

FOR CONSIDERATION

October 20, 2011

TO: The Directors

FROM: Kenneth Adams

SUBJECT: Lysander (Onondaga County) – Radisson Community

REQUEST FOR: Authorization to Sell Land to Thomas C. Rogers; Authorization to Hold Public Hearing Thereon; and Authorization to Take Related Actions.

---

**I. Project Summary**

Site: An approximately six (6) acre parcel of vacant land, fronting on Loop Road within Radisson’s industrial sector, currently owned by ESD (the “Premises”). See Map at Attachment A.

Purchase Price: \$61,500

Terms: 10% refundable deposit within three business days of contract execution; balance at closing.

ESD Obligation: Sale of Premises only.

ESD Funding: None

Appraisal: Fair market “as is” value = \$64,000  
Wicker Appraisal Associates Inc., Syracuse, New York  
August 31, 2011  
See appraisal at Attachment B

Purchaser: Thomas C. Rogers  
8350 East Mud Lake Road  
Baldwinsville, New York 13027

Construction Contemplated: Commercial construction

Brokerage Fee: None

## **II. Background**

The Radisson Community (“Radisson”) is located on approximately 3,000 acres in the Town of Lysander, County of Onondaga, approximately 12 miles northwest of Syracuse. Approximately 350 acres of industrial land in Radisson remains unsold, and therefore remains owned by ESD. In Fall 2010, ESD issued a public Request for Proposals soliciting offers to purchase the Radisson industrial properties, including the Premises. ESD received no response to the Request.

The proposed Purchaser of the Premises is Thomas C. Rogers, President of Baco Control, Inc. (“Baco”). Baco has long been recognized as a worldwide leader in the manufacture of Industrial Pilot Devices, Rotary Cam Switches, and Disconnect Switches for industrial automation. Since 1980, Baco has provided the sales and marketing function for the Baco family of products within the domestic United States market. In 2004, Baco expanded to include Rex time switches in its product line, and in 2010, Baco introduced Pizzato products to its portfolio. Baco currently has a facility in Cazenovia, New York which employs seven employees. Baco plans to move this operation to Radisson, and two to three new employees are expected to be hired shortly after the move.

## **III. Proposal**

Purchaser seeks to purchase from the Corporation an approximately 6 acre parcel of vacant land adjoining Loop Road in the industrial sector of the Radisson Community for construction of a 10,000 to 12,000 square foot office and/or warehouse. The proposed sale price is \$61,500, approximately 5% below the fair market “as is” value as determined by independent appraisal performed on behalf of ESD. The Premises consist partly of wetlands, which will remain protected and undeveloped. As more fully described in the draft Contract to Purchase attached hereto at Attachment C, Purchaser’s offer to purchase is contingent upon: (a) requisite local Zoning Approvals permitting the contemplated use; and (b) Purchaser’s due diligence review.

## **IV. Public Authorities Accountability Act Compliance**

In accordance with the Public Authorities Accountability Act, as most recently amended (“PAAA”), an appraisal of the Premises has been prepared. As set forth above, Wicker Appraisal Associates Inc., an independent appraiser from Syracuse, New York, appraised the fair market “as is” value at \$64,000 as of August 31, 2011. See Attachment B. Also in accordance with the PAAA, ESD publicly advertised for bids by issuing the public Request for Proposals soliciting offers to purchase the Radisson industrial properties, including the Premises, which attracted no response in December 2010.

PAAA Section 2897(7)(a)(ii) permits the disposal of property for less than fair market value if “the purpose of the transfer is within [ESD’s] purpose, mission or governing statute”. Section 2 of the UDC Act directs the Corporation to “retain existing industries” and “encourage the creation of new job opportunities”, in part by “encouraging maximum participation by the private sector of the economy, including [through] the sale or lease of the corporation’s interest in projects at the earliest time deemed feasible”. See also UDC Act Section 5(2)

permitting disposition of project properties. The proposed sale of the Premises will further these corporate statutory goals by retaining Baco and permitting its expansion.

Given the lack of response to ESD's 2010 Request for Proposals, given the continuing availability of nearly 350 acres of vacant commercial property at Radisson, and given Baco's interest in developing the Premises for commercial purposes, staff believes, and recommends that the Directors determine, as required by the PAAA, that there exists no reasonable alternative to the proposed sale that would result in the same benefits to the public or achieve the same purpose of the proposed sale.

