be approved.

Attachment
Resolution

January 31, 2013

NEW YORK STATE JOB DEVELOPMENT AUTHORITY– Approval of Compensation Rates for Outside Counsel

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BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the New York Job Development Authority ("JDA"), JDA is hereby authorized to compensate outside legal counsel as follows:

<u>Maximum Rate Structure for Outside Counsel</u>

| | |
|---|---|
| Partner/Of Counsel | $400/hr |
| Senior Associate | |
| (5th year and up) | $375/hr |
| Mid-level Associate | |
| (3rd-4th year) | $350/hr |
| Junior Associate | |
| (passed bar exam – 2nd year) | $300/hr |
| Law Clerk | |
| (law student interns; | |
| first year associates pre-bar exam passage) | $220/hr |
| Legal Assistants | $90/hr; and be it further |

RESOLVED, that the Chief Executive Officer and General Counsel or, in the General Counsel's absence, the Deputy General Counsel or their designee(s), and each of them hereby is, further authorized, as determined to be necessary in their discretion, to enter into alternate compensation arrangements with outside legal counsel at blended rates of up to $400.00 per hour for all attorneys (excluding Law Clerks and Legal Assistants); and be it further

RESOLVED, that that the Chief Executive Officer and General Counsel or, in the General Counsel's absence, the Deputy General Counsel or their designee(s), and each of them hereby is, further authorized to amend JDA's maximum compensation rate schedule for outside counsel to permit a firm to charge its normal rates for legal services and expenses in those instances in which JDA will be fully reimbursed for such costs by a third party.

* * *

New York Job Development Authority

**FOR CONSIDERATION**
**January 31, 2013**

**TO:** The Members

**FROM:** Kenneth Adams

**SUBJECT:** JDA Procurements Guidelines

**REQUEST FOR:** Adoption of Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

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**Background**

The proposed Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, as mandated by §2879 of the Public Authorities Law (the "Guidelines") attached to this memorandum set forth the policies and procedures to be followed by the JDA when seeking to contract for goods or services. It should be noted that these Guidelines do not have the force of law, and are intended as a statement of best practices and procedures. No contract is invalid merely because these guidelines have not been followed.

The proposed Guidelines define the universe of procurement transactions which are subject to the policies and procedures. Generally, all procurements by JDA must be competitive, except where State law provides for non-competitive sourcing (e.g., goods purchased from approved non-profit agencies for the blind, and procurements from the Office of General Services Centralized Contracts List). Based on the expected cost of procured goods and/or services, procurement contracts must be obtained after advertisement in the NYS Contract Reporter, except in limited instances where an exemption is obtained, generally for sole or single source procurements when only one vendor offers the desired goods or services or when a single vendor has unique qualities or experience that obviate a competitive process. The proposed Guidelines explain the various means of obtaining goods and services in an open, accountable and transparent manner, including incorporation of ESD's Bid Opening Guidelines and the compilation of a Procurements Record for every covered Procurement Contract.

The proposed Guidelines comply with the applicable provisions of the Public Authorities Law, the State Finance Law and the State Tax Law. They are consistent with the State Procurement Council's Guidelines and with the Governor's directive that all state agencies and public authorities make responsible spending decisions, and that they be accountable for sufficient monitoring of their spending to ensure the highest level of fairness, non-

discrimination, openness and transparency.

The proposed Guidelines are intended to be user-friendly and are set forth in a logical and coherent fashion that will assist staff in understanding the procedures to be followed and the substantive rules that govern procurements. Many sources of help and information are included as clickable links, and virtually all required forms and JDA/ESD policy and procedure documents can also be accessed from within the document by hyperlinks. For obvious reasons, the hard copy of the proposed Guidelines presented to the Directors for approval cannot contain these links, but they are shown in highlight form.

Highlights of the attached Guidelines include:

1. Service contracts that last for more than one year do not automatically require Board approval. For example, equipment warranty and product maintenance/support/lease contracts (including but not limited to auto leases) that last for more than one year do not require approval by the Board unless the amount of such contract is over $100,000 in aggregate through the life of the contract. This will allow JDA to speedily enter into such contracts, which generally are significantly cheaper than single-year contracts that must be renewed annually.

2. "Forced contracts" are not procurement contracts. Forced contracts arise when an agency may need to obtain a license from a governmental agency, authority, or company or a public utility in order to enter the licensor's premises and perform work. As a precondition to receiving the license, an agency can be required to enter into agreements with the licensor that prescribe conditions for work to be performed on the site, including work and/or oversight of work which must be performed by the licensor's personnel or contractors, as well as payment of licensor costs by an agency. Examples include licenses for work on rail and utility facilities. Forced contracts are not covered by the competitive solicitation requirements because an agency has no discretion or authority with respect to the work to be performed by the licensor's personnel and contractors. However, appropriate approval(s) (including Board approval based on the amount and/or duration of the agreement) would apply.

3. Submission of the State Controller's Vendrep vendor responsibility form is required for all contracts to be approved by the Board, and encouraged for all contracts.

4. MWBE requirements of Executive Law Article 15 are incorporated.

5. Compliance with Iran Divestment Act of 2012 is required. This legislation, recently made applicable to public authorities, mandates that all vendors contracting with public authorities such as JDA must certify that they do not have investments in Iran.

6. Compliance with Project Sunlight is required. This is a Governor's initiative that requires (among other things) public authorities to report on an Office of General Services

database communications from representatives of parties seeking procurement contracts which are intended to influence the award of such contracts.

7. To more efficiently handle small procurements of goods that do not require Board approval, the dollar limit for Purchase Orders is $50,000. Purchase Orders are simpler than ESD's Short Form Contract for goods or services, thus reducing negotiation time and expense. Purchase Orders require approval by the relevant Department Head, Procurement Department, Controller's Office and Contracts Administration. Contracts for services of less than one year continue to require the Short Form Contract and approval by the Chief Financial Officer or designee. Contracts over $50,000, or for services in any amount for more than one year, require Board approval.

   The Guidelines are in lockstep with ESD's procurements guidelines.

**Recommendation and Requested Action**

The Members are requested to adopt the proposed Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, effective as of the date of approval.

