

AUTHORIZING RESOLUTION FOR ADDITIONAL FINANCIAL ASSISTANCE
(The Community Builders, Inc. – Cottage Place Gardens Project)

A regular meeting of the City of Yonkers Industrial Development Agency was convened on September 24, 2014.

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

Resolution No. 09 / 2014 - 25

RESOLUTION OF THE CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING (i) ADDITIONAL FINANCIAL ASSISTANCE TO THE COMMUNITY BUILDERS, INC. (THE "COMPANY") IN AN AMOUNT EXCEEDING THE AMOUNT INDICATED BY THE COMPANY IN ITS APPLICATION TO THE AGENCY DATED SEPTEMBER 7, 2012 AND (ii) AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS WITH RESPECT THERETO

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, **THE COMMUNITY BUILDERS, INC.**, for itself or on behalf of an entity to be formed (the "Company"), previously submitted an application (the "Application") to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of: (A) the acquisition of title to or a leasehold interest in certain land located at 188-192 Warburton Avenue, Yonkers, New York (the "Land") and the existing two public housing buildings located thereon (the "Existing Improvements"); (B) the demolition of the Existing Improvements; (C) the construction on the Land of a four-or-more-story, 45,000 square-foot, fifty-one (51) unit family apartment building with seventy-seven parking spaces in a two-level garage to be built into the slope of the Land located beneath the building (the "Building Improvements"); (D) the acquisition, construction and installation at the ground floor level of commercial and community spaces, landscaped terraces, street trees, public benches, private play areas, street lighting and finished sidewalks and related improvements (the "Landscape Improvements" and together with the Building Improvements, the "Improvements"); (E) the acquisition of and installation in and around the Existing Improvements and Improvements of certain items of equipment, machinery and other tangible personal property (the "Equipment", and collectively with the Land, the Existing Improvements, and the Improvements, the "Facility"); and

WHEREAS, September 19, 2012, the Agency adopted a resolution (the "Initial Resolution") directing that a public hearing be held and that an agent agreement (the "Agent

Agreement"), lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement"), tax agreement (the "Tax Agreement") and tax agreement mortgage (the "Tax Agreement Mortgage") and related documents be negotiated; and

WHEREAS, pursuant to General Municipal Law Section 859-a, on May 14, 2014, at 5:30 p.m. in the Mayor's Reception Room at Yonkers City Hall, 40 South Broadway, Yonkers, the Agency held a public hearing with respect to the Project and the proposed Financial Assistance (as defined in the Inducement 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; and

WHEREAS, on May 20, 2014, the Agency adopted a resolution (the "Final Resolution") (i) acknowledging the Public Hearing, (ii) making a determination 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"), (iii) authorizing 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 \$6,768,501.49, which would result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed \$566,862, (iv) approving the terms of the proposed Tax Agreement (as defined in the Final Resolution), and (v) authorizing the execution and delivery of the Agent Agreement, Lease Agreement, Leaseback Agreement, Tax Agreement and Tax Agreement Mortgage; and

WHEREAS, on or about August 8, 2014, the Company submitted a revised *pro forma* to Application requesting that the Agency provide the Company with an additional \$683,138 of estimated sales and use exemptions (previously, \$566,862; now as increased, \$1,250,000) and an additional approximately \$152,000 of mortgage recording tax savings (previously \$48,000; now as increased, approximately \$200,000) (together, the "Additional Financial Assistance"); and

WHEREAS, pursuant to General Municipal Law Section 859-a, on August 11, 2014, at 5:30 p.m. at Yonkers City Hall, 40 South Broadway, Yonkers, New York, the Agency held a public hearing with respect to the Project and the Additional Financial Assistance being contemplated by the Agency (the "Additional 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 Additional Public Hearing together with the Notice of the Additional Public Hearing published and forwarded to the affected taxing jurisdictions ten (10) days prior to said Additional Public Hearing are attached hereto as **Exhibit A**; and

WHEREAS, the Agency desires to adopt a resolution acknowledging the Additional Public Hearing and approving the Additional Financial Assistance and the execution and delivery of any document necessary and incidental thereto.

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 August 11, 2014, concerning the Project and the Additional 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 Additional 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 and the Additional Financial Assistance.

Section 2. Based upon the representation and warranties made by the Company the Application for Financial Assistance, as amended by the *pro forma* dated on or about August 8, 2014, 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 aggregate amount up to **\$14,925,373.13**, which would result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed in the aggregate **\$1,250,000**. 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 3. 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 4. 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 documents necessary and incidental to provide the Company with the Additional Financial Assistance with such changes as shall be approved by the Chairman, Vice Chairman, President, Executive Director and/or the CFO upon execution.

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 upon adoption.

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

The Resolutions were thereupon duly adopted.

CERTIFICATION

(The Community Builders, Inc. – Authorizing Resolution for Additional Financial Assistance)

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:

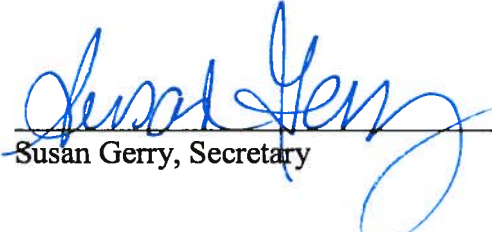
That I have compared the annexed extract of minutes of the meeting of the City of Yonkers Industrial Development Agency (the "Agency"), including the resolution contained therein, held on September 24, 2014, with the original thereof on file in my office, and that the same is a true and correct copy 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 24 day of September, 2014.



Susan Gerry, Secretary

[SEAL]

EXHIBIT A

[Additional Public Hearing Notice Documents]

Attached hereto