Finally, PAAA Section 2897(7)(b) requires disclosure of the following information:

- (i) full property description: ~six acres of vacant land, fronting on Loop Road within Radisson's industrial sector, currently owned by ESD (the "Premises"). See Map at Attachment A.
- (ii) appraisal: Wicker Appraisal Associates Inc., Syracuse, New York, dated August 31, 2011, fair market "as is" value = \$64,000. See appraisal at Attachment B.
- (iii) purpose of transfer; statement of public benefit: the purpose of the transfer is to assist Baco in continuing and expanding its business in New York State, which will result in benefit to the public of increased employment opportunity, enhanced tax revenues, and indirect economic benefit.
- (iv) value to be received by ESD: \$61,500; in addition to the benefit of retaining and expanding Baco jobs.
- (v) private participants and value to be received: Thomas C. Rogers; an approximate 5% discount from FMV, and an opportunity to grow a valuable business.
- (vi) other offers: none, despite public solicitation.

#### **V. Environmental Review**

Disposition of the subject parcel for development in the industrial section of Radisson is consistent with Radisson's General Project Plan and/or its amendments that the Directors have approved after prior environmental reviews. Sale of the Premises does not require separate environmental review.

#### **VI. Affirmation Action**

Purchaser will agree to the following policy, which will appear in the land purchase contract and deed: "Purchaser, and every successor in interest to the Premises, shall not discriminate upon the basis of race, creed, color, sex or national origin, in the sale, lease or rental or in the use or occupancy of the Premises or any improvements erected or to be erected thereon or any part thereof. This covenant shall run with the land in perpetuity."

#### **VII. Requested Actions**

The Directors are requested to: (a) adopt the draft Contract of Sale and authorize a public hearing thereon; (b) approve the essential terms of the Contract of Sale and authorize execution of the Contract of Sale and sale of the Premises; and (c) determine that there exists no reasonable alternative to the proposed sale that would result in the same benefits to the public or achieve the same purpose of the proposed sale.

**VIII. Recommendation**

Based on the foregoing, I recommend approval of the requested actions.

**IX. Attachments**

Resolutions

A – Map

B – Appraisal

C – Draft Contract to Purchase Land

October 20, 2011

Lysander (Onondaga County) – Radisson Community – Authorization to Sell Land to Thomas C. Rogers; Authorization to Hold Public Hearing Thereon; and Authorization to Take Related Actions.

---

RESOLVED, that on the basis of the materials presented to the Directors at this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation (the “Materials”), the Corporation is hereby authorized to sell and convey to Thomas C. Rogers (“Purchaser”), or any corporation or other business entity affiliated or controlled by Purchaser and satisfactory to the President and Chief Executive Officer of the Corporation or his designee(s), for business development purposes, an approximately 6± acre parcel of vacant land owned by the Corporation and located within the Radisson Community as shown on the map presented to this meeting (the “Premises”), substantially on the terms and conditions set forth in the Materials; and be it further

RESOLVED, that the Corporation hereby finds, pursuant to Section 6(1) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that such sale as proposed and approved herein is in conformity with a plan or undertaking of the clearance, replanning, reconstruction or rehabilitation of substandard and insanitary areas within the Town of Lysander and County of Onondaga; and be it further

RESOLVED, the Corporation hereby determines, after giving due consideration to the appraisal of the Premises, the lack of response to the Corporation’s Request for Proposals soliciting offers to purchase the Radisson industrial properties, and Purchaser’s intent to commercially develop the Premises, that there is no reasonable alternative to the proposed below-market transfer that would result in the same benefits to the public or achieve the same purpose of the proposed sale; and be it further

RESOLVED, that the President and Chief Executive Officer or designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to take all such actions as are necessary or appropriate to schedule and hold public hearing as required by the UDC Act or other applicable law (which hearings may be held simultaneously); and be it further

RESOLVED, that the President and Chief Executive Officer or designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver, and affix the seal of the Corporation to, all such agreements, contracts, deeds, certificates and instruments and to take any such action as may be considered to be necessary or proper to effectuate the sale of the Premises.

