

RESOLUTION OF THE TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING THE OAKS AT SOUTH PARK LLC (THE "LESSEE") TO ACQUIRE AN APPROXIMATELY 27 ACRE PARCEL OF LAND LOCATED AT 5138 SOUTH PARK AVENUE IN THE TOWN OF HAMBURG, FOR THE ADAPTIVE RE-USE OF A FORMER SCHOOL BUILDING AND RE-DEVELOPMENT OF THE PARCEL OF LAND FOR CONSTRUCTION OF 19 TWO-STORY BUILDINGS TOTALING 152 HOUSING UNITS AND THE INSTALLATION OF BASEBALL AND SOFTBALL FIELDS AND OTHER AMENITIES AND TO ACQUIRE AND INSTALL MACHINERY AND EQUIPMENT REQUIRED IN CONNECTION THEREWITH, AS AGENT FOR THE AGENCY, ALL FOR A RESIDENTIAL HOUSING COMPLEX WITH ADDITIONAL SERVICES (THE "PROJECT"). THE PROJECT WILL BE LEASED BY THE LESSEE TO THE AGENCY FOR SUBLEASE BACK TO THE LESSEE FOR SUB-SUBLEASE TO RESIDENTIAL TENANTS WHICH WILL BE THE OCCUPANTS OF THE PROJECT AND TO TAKE OTHER PRELIMINARY ACTION.

WHEREAS, The Oaks at South Park LLC (the "Lessee") has entered into negotiations with the officials of the Town of Hamburg Industrial Development Agency (the "Agency") with respect to the acquisition and equipping by the Agency with the proceeds of a lease with mortgage for the acquisition by the Lessee of an approximately 27 acre parcel of land located at 5138 South Park Avenue in the Town of Hamburg, the construction by the Lessee, as agent for the Agency (i) the adaptive re-use of a former school building and re-development the parcel of land for construction of 19 two-story buildings totaling 152 housing units and (ii) installation of baseball and softball fields and other amenities and the acquisition and installation of machinery, equipment, furnishings and fixtures by the Lessee, as agent for the Agency, all for a residential housing complex with additional services (the "Project"). The project will be leased by the Lessee to the Agency for sublease back to the Lessee for sub-sublease to residential tenants which will be the occupants of the project.

WHEREAS, the Lessee has submitted an Eligibility Questionnaire and other materials and information to the Agency (collectively hereinafter the "Eligibility Questionnaire") to initiate the accomplishment of the above; and

WHEREAS, the Eligibility Questionnaire sets forth certain information with respect to the Lessee, including the following: that the Lessee desires Agency assistance in the acquisition, construction and installation of the Project for lease by the Lessee to the Agency 5138 South Park Avenue has been vacant for more than three years; that the move to the proposed location in the Town of Hamburg is necessary for the Lessee to maintain its competitive position in its industry; the Lessee currently has no employees at this location in Hamburg, but within two years after Project completion forecasts that they will add 7 FTE positions at the Project location; the Project will provide substantial capital investment; Agency financing or other assistance is reasonably necessary to encourage the Lessee which would likely not proceed with the Project without that assistance; and that, therefore, Agency financing or

other assistance is necessary to encourage the Lessee to proceed with the Project in the Town of Hamburg; and

WHEREAS, the Agency has held a public hearing on the Project pursuant to Section 859-A of the General Municipal Law; and

WHEREAS, the Agency desires to further encourage the Lessee with respect to the acquisition and construction of the Project, if by so doing it is able to induce the Lessee to proceed with the Project in the Town of Hamburg; and

WHEREAS, the Project should not be delayed by the requirement of determining the details of a lease with mortgage transaction, which cannot be immediately accomplished, and the Lessee has agreed to extend its own funds with respect to the Project, subject to reimbursement from the proceeds of the notes, if applicable;

NOW, THEREFORE, THE TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby determines that the acquisition, construction and installation of the Project and the financing or other assistance thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act. The Agency further hereby determines, on the basis of the Eligibility Questionnaire and supplemental information furnished by the Lessee, as follows: (a) it would not have financed or otherwise assisted the Project except to induce the Lessee to construct the Project in the Town of Hamburg; (b) the Project is an infill development and includes the costs of the acquisition of an existing structures with extensive environmental issues, the cost of the demolition of the existing building which create additional costs for the Project above the costs that would be associated with adaptive re-use development; (c) that the Project is located at 5138 South Park Avenue in the Town of Hamburg; (d) the property at 5138 South Park Avenue was formerly a school and has been vacant for more than three years; (e) that Agency financing or other assistance for the Project is reasonably necessary to encourage the Lessee to proceed with the Project and that without Agency financing or other assistance they would likely not proceed with the Project in the Town of Hamburg and the adaptive re-use and redevelopment of the parcel of land; (f) the Project will create 7 FTE jobs at the Project location in the Town of Hamburg. The Agency further determines, on the basis of the Lessee's Eligibility Questionnaire that; (g) the Project as represented is reasonably necessary to provide the purposes of the Act, subject to verification and confirmation of such representations prior to the Agency entering into a lease with mortgage; and (h) the Project is an integral part of the Lessee's plans to expand employment in the Town of Hamburg.

