

## **Amsterdam House Continuing Care Retirement Community, Inc. - Consent Resolution**

A regular meeting of the Board of Directors of the Nassau County Industrial Development Agency (the "Agency") was convened in public session at the Theodore Roosevelt Executive & Legislative Building, Ceremonial Chamber, 1550 Franklin Avenue, Mineola, County of Nassau, New York on October 17, 2019 at 6:30 p.m., local time.

The meeting was called to order by the Chairman and, upon roll being called, the following Directors of the Agency were:

### **PRESENT:**

Richard Kessel	Chairman
Lewis M. Warren	Vice Chairman
Anthony Simon	2nd Vice Chairman
Amy Flores	Treasurer
John Coumatos	Asst. Treasurer
Chris Fusco	Asst. Secretary

### **NOT PRESENT:**

Timothy Williams	Secretary
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### **THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:**

Harry Coghlan	Chief Executive Officer/Executive Director
Danielle Oglesby	Chief Operating Officer/Deputy Executive Director
Catherine Fee	Director of Business Development/Chief Marketing Officer
Colleen Pereira	Administrative Director
Thomas D. Glascock	Agency Counsel
Andrew Komaromi	Bond/Transaction Counsel

The attached resolution no. 2019-91 was offered by Lewis M. Warren, seconded by Richard Kessel:

RESOLUTION OF THE NASSAU COUNTY INDUSTRIAL DEVELOPMENT  
AGENCY (THE "ISSUER" OR THE "AGENCY") AUTHORIZING CERTAIN  
MATTERS IN CONNECTION WITH ITS CONTINUING CARE RETIREMENT  
COMMUNITY FIXED RATE REVENUE BONDS (AMSTERDAM AT  
HARBORSIDE PROJECT) SERIES 2014THE "BONDS" OR THE "SERIES 2014  
BONDS")

WHEREAS, the Nassau County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act"), and Chapter 674 of the 1975 Laws of New York, as amended, constituting Section 922 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, industrial and commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, on or about April 6, 2007, Amsterdam House Continuing Care Retirement Community, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York (the "Applicant"), presented an application to the Agency, which application requested that the Agency consider undertaking a project (the "Original Project") consisting of the following: (A) (1) the acquisition of an interest in an approximately 8.9 acre parcel of land located at 300 East Overlook, Port Washington, Town of North Hempstead, County of Nassau, New York (the "Land" or "Project Site"), (2) the construction of an approximately 600,000 square foot, six-story building on the Land (collectively, the "Building"), together with related improvements to the Project Site, and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the "Equipment"), all of the foregoing to constitute a continuing care retirement community for the benefit of eligible senior citizens, consisting of approximately 229 independent living units, 44 enriched housing units and 56 skilled nursing beds, together with associated common spaces and parking areas (collectively, the "Project Facility"); (B) the financing of all or a portion of the costs of the foregoing by the issuance of tax-exempt and/or taxable revenue bonds of the Agency in one or more series; (C) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions or partial exemptions from sales and use taxes, mortgage recording taxes and real property taxes (but not including special assessments and ad valorem levies) (together with the bonds, collectively, the "Original Financial Assistance"); and (D) the lease (with an obligation to purchase), license or sale of the

Project Facility to the Applicant or such other entity as may be designated by the Applicant and agreed upon by the Agency; and

WHEREAS, pursuant to Resolution 2007-57 (attached hereto as Exhibit A) duly adopted by the members of the Agency on October 31, 2007, the Agency approved the Original Project and the granting of the Original Financial Assistance as more fully described therein (the "Prior Resolution") (capitalized terms used but not defined herein are defined in the Prior Resolution); and

WHEREAS, pursuant to Resolution 2014-52 (attached hereto as Exhibit B) duly adopted by the members of the Agency on June 24, 2014, the Agency approved an amendment to the payment-in-lieu-of-taxes agreement dated as of December 1, 2007 between the Agency and the Applicant, with the requirement that the Applicant's contemplated financial restructuring be accomplished on or before December 31, 2014; and

