

RESOLUTION
Cayuga Green, LLC: Amended PILOT Agreements

A regular meeting of the Tompkins County Industrial Development Agency was convened on July 10, 2014 at 4:00 p.m.

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

Resolution approving amendment of the following Payment in Lieu of Tax (“PILOT”) Agreements between the Tompkins County Industrial Development Agency (“the Agency”) and Cayuga Green, LLC (“the Company”):

(1) PILOT Agreement dated August 9, 2007 and amended by an Amended PILOT Agreement dated February 12, 2008, for property located at 235 South Cayuga Street in the City of Ithaca, County of Tompkins, New York, consisting of commercial space on the ground floor of the Cayuga Garage;

(2) PILOT Agreement dated August 9, 2007 and amended by an Amended PILOT Agreement dated February 12, 2008, for property located at 116-128 East Green Street in the City of Ithaca, County of Tompkins, New York, consisting of a movie theater located on the ground floor of the Green Street Parking Garage; and

(3) PILOT Agreement dated August 9, 2007 and amended by an Amended PILOT Agreement dated February 12, 2008, for property located at 131-133 and 135 East Green Street in the City of Ithaca, County of Tompkins, New York, consisting of approximately 68 apartments and approximately 17,500 square feet of retail, restaurant and office space; collectively referred to as “the PILOT Agreements.”

WHEREAS, the Agency by Inducement Resolution adopted on December 19, 2005 and Amended Inducement Resolution adopted on September 8, 2006 approved financial assistance to the projects described in the PILOT Agreements (“the Project”), consisting of an approximately \$15 million, mixed-use project in the City of Ithaca’s downtown density district that includes an approximately 12,000 square foot theater, approximately 39,000 square feet of office and retail space in two locations, and 68 apartment units (hereafter referred to as “the Project”). The financial assistance consists of (1) a sales and use tax exemption for purchases and rentals related to the construction and equipping of the Project, (2) a partial real property tax abatement through the PILOT Agreements, and (3) a mortgage tax exemption for the financing related to the Project; and

WHEREAS, the Project has resulted in real property tax payments of approximately \$576,471 since it was completed in 2008; and

WHEREAS, due to the uncertainty about the residential rental market and the overall financial feasibility of the Project, the Agency agreed to share in the financial risk of the Project and alleviate some of the uncertainty for the Company, as set forth in the PILOT Agreements; and

WHEREAS, the PILOT Agreements provide for adjustment of the property tax abatement schedule each year after five years in operation, starting in Tax Year 5 of the abatement schedule set forth in the PILOT Agreements, based on the Company’s return on investment for the Project for the

preceding year. The PILOT Agreements provide that the Company will receive a greater property tax abatement if the return on investment was below 8.5%, or a smaller property tax abatement if the return on investment was above 12.5%; and

WHEREAS, the PILOT Agreements also require that rent for the residential units be kept within a prescribed range, with allowances for changes in the CPI and the underlying tax assessment; and

WHEREAS, the Company submitted the required certified financial reports and rental history of each of the units to calculate the return on investment as set forth in the PILOT Agreements. Tompkins County Area Development (TCAD) staff, who provide administrative services to the Agency, reviewed the reports and confirmed that the return on investment was below 8.5%; and

WHEREAS, there was some disagreement between the Agency and the Company regarding the definitions and the calculations used to determine the allowable rental rates and, as a result, TCAD staff used both the Agency's and the Company's definitions and calculations and found that rental rates were within the allowable rent ranges prescribed by the PILOT agreement based on both calculations; and

WHEREAS, all the requirements of the PILOT Agreements have been met by the Company; and

WHEREAS, the calculation of the Company's Return on Investment for the Project, as set forth in the PILOT Agreements, would result in an increase of the property tax abatement from 50% (the current abatement percentage pursuant to the PILOT Agreements) to 68.3%; and

WHEREAS, such an increase would have immediate negative impacts on the taxing jurisdictions, which have already established tax rates based on an anticipated higher tax payment amount from the Company for the properties covered by the PILOT Agreements; and

WHEREAS, the apartment rental market has changed significantly since the Project was first proposed and new units have been added to the market at all income levels. A review of current rental rates shows that Cayuga Green rates are on the lower end of the middle range of available downtown apartments; and

WHEREAS, the retail spaces included in the project have significantly underperformed compared to the Company's initial projections; and

WHEREAS, the Company has been supportive of this community, facilitating flexible, low cost space for the not-for-profit Finger Lakes Wine Center and the Tompkins Cortland Community College farm to bistro project, Coltivare; and

WHEREAS, the abatement schedule in the PILOT Agreements is the Agency's standard downtown density abatement schedule;

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

Section 1. The PILOT Agreements shall be amended as follows:

- a. The adjustment of the abatement percentage based on the return on investment of the Project will be deleted.
- b. The caps on rental rates will be deleted.
- c. The abatement schedule in the PILOT Agreements will apply without any further adjustments in future years.

Section 2. The Chairperson, Vice Chairperson and/or the Administrative Director of the Agency are hereby authorized, on behalf of the Agency, to execute amended PILOT Agreements containing the amendments set forth in this Resolution, provided:

- a. No Event of Default under the PILOT Agreement or under any of the other agreements between the Agency and the Company shall have occurred and be continuing; and
- b. The execution of such amended PILOT Agreements (1) is permitted by law in effect at the time, and (2) will serve the public purposes of the Act; and
- c. The Company shall be responsible for and shall pay the costs and expenses related to the amendment of the PILOT Agreements, including, without limitation, actual counsel fees for the Agency's counsel.

Section 3. 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 4. 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>
James P. Dennis, Chair	[✓]	[]	[]	[]
Svante L. Myrick	[✓]	[]	[]	[]
Larry Baum	[✓]	[]	[]	[]
Will Burbank	[✓]	[]	[]	[]
Grace Chiang	[✓]	[]	[]	[]
Martha Robertson	[✓]	[]	[]	[]
Nathan Shinagawa	[✓]	[]	[]	[]

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: July 10, 2014



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