**Attachments**

Resolution
Proposed Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

January 31, 2013

NEW YORK JOB DEVELOPMENT AUTHORITY – Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

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BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the New York Job Development Authority, the proposed Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, a copy of which is attached to the materials, be and hereby is approved and adopted as of the date hereof, and the Chief Executive Officer or his designee is authorized to promulgate the said Guidelines in electronic form and other media for the use of the staff of the JDA and the New York Urban Development Corporation d/b/a Empire State Development, and to take such other and further action as may be deemed necessary or appropriate to effectuate the foregoing Resolution.

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New York Job Development Authority

FOR INFORMATION
January 31, 2013

**TO:** Authority Members

**FROM:** Kenneth Adams

**SUBJECT:** JDA Loan Underwriting Classification System

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JDA loan underwriting will incorporate a financial analysis to categorize each project with a three part classification system. The classification system will rate each project to determine whether it represents a prudent use of JDA funds, and whether it allows for sufficient portfolio diversification.

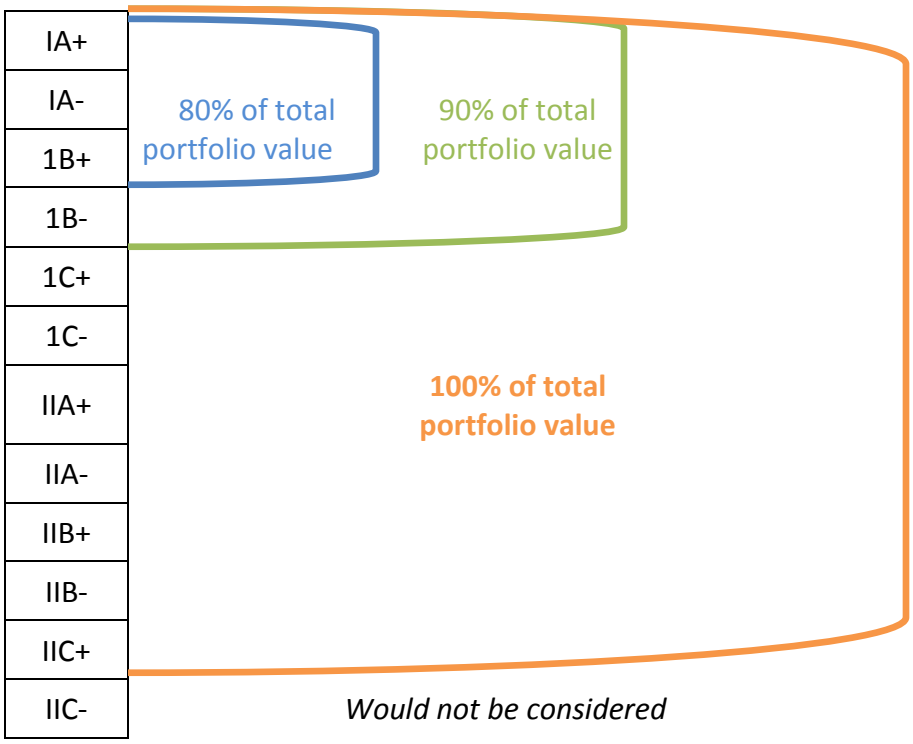
Projects will be assessed in three levels and categorized according to the following classification system:

| Level I: Cash Flow | Level II: Default Risk | Level III: Collateral Value |
|---|---|---|
| **I** Actual or Adjusted Cash Flow ≥ 1.2:1 | **A** Score of ≥ 4 on the Default Risk Model | **+** Liquid value of collateral + adjusted value of personal guarantee ≥ total loan value |
| **II** Actual or Adjusted Cash Flow < 1.2:1, but with Projected Cash Flow ≥ 1.2:1 | **B** Score of 3 on the Default Risk Model | **-** Liquid value of collateral+ adjusted value of personal guarantee < total loan value |
| | **C** Score of ≤ 2 on the Default Risk Model | |

Under this system the highest classification would be IA+, followed by IA-, IB+, and so forth.

To ensure the continued viability of JDA as a self-sufficient revolving loan program, effort will be made to maintain the total distribution of the portfolio in accordance with the following, as represented by the chart below:

- 80% of all portfolio projects, as measured by dollar value, should be allocated to borrowers classified as IB+ or higher.
- 90% of all portfolio projects, as measured by dollar value, should be allocated to borrowers classified as IB- or higher.
- 100% of portfolio projects should be classified as IIC+ or higher.
- Projects classified at IIC- will not be recommended for further consideration.




**Level I: Cash Flow**

Projects where the applicant has an Actual or Adjusted Debt Service Coverage Ratio ("DSCR") at or above 1.2:1 will be classified as Tier I. Projects where the applicant has an Actual or Adjusted Cash Flow below 1.2:1 but has a Projected Cash Flow at or above 1.2:1 will be classified as Tier II. This initial classification establishes a bright-line distinction between those companies that can reasonably be expected to meet their debt obligations as currently situated (Tier I), and those companies which, though projected to meet obligations in the future, may be more risky based on their current situation (Tier II).

Potential JDA loans will initially be evaluated based on their Actual, Adjusted, or Projected Cash Flow and placed into Tier I or Tier II based on the following definitions:

Adjusted Cash Flow: Adjustments may be made to Cash Flow to calculate an Adjusted Cash Flow in the following discrete situations:

(i) Where a reduction in rent will occur as a result of the purchase of a property;
(ii) Where documented cost savings will be realized from the utilization of new, more efficient equipment;
(iii) Where the applicant will benefit from the receipt of real property tax abatements, and proof of qualification is made prior to closing;
(iv) Where a reduction of owners' salaries is negotiated (capped at 25% downward adjustment); or
(v) Where the applicant executes new lease(s) to tenant(s) and increases cash flow.

Projected Cash Flow: Projects that are unable to meet an actual or adjusted DSCR of 1.2:1, but may reasonably anticipate a DSCR at or above 1.2:1 through pro-forma projections, will be categorized as Tier II. These projects are not preferred as they represent a higher risk of default, but may be further analyzed or recommended to the JDA Board in furtherance of JDA goals, and will represent only a very small percentage of the overall JDA portfolio.

**Level II: Default Risk**

After making an initial determination of the project based on Cash Flow, the applicant's audited/reviewed financial records are entered into JDA's "Default Risk Model." This model provides underwriting with a comprehensive picture of the applicant's fiscal strength as it relates to its ability to service debt and allows for the categorization of projects into one of three categories within the second classification Level.

