

**APPROVING RESOLUTION  
SPRAGUES WASHINGTON SQUARE, L.L.C. PROJECT**

A regular meeting of County of Cattaraugus Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency located at 3 East Washington Street in the Village of Ellicottville, Cattaraugus County, New York on June 19, 2012 at 11:00 o'clock a.m., local time.

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

**PRESENT:**

Thomas E. Buffamante	Chairman
Crystal J. Abers	First Vice Chairman
Salvatore Marranca	Second Vice Chairman
Gregory J. Fitzpatrick	Secretary
Joseph E. Higgins	Director

**ABSENT:**

Brent Driscoll	First Assistant Secretary
Joseph K. Eade	Treasurer

**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

Corey R. Wiktor	Executive Director
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The following resolution was offered by Salvatore Marranca, seconded by Joseph Higgins, to wit:

Resolution No. 612-04

**RESOLUTION AUTHORIZING EXECUTION OF DOCUMENTS IN CONNECTION  
WITH A LEASE/LEASEBACK TRANSACTION FOR A PROJECT FOR SPRAGUES  
WASHINGTON SQUARE, L.L.C. (THE "COMPANY").**

WHEREAS, County of Cattaraugus Industrial Development Agency (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 536 of the 1971 Laws of New York, as amended, constituting Section 890-b 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 commercial, manufacturing and industrial 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 and install one or more "projects" (as defined in the Act) or to cause said

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

WHEREAS, in April, 2012, Spragues Washington Square, L.L.C., a New York limited liability company (the "Company") submitted an application (the "Application") to the Agency, a copy of which Application is on file at the office of the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project consisting of the following: (A) (1) the acquisition of an interest in an approximately 8 acre parcel of land located at 11-13 Elizabeth Street (tax map no. 55.027-2-6.1) in the Town and Village of Ellicottville, Cattaraugus County, New York (the "Land"), together with 2 buildings containing in the aggregate approximately 49,033 square feet of space located thereon (collectively, the "Facility"), (2) the renovation of approximately 43,000 square feet of the Facility, (3) the acquisition and installation therein and thereon of machinery and equipment, including, (collectively, the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a commercial facility, portions of which to be leased by the Company to various tenants, including Tim & Bonnie's Pizza Inc., for use as a restaurant and bowling alley and related uses; (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 certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on April 24, 2012 (the "Public Hearing Resolution"), the Agency authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Project; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency (the "Public Hearing") pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on April 25, 2012 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is to be located, (B) caused notice of the Public Hearing to be posted at (a) the County of Cattaraugus Industrial Development Agency Offices located at 3 East Washington Street in the Town of Ellicottville, Cattaraugus County, New York on April 26, 2012, (b) the United States Post Office located at 4 Washington Street in the Town of Ellicottville, Cattaraugus County, New York on April 27, 2012, and (c) Spragues Washington Square Office located at 1 W. Washington Street in the Town of Ellicottville, Cattaraugus County, New York on April 27, 2012, (C) caused notice of the Public Hearing to be published on April 30, 2012 in The Olean Times Herald, a newspaper of general circulation available to the residents of Town and Village of Ellicottville, Cattaraugus County, New York, (D) conducted the Public Hearing on May 11, 2012 at 9:00 a.m., local time at the offices of the Agency located at 3 East Washington Street in the Village of Ellicottville, Cattaraugus County, New York, and (E) prepared a report of the Public Hearing (the "Public Hearing Report") fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency; 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 (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Agency on April 24, 2012 (the "Preliminary SEQR Resolution"), the Agency (A) determined (1) that the Project involves more than one "involved agency", and (2) that, although the Project may constitute an "unlisted

action”, and coordinated review and notification of other involved agencies is strictly optional with respect to the Project, the Agency wished to investigate the advisability of undertaking a coordinated review with respect to the Project and (B) authorized the Executive Director of the Agency to contact all other “involved agencies” for the purpose of ascertaining whether such “involved agencies” were interested in undertaking a coordinated review of the Project and, if so, designating a “lead agency” with respect to the Project (as such quoted terms are defined in SEQRA); and

WHEREAS, further pursuant to SEQRA, by resolution adopted by Agency on June 19, 2012 (the “Final SEQR Resolution”), Agency determined (A) that the Project constituted an “Unlisted Action” under SEQRA, (B) that the Project would not have a “significant effect on the environment” pursuant to SEQRA and, therefore, that no environmental impact statement need be prepared with respect to the Project, and (C) as a consequence of the foregoing, to prepare a negative declaration with respect to the Project; and

WHEREAS, the Agency has given due consideration to the Application, and to representations by the Company that (A) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Company to undertake the Project in County of Cattaraugus, New York and (B) the completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York; and

WHEREAS, the Agency desires to encourage the Company to preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of County of Cattaraugus, New York by undertaking the Project in County of Cattaraugus, New York; and