\*\*\*



## ATTACHMENT C

### CONTRACT TO PURCHASE LAND

This Contract (the "Contract"), made effective as of this \_\_\_ day of \_\_\_\_\_, 2011, by and between NEW YORK STATE URBAN DEVELOPMENT CORPORATION, d/b/a EMPIRE STATE DEVELOPMENT CORPORATION, a corporate governmental agency of the State of New York and a public benefit corporation having its principal place of business at 633 Third Avenue, 37<sup>th</sup> Floor, New York, New York 10017 (hereinafter referred to as "Seller"), and THOMAS C. ROGERS, residing at 8350 East Mud Lake Road, Baldwinsville, New York 13027 (hereinafter referred to as "Purchaser"). The parties hereby agree as follows:

1. Premises. Seller owns and agrees to sell and convey, and Purchaser agrees to purchase, all of Seller's right, title and interest in that certain parcel of real property located in the Town of Lysander, County of Onondaga, State of New York, being a portion of Tax Parcel 75-02-11.1 consisting of approximately six (6) acres of vacant land adjoining Loop Road, the boundaries of which are approximately in yellow/orange on the sketch attached hereto and made a part hereof as Exhibit A (hereinafter referred to as the "Premises"). Purchaser agrees to have the Premises surveyed by a New York State Licensed Surveyor, at Purchaser's expense, prior to Closing (as such term is defined in Section 8 below). Said survey shall be certified to both Seller and Purchaser.

2. Purchase Price. Purchaser agrees to pay Seller the sum of \$61,500.00 for the Premises. Such purchase price shall be payable as follows:

- (a) A deposit in the amount of \$6,150.00 by certified or bank cashier's check to be paid by Purchaser to Seller within three business days of the date of execution of this Contract by Seller, to be held by Seller's attorney until closing (the "Deposit"), which sum shall be applied to the purchase price at the time of Closing. Failure to make such deposit shall void this Contract.
- (b) Subject to any payment made by Purchaser for the Abstract of Title as set forth in Section 6 below, the balance of such purchase price shall be delivered to Seller in cash or by certified or bank cashier's check at Closing.

3. Zoning Approvals Contingency. Purchaser is buying the Premises with the intent to build a 10,000 to 12,000 square foot office and/or warehouse on the Premises. This purchase, and Purchaser's obligations under this Contract, are contingent upon local planning board subdivision approval and site plan approval, as well as any and all other discretionary zoning / planning approvals that may be required for Purchaser to obtain the right to build Purchaser's

intended improvements for Purchaser's intended use upon conditions not unduly restrictive to the intended use of the Purchaser ("Zoning Approvals"). Purchaser will make such applications to the appropriate boards, commissions, agencies, and/or officers as are necessary to obtain the Zoning Approvals as soon as reasonably practicable following the acceptance of this offer by Seller, and Purchaser will thereafter pursue such Zoning Approvals as are required as expeditiously as practicable. All expenses of obtaining the Zoning Approvals shall be the responsibility of Purchaser. Seller shall cooperate with, and support Purchaser's efforts to obtain the Zoning Approvals, and shall execute all such applications and consents as may be required to obtain the Zoning Approvals. Upon written notice to Seller, Purchaser may cancel this Contract if the cost or conditions required to obtain the Zoning Approvals are, in the reasonable judgment of Purchaser, unreasonable, or upon the denial, for any reason, of any of the required Zoning Approvals by the relevant board, commission, officer, and/or agency. If Purchaser has not sooner exercised the right to terminate this Contract pursuant to the provisions of this Section 3, this Zoning Approvals contingency will expire at the end of the 180<sup>th</sup> day following the date of this Contract (the "Zoning Contingency Expiration Date"), unless such Zoning Contingency Expiration Date is otherwise extended by the mutual consent of the parties hereto.

4. Due Diligence Contingency. (a) Notwithstanding any provisions herein to the contrary, Purchaser shall have the right to terminate this Contract upon written notice delivered to Seller on or prior to the 180<sup>th</sup> day from the date of this Contract (the "Due Diligence Expiration Date") if Purchaser for any reason, in Purchaser's sole discretion, is not satisfied with the results of its due diligence investigation and assessment of the Premises. Upon the giving of such notice (the "Due Diligence Termination Notice") by Purchaser, Seller shall promptly return or cause the Deposit to be returned to Purchaser, without interest, and upon such return, this Contract shall terminate and neither party hereto shall have any further rights or obligations hereunder.

(b) During the period prior to the Due Diligence Expiration Date, Purchaser, and Purchaser's designees, shall be given reasonable access to the Premises from time to time for any tests or inspections of the Premises and its environmental and site conditions as may be desired by Purchaser, in Purchaser's sole discretion.

