

RESOLUTION

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

A regular meeting of the City of Yonkers Industrial Development Agency was convened on May 19, 2015.

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

Resolution No. 05/2015 - 20

RESOLUTION OF THE CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY (i) ACCEPTING THE APPLICATION OF L&A ACQUISITION D/B/A ADIRA AT RIVERSIDE REHABILITATION WITH RESPECT TO THE ACQUISITION OF THE MICHAEL MALOTZ SKILLED NURSING PAVILION AT 120 ODELL AVENUE, CITY OF YONKERS, NEW YORK; (ii) MAKING A DETERMINATION PURSUANT TO THE NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT WITH RESPECT TO THE PROJECT; (iii) AUTHORIZING A PUBLIC HEARING WITH RESPECT TO THE PROJECT; (iv) DESCRIBING THE FORMS OF FINANCIAL ASSISTANCE BEING CONTEMPLATED BY THE AGENCY; AND (v) AUTHORIZING ALL ACTIONS NECESSARY TO REFUND THE OUTSTANDING PRINCIPAL AMOUNT \$15,000,000 CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY MORTGAGE REVENUE BONDS SERIES 1999 (FHA INSURED MORTGAGE – MICHAEL MALOTZ SKILLED NURSING PAVILION PROJECT) AND THE EXECUTION OF RELATED DOCUMENTS

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 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 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 has submitted an application (the "Application") 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, it is contemplated that the Agency will hold a public hearing in accordance with Section 859-a of the Act and (i) negotiate and enter into a 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 1999 Project Facility, (ii) take title to or a leasehold interest in the Series 1999 Project Facility (once the Lease Agreement, Leaseback Agreement, Tax Agreement and Tax Agreement Mortgage have been negotiated), and (iv) provide financial assistance to the Company in the form 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

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 General Municipal Law the Agency desires to adopt a resolution describing the Project and the Financial Assistance (as described below) that the Agency is contemplating 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 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 and preventing economic deterioration in the City of Yonkers, New York, and otherwise furthering the purposes of the Agency as set forth in the Act; and

(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.

(E) Based upon the review by the Agency of the Application submitted by the Company with respect to the Project, the Agency finds that the proposed Phase I Project action constitutes a "Type II action" pursuant to 6 N.Y.C.R.R. § 617.5 and therefore is exempt from review under SEQRA.

Section 2. The Chairman, Vice Chairman, President, Executive Director and/or the Chief Fiscal Officer of the Agency of the are hereby authorized, on behalf of the Agency, to hold a public hearing in compliance with the Act and negotiate: (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 Company leases the Series 1999 Project Facility to the Agency, (3) a related Leaseback Agreement, pursuant to which the Agency leases its interest in the Series 1999 Project Facility back to the Company, (4) a Tax Agreement, pursuant to which Company agrees to make certain payments in lieu of real property taxes for the benefit of the affected tax jurisdictions with respect to the Series 1999 Project Facility, (5) 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 1999 Project Facility and indemnification of the Agency by the Company for actions taken by Company and/or claims arising out of or related to the undertaking of the Project and the acquisition of the Series 1999 Project Facility; and (ii) the terms of the Tax Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation therefrom have been complied with.

Section 3. 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 and all documents necessary to effectuate the refunding of the Series 1999 Bonds and the termination and discharge of the underlying Series 1999 Bonds documents, including but not limited to the Company Lease, the Lease Agreement, and the Indenture of Mortgage and Trust, each dated as of June 1, 1999 (the "1999 Bond Documents") and the delivery of any and all notices or waivers thereof required under the Series 1999 Bonds Documents.

Section 4. The Agency is hereby authorized to conduct a public hearing in compliance with the Act.

Section 5. 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 6. 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	[]	[]	[]	[x]
Deputy Mayor Susan Gerry	[✓]	[]	[]	[]
Martin Ball, Sr.	[]	[]	[]	[x]
Joy Carden	[✓]	[]	[]	[]
Hon. Cecile D. Singer	[✓]	[]	[]	[]
Peter Kischak	[✓]	[]	[]	[]
Robert Maccariello	[✓]	[]	[]	[]

The Resolutions were thereupon duly adopted.

CERTIFICATION

(L&A Acquisition d/b/a Adira at Riverside Rehabilitation and Nursing 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 on May 19, 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 19th day of May, 2015.



Susan Gerry, Secretary

[SEAL]