WHEREAS, in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents (hereinafter collectively referred to as the “Agency Documents”): (A) a certain lease to agency (the “Lease to Agency” or the “Underlying Lease”) by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease 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”); (B) a certain license agreement (the “License to Agency” or the “License Agreement”) by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency (1) a license to enter upon the balance of the Land (the “Licensed Premises”) for the purpose of undertaking and completing the Project and (2) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement (as hereinafter defined); (C) a lease agreement (and a memorandum thereof) (the “Lease Agreement”) by and between the Agency and the Company, pursuant to which, among other things, the Company agrees to undertake the Project as agent of the Agency and the Company further agrees to lease the Project Facility from the Agency and, as rental thereunder, to pay the Agency’s administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project; (D) a payment in lieu of tax agreement (the “Payment in Lieu of Tax Agreement”) by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility; (E) if the Company intends to finance the Project with borrowed money, one or more mortgages and any other security documents and related documents (collectively, the “Mortgage”) from the Agency and the Company to the Company’s lenders with respect to the Project (the “Lender”), which Mortgage will grant liens on and security interests in the Project Facility to secure one or more loans from the Lender to the Company with respect to the Project (collectively, the “Loan”); (F) all building loan and other agreements requested by the Lender in

connection with the Loan (collectively with the Mortgage, the "Loan Documents"); and (G) various certificates relating to the Project (the "Closing Documents");

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

Section 1. All action taken by the Executive Director of the Agency with respect to the Public Hearing with respect to the Project is hereby ratified and confirmed.

Section 2. The law firm of Hodgson Russ LLP is hereby appointed Counsel to the Agency with respect to all matters in connection with the Project. Counsel for the Agency is hereby authorized, at the expense of the Company, to work with the Company, counsel to the Company and others to prepare, for submission to the Agency, all documents necessary to effect the transactions contemplated by this Resolution. Counsel to the Agency has prepared and submitted an initial draft of the Agency Documents to staff of the Agency.

Section 3. The Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act;

(B) The Project constitutes a "project," as such term is defined in the Act;

(C) The Project site is located entirely within the boundaries of County of Cattaraugus, New York;

(D) It is estimated at the present time that the costs of the planning, development, acquisition, construction, reconstruction and installation of the Project Facility (collectively, the "Project Costs") will be approximately \$1,000,000;

(E) the completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York;

(F) The granting of the Financial Assistance by the Agency with respect to the Project will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of County of Cattaraugus, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act;

(G) The Agency has reviewed the Hearing Report and has fully considered all comments contained therein; and

(H) It is desirable and in the public interest for the Agency to enter into the Agency Documents.

Section 4. In consequence of the foregoing, the Agency hereby determines to: (A) proceed with the Project; (B) acquire the Project Facility; (C) lease the Project Facility to the Company pursuant to the Lease Agreement; (D) enter into the Payment in Lieu of Tax Agreement; (E) secure the Loan by entering into the Loan Documents; and (F) grant the Financial Assistance with respect to the Project.

Section 5. The Agency is hereby authorized (A) to acquire a license in the Licensed Premises pursuant to the License Agreement, (B) to acquire a leasehold interest in the Leased Premises pursuant to the Underlying Lease, (C) to acquire title to the Equipment pursuant to a bill of sale (the "Bill of Sale to Agency") from the Company to the Agency, and (D) to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisitions are hereby approved, ratified and confirmed.

Section 6. The Agency is hereby authorized to acquire, construct and install the Project Facility as described in the Lease Agreement and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition, construction and installation are hereby ratified, confirmed and approved.

Section 7. The Chairman (or Vice Chairman) of the Agency, with the assistance of Agency Counsel and/or Special Counsel, is authorized to negotiate and approve the form and substance of the Agency Documents.

Section 8. (A) The Chairman (or Vice Chairman) of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents, 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 the forms thereof as the Chairman (or Vice Chairman) shall approve, the execution thereof by the Chairman (or Vice Chairman) to constitute conclusive evidence of such approval.

(B) The Chairman (or Vice Chairman) of the Agency is hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 9. 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 Agency 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 Agency Documents binding upon the Agency.

Section 10. 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:

Thomas E. Buffamante	VOTING	Yes
Crystal J. Abers	VOTING	Yes
Salvatore Marranta	VOTING	Yes
Gregory J. Fitzpatrick	VOTING	Yes
Brent Driscoll	VOTING	Excused
Joseph K. Eade	VOTING	Excused
Joseph E. Higgins	VOTING	Yes

The foregoing Resolution was thereupon declared duly adopted.

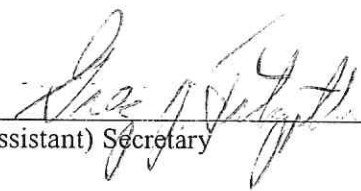
STATE OF NEW YORK                    )  
  ) SS.:  
COUNTY OF CATTARAUGUS         )

I, the undersigned (Assistant) Secretary of County of Cattaraugus Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on June 19, 2012 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original 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 19<sup>th</sup> day of June, 2012.

  
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(Assistant) Secretary

(SEAL)