

INITIAL RESOLUTION
(Morris Builders, L.P. Project)

A regular meeting of the City of Yonkers Industrial Development Agency was convened on May 25, 2016.

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

Resolution No. 05/2016 - 23

RESOLUTION OF THE CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY (i) ACCEPTING THE APPLICATION OF MORRIS BUILDERS, L.P. WITH RESPECT TO A CERTAIN PROJECT (AS DESCRIBED BELOW) LOCATED AT AUSTIN AVENUE AND STEW LEONARD DRIVE IN THE CITY OF YONKERS, NEW YORK; (ii) AUTHORIZING A PUBLIC HEARING WITH RESPECT TO THE PROJECT; AND (iii) DESCRIBING THE FORMS OF FINANCIAL ASSISTANCE BEING CONTEMPLATED BY THE AGENCY WITH RESPECT TO THE PROJECT.

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"), **CITY OF YONKERS 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, the Agency, City of Yonkers, County of Westchester, County of Westchester Industrial Development Agency, and Morris Builders, LP (the "Five Parties") have agreed to enter into settlement of all outstanding claims with respect to the Austin Avenue development and to transfer fee title to certain lands to Morris Builder, L.P. all as described in the attached Settlement Agreement Executive Summary (the "Settlement Agreement"); and

WHEREAS, **MORRIS BUILDERS, L.P.**, for itself or on behalf of an entity to be formed (the "Company") has submitted an application to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of (i) following acquisition by the Company of fee title to certain acreage currently held by County of Westchester Industrial Development Agency, the acquisition by the Agency of a leasehold interest in a parcel or parcels of land located at Austin Avenue and Stew Leonard Drive in the City of Yonkers, New York for the development of the proposed New Store Improvements as described in the Settlement Agreement (the "Land") and the existing improvements located thereon, if any (the "Existing Improvements"); (ii) the construction and equipping by the Company of sitework improvements on the Land and in and around the Existing Improvements to accommodate the future buildout of a retail Target store or similar by the retail operator or its designees (the "Improvements"); and (iii) the acquisition and installation in and around the Improvements and Existing Improvements of certain items of equipment and other tangible personal property (the "Equipment", and

collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); all for sublease to a retail Target store; 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 hold a public hearing and (i) negotiate an agent agreement, pursuant to which the Agency will designate the Company as its agent for the purpose of acquiring, constructing and equipping the Project (the "Agent Agreement"), (ii) negotiate and enter into a lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement") and tax agreement (the "Tax Agreement") with the Company, and, if required by the Agency, a Tax Agreement mortgage (the "Tax Agreement Mortgage"), (iii) take a leasehold interest in the Land, the Existing Improvements, the Improvements and personal property constituting the Project (once the Lease Agreement, Leaseback Agreement and Tax Agreement (and Tax Agreement Mortgage, if applicable) have been negotiated), and (iv) provide financial assistance (the "Financial Assistance") to the 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 structured through the Tax Agreement, and (c) a mortgage recording tax exemption for the financing related to the Project; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at 6 N.Y.C.R.R. Part 617, as amended (collectively referred to as "SEQRA"), the Agency must satisfy the applicable requirements set forth in SEQRA, as necessary, prior to making a final determination whether to undertake the Project; and

WHEREAS, pursuant to Article 18-A of the Act, the Agency desires to adopt a resolution (i) accepting the Application of the Company; (ii) describing the Financial Assistance to be provided by the Agency to Company; and (iii) authorizing a public hearing with respect to the Project.

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

Section 1. The terms of the Settlement Agreement as attached are hereby approved. 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 Settlement Agreement.

