

FINAL RESOLUTION

(L&A Acquisition LLC d/b/a Adira at Riverside Rehabilitation and Nursing Project)

A special meeting of the City of Yonkers Industrial Development Agency was convened on Friday, August 21, 2015.

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

Resolution No. 08 / 2015 - 34

RESOLUTION OF THE CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY (i) ACKNOWLEDGING THE PUBLIC HEARING HELD WITH RESPECT TO THE L&A ACQUISITION LLC D/B/A ADIRA AT RIVERSIDE REHABILITATION AND NURSING (AS MORE FULLY DESCRIBED BELOW), AND (ii) AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGENT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT, TAX AGREEMENT, TAX AGREEMENT MORTGAGE, MORTGAGE AND RELATED DOCUMENTS WITH RESPECT TO THE PROJECT (AS DEFINED BELOW)

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, on or about June 24, 1999, the Agency issued its \$15,000,000 City of Yonkers Industrial Development Agency Mortgage Revenue Bonds Series 1999 (FHA Insured Mortgage – Michael Malotz Skilled Nursing Pavilion Project) (the "Series 1999 Bonds"), the proceeds of which were used to finance a certain project (the "Series 1999 Project") for the benefit of Michael Malotz Skilled Nursing Pavilion, a New York not-for-profit corporation (the "Institution"), consisting of the acquisition, construction and equipping of a 120-bed skilled nursing home facility at 120 Odell Avenue, in the City of Yonkers, New York (the "Series 1999 Project Facility"); and

WHEREAS, due to general negative cash flow trends with respect to the operation of skilled nursing home facilities, the Institution intends to sell the Series 1999 Project Facility to L&A Acquisition LLC d/b/a Adira at Riverside Rehabilitation and Nursing, a for-profit entity, or another for-profit entity formed or to be formed by it or on its behalf ("Company"); and

WHEREAS, the Company previously submitted an application (the "Application") to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of the acquisition of the Series 1999 Project Facility and refunding of the Series 1999 Bonds with the

proceeds of a commercial bank loan (the "Commercial Bank Loan") from a lender to be identified by the Company; and

WHEREAS, on May 19, 2015, the Agency adopted a resolution (the "Initial Resolution") with respect to the Project (i) accepting the Application of the Company; (ii) directing that a public hearing be held; (iii) contemplating the financial assistance to be provided by the Agency to the Company consisting of (a) a sales and use tax exemption in connection with the undertaking of the Project, (b) an exemption from all New York State, Westchester County and City of Yonkers mortgage recording taxes on the recording of the mortgage or mortgages securing the Commercial Bank Loan, and (c) a partial real property tax abatement structured within a tax agreement (collectively, the "Financial Assistance"); and (iv) authorizing the negotiation of an agent agreement (the "Agent Agreement") lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement"), a tax agreement (the "Tax Agreement") and a tax agreement mortgage (the "Tax Agreement Mortgage") with respect to the Series 1999 Project Facility; and

WHEREAS, pursuant to General Municipal Law Section 859-a, on Wednesday, June 3, 2015, at 5:30 p.m., local time, at the Agency's offices at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701, the Agency held a public hearing with respect to the Project and the proposed Financial Assistance (as defined in the Initial Resolution) 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 the Public Hearing together with the Notice of Public Hearing published and forwarded to the affected taxing jurisdictions ten (10) days prior to said Public Hearing are attached hereto as **Exhibit A**; and

WHEREAS, the Agent Agreement, Lease Agreement, Leaseback Agreement, Tax Agreement, Tax Agreement Mortgage and related documents with respect to the Project are being negotiated and will be presented to the President of the Agency for execution upon approval of this resolution.

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

Section 1. The public hearing held by the Agency on June 3, 2015, concerning the Project and the Financial Assistance was duly held in accordance with the Act, including but not limited to the giving of at least ten (10) days published notice of the Public Hearing (such notice also provided to the Chief Executive Officer of each affected tax jurisdiction), affording interested parties a reasonable opportunity, both orally and in writing, to present their views with respect to the Project.

Section 2. Subject to the Company executing an Agent Agreement (in a form to be approved by Counsel to the Agency and/or Transaction Counsel) and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Project and hereby appoints the Company as the true and

lawful agent of the Agency: (i) to acquire, construct and equip the Project; (ii) 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 Company chooses; and (iii) 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 in its own behalf; *provided, however*, the Agent Agreement shall expire on **August 30, 2016** (*unless extended for good cause by the President and/or Executive Director of the Agency*) if the Lease Agreement, Leaseback Agreement, Tax Agreement and Tax Agreement Mortgage contemplated have not been executed and delivered.

Section 3. Based upon the representation and warranties made by the Company in its application for financial assistance, 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 **\$2,500,000**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$209,375**. 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 4. 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 5. The Chairman, Vice Chairman, President, Executive Director and/or the CFO of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Lease Agreement, Leaseback Agreement, Tax Agreement, Tax Agreement Mortgage, Agent Agreement and related documents with such changes as shall be approved by the Chairman, Vice

Chairman, President, Executive Director and/or the CFO upon execution; provided, the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project.

Section 6. The Chairman, Vice Chairman, President, Executive Director and/or the CFO of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver any mortgage, assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by any Lender identified by the Company (the "Lender") to secure the Commercial Bank Loan up to a maximum principal amount necessary to undertake the Project, acquire the Facility and/or finance or refinance equipment and other personal property and related transactional costs (hereinafter, with the Agent Agreement, Lease Agreement, Leaseback Agreement, Tax Agreement and Tax Agreement Mortgage, 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 Chairman, Vice Chairman, President, Executive Director and/or the CFO of the Agency shall approve, the execution thereof by the Chairman, Vice Chairman, President, Executive Director and/or the CFO 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 7. 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 8. These Resolutions shall take effect immediately upon adoption.

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

The Resolutions were thereupon duly adopted.

CERTIFICATION

*(L&A Operations LLC d/b/a Adira at Riverside Rehabilitation and Nursing Project –
Final Resolution)*

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:

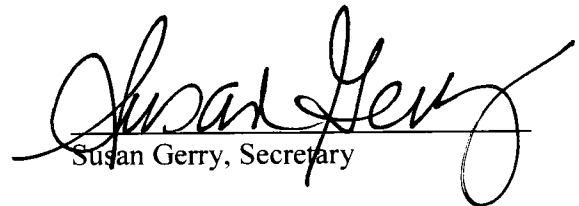
That I have compared the annexed extract of minutes of the meeting of the City of Yonkers Industrial Development Agency (the "Agency"), including the resolution contained therein, held August 21, 2015, with the original thereof on file in my office, and that the same is a true and correct copy of the 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 27 day of August, 2015.


Susan Gerry, Secretary

[SEAL]

Resolution No. 08/2015-34

Final Resolution: L&A Acquisition LLC d/b/a Adria at Riverside Rehabilitation and Nursing Project
August 18, 2015

EXHIBIT A

[Notice Documents]

Attached hereto