

FOR CONSIDERATION

September 14, 2010

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: Smithtown (Suffolk County) – Binder & Binder Capital – JOBS Now Program – Capital Grant

REQUEST FOR: Findings and Determinations Pursuant to Sections 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant and to Take Related Actions

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General Project Plan

I. Project Summary

Grantee: Binder & Binder - The National Social Security Disability Advocates (NY), LLC (“Binder & Binder” or the “Company”)

ESD\* Investment: A grant of up to \$250,000 to be used for a portion of the cost of the purchase and renovation of a office building.

\* The New York State Urban Development Corporation doing business as the Empire State Development Corporation (“ESD” or the “Corporation”)

Project Locations: 300 Rabro Drive, Smithtown, Suffolk County\*  
1500 New York Avenue, Huntington Station, Suffolk County  
375 North Broadway, Jericho, Nassau County

NYS Empire Zone (or equivalent): \* Project activity site; others are job-retention sites  
N/A

Proposed Project: Building purchase and renovations associated with Company expansion.

ESD Incentive Offer Accepted: June 26, 2006

Project Completion: March 2010

Number of Employees at Project Locations:

Initial employment at time of ESD Incentive Offer: 130  
Current employment level: 305  
Minimum employment through January 1, 2012: 280

Grantee Contact: Harry J. Binder, President  
1500 New York Avenue  
Huntington, NY 11746  
Phone: (631) 351-1227  
Fax: (631) 351-1261

Anticipated  
Appropriation  
Source: JOBS Now Program

ESD Project No.: U333

Project Team: Origination Barry Greenspan  
Project Management Wai Shiu  
Affirmative Action Laverne Poole  
Finance Ross Freeman  
Environmental Soo Kang

## II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>		
Real Estate Acquisition*	\$6,000,000		
Building Renovations	<u>1,000,000</u>		
Total Project Costs	<u>\$7,000,000</u>		
<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>	<u>Rate / Term / Lien</u>
ESD-Grant	\$250,000	4%	
Mortgage from General Electric Credit Corp.	4,750,000	68%	6.875%/30-yr/1 <sup>st</sup> on RE
Company Equity	<u>\$2,000,000</u>	<u>29%</u>	
Total Project Financing	<u>\$7,000,000</u>	<u>100%</u>	

\* Purchased by Bully and Congrats Realty LLC

### III. Project Description

#### A. Background

Binder & Binder - The National Social Security Disability Advocates (NY), LLC, founded in 2005, is the successor and parent of The Social Security Express Ltd (“SSE”). SSE was established in 2003 as a successor in interest to Bosco Payroll Management Inc., and it was structured as an employee leasing company to Binder & Binder. In July 2010, SSE was closed and all of its employees and operations were transferred back to Binder & Binder, its parent. Harry Binder and Charles Binder are the owners of Binder & Binder, which operates solely in New York State. The two owners also have formed nine sister companies for operating in other states.

Binder & Binder (together with its sister companies) is the only company at the national level that processes applications by individuals for Social Security and Railroad Retirement Board disability benefits, and Supplemental Security Income. At present, Binder & Binder has around 600 employees in New York State, of which 305 positions are maintained in Long Island. The Company has annual revenue of over \$18 million. Nationally, Binder & Binder’s sister companies have a combined staff of approximately 400.

Primary drivers for Binder & Binder’s business are the aging of “baby boomers,” demographic changes, and the current recession. As a result, the number of caseloads taken by the Company has been increasing by more than 50% over the last three years, and Binder & Binder anticipates a further increase of 45% over the next three years. In 2006, as the Company faced increasing business demands, it recognized the need to build four regional hub offices to efficiently handle case developments before sending them to local offices. Attracted by the quality of Hauppauge’s workforce and the caliber of its management team, Binder & Binder further selected Hauppauge as the central and largest of the four regional offices, with the additional responsibility of processing national cases.

However, Binder & Binder did not have sufficient funds to complete the project, and the Company faced the possibility of moving its planned Hauppauge regional office to either Florida or Texas, where the two states had lower costs of doing business and low taxes. In order to entice the Company to remain in New York, ESD responded with a \$250,000 incentive offer, which the Company accepted in June 2006. Without ESD’s assistance, the project may not have taken place and Binder & Binder might have moved all future employment and expansion activities to its Florida or Texas locations.

