

**INDUCEMENT RESOLUTION:
318 South Albany Street LLC (property owner)
310-318 South Albany Street, City of Ithaca
(Beechtree Care Center, formerly Reconstruction Home)**

A regular meeting of the Tompkins County Industrial Development Agency was convened on December 18, 2013 at 3:30 p.m.

The following resolution was duly offered and seconded, to wit:

Resolution authorizing the Tompkins County Industrial Development Agency to

(i) take a leasehold interest in real property located at 310-318 South Albany Street in the City of Ithaca, Tompkins County, New York, currently designated as City of Ithaca tax parcel number 80.-7-1 (the "Land"), and all improvements existing and to be constructed thereon (together with the Land, the "Facility");

(ii) appoint 318 South Albany Street LLC as its agent to acquire the Facility and to acquire, construct and equip thereon critical and non-critical repairs and the upgrading and extension of the short-term unit and rehabilitation services for the purpose of continued use as a nursing home;

(iii) negotiate and execute a lease agreement, leaseback agreement and related payment-in-lieu-of-tax agreement;

(iv) provide financial assistance to 318 South Albany Street LLC in the form of

(a) a sales tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Facility,

(b) a partial real property tax abatement through the PILOT Agreement, and

(c) a mortgage tax exemption for the financing related to the Facility; and

(v) execute related documents.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and § 895-b of the General Municipal Law of the State of New York, as amended (hereinafter collectively called the "Act"), TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY (hereinafter called the "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, 318 South Albany Street LLC (hereinafter called the "Real Estate Company") wishes to acquire premises at 310-318 South Albany Street in the City of Ithaca, Tompkins County, New York (consisting of City of Ithaca tax parcel number 80.-7-1) (the "Land") and the existing approximately 54,876-square-foot building and other existing and future improvements thereon (together with the Land, the "Facility") and to acquire, construct and equip thereon critical and non-critical repairs to the existing building

and the upgrading and extension of the short-term unit and rehabilitation services in order to continue said building's use as a 120-bed nursing home (the acquisition of the Facility and the aforementioned improvements and repairs are hereafter referred to as "the Project"); and

WHEREAS, pursuant to Article 18-A of the General Municipal Law, the Agency desires to adopt a resolution describing the Project and the financial assistance that the Agency is contemplating with respect to the Project; and

WHEREAS, it is contemplated that the Agency will:

(i) designate the Real Estate Company as its agent for the purpose of acquiring, constructing and equipping the Project;

(ii) negotiate and enter into a lease agreement (the "Lease"), leaseback agreement (the "Leaseback Agreement") and payment-in-lieu-of-tax agreement (the "PILOT Agreement") with the Real Estate Company;

(iii) take a leasehold interest in the land and the improvements and personal property constituting the Project (once the Leaseback Agreement and PILOT Agreement have been negotiated); and

(iv) provide financial assistance to the Real Estate Company in the form of:

(a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Project,

(b) a partial real property tax abatement through the PILOT Agreement, and

(c) a mortgage tax exemption for the financing related to the Project; and

WHEREAS, pursuant to General Municipal Law Section 859-a, at 5:30 p.m. on December 12, 2013 at the Old Jail Conference Room, located in the City of Ithaca at 125 East Court Street, the Agency held a public hearing with respect to the Project and the proposed financial assistance being contemplated by the Agency (the "Public Hearing") whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views. A copy of the minutes of said Public Hearing is attached hereto as Exhibit A;

WHEREAS, the Tompkins County Legislature on November 19, 2013 issued a negative declaration (the "SEQR Proceedings") under Article 8 of the Environmental Conservation Law and Regulations adopted pursuant thereto by the Department of Environmental Conservation of the State (collectively, "SEQR") with respect to the Project. A copy of the negative declaration is attached hereto as Exhibit B; and

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

Section 1. The Real Estate Company has presented an application in a form acceptable to the Agency. Based upon the representations made by the Real Estate Company to the Agency in the Real Estate Company's application, 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; and
- b. It is desirable and in the public interest for the Agency to appoint the Real Estate Company as its agent for purposes of acquiring, constructing and equipping the Project; and
- c. The Agency has the authority to take the actions contemplated herein under the Act; and
- d. The action to be taken by the Agency will induce the Real Estate Company to develop the Project, thereby increasing employment opportunities in Tompkins County and otherwise furthering the purposes of the Agency as set forth in the Act; and
- e. The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Real Estate Company or any other proposed occupant of the Project from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Real Estate Company or any other proposed occupant of the Project located within the State, and the Agency hereby finds that, based on the Real Estate Company's application, to the extent occupants are relocating from one plant or Project to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or Project to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries; and
- f. The Project involves an Unlisted action as said term is defined in Article 8 of the Environmental Conservation Law and Regulations adopted pursuant thereto by the Department of Environmental Conservation of the State (collectively, "SEQR").

