

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY
AMENDATORY INDUCEMENT RESOLUTION**

**ORCHARD HEIGHTS, INC., AND/OR INDIVIDUAL(S) OR AFFILIATE(S),
SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS
BEHALF**

A regular meeting of the Erie County Industrial Development Agency was convened on Wednesday, July 15, 2015 at 9:00 a.m.

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

AMENDATORY INDUCEMENT RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE APPROVAL OF THE REVISION TO THE PROJECT DESCRIPTION AND CERTAIN MATERIAL TERMS AND CONDITIONS RELATED TO THE PROVISION OF FINANCIAL ASSISTANCE WITH RESPECT TO THE ORCHARD HEIGHTS, INC. PROJECT (AS MORE FULLY DESCRIBED BELOW)

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 293 of the Laws of 1970 of the State of New York, as amended (collectively, the "Act"), the ERIE COUNTY 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, commercial and other facilities as authorized by the Act; and

WHEREAS, ORCHARD HEIGHTS, INC., AND/OR INDIVIDUAL(S) OR AFFILIATES, SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (the "Company") has submitted an application to the Agency (the "Original Application") requesting the Agency's assistance with a certain project (the "Original Project") consisting of: (i) the leasehold interest in a 17+/- acre parcel of land located at 5200 Chestnut Ridge Road, Town of Orchard Park, Erie County, New York (the "Land") together with the existing improvements thereon (the "Existing Improvements"), (ii) the expansion, renovation, upgrading and equipping of the Existing Improvements to include a new wing of 41 assisted living units and additions to the facility common area and dining areas and the construction and equipping of two (2) 32-unit independent living apartment buildings (the "Improvements"), and (iii) the acquisition and installation in and around the Existing Improvements and Improvements by the Company of certain items of machinery, equipment and other tangible personal property (the "Equipment", and collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); and

WHEREAS, by resolution adopted on July 16, 2014 (the "Initial Resolution") the Agency authorized financial assistance to the Company with respect to the Original Application in the form of (a) an exemption benefit from all New York State and local sales and use taxes for

purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the construction, expansion, renovation, upgrading and equipping of the Facility, (b) a real property tax abatement benefit through a seven (7) year term PILOT Agreement for the benefit of each municipality and school district having taxing jurisdiction over the Project, and (c) a mortgage recording tax exemption benefit for the financing related to the Project (collectively, the sales and use tax exemption benefit, the real property tax exemption benefit, and the mortgage recording tax exemption benefit are hereinafter collectively referred to as the "Financial Assistance"); and

WHEREAS, based upon representations and warranties made by the Company in the Original Application, the Agency, within the terms of the Initial Resolution, authorized and approved the Company, as its agent, to make purchases of goods and services relating to the Project that would otherwise be subject to New York State and local sales and use tax in an amount up to \$12,626,700.00 which results in New York State and local sales and use tax exemption benefits not to exceed \$1,104,836.00, and required the Company to evidence that the total investment actually made with respect to the Project, at the time of Project completion, equals or exceeds \$24,310,000.00 (which represented the product of 85% multiplied by \$28,600,000.00 (being the total project cost as stated in the Original Application for financial assistance at that point in time)); and

WHEREAS, on June 12, 2015, the Agency received an amended application (the "Amended Application") from the Company requesting a revision to the scope of the Project to reduce the construction and equipping of two (2) 32-unit independent living apartment buildings to the construction and equipping of one (1) 32-unit independent living apartment building and informing the Agency that the Project costs have decreased by approximately \$9,901,431.00 (the "Amended Project"), and

WHEREAS, pursuant to General Municipal Law Section 859-a, on June 27, 2015 at 9:00 a.m. at the Town of Orchard Park Town Hall Offices located at 4295 South Buffalo Street (1st Floor Lobby Conference Room), Orchard Park, NY 14127, the Agency held a public hearing with respect to the Amended 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; and

WHEREAS, the Agency desires to amend the Initial Resolution and approve this Amendatory Resolution with respect to the Amended Project in order to revise of the scope of the Project, along with the execution and delivery of certain documents in connection with same.

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

Section 1. All recitals, findings and determinations of the Agency contained in the Initial Inducement are hereby reaffirmed, ratified, restated and incorporated herein by reference as if set forth herein in their entirety, except as modified by this Resolution.

Section 2. The description of the Original Project is hereby revised in accordance with the Amended Application to reflect (ii) the expansion, renovation, upgrading and equipping of the Existing Improvements to include a new wing of 41 assisted living units and additions to the facility common area and dining areas and the construction and equipping of one (1) 32-unit independent living apartment building (the "Improvements"), and (iii) the acquisition and installation in and around the Existing Improvements and Improvements by the Company of certain items of machinery, equipment and other tangible personal property (the "Equipment", and collectively with the Land, the Existing Improvements and the Improvements, the "Facility").

Section 3. Based upon the representations and warranties made by the Company in its application with respect to the Amended Project, Agency Policy Committee review of the Amended Project and its July 2, 2015 resolution to approve the Amended Project, subject to the terms and conditions as described herein, public hearing comments, and Agency board member review, discussion and consideration of same, the Agency hereby finds, determines and hereby amends the second full paragraph in Section 3 of the Initial Resolution in its entirety to read as follows:

With respect to the foregoing, and based upon the representations 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 estimated amount up to \$8,476,250.00, which may result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed \$741,672.00. The Agency may consider any requests by the Company for increases 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. Section 3(i), 3(ii) and 3(iv) of the Initial Resolution are hereby replaced in their entirety to read as follows:

- (i) the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$15,893,783 (which represents the product of 85% multiplied by \$18,698,569 (representing the total project cost as stated in the Company's amended application for financial assistance));
- (ii) that there are at least forty-nine (49) existing full time equivalent ("FTE") employees and that there are at least fifty-three (53) existing part time equivalent (PTE) employees located at, or to be located at, the Facility as stated in the Company's application for Financial Assistance (the "Baseline FTE/PTE"); and
- (iv) that, at the conclusion of year two following Project completion and through the term of the PILOT Agreement, the Project has maintained and created FTE employment at the Facility equal to 54 FTE employees [representing the sum of 49 Baseline FTE employees plus 5 new FTE employee positions (being the

product of 85% multiplied by 6, representing the 6 new FTE employee positions as proposed to be created by the Project as stated in the Company's application for financial assistance)] and that, at the conclusion of year two following Project completion and through the term of the PILOT Agreement, the Project has maintained and created PTE employment at the Facility equal to 66 PTE employee positions [representing the sum of 53 PTE Baseline PTE employees plus 13 new PTE employee positions (being the product of 85% multiplied by 16, representing the 16 new PTE employee positions as proposed to be created by the Project as stated in the Company's application for financial assistance)]; and

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. All actions heretofore undertaken by the Agency and the Company as agent of the Agency are ratified and approved and the Agency and the Company, as agent of the Agency, are hereby authorized to continue to undertake the Project.

Section 7. These Resolutions shall take effect immediately.

Dated: July 15, 2015

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

I, the undersigned Secretary of the Erie County Industrial Development Agency, DO
HEREBY CERTIFY:

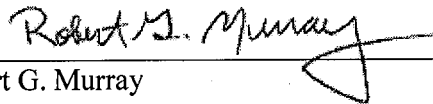
That I have compared the annexed extract of minutes of the meeting of the Erie County Industrial Development Agency (the "Agency"), including the resolution contained therein, held on July 15, 2015, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of the 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 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 the Agency this 15th day of July, 2015.



Robert G. Murray
Secretary

[SEAL]