Section 2. The Agency hereby authorizes the Lessee to proceed with the Project as herein authorized at a cost estimated at \$28,700,000, which Project will be financed through a lease with mortgage transaction with the Lessee.

Section 3. The Agency will undertake, as soon as it is furnished with sufficient

information undertake to enter into a lease with mortgage.

Section 4. The Chairman, Vice Chairman, Secretary and Assistant Secretary of the Agency and other appropriate officials of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Lessee to assist in the acquisition and construction of the Project.

Section 5. The Lessee is authorized to initiate the acquisition of an approximately square foot buildings located at 5138 South Park Avenue in the Town of Hamburg, to renovate the existing building and to initiate the acquisition and installation of machinery, equipment furnishings and fixtures required by the Lessee in connection therewith, as agent for the Agency, and the Lessee is authorized to advance such funds as may be necessary to accomplish such purposes, subject to reimbursement for all qualifying expenditures from the proceeds of notes. The Agency is hereby authorized to enter into such agreements with the Lessee as the Chairman, Vice Chairman, Secretary, Assistant Secretary or other authorized officer may deem necessary in order to accomplish the above.

Section 6. The Lessee is authorized 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 a combined amount up to \$10,000,000, which may result in a New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed \$875,000.00. The Agency may consider any requests by the Lessee for increases in the amount of sales and use tax benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services necessary for the completion of the Project.

Section 7. Any such action heretofore taken by the Lessee in initiating the acquisition and construction of the Project is hereby ratified, confirmed and approved.

Section 8. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Lessee. By acceptance hereof, the Lessee agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, officers, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project and the financing thereof.

Section 9. The Agency is offering the standard seven year payment in lieu of taxes on the value added by the Project. Should the Lessee vacate the premises prior to the expiration of the arrangement for payment in lieu of taxes, the Lessee shall use its best efforts to obtain new tenants, so that no application will be necessary for reduction in assessed value, it being the intent of the Agency that payments in lieu of taxes will be maintained at the level called for in this special pilot at all times while it holds a leasehold interest in the Project.

Section 10. The provisions of this resolution shall continue to be effective until one year from the date hereof whereupon this resolution shall cease to be effective (except with respect to matters contained in Section 7 hereof) unless prior to the expiration of such period (a) the

Agency shall by subsequent resolution extend the effective date of this resolution or (b) the Agency shall enter into a lease with mortgage transaction or (c) the Lessee shall continue to take affirmative steps to secure financing for the Project.

Section 11. This resolution is also subject to the construction of space suitable for the purpose authorized herein.

Section 12. The execution and delivery of a Project and Agent Agreement, a Lease to Agency and Leaseback Agreement, between the Agency and the Lessee each being substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman or Vice Chairman is hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 13. The execution and delivery of a mortgage from the Agency and the Lessee to a lender selected by the Lessee and approved by the Chairman, Vice Chairman, Secretary or Assistant Secretary, in an amount not to exceed \$28,700,000 and together other ancillary documents is hereby authorized which mortgage and ancillary documents shall be substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman, Secretary or Assistant Secretary. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 14. The Agency hereby determines, based upon information furnished to the Agency by the Lessee and such other information as the Agency has deemed necessary to make this determination, that the Project constitutes a Type II action under the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation law, and the contemplated actions will not have a significant effect on the environment.

Section 15. The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Lessee's purposes or needs or the extent to which proceeds derived from the sale of the bonds will be sufficient to pay the cost of the acquisition, construction, renovation and installation of the Project. The Lessee is satisfied that the Project is suitable and fit for Lessee's purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or

adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused, and the Lessee hereby agrees to indemnify and hold the Agency harmless from any such loss, damage or expense.

Section 16. Should the Agency's participation in this Project be challenged by any party, in the courts or otherwise, the Lessee shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from such challenge, including, but not limited to, the fees and disbursements of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Lessee hereunder or otherwise.

Section 17. This resolution is subject to compliance with all local building and zoning requirements.

Section 18. The provisions of the new Section 875 of the General Municipal Law which became effective on March 28, 2013 shall apply to this Project. In the event it is determined that an agent, project operator or other person or entity obtained state sales and use exemptions benefits for which they were not entitled or which were in excess of the amount authorized, the agent, project operator or other person or entity shall comply with all the provisions of Section 875 and pay back to the Agency the amount of the state sales and use tax exemptions benefits that they obtained but were not entitled to.

Section 19. The provisions of the Town of Hamburg Industrial Development Agency Policy for Recapture and/or Termination or Modification of Financial Assistance adopted by the Agency on June 16, 2016 shall be applicable to this Project.

Section 20. This resolution shall take effect immediately.

ADOPTED: _____, 2019

ACCEPTED:

THE OAKS AT SOUTH PARK LLC

By: _____