WHEREAS, the Prior Resolution contained approval of the issuance of certain revenue bonds of the Agency in connection with the Original Project (the "2007 Bonds"); and

WHEREAS, subsequent to the issuance of the 2007 Bonds, the Applicant defaulted on certain of its obligations in connection with the 2007 Bonds, and entered into negotiations with holders of a majority of principal amount of the 2007 Bonds to address the issues relating to said defaults; and

WHEREAS, on July 22, 2014, the Applicant filed its voluntary petition under Chapter 11 of the United States Bankruptcy Code in the bankruptcy case styled In re: Amsterdam House Continuing Care Retirement Community, Inc., Case No. 14-73348 (AST) (the "Bankruptcy Proceedings") in the United States Bankruptcy Court, Eastern District of New York (the "Bankruptcy Court"); and

WHEREAS, on July 23, 2014, the Applicant filed its reorganization plan with the Bankruptcy Court which included the restructuring of the 2007 Bonds, which plan was amended and superseded by an amended plan filed on September 2, 2014 (as amended, the "Bankruptcy Plan"); and

WHEREAS, On October 23, 2014, the Bankruptcy Court issued its order (the "Order") confirming the Bankruptcy Plan; and

WHEREAS, the Order and the Bankruptcy Plan provide that all of the payment obligations under the 2007 Bonds are to be restructured by having the owners of all of the 2007 Bonds exchange such 2007 Bonds for a ratable share of the Series 2014 Bonds (as defined below) (collectively, the "Bond Exchange"), with the payment obligations of the Applicant to be restructured under an Installment Sale Agreement (the "Sale Agreement") as security for the Series 2014 Bonds; and

WHEREAS, In order to effectuate the Bond Exchange and the Bankruptcy Plan, the Applicant has requested that the Agency issue: (a) \$141,585,000 in aggregate principal amount of its Continuing Care Retirement Community Fixed Rate Revenue Bonds (Amsterdam at

Harborside Project) Series 2014A (the "Series 2014A Bonds"), (b) \$23,842,500 in aggregate principal amount of its Continuing Care Retirement Community Fixed Rate Revenue Bonds (Amsterdam at Harborside Project) Series 2014B (the "Series 2014B Bonds" and together with the Series 2014A Bonds, the "Senior Bonds") and (c) \$59,537,660 in aggregate principal amount of its Continuing Care Retirement Community Excess Cash Flow Revenue Bonds (Amsterdam at Harborside Project) Series 2014C (the "Series 2014C Bonds" and, together with the Series 2014A Bonds and the Series 2014B Bonds, the "Series 2014 Bonds"), and exchange the Series 2014 Bonds for the outstanding Series 2007 Bonds, with (A) each holder of Series 2007A Bonds to receive their share of (i) Series 2014A Bonds in an aggregate principal amount equal to \$123,288,750 and (ii) Series 2014C Bonds in an aggregate original principal amount equal to \$44,453,584 in the percentages set forth herein, (B) each holder of Series 2007B Bonds to receive their pro rata share of (i) Series 2014A Bonds in an aggregate principal amount equal to \$6,375,000 and (ii) Series 2014C Bonds in an aggregate original principal amount equal to \$2,295,355 and (C) with each holder of Series 2007C Bonds to receive their pro rata share of (i) Series 2014A Bonds in an aggregate principal amount of \$11,921,250, (ii) Series 2014B Bonds in an aggregate original principal amount equal to \$23,842,500, and (iii) Series 2014C Bonds in an aggregate original principal amount equal to \$12,788,721.

WHEREAS, In order to effectuate the Bond Exchange and the Bankruptcy Plan and pursuant to the Bankruptcy Plan, the Agency and the Applicant entered into an Indenture of Trust dated as of November 1, 2014 and contemporaneously with the execution thereof, (i) the Applicant entered into the Installment Sale Agreement, (ii) the Applicant will enter a guaranty agreement with the Trustee whereunder the Applicant guaranteed the payment of the principal, Sinking Fund Installments or Redemption Price of or interest on the Series 2014 Bonds, (iii) the Agency and the Applicant granted a mortgage lien on and security interest in the Facility to the Trustee, and (iv) the Applicant granted a security interest in certain assets of the Applicant and will assign its interest in certain contracts to the Trustee and the Agency issued and delivered the Series 2014 Bonds on November \_\_, 2014.

