

FINAL RESOLUTION
(SDC Realty Acquisition LLC)

A regular meeting of the City of Yonkers Industrial Development Agency was convened at 9:00 a.m. on August 18, 2015, at the offices of the Agency, 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701.

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

Resolution No. 08/2015- 30

FINAL RESOLUTION OF THE CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING THE EXECUTION AND DELIVERY OF THE PROJECT AGREEMENT, COMPANY LEASE AGREEMENT, AGENCY SUBLEASE AGREEMENT, PAYMENT-IN-LIEU-OF-TAXES-AGREEMENT, AND, IF NECESSARY, A MORTGAGE AND RELATED DOCUMENTS WITH RESPECT TO THE SDC REALTY ACQUISITION LLC PROJECT (AS DESCRIBED BELOW) LOCATED AT 1086 NORTH BROADWAY, YONKERS, NEW YORK

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 may be amended from time to time (collectively, the "Act"), the City of Yonkers Industrial Development Agency (the "Agency") was created with the authority and power among other things, to assist with the acquisition of certain projects as authorized by the Act; and

WHEREAS, SDC REALTY ACQUISITION LLC, a New York limited liability company, with offices at 1250 Waters Place, Bronx, New York 10461 (the "Company"), previously submitted an application (the "Application") to the Agency, requesting financial assistance through a straight-lease transaction (as each such term is defined in the Act) for a proposed project (the "Project") in the City of Yonkers (the "City");

WHEREAS, the Project shall consist of (i) the Agency taking title, possession or control (by deed, lease, sublease, license or otherwise) of the former Boyce Thompson Institute and greenhouses, 6.09 acres located on the southeast corner of North Broadway and Executive Boulevard (1086 North Broadway), Yonkers, New York (Section 3, Block 3455, Lot 66) (collectively, the "Project Site"), currently owned by the City; (ii) the lease, sublease, or installment sale of the Project Site to the Company; and (iii) the restoration, construction, reconstruction, renovation, improving, maintenance and equipping of the existing 52,000 square foot, two (2) story building thereon, the demolition of the greenhouse structures, and the construction and equipping of an approximately 18,000 square foot, two-story addition to the existing structure and a new free standing two level glass and aluminum building, all intended to contain a combination of uses, including retail stores, banks, offices, medical offices, commercial schools and/or restaurants; (collectively, the "Facility"), which Facility will be developed and operated by the Company under a lease or sublease from the Agency, all as more fully described in the Application; and

WHEREAS, on July 22, 2015, the Agency adopted a resolution (the "Inducement Resolution") (1) accepting the Application of the Company with respect to the Project in a form acceptable to the Agency, and (2) authorizing the Agency to hold the Public Hearing (as defined below), and

WHEREAS, pursuant to General Municipal Law Section 859-a, on August 11, 2015, at 5:30 p.m., at the offices of the Agency 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 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 along 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, pursuant to the Inducement Resolution, the officers, employees and agents of the Agency have negotiated with the Company the terms of a proposed Project Agreement (the "Project Agreement"), Company Lease Agreement (the "Company Lease Agreement"), Agency Sublease Agreement (the "Sublease Agreement"), Letter for Exemption from Sales Tax (the "Sales Tax Letter"), Payment in Lieu of Taxes Agreement (the "PILOT Agreement") and PILOT Agreement Mortgage (the "PILOT Mortgage"), pursuant to which, inter alia, the Agency will designate the Company as its agent for the purpose of acquiring, constructing and equipping the Project; and

WHEREAS, the Project Agreement, Company Lease Agreement, Agency Sublease Agreement, PILOT Agreement, PILOT Mortgage and related documents will be presented to the President/Chief Executive Officer for execution upon approval of this resolution; and

WHEREAS, the Company has represented to the Agency that the transactions contemplated by this Resolution shall not provide financial assistance in respect of any project where facilities or property that are primarily used in making retail sales (within the meaning of the Act) of goods or services to customers who personally visit such facilities constitute more than one-third of the total project costs; and

WHEREAS, the Agency constitutes a "State Agency" and an "Involved Agency" under and pursuant to Article 8 of the Environmental Conservation Law and the regulations of the Department of Environmental Conservation of the State of New York thereunder (collectively, "SEQRA"); and