The Default Risk Model assesses the financial strength of the applicant based on: (i) the strength of the debt coverage; (ii) debt/EBITDA; (iii) a Z-score; (iv) funds from operations/debt; (v) retained cash flow/net debt; (vi) current liabilities/net worth; and (vii) total debt/ capitalization (see Appendix for greater details). These seven ratios are then weighted to provide an overall rating score for the project on a scale 1-5, with 5 being highest. The rating score is then incorporated into the classification system based on the following:

- Class A: Projects where the applicant achieves a score of 5 or 4 on the Default Risk Model will be classified as Class A, and are expected to have a relatively strong financial outlook and therefore pose a relatively low risk of default.

- Class B: If a score of 3 is achieved, the project will be classified as Class B, identifying the project as one where the applicant has a moderate financial outlook and consequently poses a moderate risk of default.

- Class C: Scores of 2 or 1 on the Default Risk Model would render the project as Class C, and would suggest that the applicant is in poor financial shape and will likely pose the higher risk of default.

**Level III: Collateral and Personal Guarantees**

The third level is designed to establish the likelihood of JDA recovery in the event of a borrower's default. Specifically, this metric determines what percentage of the principal value of the JDA loan may be recovered, through the sale of collateral and utilization of personal guarantees, in the event of a borrower's default.

If the value of the project collateral and personal guarantees exceed the value of the JDA loan and all senior loans, the project is rated "+". If, however, the combined value of the guarantees and collateral is less than the value of the JDA loan and all senior loans, the project is rated "-". If the project receives a "+", JDA is expected to recoup the entire principal value of the loan in the event of a borrower default; conversely, if the project receives a "-", it is likely that JDA may not recoup the entire principal value of the loan in the event of a borrowers default.

The liquidation value of the collateral will be calculated based on the median recovery that may be obtained through a bankruptcy sale for a similar property. The personal net worth of the guarantors will be adjusted by excluding any equity in the applicant company and adjusting personal property and real estate holdings to liquidation value.

APPENDIX

## Default Risk Model Explanation

The JDA's Default Risk model has been adjusted to specifically measure the risk of a JDA project through an analysis of the financial condition of a borrower. The components of the Default Risk Model are described below

| Ratio | Weighting (%) |
|---|---|
| Debt Coverage | 40% |
| Debt/EBITA | 20% |
| Z-Score | 10% |
| Funds from Operations/Debt | 10% |
| Retained Cash Flow/Net Debt | 10% |
| Current Liabilities/Net Worth | 5% |
| Total Debt/Capitalization | 5% |
| **Total** | **100%** |

## Explanation of the Model

- Debt Coverage – Measures EBITDA divided by debt service requirements, including the financing on the new project. The more the debt coverage exceeds the 1.2 minimum requirement, the stronger the financial condition and the lower the risk. Debt coverage can include adjusted cash flow but may not be calculated using projected cash flow. This ratio represents 40% of the overall score because it is recognized by the industry as the best indicator of a borrower's ability to pay back a loan.

- Debt/EBITDA – Measures total debt (short-term debt and long-term debt) in relation to EBITDA. This component accounts for 20% of the overall score and is an indicator of financial flexibility. The larger the number, the narrower the margin for error the Company has in servicing its debt in the event of a downturn in its business.

- Z-Score – Represents a combination of various liquidity ratios such as working capital/total assets; retained earnings/total assets; EBITDA/total assets; and sales /total assets that measures a company's ability to remain solvent. The lower the score the greater the risk of bankruptcy. Z-Score will factor in as 10% of the overall score.

- Funds from Operations/Debt - Measures a company's cash generated from its operating activities before working capital adjustments, in relation to total debt. This component has been added to the Default Risk Model as a wider indicator than EBITDA of the overall cash generating ability of an organization because it takes into consideration additional cash flow factors such as gains and losses from investments and deferred taxes. It will account for 10% of the overall project score.

- Retained Cash Flow/Net Debt - Measures a company's Funds from Operations less dividends, in relation to total debt after subtracting its cash balance. This component has been added to the Default Risk Model and will be weighted as 10% of the overall score. It is an indicator of how well the Company manages its cash. The larger the number the better the Company's financial management.

- Current Liabilities/Net Worth – Measures the percentage of capital structure that is composed of liabilities due within one year. Consisting of 5% of the overall score, a larger number suggests a lesser projected ability of the company to meet short-term obligations.

- Total Debt/Capitalization – Measures the amount of debt as a percentage of the total capital structure. This calculation consists of 5% of the overall project score and accounts for how leveraged the organization is.

# Loan Report to the JDA Board of Directors
## January 31, 2013

TO: The Members

FROM: Kenneth Adams

DATE: January 31, 2013

RE: Authorization to Make a Machinery & Equipment Loan and Take Related Actions

| | |
|---|---|
| **Borrower:** | Giumenta Corp., D/B/A Architectural Grille |
| **Economic Region:** | New York City |
| **Loan Amount Requested:** | $1,491,000 |
| **Rate:** | 3.32% Tax Exempt Rate |
| **Term:** | 7 years, fully amortizing |
| **Classification:** | IA+ |
| **Distressed Area:** | Yes |
| **Initial Payment:** | $19,815 |

| **SOURCES**<br>**USES OF FUNDS** | JDA ** | BofA *** | Equity | Total |
|---|---|---|---|---|
| Machinery & Equipment | $1,491,000 | $745,500 | $248,500 | $2,485,000 |
| Installation/Freight Charges | - | - | $50,000 | $50,000 |
| Miscellaneous Costs * | - | - | $50,000 | $50,000 |
| Soft Costs | - | - | $50,000 | $50,000 |
| | **$1,491,000** | **$745,500** | **$398,500** | **$2,635,000** |

*Extra parts and training

** 7 year amortization at 3.32% with a co-equal first lien on collateral

*** 7 year amortization at 3.9% with a co-equal first lien on collateral

| | | |
|---|---|---|
| Most Recent Year End Debt Service Coverage Ratio: | 6.25 | :1 |
| Projected Year End Debt Service Coverage Ratio: | 2.36 | :1 |
| Projected Year End Debt Service Coverage Ratio: * | 1.89 | :1 |

*The coverage ratio after including the potential $2MM SBA loan

**Security:**

a. A co-equal first lien on the machinery and equipment with Bank of America. The adjusted value is to be determined.