Section 2. Based upon a review of the Real Estate Company's application and the SEQR Proceedings submitted to the Agency, the Agency hereby:

- a. Consents to and affirms the status of the Tompkins County Legislature (the "Legislature") as Lead Agency within the meaning of, and for all purposes of complying with, SEQR;
- b. Determines that the proceedings undertaken by the Legislature as Lead Agency under SEQR with respect to the acquisition, construction and equipping of the Project satisfy the requirements of SEQR, and ratifies and confirms such proceedings by the Legislature as Lead Agency;
- c. Determines that all of the provisions of SEQR that are required to be complied with as a condition precedent to the approval of the financial assistance contemplated by the Agency with respect to the Project and the participation by the Agency in undertaking the Project have been satisfied.

Section 3. Based upon the representations and warranties made by the Real Estate Company in its application for financial assistance, the Agency hereby authorizes and approves the Real Estate Company, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to

\$20,000.00, which result in New York State and local sales and use tax exemption benefits (“sales and use tax exemption benefits”) not to exceed **\$1,600.00**. The Agency agrees to consider any requests by the Real Estate Company for increase to the amount of sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services.

Section 4. Pursuant to Section 875(3) of the New York General Municipal Law, the Agency may recover or recapture from the Real Estate Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Real Estate Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that:

- a. the Real Estate Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits;
- b. the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Real Estate Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project;
- c. the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or
- d. the sales and use tax exemption benefits are taken in cases where the Real Estate Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project.
- e. As a condition precedent of receiving sales and use tax exemption benefits, the Real Estate Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must
 - i. cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and
 - ii. promptly pay over any such amounts to the Agency that the Agency demands.

Section 5. Subject to the Real Estate Company executing the Agent Agreement attached hereto as Exhibit C, the Agency hereby authorizes the Real Estate Company to proceed with the acquisition, construction and equipping of the Project and hereby appoints the Real Estate Company as the true and lawful agent of the Agency:

- a. to construct, renovate, and equip the Project;
- b. to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors and subcontractors of such agents and

subagents and to such other parties as the Real Estate Company chooses; and

- c. in general, to do all things which may be requisite or proper for completing the Project,

all with the same powers and the same validity that the Agency could do if acting on its own behalf; provided, however, that the Agent Agreement shall expire on **December 31, 2015** (unless extended for good cause by the Administrative Director of the Agency) if the Leaseback Agreement and PILOT Agreement contemplated have not been executed and delivered.

Section 6. The Chairperson, Vice Chairperson and/or the Administrative Director of the Agency are hereby authorized, on behalf of the Agency, to negotiate and execute (a) the Lease Agreement whereby the Real Estate Company conveys a leasehold interest in the Project to the Agency, (b) the related Leaseback Agreement leasing the Project back to the Real Estate Company, and (c) the PILOT Agreement; provided:

- a. the rental payments under the Leaseback Agreement include payment of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Real Estate Company for actions taken by the Real Estate Company and/or claims arising out of or related to the Project; and
- b. the terms of the PILOT Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

Section 7. The Chair, Vice Chair and/or Administrative Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver any mortgage(s), assignment(s) of leases and rents, security agreement(s), UCC-1 Financing Statement(s) and all documents, in a form acceptable to the Agency's counsel, reasonably contemplated by these resolutions or required by any lender(s) identified by the Real Estate Company (the "Lender") up to a maximum principal amount of \$5,305,000.00 to finance the acquisition of the Project and building construction, equipment and other personal property and related transactional costs (hereinafter, with the Leaseback Agreement and PILOT Agreement, collectively called the "Agency Documents"); and, where appropriate, the Secretary or Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chair, Vice Chair and/or Administrative Director of the Agency shall approve, the execution thereof by the Chair, Vice Chair and/or Administrative Director of the Agency to constitute conclusive evidence of such approval; provided in all events recourse against the Agency is limited to the Agency's interest in the Project.

Section 8. 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 and to execute and deliver all such 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 resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 9. These resolutions shall take effect immediately.


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

<u>Member names</u>	<u>Yea</u>	<u>Nea</u>	<u>Abstain</u>	<u>Absent</u>
Martha Robertson, Chair	[✓]	[]	[]	[]
Jim Dennis	[✓]	[]	[]	[]
Larry Baum	[]	[]	[]	[✓]
Svante L. Myrick	[✓]	[]	[]	[]
Will Burbank	[✓]	[]	[]	[]
Nathan Shinagawa	[]	[]	[]	[✓]
Grace Chiang	[✓]	[]	[]	[]

The resolutions were thereupon duly adopted.

I, Svante L. Myrick, as Secretary of the Tompkins County Industrial Development Agency, hereby certify that the above is a true and correct copy of a duly authorized resolution of the Tompkins County Industrial Development Agency.

Dated: December 18, 2013



Svante L. Myrick, Secretary of the
Tompkins County Industrial Development Agency