WHEREAS, the proceeds of the Bonds were loaned by the Agency to the Applicant pursuant to the Installment Sale Agreement; and

WHEREAS, Events of Default have occurred and are continuing under the Installment Sale Agreement as a result of the Applicant's failure to maintain a Debt Service Coverage Ratio of at least 1.0x for the Fiscal Year ended December 31, 2018 (Section 8.5(b) of the Installment Sale Agreement) and the failure to meet the Liquidity Covenant as of December 31, 2018 and June 30, 2019 (Section 8.5(c) of the Installment Sale Agreement)(the "Existing Defaults"). The Applicant is also expected to be unable to meet the Liquidity Covenant for December 31, 2019 and June 30, 2020 (the "Anticipated Defaults").

WHEREAS, the majority of the holders of the Bonds (the "Majority of Holders") have agreed to direct the Trustee to waive the Existing Default and amend the Bonds Documents with respect to the Anticipated Defaults, provided certain additional amendments are made to the Bond Documents.

WHEREAS, pursuant to a notification and consent request letter, dated October 11, 2019, the Applicant requested that the Agency approve an amendment to the Installment Sale Agreement to

- lower the Liquidity Covenant for December 31, 2019 and June 30, 2020 to 45 Days' Cash on Hand (Section 8.5(c)(A));

- confirm the Applicant's obligation to deliver to the Trustee one-twelfth (1/12) of the principal on the Series 2014B Bonds coming due on July 1, 2020 (Section 5.3(a)(ii));

- clarify the scope of Phase II of the Project and confirm that a financing or refinancing is permitted, subject to the satisfaction of the stated conditions in Section 8.14 and to the provisions of Section 8.23 discussed below;

- add a new section that restricts the Applicant from incurring additional indebtedness or undertaking any other material transaction outside the ordinary course of business until the Series 2014B Bonds are paid in full, without the written consent of the Majority of Holders (Section 8.23). (collectively, the "Proposed Amendment"); and

the Issuer approve an amendment to the Indenture of Trust to permit the redemption of the Bonds on a quarterly basis with funds delivered to the Trustee pursuant to Section 5.3(a)(ii) of the Installment Sale Agreement (the monthly 1/12 payments described in thesecond bullet above), in the manner that available Entrance Fees are used to redeem Bonds pursuant to Sections 2.03(b)(1) and 5.12 of the Indenture of Trst. (the "Consent Request").

WHEREAS, the Agency is willing to consent to such request, subject to the terms of this Resolution;

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

1. Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Indenture of trust and the Loan Agreement.

2. The Agency determines that the Applicant's request with respect to a previously approved and unchanged Project is a Type II Action pursuant to SEQRA involving "continuing Agency administration" which does not involve "new programs or major reordering of priorities that may affect the environment" (6 NYCRR §617.5(c)(20)) and therefore no Findings or determination of significance are required under Article 8 of the New York Environmental Conservation Law.

3. The Agency hereby ratifies, confirms and approves all actions heretofore taken by the Chairman, the Vice Chairman, the Chief Executive Officer/Executive Director, and the staff of the Agency with respect to the matters contemplated by this Resolution, including, without limitation, those actions required to ensure full compliance with the requirements of the Act and all other Applicable Laws that relate thereto.