**Guarantors:**

a. An unlimited personal guarantee of Anthony J. Giumenta who has a personal net worth that exceeds the value of the total project loans.
b. An unlimited personal guarantee of Anthony F. Giumenta who has a personal net worth that exceeds the value of the total project loans.
c. An unlimited personal guarantee of Stephen Giumenta who has a personal net worth that exceeds the value of the total project loans.

**Job Information: Existing:** 8 full-time and 16 part-time **New Jobs Projected:** 20 full-time

**Project Summary:**

Borrower: Giumenta Corp., D/B/A Architectural Grille
42 Second Avenue
Brooklyn New York 11215

Contact: Anthony F. Giumenta, Vice President
Phone: 718- 832-1200
Fax: 718-832-1390

This is a proposed $1.491MM Job Development Authority ("JDA") loan (the "Loan") towards the purchase of new machinery and equipment ("M&E") for the production of custom grilles for heating and ventilating and custom architectural metalwork in the Gowanus section of Brooklyn, New York (the "Project"). The total project cost is $2.635MM (the "Project Cost"). The new M&E would replace the M&E that was destroyed by Hurricane Sandy.

Project location: 42 Second Avenue
Brooklyn New York 11215

Project Completion: 2nd quarter 2013

## 1) PROJECT OVERVIEW AND RECOMMENDATION

### Background

Architectural Grille began as a division of Giumenta Corporation. Its founder, Federico Giumenta Sr. started this family-owned and operated company in 1945 under the name Utility Brass & Bronze. At that time, the business focused on ornamental hand-crafted metalwork that stressed the importance of quality.

In 1983 the company evolved into what it is called today - Architectural Grille (the "Company") - operating as a fully-functional manufacturing plant that specializes in custom linear bar grilles and perforated grilles with a wide selection of material finishes. The company operates out of a 55,000 sq. ft. building.

The Company has found its place in all areas of construction, fabrication and interior design. The Company's products have been used for air conditioning, heating, ventilation, decorative screening and artwork. The Company has been involved in numerous projects around the world that range from large-scale government jobs to small home owner projects.

**Project Description**

In October of 2012, Hurricane Sandy devastated portions of the Northeastern United States. A category 1 storm, Sandy became the largest Atlantic hurricane on record. Sandy's storm surge hit New York City on October 29, flooding streets, tunnels and subway lines and cutting power in and around the city. Damage in the US is estimated at over $63 billion. With waves measuring 30 ft., Sandy caused horrific damage to residents and businesses located near waterways.

Located next to the Gowanus Canal, the Company suffered tremendous damage to its operating facility with water reaching levels of 6 ft in the manufacturing area of the building. In total, the Company incurred $6.0MM in damages. Eighty-five percent of the Company's M&E was rendered useless by the corrosive effects of the Gowanus Canal's salt water. Despite having filed insurance claims in the amount of $6.0MM, the only money the Company received was $250,000 for flood insurance. The explanation the Company received for the insurance denial was that the water that flooded the operating facility was surface water. To cover the insurance shortfall, the Company plans to make it up with JDA proceeds, an SBA loan, and income and cash from its business operations.

After the traumatic event of Hurricane Sandy, the Company is working feverishly to restore its operations back to normal. Never previously having to borrow, the Company is, like many New York companies, scrambling for assistance. The Company has requested disaster relief from the SBA in the amount of $2MM. Luckily, the Company completed enough work before Sandy hit to fill some of its back orders. New orders are being filled manually, a painstakingly slow process that the Company can only sustain for a short period. The funds being requested for the Project would be used to purchase cutting, polishing, storage and leveling equipment that would allow the Company to return to a semblance of production. The Company's management has reached out to customers to make arrangements to fulfill orders and many of the customers have decided to stick by the Company during these difficult times and are working with the Company in an effort to get orders done in a manner that will be amenable to both the Company and customer.

Nevertheless, as a result of Sandy the Company anticipates lost revenue in the amount of $1.6MM. Prior to Sandy, the Company projected revenue to be in the range of $500,000 to $600,000 per month. However, with operations scaled down significantly, the Company is projecting revenue to be approximately $350,000 per month until they can be fully operational.

**Strengths**

- The Company received JDA's highest classification of IA+. Architectural Grille has been profitable over the three-year historical period, as well as being highly liquid and solvent.
- The Company has the ability to repay a JDA loan and Bank of America loan with a projected Debt Service Coverage Ratio (DSCR) of 2.36.
- The Company meets JDA's loan-to-value requirement of 90% with a loan-to-value of 90%.
- The personal guarantors have a combined net worth that exceeds the total amount of all project loans.

**Weaknesses**

- The Company's ability to regain business operations as they were prior to Hurricane Sandy is unknown.
- It is uncertain when and if the Company will be able to retain its customer base at pre-Hurricane Sandy levels.

**Recommendation**

The Loan is recommended for approval based on the following:

- The Company has a strong history of operating profitably prior to Hurricane Sandy, and has received JDA's highest classification of IA+.
- The Company now requires JDA's assistance to restore its operations and profitability to pre-Sandy levels. The Company expects to be operating at pre-Sandy levels by June 1, 2013. Furthermore, with JDA's assistance the Company will be able to hire 20 full time employees.
- In order to retain its current customer base and stay in communication with them, the Company has sent out letters to its customers describing how the Company was impacted by Hurricane Sandy and its plan to restore operations.
- Furthermore, the Company operates in a very specific niche and high-end market and is the market leader for custom grill manufacturing.
- The Company currently has $950,000 of active jobs in production on the floor and $290,000 of jobs on hold due to pending shop drawing approvals.
- The Company has a back log of projects as well as steady ordering/purchases of their products this spring to sustain its business until it can be fully operational.