Section 2. The Company has presented an Application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the 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) The Agency has the authority to take the actions contemplated herein under the Act; and

(C) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in the City of Yonkers and otherwise furthering the purposes of the Agency as set forth in the Act;

(D) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the 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 Company or any other proposed occupant of the Project located within the State; and the Agency hereby finds that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility 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

(E) The City of Yonkers Planning Board has conducted a review of the Project pursuant to Article 8 of the Environmental Conservation Law and 6 N.Y.C.R.R. Part 617 (collectively referred to as "SEQRA"). In addition to classifying the Project as a Type I Action pursuant to SEQRA, the City of Yonkers Planning Board also issued a determination dated May 13, 2015, determining that the Project did not present a potential significant adverse environmental impact. The Agency, having reviewed the materials presented by the Company, including but not limited to the determination, thus ratifies the determination previously issued by the City of Yonkers Planning Board.

Section 3. The Chairman, Vice Chairman, President and/or Executive Director of the Agency are hereby authorized, on behalf of the Agency, to (A) hold a public hearing in compliance with the Act, and (B) negotiate, but not execute (1) an Agent Agreement, pursuant to which the Agency appoints the Company as its agent to undertake the Project, (2) a Lease Agreement, pursuant to which the Company leases the Project to the Agency, (3) a related Leaseback Agreement, pursuant to which the Agency leases its interest in the Project back to the Company, (4) a Tax Agreement, pursuant to which the Company agrees to make certain payments in lieu of real property taxes for the benefit of the affected tax jurisdictions, (5) a Tax Agreement Mortgage, and (6) related documents; provided (i) 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; and (ii) the terms of the Tax Agreement is consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation therefrom have been complied with.

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.

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

	<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
(Morris Builders, L.P. Project)

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

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

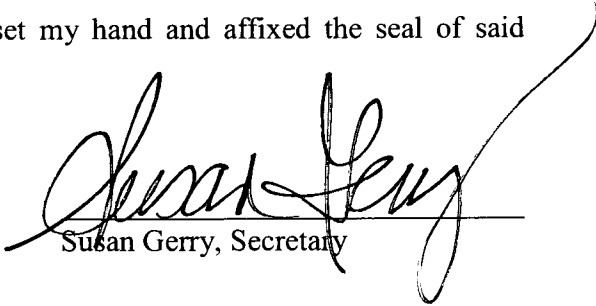
That I have compared the annexed extract of minutes of the meeting of the City of Yonkers Industrial Development Agency (the "Agency"), including the resolution contained therein, held on May 25, 2016, with the original thereof on file in my office, and that the same is a true and correct copy of the 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 26 day of May, 2016.


Susan Gerry, Secretary

Executive Summary of Austin Avenue Settlement

1. Lands involved - Morris shall purchase from WIDA the "Morris Lands" to be described by maps and legal descriptions satisfactory to all parties that include: (a) all the real property encumbered by the Agreement of Lease between Morris and WIDA dated October 24, 1985, as amended, and (b) approximately eight (8) acres on the western side of (landfill) Lot 1 on the Tax Map of the City of Yonkers; EXPRESSLY EXCLUDING approximately eleven acres constituting the eastern portion of (landfill) Lot 1 (the "Acres to be transferred to the City") upon which at least a one (1) acre area will be dedicated where the New Hogan Park will be established AND EXCLUDING the approximately 9 acres on the west side of Sprain Road north of Austin Avenue ("9 Acres on Sprain"). Prior to closing, the City will present to Morris the location of at least one (1) acre area of the Acres to be transferred to the City to be dedicated as parkland in order to satisfy the parkland dedication criteria set forth in Chapter 833 of the Laws of the State of New York, 1984 (the "1984 Law"). The City shall be responsible for complying with the 1984 Law including installation of a "picnic area, park benches, pathways and the like". In the event Morris's title to the Morris Lands are challenged based on the failure to satisfy the 1984 Law, the City of Yonkers shall take any and all actions necessary to satisfy the 1984 Law so Morris has good title to the Property related to the 1984 Law after closing, and the court will have continuing jurisdiction to insure the 1984 Law is fully complied with. WIDA will retain the 9 Acres on Sprain, but shall order an appraisal and shall grant to Morris (or Morris Newco as Morris shall designate) a recorded option to purchase fee title to the 9 Acres on Sprain at (i) the appraised value agreed to by the parties, or (ii) the amount of the appraisal, whichever is less. Such Purchase Option shall last for 5 years from the date the Morris Lands are conveyed to Morris pursuant to this Stipulation. Morris shall also have a recorded Right of First Refusal encumbering the 9 Acres on Sprain, which Right of First Refusal shall be governed by the procedure set forth in Schedule I hereto. The Morris Lands will be benefitted by a drainage easement over the Acres to be transferred to the City and the 9 Acres on Sprain. WIDA shall transfer the Acres to be transferred to the City to the City of Yonkers by deed on the date the deed to Morris to the Morris Lands is delivered. Said deed shall limit the use of the Acres transferred to the City to public uses that may include parks as determined from time to time by future action of the City.

