

**RESOLUTION AUTHORIZING REFINANCING  
SPRUCE PROPERTIES LLC PROJECT**

A regular meeting of Town of Montgomery Industrial Development Agency (the "Agency") was convened in public session in the Town Hall located at 110 Bracken Road in the Town of Montgomery, Orange County, New York on September 15, 2014 at 5:30 p.m., local time.

The meeting was called to order by the Chairman of the Agency and, upon roll being called, the following members of the Agency were:

**PRESENT:**

F. Edward Devitt	Chairman
Donna Jennings	Treasurer
Richard Lomazzo	Secretary
Michael Hayes	Member

**ABSENT:**

Edwin F. Williams, Jr.	First Vice Chairperson
Stephen Rainaldi	Second Vice Chairperson

**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

Suzanne Hadden	Clerk
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Resolution No. \_\_\_

**RESOLUTION AUTHORIZING THE EXECUTION BY TOWN OF MONTGOMERY  
INDUSTRIAL DEVELOPMENT AGENCY OF CERTAIN SECURITY DOCUMENTS  
IN CONNECTION WITH THE SPRUCE PROPERTIES LLC PROJECT.**

WHEREAS, the Agency is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 527 of the 1971 Laws of New York, as amended, constituting Section 911-c of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreation facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act) or to

cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, on or about January 27, 2012 (the "Closing"), the Agency entered into a lease agreement dated as of January 1, 2012 (the "Lease Agreement") by and between the Agency and the Spruce Properties LLC (the "Company") for the purpose of undertaking a project (the "Project") consisting of the following: (A) (1) the acquisition of an interest in an approximately 3.80 acre parcel of land located at State Route 208 (Tax map no.: 30-1-81) in the Town of Montgomery, Orange County, New York (the "Land"), (2) the construction on the Land of an approximately 9,000 square foot building (the "Facility") and (3) the acquisition and installation therein and thereon of machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a professional office facility to be owned and operated by the Company and leased to various tenants; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from sales and use taxes, real property transfer taxes, mortgage recording taxes and real estate taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the Company pursuant to the Lease Agreement; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement, (A) the Company executed and delivered to the Agency (1) a certain lease to agency dated as of January 1, 2012 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company leased to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises") for a lease term ending on December 31, 2025; and (2) a bill of sale dated as of January 1, 2012 (the "Bill of Sale to Agency"), which conveyed to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency executed and delivered a payment in lieu of tax agreement dated as of January 1, 2012 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company agreed to pay certain payments in lieu of taxes with respect to the Project Facility, (C) the Agency filed with the assessor and mailed to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement, (D) the Agency executed and delivered to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance; and (E) the Agency filed with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report"); and

WHEREAS, in order to finance a portion of the costs of the Project, the Company obtained a loan in the principal sum of \$1,102,000 (the "Loan") from JP Morgan Chase Bank, N.A. (the "Lender"), which Loan was secured by (1) a certain mortgage dated as of January 27, 2012 (the "Mortgage") from the Agency and the Company to the Lender; and

WHEREAS, by correspondence dated August 5, 2014 (the "Request"), the Agency has been asked to approve a refinancing of the Loan in an amount equal to \$1,100,000 (the "Refinancing") from TD Bank, N.A. (the "New Lender") to the Company; and

WHEREAS, in connection with the Refinancing, the Company would like the Agency to enter into one or more security documents and any related documents (collectively, the "Refinancing Documents") to facilitate the Refinancing; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the "Regulations" and collectively with the SEQR Act, "SEQRA"), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to proceed with the Refinancing; and

WHEREAS, pursuant to SEQRA, the Agency has examined the details of the Refinancing in order to make a determination as to whether the Refinancing is subject to SEQRA, and it appears that the Refinancing constitutes a Type II action under SEQRA;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF TOWN OF MONTGOMERY INDUSTRIAL DEVELOPMENT AGENCY, AS FOLLOWS:

Section 1. Based upon an examination of the Refinancing, the Agency hereby makes the following determinations:

(A) The Refinancing constitutes a "Type II action" pursuant to 6 NYCRR 617.5(c)(23), and therefore that, pursuant to 6 NYCRR 617.6(a)(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Refinancing.

(B) The Refinancing does not contemplate the borrowing of new money and there is no mortgage tax exemption being provided by the Agency in connection with the Refinancing.

(C) That since compliance by the Agency with the Refinancing will not result in the Agency providing more than \$100,000 of "financial assistance" (as such quoted term is defined in the Act) to the Company, Section 859-a of the Act does not require a public hearing to be held with respect to the Refinancing.

Section 2. Subject to (A) approval of the form of the Refinancing Documents by Agency counsel, (B) evidence satisfactory to the Agency and its staff that the Company is in compliance with the Agency's policies relating to the Project, and (C) receipt by the Chief Executive Officer of (1) the Agency's administrative fee relating to the Refinancing, if any, and (2) counsel's fees relating to the Refinancing, the Agency hereby authorizes the execution by the Agency of the Refinancing Documents.

Section 3. Subject to the satisfaction of the conditions described in Section 2 hereof, the Chairman, Vice Chairman or Chief Executive Officer of the Agency is hereby authorized to execute and deliver the Refinancing Documents to the Company, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the form thereof presented to this meeting, with such changes, variations, omissions and insertions as the Chairman, Vice Chairman or Chief Executive Officer shall approve, the execution thereof by the Chairman, Vice Chairman or Chief Executive Officer to constitute conclusive evidence of such approval.

Section 4. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Refinancing Documents, and to execute and deliver all such additional

certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Refinancing Documents binding upon the Agency.

Section 5. This Resolution shall take effect immediately.

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

F. Edward Devitt	VOTING	<u>YES</u>
Edwin F. Williams, Jr.	VOTING	<u>ABSENT</u>
Stephen Rainaldi	VOTING	<u>ABSENT</u>
Donna Jennings	VOTING	<u>YES</u>
Richard Lomazzo	VOTING	<u>YES</u>
Michael Hayes	VOTING	<u>YES</u>

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF ORANGE         )

I, the undersigned (Assistant) Secretary of Town of Montgomery Industrial Development Agency (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on September 15, 2014 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of the whole of such proceedings of the Agency and of such Resolution set forth therein so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 15th day of September, 2014.

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(Assistant) Secretary

(SEAL)