WHEREAS, the acquisition, restoration, construction, reconstruction, renovation, improving, maintenance, equipping and operation of the Facility is an "Action" under SEQRA; and

WHEREAS, to aid the Agency in determining whether the Facility may have a significant effect upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form ("EAF") and related documents with respect to the Facility, copies of which are on file at the office of the Agency; and

WHEREAS, the City of Yonkers City Council (the "Lead Agency") declared itself "Lead Agency" for purposes of review of the Action under SEQRA; and

WHEREAS, an EAF and supplemental attachments were prepared and submitted to the Lead Agency for the proposed Action; and

WHEREAS, by Resolution dated March 10, 2015, the Lead Agency found that the proposed Action will have no adverse impact on the environment and adopted a Negative Declaration for the Action under SEQRA (the "Lead Agency's Findings"); and

WHEREAS, as an Involved Agency, the Agency must make its own findings under SEQRA prior to funding, undertaking, or approving the Project; and

WHEREAS, the Agency has reviewed the EAF and the documents incorporated by reference therein, and the Lead Agency's Findings, as well as such other documents as the Agency felt it necessary or appropriate to examine to adequately review the proposed Action; and

WHEREAS, after review in accordance with SEQRA, the Agency concurs in the Lead Agency's Findings and has determined that the Project will not have a significant impact on the environment..

NOW, THEREFORE, BE IT RESOLVED by the Agency (a majority of the members thereof affirmatively concurring) as follows (collectively, this "Resolution"):

Section 1. Based upon the EAF completed by the Company and other representations and information furnished regarding the Facility, the Agency hereby (a) concurs in the Lead Agency's findings and decisions contained in the Lead Agency's Findings; and (b) based upon its review of the EAF, the appropriate criteria for determination of significance, and such other and further information which the Agency feels necessary to review the Facility, finds that the Facility will not have a "significant effect" on the environment and, therefore, an environmental impact statement will not be prepared. This determination constitutes a negative declaration for purposes of SEQRA. The Agency finds that the requirements of 6 NYCRR Part 617 have been met.

Section 2. Based upon the representations of the Company and information and descriptions furnished by the Company regarding the Facility, the Agency hereby finds that the Project shall not provide financial assistance in respect of any project where facilities or property that are primarily used in making retail sales (within the meaning of the Act) of goods or services to customers who personally visit such facilities constitute more than one-third of the total project costs, except as otherwise permitted by the Act.

Section 3. Subject to the Company executing the Project Agreement 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.

Section 4. 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 \$8,650,000, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed \$724,438. 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 5. The Chairman, Vice Chairman, President, Executive Director and/or the Chief Fiscal Officer of the Agency (each an "Authorized Person") are hereby authorized, on behalf of the Agency, to execute and deliver the Project Agreement, the Company Lease Agreement, the Sublease Agreement, the PILOT Agreement, the PILOT Mortgage and related documents with such changes as shall be approved by the Authorized Person upon execution.

Section 6. The Authorized Persons 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") up to a maximum principal amount necessary to (i) undertake the Project, (ii) acquire, construct, furnish and equip the Facility, and/or (iii) finance or refinance the purchase of equipment and other personal property and related transactional costs (the "Mortgage Instruments", and together with the Project Agreement, the Company Lease Agreement, the Sublease Agreement, the Sales Tax Letter, the PILOT Agreement, and the PILOT Mortgage, collectively, 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 Authorized Person shall approve, the execution thereof by the Authorized Person 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

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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. The terms and conditions of subdivision 3 of Section 875 of the General Municipal Law are hereby incorporated herein and made a part of this Resolution.

Section 9. This Resolution shall take effect immediately.

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

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

The Resolutions were thereupon duly adopted.

SECRETARY'S CERTIFICATION

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"), held on August 18, 2015, including the resolution contained therein regarding the final authorization of a proposed project for the benefit of SDC Realty Acquisition LLC for a proposed project to be located at 1086 North Broadway, Yonkers, New York, 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 18 day of August, 2015.


Susan Gerry, Secretary

[SEAL]