

AUTHORIZING RESOLUTION FOR ADDITIONAL FINANCIAL ASSISTANCE
(1175 Warburton Ave LLC Project)

A regular meeting of the City of Yonkers Industrial Development Agency was convened on Wednesday, October 26, 2016.

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

Resolution No. 10/2016 - 38

RESOLUTION OF THE CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY (i) AUTHORIZING ADDITIONAL FINANCIAL ASSISTANCE TO 1175 WARBURTON AVE LLC (THE "COMPANY") IN AN AMOUNT EXCEEDING THE AMOUNT REQUESTED BY THE COMPANY IN ITS APPLICATION TO THE AGENCY DATED SEPTEMBER 1, 2015, AND (ii) AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS WITH RESPECT THERETO

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 83 of the Laws of 1982 of the State of New York, as amended (hereinafter collectively called the "Act"), the **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY** (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, **1175 WARBURTON AVENUE LLC** (the "Company"), previously submitted an application (the "Application") to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of (i) the acquisition by the Agency of a leasehold interest in certain land located in approximately 1.3 acres of land located at 1175 Warburton Avenue (aka 1183 Warburton Avenue), Yonkers, New York (the "Land") and the existing improvements located thereon, if any (collectively, the "Existing Improvements"); (ii) the demolition of the Existing Improvements and the construction on the Land of a three (3)-story, fifty-five (55)-unit rental apartment building containing one (1) affordable housing unit as well as market-rate units (collectively, the "Improvements"); and (iii) the acquisition of and installation in and around the Improvements of certain items of equipment and other tangible personal property (the "Equipment" and, collectively with the Improvements and the Existing Improvements, the "Facility"); and

WHEREAS, on December 16, 2015, the Agency adopted a resolution (the "Final Resolution") the Agency authorized its Chairman, Vice Chairman, President, Executive Director and/or the CFO to execute certain documents including but not limited to, an agent agreement, a lease agreement, leaseback agreement, a tax agreement, a tax agreement mortgage, a mortgage and related documents (collectively, the "Agency Documents") as well as the 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 \$3,856,250.75,

which would result in New York State and local sales and use tax exemption benefits ("Sales and Use Tax Exemption Benefits") not to exceed \$322,961.00 (calculated at the old City of Yonkers sales tax rate of 8.375%); and

WHEREAS, subsequent to the submission by the Company of the Application to the Agency and the adoption by the Agency of the Final Resolution, the sales and use tax rate in the City of Yonkers, New York, was increased from 8.375% to 8.875%; and

WHEREAS, on or about September 19, 2016 the Company submitted a revised *pro forma* to Application requesting that the Agency authorize the Company 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 the amount up to \$5,000,000.00, which would result in New York State and local Sales and Use Tax Exemption Benefits not to exceed \$443,750.00 (calculated at the new City of Yonkers sales tax rate of 8.875%) (the "Additional Financial Assistance"); and

WHEREAS, the Agency desires to adopt a resolution authorizing the Additional Financial Assistance and the execution and delivery of any document necessary and incidental thereto.

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

Section 1. Based upon the representation and warranties made by the Company in its Application, as revised, the Agency hereby authorizes and approves the 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 \$5,000,000.00, which result in New York State and local Sales and Use Tax Exemption Benefits not to exceed \$443,750.00. The Agency agrees to consider any requests by the 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 2. Pursuant to Section 875(3) of the New York General Municipal Law, the Agency may recover or recapture from the 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 Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the 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; (ii) the Sales and Use Tax Exemption Benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the Sales and Use Tax Exemption Benefits are for property or services not authorized by the Agency as part of the Project; or (iv) The Sales and Use Tax Exemption Benefits are taken in cases where the 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. As a condition precedent of receiving Sales and Use Tax Exemption Benefits, the 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 3. The Chairman, Vice Chairman, President, Executive Director, Secretary and/or the CFO of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver any documents necessary and incidental to provide the Company with the Additional Financial Assistance and the Agency Documents with such changes as shall be approved by the Chairman, Vice Chairman, President, Executive Director, Secretary and/or the CFO upon execution.

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 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 5. These Resolutions shall take effect immediately upon adoption.

	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>
Mayor Mike Spano	[✓]	[]	[]	[]
Martin Ball, Sr.	[✓]	[]	[]	[]
Deputy Mayor Susan Gerry	[✓]	[]	[]	[]
Melissa Nacerino	[]	[]	[]	[✕]
Hon. Cecile D. Singer	[✓]	[]	[]	[]
Peter Kischak	[✓]	[]	[]	[]
Robert Maccariello	[]	[]	[]	[✕]

The Resolutions were thereupon duly adopted.

CERTIFICATION
(1175 Warburton Avenue LLC Project)

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

I, SUSAN GERRY, the undersigned Secretary of the City of Yonkers Industrial Development Agency DO HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the City of Yonkers Industrial Development Agency (the "Agency"), including the resolution contained therein, held October 26, 2016, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

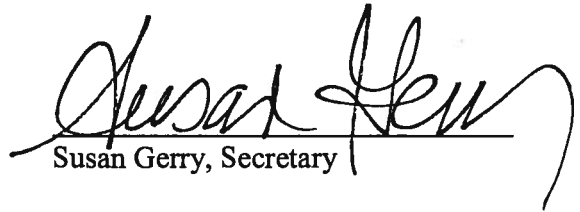
I FURTHER CERTIFY, that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY, that 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 modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this ~~15~~ day of October, 2016.

November


Susan Gerry, Secretary

[SEAL]