New Hogan Park – The City will designate the 11 Acres to be transferred to the City as parkland or if less than all is dedicated as parkland at least 1 acre will be dedicated parkland and in said event WIDA will have a reverter on areas not dedicated as parkland to insure receipt of future consideration that can be distributed to the County and City as additional proceeds. In all events the City will control the future uses of the 11 acres and future uses will be consistent with park uses or WIDA will have a right to receive additional consideration. The City shall deliver a correction deed (bargain and sale form) to WIDA to the satisfaction of the title companies to insure the Morris Lands do not have a continuing title defect related to efforts to transfer lands in the 1980s as contemplated by Chapter 833 of the Laws of the State of New York, 1984.

2. Purchase Price – Morris will pay a total of \$32,000,000. \$25,000,000 payable between June 15-30, 2016 at Closing; \$5,000,000 when a building permit is issued for new improvements for a new store for Target Corporation (or similar retailer) on the Morris Lands

(the "New Store Improvements"); \$1,000,000.00 ten (10) days after the opening of the New Store Improvements to the general public (the "Opening Date"); and \$1,000,000.00 on the first anniversary date of the Opening Date. Morris shall form a new special purpose entity affiliated with and controlled by Morris ("Morris Newco") which shall take title to the lands north of Austin Avenue generally referred to by Morris as the upper site. In recognition of the fact that the \$7,000,000 in excess of the \$25,000,000 being paid at Closing (the "Balance of Purchase Price") may not be payable for some time depending on when a building permit is issued for the New Store Improvements, the Balance of the Purchase Price shall also be evidenced by a promissory note to WIDA from Morris Newco, in the form attached hereto as Schedule II, and which will be secured by a mortgage on lands north of Austin Avenue delivered at the closing on the Morris Lands. In no event shall Morris be responsible for paying mortgage recording tax for the mortgage to be held by WIDA. The YIDA financial assistance described in Section 5 below shall include a structure that provides for an exemption of the mortgages securing the Purchase Price and any financing related to the New Store Improvements. Said mortgage held by WIDA securing the Balance of the Purchase Price shall be released and the promissory note marked satisfied when the Balance of the Purchase Price is paid. The Purchase Price and any amounts paid with respect to the 9 Acres on Sprain shall be paid by WIDA to the County and City upon receipt as follows: County receives \$15mm of first \$25mm with the City receiving the remaining \$10mm; County receiving \$3mm of the \$5mm with the City receiving the remaining \$2mm; the County receiving the first \$1mm payable on opening of the New Store Improvements and the City receiving the \$1mm on the first anniversary of the New Store Improvements; the County and City will share 50/50 any payments made with respect to the 9 Acres on Sprain.