4. The Agency hereby consents to the Proposed Amendment as outlined in the Consent Request, subject, however, to the delivery of evidence satisfactory to the Chairman, the Vice Chairman, Chief Executive Officer/Executive Director of the Agency or staff of the Agency that (i) that immediately after the contemplated amendments and waivers taking effect, the Applicant is not in default of any obligation under the Transaction Documents; (ii) the Bondholders have consented in writing to the Proposed Amendment and (iii) all other conditions to the Proposed Amendment contained in the Indenture of Trust and the Installment Sale Agreement, including the delivery of any opinions required thereunder, have been satisfied. The execution and delivery of amendment documents and agreements required to effectuate the Proposed Amendment (collectively, the "Amendment Documents"), being substantially in the forms utilized by the Agency for prior transactions, are hereby authorized and approved. The Chairman, the Vice Chairman, Chief Executive Officer/Executive Director, Chief Operating Officer and Administrative Director of the Agency are each hereby authorized, acting individually or jointly, to execute, acknowledge and deliver the Amendment Documents. The execution and delivery of the Amendment Documents by any one of said officers shall be conclusive evidence of due authorization and approval.

5. The Chairman, the Vice Chairman, the Chief Executive Officer/Executive Director of the Agency are each hereby designated an Authorized Representative of the Agency and each of them is hereby authorized and directed, acting individually or jointly, to execute and deliver any and all consents, agreements, papers, instruments, opinions, certificates, affidavits and other documents required in connection with the Amendment Documents (collectively, the "Consent Documents"), and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution, including, without limitation, taking any necessary action to obtain consent of any other person or party necessary with respect to execution, delivery and approval of the Consent Documents.

6. The authorizations set forth in this Resolution are subject to the condition that the Applicant shall reimburse the Agency for all costs and expenses incurred by the Agency in connection with the transactions contemplated herein, including, without limitation, the Agency's consent and amendment fee in the amount of \$1,000 and all reasonable attorneys' fees and disbursements incurred by the Agency, including without limitation, the fees and expenses of Special Counsel, Harris Beach PLLC.

7. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution, the Amendment Documents and the Consent Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time; provided, however, that no covenants, stipulations, obligations or agreements of the Agency contained in this Resolution, any Amendment Document or any Consent Document shall give rise to any pecuniary liability of the Agency or a charge against its general credit or shall obligate the Agency in any way except to the extent that the same can be paid or recovered from the Project Facility or the sale or liquidation of the Project Facility or revenues therefrom.



8. No covenant, stipulation, obligation or agreement herein contained or contained in any Amendment Document or any Consent Document shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity and neither the members of the Agency nor any officer executing any Amendment Document or any Consent Document shall be liable personally on the Amendment Documents or the Consent Documents or be subject to any personal liability or accountability by reason of the issuance thereof.

9. The Chairman, the Vice Chairman, the Chief Executive Officer/Executive Director of the Agency are each hereby authorized to approve modifications to the terms approved herein which are not inconsistent with the intent and substance of this Resolution, such approval to be evidenced by the execution by any one of such officers of the Amendment Documents and/or the Consent Documents containing such modifications.

10. This Resolution 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:

Richard Kessel	VOTING Aye
Lewis M. Warren	VOTING Aye
Anthony Simon	VOTING Aye
Timothy Williams	NOT PRESENT
Chris Fusco	VOTING Aye
Amy Flores	VOTING Aye
John Coumatos	VOTING Aye

The foregoing Resolution was thereupon declared

STATE OF NEW YORK                    )  
  ) SS:  
COUNTY OF NASSAU                    )

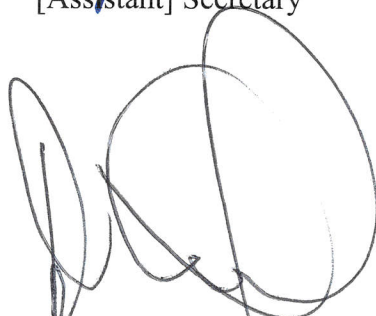
I, the undersigned [Vice] Chairman and [Assistant] Secretary of the Nassau County Industrial Development Agency (the "Agency"), do hereby certify that we have compared the foregoing extract of the minutes of the meeting of the Directors of the Agency, including the Resolution contained therein, held on October 17, 2019, with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matter therein referred to.

I FURTHER CERTIFY that (A) all Directors of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the Directors of the Agency present and 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 rescinded.

IN WITNESS WHEREOF, I have hereunto set our hands and affixed the seal of the Agency this 17th day of October, 2019.

  
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[Assistant] Secretary

  
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[Vice] Chairman

(SEAL)