#### B. The Project

The project consisted of the purchase a 59,000-square-foot office building at 300 Rabro Drive and the renovation and construction of its space. Binder & Binder started the project in July 2006, and it was completed in March 2010. The deed to the building is held by Bully And Congrats Realty LLC, an entity owned by Messrs. Harry and Charles Binder.

As a result of the project, Binder & Binder has experienced vast improvements in productivity and the quality of output. The Company is able to utilize 45,000-square-feet of the

available space, and the rest is being rented out to tenants. The Company has surpassed its employment commitment of 280 jobs, including 150 new positions, and is expected to maintain those jobs until January 2012.

Evaluated over a seven-year period, the following are anticipated project impacts (dollar values are present value):

- Fiscal benefits to NYS government from the project are estimated at \$250,000;
- Fiscal cost to NYS government is estimated at \$6,283,964;
- Project cost to NYS government per direct job is \$1,506;
- Project cost to NYS government per job (direct plus indirect ) is estimated at \$894;
- Ratio of project fiscal benefits to costs to NYS government is 25.14:1;
- Fiscal benefits to all governments (state and local) are estimated at \$13,455,680;
- Fiscal cost to all governments is \$250,000;
- All government cost per direct job is \$1,506;
- All government cost per total job is \$894;
- The fiscal benefit to cost ratio for all governments is 53.82:1;
- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$53,120,796, or \$189,922 per job (direct and indirect);
- The economic benefit to cost ratio is 212.48:1;
- Project construction cost is \$1,000,000 which is expected to generate 8 direct job years and 5 indirect job years of employment;
- For every permanent direct job generated by this project, an additional 0.72 indirect jobs are anticipated in the state's economy;
- The payback period for NYS costs is 1 year.

(See Project Summary Benefit-Cost Evaluation attached for detail and definitions.)

### C. Financial Terms and Conditions

1. Upon execution of the grant disbursement agreement, the Company shall pay a commitment fee of 1% of the \$250,000 capital grant (\$2,500) and reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Company will demonstrate no material adverse change in its financial condition prior to disbursement.
3. Mr. Harry Binder will guarantee the grant repayment obligation of his company, Binder & Binder - The National Social Security Disability Advocates (NY), LLC, in the event of an Employment Shortfall or other default, as defined in these materials or the Grant Disbursement Agreement.
4. The Company will be required to contribute a minimum of 10% of the total project cost in the form of equity contributed after the Company's acceptance of ESD's offer. Equity is defined as cash injected into the project by the Company or by investors, and should be

auditable through Company financial statements or Company accounts, if so requested by ESD. Equity cannot be borrowed money secured by the assets in the project.

5. Prior to disbursement, the Company must employ at least the number of Full-time Permanent Employees set forth as the Baseline Employment in the table below. A Full-time Permanent Employee shall mean (a) a full-time, permanent, private-sector employee on the Grantee's payroll, who has worked at the Project Locations for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties; or (b) two part-time, permanent, private-sector employees on Grantee's payroll, who have worked at the Project Locations for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties.
6. Up to \$250,000 will be disbursed to the Grantee in three installments as follows:
  - a) an Initial Disbursement of an amount equal to 50% of the grant (\$125,000) upon documentation of project expenditures in real estate acquisition and building renovations of at least \$7,000,000 by Grantee or Bully And Congrats Realty LLC, completion of the project substantially as described in these materials, as evidenced by a certificate of occupancy for the 300 Rabro Drive location, and documentation of the employment of at least 130 Full-time Permanent Employees at the Project Locations, assuming that all project approvals have been completed and funds are available;
  - b) a Second Disbursement of an amount equal to 25% of the grant (\$62,500) will be disbursed upon documentation of the employment of at least 205 Full-time Permanent Employees at the Project Locations (Employment Increment of 75), provided Grantee is otherwise in compliance with program requirements;
  - c) a Third Disbursement of an amount equal to 25% of the grant (\$62,500) will be disbursed upon documentation of the employment of at least 280 Full-time Permanent Employees at the Project Locations (Employment Increment of 75), provided Grantee is otherwise in compliance with program requirements.