3. Approvals – All parties will cooperate and obtain executive and legislative and any corporate approvals as soon as practicable and cooperate to assist Morris in obtaining the necessary zoning and site plan approvals for the New Store Improvements by June 15, 2016. The parties agree that the closing is conditioned upon (i) approval by City Council of the AASS Zoning, (ii) approval by the City Council of the CDP Plan, (iii) approval of the site plan for Target by the Planning Board and, (iv) subject to submission of an application by May 23, 2016, approval of the application for financial assistance by YIDA for a mortgage recording tax exemption on all lands being purchased by Morris under this Settlement and a PILOT for Target pursuant to Section 5 below. In the event of a failure of any of the foregoing conditions, the parties shall work in good faith to satisfy such conditions as soon as reasonably practicable, and continue to closing thereafter. YIDA shall have an ongoing obligation after closing to provide a PILOT to Target or such New Store Improvements pursuant to Section 5 below. Morris shall make commercially reasonable efforts to pursue the building permit for the New Store Improvements.

4. PILOT – The parties will acknowledge that any and all payment in lieu of tax agreements related to the Morris Lands ("PILOT") have or will have expired as of June 30, 2016. Subject to Morris and or Target applying to YIDA, and paying customary agency and counsel fees, the New Store Improvements shall be the subject of a ten (10) year payment in lieu of tax agreement between Morris and YIDA providing for combined County, City (inclusive of School) in lieu of tax payments of \$2.50/gross square foot of New Store Improvements during years 1-5 and \$3.10/gross square feet of New Store Improvements in years 6-10 plus all special district

charges and assessments that are not exempted by YIDA. YIDA will offer the same PILOT terms for other development on the Morris Lands which obtain a building permit within the 10 year period following the conveyance of the Morris Lands pursuant to this Stipulation provided the per square foot rates shall be escalated by the City tax rates during the pendency of said program.

5. All Existing Lawsuits are dismissed with prejudice - The Parties agree to execute simultaneously with this Stipulation, a Stipulation of Dismissal with Prejudice and Without Costs of this Action which can be filed by either party hereto pursuant to Fed. R. Civ. P. 41 et seq. and a Stipulation of Discontinuance of the State Court Action with Prejudice. Prior to the filing of the Stipulation of Dismissal with Prejudice pursuant to Fed. R. Civ. P. 41, the parties will enter into an Order and Stipulation asking the Court to maintain jurisdiction to enforce the terms of the Stipulation.

6. Termination of 5 Party Agreements and General Releases – The Parties will acknowledge that the existing PILOT has expired as of the date of Closing and will thus agree to terminate the Five Party Agreement and all related agreements and exchange mutual general releases for all causes of actions or claims, known or unknown, foreseeable or unforeseeable, between the parties, excepting only those claims that are wholly unrelated to the Austin Avenue Development, and further excepting the tax appeal filed by Morris related to the Morris Lands and the obligations of the parties hereunder. Said mutual releases shall include but not be limited to any and all claims under any written agreement involving two or more of the parties, prior judicial settlements, any tax or QEZ credits received by Morris, development of roads and infrastructure and the improvements at the Austin Avenue site and nearby that exist, or any other claim that directly, indirectly or tangentially relates to the Austin Avenue site as of the date of the mutual release but shall not include any building code violations, fire code violations or claims under environmental laws.

7. Escrow Agent – As the various parties approve of the Settlement their respective documents and agreements will be signed and held in escrow by a title company acceptable to the Parties.

8. Real Estate Tax Adjustment – Taxes to be adjusted from 1/1/16 to the Closing Date.

9. Assignment of COC for Lot 1 – WIDA and/or the City must take all necessary steps to transfer and assign the Certificate of Completion for Lot 1 to Morris, execute the Environmental Easement and accompanying documents for Lot 4, and execute any other document requested by Morris in connection with the closure of the landfill and the transfer thereof.

10. Definitive Agreement – This Executive Summary of Settlement sets forth the framework for completing a settlement, but remains subject to the parties entering into definitive binding agreements. The parties shall negotiate in good faith to reach a definitive binding agreement.

Resolution No. 05/2016-23
Initial Resolution: Morris Builders, L.P. Project
May 25, 2016