## 2) DESCRIPTION OF THE COMPANY AND THE PRINCIPALS

| | |
|---|---|
| BORROWER NAME: | Giumenta Corp., D/B/A Architectural Grille |
| ADDRESS: | 42 Second Avenue<br>Brooklyn, NY 11215 |
| PHONE#: | (718) 832 -1390 |
| Ownership: | Anthony J. Giumenta (President) owns 52%; Anthony F. Giumenta (Vice-President) owns 24%; and Stephen Giumenta (Vice-President) owns 24%. |
| Nature of Business: | Manufactures custom grilles for heating and ventilating along with custom architectural metalwork. |
| Major Competitors: | Kees, Inc., Advanced Architectural Grille and AirFlex |
| Major Customers: | Hobbs, Pan Am Equities, Weber & Grahn, Harmon Inc. and Mid Canada Millwork |

## 3) FINANCIAL INFORMATION

<u>Historical Financial Information</u>

- Industry: Sheet Metal Work Manufacturing
- NAICS Code: 332322
- JDA Classification: IA+
  - Profitability:
    - Sales: Decreasing over 3-year historical period.
    - Profit Margin: Above the industry median in most recent year.
    - EBITDA: Increasing over the 3-year historical period.
    - Net Income: Increasing over 3-year historical. Although the Company's sales have declined over the 3-year historical period, its profitability, EBITDA and net income have increased during this period. The reason for the increase is operating expenses have declined, specifically the compensation of officers.
  - Liquidity:
    - Current ratio: Above the industry median and greater than 1.
  - Solvency:
    - Total debt/total assets: Above the industry median but less than 65%.
    - EBITDA/Debt Service: Strong

**Architectural Grille**
**Years Ending December 31**

| | Industry Median | 2009 | 2010 | 2011 | YTD 2012 * |
|---|---|---|---|---|---|
| Net Sales | | 6,605,746 | 6,248,671 | 6,520,544 | 5,257,026 |
| EBITDA | | 1,188,221 | 1,301,360 | 1,369,555 | 1,101,729 |
| Pre-tax Profit | | 389,448 | 476,313 | 747,979 | 841,284 |
| Pre-tax profit/net sales | 4.80% | 5.90% | 7.62% | 11.47% | 16.00% |
| Net Income | | 389,448 | 476,313 | 747,979 | 841,284 |
| Current Assets | | 1,484,407 | 1,659,526 | 2,042,814 | |
| Current Liabilities | | 1,019,227 | 436,709 | 567,161 | |
| Current Ratio | 1.70 | 1.46 | 3.80 | 3.60 | |
| Total Assets | | 4,960,599 | 4,423,988 | 4,380,169 | |
| Long-term Debt | | 809,046 | 647,790 | 169,302 | |
| Total Debt | | 1,556,546 | 1,885,290 | 1,616,802 | |
| Total Liabilities | | 2,583,045 | 2,507,586 | 2,590,770 | |
| Net Worth | | 2,377,554 | 1,916,402 | 1,789,399 | |
| Total debt/total assets | 0.19 | 0.31 | 0.43 | 0.37 | |
| EBITDA/Debt Service | | 5.98 | 6.41 | 6.25 | |

*For the nine months ending September 30th

## 4) CREDIT ANALYSIS

### I. Debt Service Coverage and Net Cash Flow Analysis

**Debt Service Coverage Ratio**

| | 2011 |
|---|---|
| EBITDA | 1,369,555 |
| | |
| **Annual Debt Service** | |
| Existing Debt | 219,257 |
| JDA Loan | 239,002 |
| Bank Of America | 121,870 |
| Total Debt Service | 580,128 |
| | |
| **DSCR** | **2.36** |

Based on 2011 cash flow, the Company will be able to service a JDA loan and a Bank of America loan with a DSCR of 2.36, which exceeds JDA's minimum standard of 1.20.

Additionally, the Company plans on taking on additional debt in the amount of $2.0MM at 6.0% with a 30-year term from the Small Business Administration (SBA) to purchase other machinery and equipment. The projected DSCR with the SBA loan in addition to the JDA and Bank of America loans is 1.89 as illustrated below.

**Debt Service Coverage Ratio with SBA Loan**

| | 2011 |
|---|---|
| EBITDA | 1,369,555 |
| | |
| **Annual Debt Service** | |
| Existing Debt | 219,257 |
| JDA Loan | 239,002 |
| Bank Loan | 121,870 |
| SBA Loan | 143,892 |
| Total Debt Service | 724,021 |
| | |
| **DSCR** | **1.89** |

## II. Collateral Analysis

| | |
|---|---|
| **Loans** | |
| JDA Loan | 1,491,000 |
| Bank of America | 745,500 |
| Total Loans | $ 2,236,500 |
| | |
| **Collateral Value** | |
| Machinery and Equipment | 2,485,000 |
| Total Value | $ 2,485,000 |
| | |
| **Loan to Value:** | **90.00%** |

## 5) POTENTIAL LOAN TERMS

| | |
|---|---|
| Funding Source | JDA |
| Funding Condition | Project completion. |
| Principal | $1,491,000 |
| Minimum Debt Service Coverage Rate | 1.20:1 |
| Interest Rate | Tax-exempt rate at time of closing which is currently 3.32% |
| Term | 7 years, fully amortizing. |
| Collateral | A co-equal first lien on the M&E with Bank of America. |
| Guarantees | Personal guarantees from Anthony J. Giumenta, Anthony F. Giumenta, Stephen Giumenta and corporate guarantee of the Company. |
| Conditions | ▪ Receipt and acceptance of interim financial statements acceptable to ESD.<br>▪ Bank reference check acceptable to JDA.<br>▪ A review of the Company's pipeline which includes executed contracts and security deposits for the completion of future projects. |
| Fees-Commitment | 1% upon commitment. |
| Application | $250 |

## 6) COVENANTS AND CONDITIONS

<u>This Loan is predicated upon the following financial conditions:</u>

- The Company must present how it plans to retain its customer base which may have been lost due to Hurricane Sandy.
- The Company must present its pipeline which includes executed contracts and security deposits for the completion of future projects.
- The Company must maintain a minimum debt service coverage ratio of 1.2 throughout the term of the loan.
- The Company must meet all other standard JDA requirements as follows:
    a. Completion of the Project to the satisfaction of JDA, as evidenced by the purchase and installation of the M&E and such other certification(s) required before the M&E may be used for the purposes intended.
    b. Execution and delivery of the Note, the Security Agreement (furnished by JDA) and related documents by the Company, all satisfactory to JDA.
    c. Procurement by the Company of funds which shall be used at or prior to the closing to pay the Project Cost, exclusive of the proceeds of the Loan.

d. Receipt by JDA of policies of insurance, including flood insurance if required, in amount, form and substance and issued by companies satisfactory to JDA.