Payment will be made upon presentation to ESDC of an invoice and such other documentation as ESDC may reasonably require. Expenses must be incurred on or after June 26, 2006 to be considered eligible project costs. All disbursements must be requested by March 31, 2011.

7. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$250,000, for this project if ESD determines that the reallocation of the assistance would better serve the needs of the Company and the State of New York. In no event shall the total amount of any assistance to be so reallocated exceed the total amount of assistance approved by the Directors.
8. In consideration for the making of the Grant, Grantee will achieve the Employment Goals set forth in Column B of the table below. If the Full-time Permanent Employee Count for the year prior to the reporting date set forth in Column A of the table below is less than

eighty-five percent (85%) of the Employment Goal set forth in Column B (an “Employment Shortfall”), then upon demand by ESD, Grantee shall be obligated to repay to ESD a portion of each disbursement of the Grant, as follows:

The Recapture Amount is based on the time that has lapsed between when the Grant funds were disbursed and when the Employment Shortfall occurred. The Recapture Amount shall be calculated by aggregating the Recapture Amount for each disbursement of the Grant, which in each instance shall be equal to:

- (i) 100% of the disbursed amount if the Employment Shortfall occurred in the calendar year that the disbursement was made, or in the first full calendar year after the disbursement was made;
- (ii) 80% of the disbursed amount if the Employment Shortfall occurred in the second full calendar year after the disbursement was made;
- (iii) 60% of the disbursed amount if the Employment Shortfall occurred in the third full calendar year after the disbursement was made;
- (iv) 40% of the disbursed amount if the Employment Shortfall occurred in the fourth full calendar year after the disbursement was made;
- (v) 20% of the disbursed amount if the Employment Shortfall occurred in the fifth full calendar year after the disbursement was made.

The Grantee’s number of Full-time Permanent Employees shall be deemed to be the greater of the number as of the last payroll date in the month of December for such year or the average employment for the 12 month period computed by quarter.

Baseline Employment	130
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A	B
Reporting Date	Employment Goals
February 1, 2012	130+X+Y

X = Grantee's Employment Increment that will be the basis of the Second Disbursement of the Grant as described in section C.6 above (i.e. X=75, and Employment Goals shall equal [130 + X = 205] if the Second Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Second Disbursement has not yet been made then X=0.

Y = Grantee’s Employment Increment that will be the basis of the Third Disbursement of the Grant as described in section C.6 above (i.e. Y=75, and Employment Goals shall equal [130 + X + Y = 280] if the Third Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Third Disbursement has not yet been made then Y=0.

IV. Statutory Basis

The project meets the statutory requirement of a JOBS Now 100 Project because the Company will create at least 100 new full-time permanent private sector jobs. No residential

relocation is required as there are no families or individuals residing on the site.

V. Environmental Review

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

VI. Affirmative Action

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

VII. ESD Financial Assistance Subject to Availability of Funds and Additional Approval

The provision of ESD financial assistance is contingent upon the availability of funds and the approval of the State Division of the Budget.

VIII. Additional Submissions to Directors

Resolutions  
New York State Map  
Project Finance Memorandum  
Cost-Benefit Analysis

September 14, 2010

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RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, relating to the Binder & Binder Capital -- JOBS Now Program – Capital Grant Project (the “Project”), the Corporation hereby determines pursuant to Section 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that there are no families or individuals to be displaced from the project area; and be it further

RESOLVED, that the Corporation does hereby adopt, subject to the requirements of Section 16(2) of the Act, the proposed General Project Plan (the “Plan”) for the Project submitted to this meeting, together with such changes therein as the Chairman and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate, a copy of which Plan, together with such changes, is hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that upon written finding of the Chairman and Chief Executive Officer of the Corporation or his designee(s) that no substantive negative testimony or comment has been received at the public hearing held on the Plan, such Plan shall be effective at the conclusion of such hearing, and that upon such written finding being made, the Chairman and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to Binder & Binder - The National Social Security Disability Advocates (NY), LLC a grant for a total amount not to exceed Two Hundred And Fifty Thousand Dollars (\$250,000) from the JOBS Now Program, for the purposes, and substantially on the terms and conditions, set forth in the materials presented to this meeting, with such changes as the Chairman and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate, subject to the availability of funds and the approval of the State Division of the Budget; and be it further

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

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

RESOLVED, that the Chairman and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation 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.

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