5. Seller's Representations. Seller represents and warrants to Purchaser that: (a) Seller owns and has the exclusive right, power, and authority, subject to all requisite public approvals and compliance with applicable law, to sell, convey, and transfer the Premises in accordance with the terms of this Contract; (b) Seller has not placed or disposed of any toxic or hazardous substances (as those terms are defined under federal, state, or local laws, rules or regulations pertaining to environmental regulation, contamination or clean up) upon the Premises; and (c) Seller has no actual knowledge of any disposal of any such materials upon the Premises in the past. Seller makes no other representations or warranties relating to the Premises.

6. Title Documents. Seller shall deliver to Purchaser, within forty-five (45) days after the date of execution of this Contract or at least thirty (30) days prior to Closing, whichever is

later, a correct, up-to-date Abstract of Title prepared by a title or abstract company authorized to do business in New York State, made from the records in the County Clerk's Office and commencing with a warranty or better deed conveying a 100 percent fee interest and recorded no later than the year 1946; a 10-year county tax search; and current property tax receipts. Purchaser agrees to pay the cost of such Abstract of Title upon receipt of demand from Seller (with appropriate invoice), which cost shall be deducted from the purchase price set forth in Section 2 above.

7. Marketable Title. At Closing, Seller shall transfer to Purchaser good and marketable title to the Premises by Bargain and Sale Deed, subject only to the following, provided that the same do not individually or in the aggregate render title unmarketable or uninsurable or interfere with development and/or use of the Premises for Purchaser's purposes as recited in Section 3 above:

- (a) state of facts as depicted in the survey of the Premises;
- (b) easements, rights-of-way, restrictive covenants, other land use and building restrictions of record, and zoning and other governmental laws regulations, and/or ordinances applicable to the Premises as at Closing (provided that the same are not violated);
- (c) utility easements benefiting the Premises or permitted pursuant to FNMA/FHLC title standards;
- (d) taxes for local improvements not then due;
- (e) building and use restrictions stated in this Contract and to be included in the Bargain and Sale Deed at Closing.

Except as set forth above, title shall be free and clear from the rights of others. If Seller is unable to convey a good, marketable and insurable title to the Premises as at Closing, Purchaser's exclusive remedy against Seller shall be the right to terminate this Contract and receive return of the Deposit.

8. Closing. The closing of the transaction contemplated by this Contract (the "Closing") shall be held at the office of Purchaser's attorney or such other place as the parties may agree, on or before the thirtieth (30<sup>th</sup>) day following the Due Diligence Expiration Date, or within thirty (30) days of the date of the Purchaser's written release or waiver of both the Zoning and Due Diligence contingencies provided for in Section 3 and 4 above, which ever date is sooner.

9. Closing Documents. At the time of the Closing, Seller shall execute and deliver to Purchaser a Bargain and Sale Deed and a New York State Gains Tax Affidavit (Form TP-584).

10. Adjustments. All charges for taxes (including property taxes), special assessments, and any other matters affecting the Premises shall be prorated and adjusted as of midnight the day before the Closing.

11. Recording Expenses. Seller shall pay for the recording fees for any mortgage discharge, gains tax affidavit, and any title affidavit required, as well as the transfer tax (deed

stamps) and any real property tax gains applicable to the transaction. Purchaser shall pay all other recording fees and/or taxes.

12. Assignment. This Contract may be assigned by Purchaser to a limited liability company or corporation controlled by Purchaser without Seller's consent. Otherwise, Purchaser may not assign this Contract without Seller's written consent.

13. No Broker. Both Seller and Purchaser represent to the other that no real estate broker was involved in this transaction.

14. Affirmative Action. Purchaser, and every successor in interest to the Premises, shall not discriminate upon the basis of race, creed, color, sex or national origin, in the sale, lease or rental or in the use or occupancy of the Premises or any improvements erected or to be erected thereon or any part thereof. This covenant shall run with the land in perpetuity. The terms of this Section 14 shall be contained in the Bargain and Sale Deed.

15. Counterparts. This Contract may be executed in counterparts. A facsimile signature shall be deemed the same as an original.

**NEW YORK STATE URBAN DEVELOPMENT CORPORATION  
d/b/a EMPIRE STATE DEVELOPMENT**

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Peter Davidson, Executive Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
**Thomas C. Rogers**