

**FINAL RESOLUTION**  
*(CCNA Realty LLC Project – Phase I)*

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

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

**Resolution No. 05 / 2015 - 19**

RESOLUTION OF THE CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY (i) ACKNOWLEDGING THE PUBLIC HEARING HELD WITH RESPECT TO THE CCNA REALTY LLC PROJECT (AS MORE FULLY DESCRIBED BELOW), (ii) MAKING A DETERMINATION PURSUANT TO THE NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT WITH RESPECT TO THE PHASE I PROJECT (AS DEFINED BELOW), AND (iii) AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGENT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT, TAX AGREEMENT, TAX AGREEMENT MORTGAGE, MORTGAGE AND RELATED DOCUMENTS WITH RESPECT TO THE PHASE I PROJECT (AS DEFINED BELOW)

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, **CCNA REALTY LLC**, a New York limited liability company, 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 in one or more phases, consisting of, in Phase I (the "**Phase I Project**"): (i) acquisition of an interest in certain property located at 470 Nepperhan Avenue, Yonkers, New York (being more particularly identified as Section 2, Block 2073, Lot 1) (the "**Phase I Land**") and the existing improvements located thereon consisting principally of an approximately 105,000 square-foot warehouse building (the "**Phase I Existing Improvements**"); (ii) the construction, reconstruction, renovating and retrofitting of the Existing Improvements to accommodate a variety of individual offices space (or to enlarge existing offices), and possible retail market space (the "**Phase I Improvements**"); and (iii) the acquisition and installation in and around the Phase I Existing Improvements and Phase I Improvements of certain items of machinery, equipment and other items of tangible personal property (the "**Phase I Equipment**" and, collectively with the Phase I Land, the Phase I Existing Improvements and the Phase I Improvements, the "**Phase I Facility**"); all for sublease to various tenants; and

WHEREAS, it is understood that the Agency might, by subsequent resolution after compliance with 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"), approve a second phase of the Project (the "*Phase II Project*"), which might include: (i) acquisition of an interest in certain property located at 470 Nepperhan Avenue, Yonkers, New York (being more particularly identified as Section 2, Block 2073, Lot 1) (the "*Phase II Land*"); (ii) the acquisition, construction and equipping of a "connecting bridge" over the Saw Mill River (the "*Phase II Connecting Bridge Improvements*"); (iii) the acquisition, construction and equipping of a parking structure (the "*Phase II Parking Structure Improvements*", and together with the Phase II Connecting Bridge Improvements, the "*Phase II Improvements*"); and (iv) the acquisition and installation in and around the Phase II Improvements of certain items of machinery, equipment and other items of tangible personal property (the "*Phase II Equipment*" and, collectively with the Phase II Land, and the Phase II Improvements, the "*Phase II Facility*"); and

WHEREAS, the Phase I Project and the Phase II Project shall hereinafter be referred to as the "Project"; and

WHEREAS, on April 27, 2015, the Agency adopted a resolution (the "Initial Resolution") with respect to the Project accepting the Application of the Company and 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 Monday, May 18, 2015, at 5:30 p.m. at Yonkers City Hall, Mayor's Reception Room, 40 South Broadway, Yonkers, New York, the Agency held a public hearing with respect to the Project and the proposed Financial Assistance (as defined in the Initial 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. A copy of the Minutes of the Public Hearing together 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 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 this resolution, the Agency desires to make a determination pursuant to SEQRA and authorize financial assistance for the benefit of the Company in the form

of a (i) sales and use tax exemption, (ii) mortgage recording tax exemption and (iii) partial real property tax abatement structured under the Tax Agreement, all with respect to the *Phase I Project only* (the "Financial Assistance"); and

WHEREAS, the Agent Agreement, Lease Agreement, Leaseback Agreement, Tax Agreement, Tax Agreement Mortgage and related documents with respect to the Phase I Project are being negotiated and will be presented to the President of the Agency for execution upon approval of this resolution.

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

Section 1. Based upon the review by the Agency of the Application submitted by the Company with respect to the Phase I 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 public hearing held by the Agency on Monday, May 18, 2015, concerning the Project and the 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 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.

Section 3. Subject to the Company executing the Agent Agreement and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Phase I Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Phase I Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, construct and equip the Phase I 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 Phase I Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; *provided, however, the Agent Agreement shall expire on December 31, 2016 (unless extended for good cause by the President and/or Executive Director of the Agency) if the Lease Agreement, Leaseback Agreement, Tax Agreement and Tax Agreement Mortgage contemplated have not been executed and delivered.*

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 Phase I Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to **\$4,000,000**, which result in New York State and local sales and use tax exemption benefits

("sales and use tax exemption benefits") not to exceed **\$335,000**. 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 5. 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 Phase I 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 Phase I 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 Phase I 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 Phase I Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Phase I 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 Phase I 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 Phase I 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 Phase I 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 6. 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 the Lease Agreement, Leaseback Agreement, Tax Agreement, Tax Agreement Mortgage, Agent Agreement and related documents with such changes as shall be approved by the Chairman, Vice Chairman, President, Executive Director and/or the CFO upon execution; provided, the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Phase I 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 Phase I Project.

Section 7. 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 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 undertake the Phase I Project, acquire the Phase I Facility and/or finance or refinance equipment and other personal property and related transactional costs (hereinafter, with the Agent Agreement, Lease Agreement, Leaseback Agreement, Tax Agreement and Tax Agreement Mortgage, collectively

called 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 Chairman, Vice Chairman, President, Executive Director and/or the CFO of the Agency shall approve, the execution thereof by the Chairman, Vice Chairman, President, Executive Director and/or the CFO of the Agency to constitute conclusive evidence of such approval; provided in all events recourse against the Agency is limited to the Agency’s interest in the Phase I Project.

Section 8. 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 9. These Resolutions shall take effect immediately upon adoption.

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

The Resolutions were thereupon duly adopted.

**CERTIFICATION**  
*(CCNA Realty LLC Project – Phase I - Final Resolution)*

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 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 19<sup>th</sup> day of May, 2015.

  
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Susan Gerry, Secretary

[SEAL]

Resolution No. 5/2015-19  
FINAL RESOLUTION - (CCNA Realty LLC Project – Phase I)  
May 19, 2015

**EXHIBIT A**

[Notice Documents]

Attached hereto