e. Receipt by JDA of an itemized statement of Project Cost, substantiated by cancelled checks and paid bills, satisfactory to JDA.

f. Receipt by JDA of financing documents of other lender(s) satisfactory to JDA.

g. Satisfaction of such other conditions as JDA, with advice of counsel, deems necessary or advisable to effectuate the Loan, secure the interest of JDA and insure compliance with the JDA Statute and applicable provisions of the Code.

h. Delivery of the Company's waiver and consent, in form furnished by JDA, permitting entry by JDA and removal of the M&E (in whole or in part(s)) in the event of default and waiving rights to prior claim against the M&E as fixtures, abandoned property or otherwise.

i. Execution of documents to permit monthly electronic debit of the Company's checking account to repay the Loan.

j. Compliance with ADDITIONAL REQUIREMENTS stipulated in all Schedules, Exhibits and Riders, attached hereto and made a part hereof.

k. Compliance with any other terms and conditions deemed to be necessary and appropriate in the opinion of the General Counsel of JDA.

l. Receipt by JDA of an Intercreditor Agreement setting forth terms of co-equal first lien position shared with Bank of America, satisfactory to JDA (form furnished by JDA).

m. The Company or the Company's owners will contribute at least 10% in equity to the Project. Equity is defined as any non-debt source of capital and should be auditable through the Company's financial statements or the Company's accounts, if so requested by JDA.

n. Subordination of any loans to the Company from those certain officers and members of the Company stipulated herein in a manner satisfactory to JDA.

o. The Company shall not enter into any agreement by which the terms of payment of any principal or interest under the Bank of America loan are waived, modified, deferred, delayed, increased or reduced in rate or amount, without the prior written consent of JDA.

p. Collateralization of the Loan with insurance of the lives of Anthony J. Giumenta, Anthony F. Giumenta and Stephen

Giumenta in an amount sufficient to pay the outstanding principal balance of the Loan at any time.

q. All certifications and permits for the operating purposes of the facility to be in full force and effect prior to closing the Loan.

## 7) ENVIRONMENTAL REVIEW

ESD staff on behalf of the JDA 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.

## 8) NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

JDA's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. The Company shall be required to (i) solicit and utilize MWBEs for any contractual opportunities generated in connection with the Project and (ii) use Good Faith Efforts (pursuant to 5 NYCRR §142.8) to achieve an overall Minority and Women Business Enterprise ("MWBE") Participation Goal of 20% related to the total value of JDA's funding.

JDA's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. The Company shall be required to (i) solicit and utilize MWBEs for any contractual opportunities generated in connection with the Project and (ii) use Good Faith Efforts (pursuant to 5 NYCRR §142.8) to achieve an overall Minority and Women Business Enterprise ("MWBE") Participation Goal of 20% related to the total value of JDA's funding.

## 9) ADDITIONAL SUBMISSIONS TO MEMBERS

Resolution
New York State Map
JDA Loan Underwriting Classification System

January 31, 2013

Brooklyn (New York City Region – Kings County) – Giumenta Corp., D/B/A Architectural Grille – New York Job Development Authority Special Purpose Fund Direct Loan Project – Machinery & Equipment Loan -- Authorization to Make Loan and to Take Related Action

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RESOLVED, that the Chief Executive Officer of the Authority or his designee(s) be, and each of them hereby is, authorized to make a Special Purpose Fund Machinery & Equipment Loan to Statewide Local Development Corporation for the benefit of Giumenta Corp D/B/A Architectural Grille for an amount not to exceed $1,491,000 or 57% of total Project costs, whichever is less, to be funded from the proceeds of New York State Guaranteed Special Purpose Fund 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 Chief Executive Officer of the Authority or his designee(s) may deem appropriate; and be it further

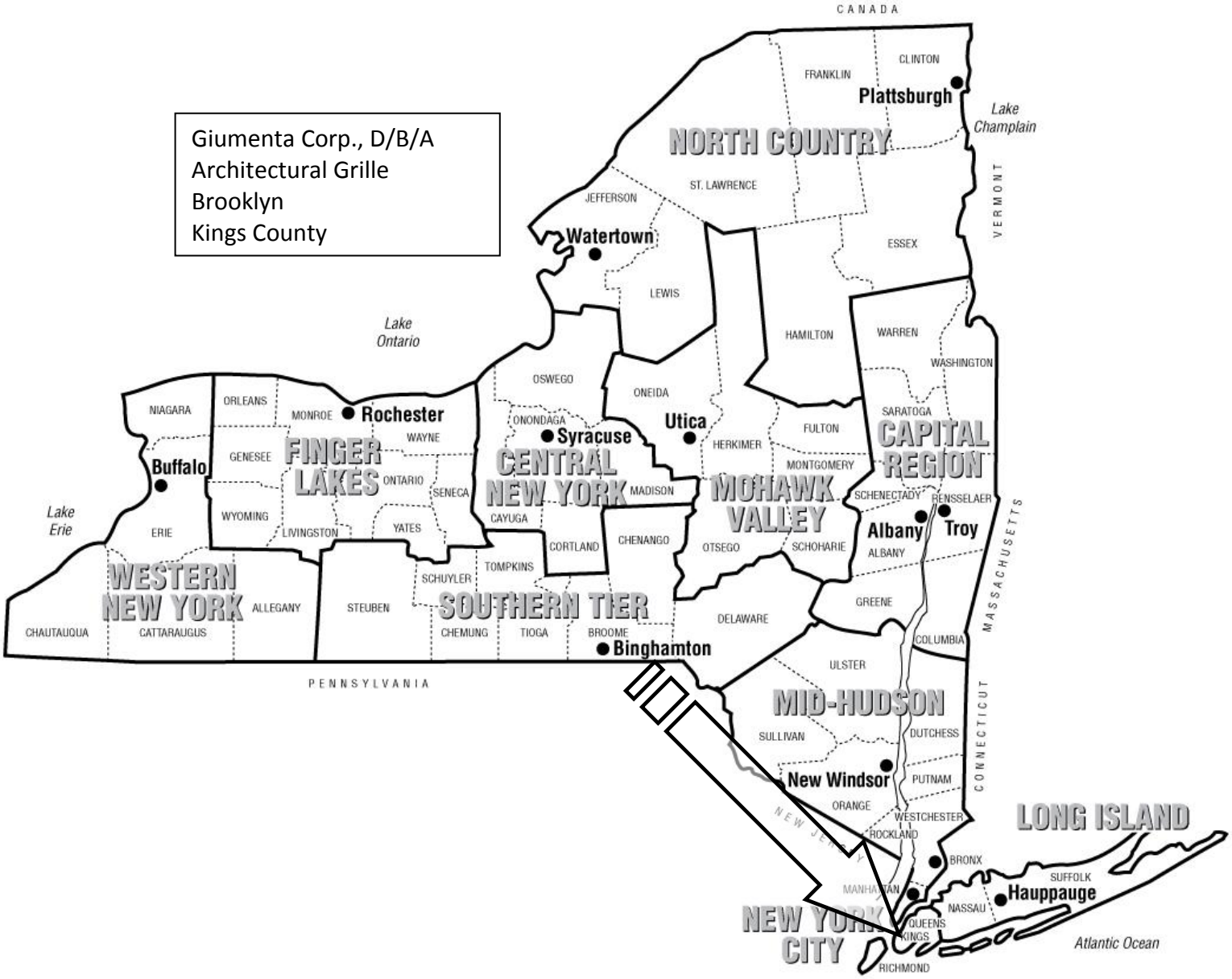
RESOLVED, that the Chief Executive Officer of the Authority or his designee(s) be, subsequent to the making of the Loan, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the Loan as he or she may deem appropriate in the administration of the Loan;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

RESOLVED, that the Chief Executive Officer 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 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.

***

Giumenta Corp., D/B/A
Architectural Grille
Brooklyn
Kings County



**JDA Underwriting Classification Chart**

| Level I: Cash Flow | | Level II: Default Risk | | Level III: Collateral Value | |
|---|---|---|---|---|---|
| **I** | Actual or Adjusted Cash Flow ≥ 1.2:1 | **A** | Score of ≥ 4 on the Default Risk Model Low Risk | **+** | Liquid value of collateral + adjusted value of personal guarantee ≥ total loan value |
| **II** | Actual or Adjusted Cash Flow < 1.2:1, but with Projected Cash Flow ≥ 1.2:1 | **B** | Score of 3 on the Default Risk Model Moderate Risk | **-** | Liquid value of collateral+ adjusted value of personal guarantee < total loan value |
| | | **C** | Score of ≤ 2 on the Default Risk Model Higher Risk | | |

New York Job Development Authority

**For Consideration**
January 31, 2013

To: Authority Members

From: Kenneth Adams

Subject: USDA Business & Industry Loan Guarantee Program

Request for: Approval for JDA to Apply as a Non Traditional Lender Under the USDA B&I Loan Guarantee Program

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## Project Background

The purpose of the USDA Business & Industry Loan Guarantee Program ("B&I") is to improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities. The B&I achieves its purpose by bolstering the existing private credit structure through the guarantee of quality loans which will provide lasting community benefits.

A B&I borrower may be a cooperative organization, corporation, partnership, or other legal entity organized and operated on a profit or nonprofit basis. Projects presented for approval under B&I must be engaged in a business that will provide employment, or improve the economic or environmental climate of the community in which the applicant is located. B&I loans are normally available in rural areas, which include all areas other than cities, towns of more than 50,000 people and the contiguous and adjacent urbanized area of such cities or towns.

Possible Loan purposes are:

a) Business and industrial acquisition when the loan will keep the business from closing, prevent the loss of employment opportunities, or provide expanded job opportunities;
b) Business conversion, enlargement, repair, modernization or development; or
c) Purchase of equipment, leasehold improvements, machinery, supplies or inventory.

The percentage of the guarantee, up to the maximum allowed is 80% for loans of $5 million or less, 70% for loans between $5 and $10 million, and 60% for loans exceeding $10 million.

The maximum repayment for loans on real estate will not exceed 30 years; machinery and equipment repayment will not exceed the useful life of the machinery and equipment purchased with loan funds or 15 years, whichever is less.

The interest rate for the guaranteed loan is negotiated between the lender and the applicant and may be either fixed or variable. The interest rates are subject to USDA review and approval.

There is a 2% fee of the guaranteed portion of the loan payable to the USDA when the guarantee is issued and an annual renewal fee of 0.25% (based on the outstanding balance of the guaranteed portion of the loan as of 12/31). These fees mirror the current SBA 504 lending program fees.

**Project Description**

During the last decade the population of upstate New York grew more slowly than any other state except North Dakota and West Virginia. The most prevalent reason for the exodus from upstate New York is the loss of jobs, and the perceived lack of opportunities for new employment. Under Governor Cuomo's administration there has been a renewed interest and recognition of the manufacturing sector's importance to upstate New York's prosperity. Upstate New York is particularly well suited to lead the way as a center of advanced manufacturing prowess. With a highly educated workforce and an abundance of natural resources, and a tradition of technology innovation there is reason for optimism. Strategically utilizing JDA funds as part of an overall financing plan could be an integral part of the manufacturing resurgence for New York State.

Staff has had preliminary conversation with the New York State regional office of the USDA to determine if JDA would be an eligible candidate for the B&I program. We are including the criteria for approval under the program for Board review.

**(a) Traditional lenders.** An eligible lender is any Federal or State chartered bank, Farm Credit Bank, other Farm Credit System institution with direct lending authority, Bank for Cooperatives, Savings and Loan Association, or Mortgage Company that is part of a bank-holding company. These entities must be subject to credit examination and supervision by either an agency of the United States or a State. Eligible lenders may also include credit unions provided, they are subject to credit examination and supervision by either the National Credit Union Administration or a State agency, and insurance companies provided they are regulated by a State or National insurance regulatory agency. Eligible lenders include the National Rural Utilities Cooperative Finance Corporation.

**(b) Other lenders.** Rural Utilities Service borrowers and other lenders not meeting the criteria of paragraph (a) of this section may be considered by the USDA for eligibility to become a guaranteed lender provided, the USDA determines that they have the legal authority to

operate a lending program and sufficient lending expertise and financial strength to operate a successful lending program.

1) Such a lender must:

(i) Have a record of successfully making at least three commercial loans annually for at least the most recent 3 years, with delinquent loans not exceeding 10 percent of loans outstanding and historic losses not exceeding 10 percent of dollars loaned, or when the proposed lender can demonstrate that it has personnel with equivalent previous experience and where the commercial loan portfolio was of a similar quantity and quality; and

(ii) Have tangible balance sheet equity of at least seven percent of tangible assets and sufficient funds available to disburse the guaranteed loans it proposes to approve within the first 6 months of being approved as a guaranteed lender.

2) A lender not eligible under paragraph (a) of this section that wishes consideration to become a guaranteed lender **must submit a request in writing to the State Office for the State where the lender's lending and servicing activity takes place**. *The State Office will review the request and forward the request, with the State Director's recommendations, to the National Office for consideration.* The National Office will *make such investigation as it deems necessary and will* notify the prospective lender, through the State Director, whether the lender's request for eligibility is approved or rejected. If rejected, the reasons for the rejection will be indicated to the prospective lender in writing. The lender's written request must include:

(i) Evidence showing that the lender has the necessary capital and resources to successfully meet its responsibilities.

(ii) Copy of any license, charter, or other evidence of authority to engage in the proposed loan making and servicing activities. If licensing by the State is not required, an attorney's opinion to this effect must be submitted.

(iii) Information on lending experience, including length of time in the lending business; range and volume of lending and servicing activity; status of loan portfolio including delinquency rate, loss rate as a percentage of loan amounts, and other measures of success; experience of management and loan officers; audited financial statements not more than 1 year old; sources of funds for the proposed loans; office location and proposed lending area; and proposed rates and fees, including loan origination, loan preparation, and servicing fees. Such fees must not be greater than those charged by similarly located commercial lenders in the ordinary course of business.

(iv) An estimate of the number and size of guaranteed loan applications the lender will develop.

**(c) Expertise.** Loan guarantees will only be approved for lenders with adequate experience and expertise to make, secure, service, and collect B&I loans.

Staff believes that applying for status as a Non Traditional ("Other") lender under B&I would not be an onerous task. Much of the information needed to secure eligibility is easily obtainable by staff. Preliminary conversations with USDA staff have been favorable.

Utilizing ESD's regional office network and having the JDA program approved as a Non Traditional ("Other") Lender would allow staff to consider credit requests in many rural communities such as Ticonderoga in the North Country or Jamestown in Western New York. Both communities have experienced difficulty in obtaining access to capital. Staff believes that approval of JDA as a Non Traditional ("Other") lender could go a long way in alleviating the lack of access to capital in rural communities throughout New York State.

Environmental Review

ESD staff has determined that this determination does not constitute an action as defined by the New York State Environmental Quality Review Act and its implementing regulations. No further environmental review is required in connection with the requested approval.

Requested Action

The Members are requested to approve the proposed application to USDA for approval as a Non Traditional Lender under B&I.

Recommendation

Based upon the foregoing, I recommend that the requested action be approved.

Attachment
Resolution

January 31, 2013

NEW YORK JOB DEVELOPMENT AUTHORITY – Approval for JDA to Apply as a Non Traditional Lender under the USDA B&I Loan Guarantee Program

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BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the New York Job Development Authority, the proposed application by JDA as a Non Traditional Lender under the USDA B&I Loan Guarantee Program, be and hereby is approved and as of the date hereof, and the Chief Executive Officer or his designee is authorized to take such other and further action as may be deemed necessary or appropriate to effectuate this Resolution.

* * *

New York Job Development Authority

FOR INFORMATION

January 31, 2013

**TO:** Authority Members

**FROM:** Kenneth Adams

**SUBJECT:** Preliminary Report of Damage and Losses Incurred by Businesses in the JDA Portfolio as a Result of Hurricane Sandy.

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## Introduction

A number of businesses that are currently part of the JDA loan portfolio were located in areas that were adversely affected by the rain, winds, and severe flooding brought on by Hurricane Sandy. To assess the storm's impact on these companies within the portfolio JDA staff thought it prudent to ascertain the extent of any damages, losses, or impact on business operations; both to assess their capacity for making any needed repairs, and to determine how JDA could best help with recovery and rebuilding efforts so as to ensure their continued solvency.

## Methods

JDA staff made phone calls to all JDA businesses located within areas affected by Hurricane Sandy. If staff was able to reach contact persons within the company, a series of inquiries were made to determine if any damage was done and the extent of such damage. If damage was minor, or if no damage was reported at all, we provided JDA staff contact information and informed the business that JDA is available to help should they require any additional information or storm-related assistance in the future. If moderate or severe damage was reported, staff first inquired as to how JDA could best assist with recovery and rebuilding efforts. Once the borrowers' needs were fully ascertained, staff provided information on State assistance programs that offer immediate bridge financing or other relevant relief to the borrower. All affected borrowers were also given JDA contact information and guidance for reaching other state agencies involved in the aid and recovery efforts.

All businesses were informed of JDA's willingness to remain flexible with loan terms throughout the recovery process to ensure that they could successfully rebuild and return to viability. More specifically, all businesses that suffered Sandy-related damages were informed that subject to a demonstrated need, businesses could qualify for JDA payment moratoriums; waivers of late fees and penalties; or other relief specifically tailored to their particular needs.

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www.esd.ny.gov

**Findings**

To date, JDA staff has communicated directly with 28 of the 32 businesses located in areas affected by Hurricane Sandy. A substantial number of businesses reported limited or no damage as a result of Hurricane Sandy. Indeed, 19 of the 32 businesses reported that outside of lost power, they suffered no substantial damage as a result of the storm and were not presently in need of any assistance.

Three of the 32 businesses reported moderate damage and requested additional information regarding state assistance, which was provided. One business suffered extensive structural damage to its facilities, however it was not in need of bridge financing or other state aid as it was expecting an imminent insurance pay-out.

Nine businesses could not be reached by phone. Where email information was available (five of the nine businesses), outreach was made via email providing JDA contact information and additional information regarding the availability of state assistance programs. Of these five, only one responded seeking more information.

For all businesses where JDA staff has not been able to make direct contact with management, a letter has been sent to their physical addresses advising of the scope and availability of state assistance. Follow-up calls to all affected businesses are ongoing.

**Conclusion**

Most of the JDA businesses in Hurricane Sandy affected areas escaped any significant damage to their operations. Nonetheless, each JDA business has been informed of the availability of state assistance programs and has been provided with current JDA staff contact information should they wish to seek additional assistance in the future. JDA staff will continue to follow up with all JDA businesses to ensure that any future needs will be properly addressed.