



ESSEX COUNTY IN THE PARK
INDUSTRIAL DEVELOPMENT AGENCY

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**Essex County IDA Special Board Meeting
January 11, 2017 at 10:00AM
7566 Court Street, Elizabethtown, NY**

Present: Darren Darrah
Jamie Rogers (via conference call)
James Bowen (via conference call)
Gerald Morrow (via conference call)

Absent: Joe Kusalonis
Matt Courtright
John Boyea

Also Present: Jody Olcott
Carol Calabrese

Open of Meeting

Chairman Darren Darrah opened the meeting at 10:05AM.

The meeting was held to discuss Champlain Valley Senior Center and their refinance through HUD and any other business to come before the board.

Champlain Valley Senior Center

Motion #2017-1: A motion to approve the application of CVSC, LLC, a New York corporation, and its successors and assigns (the "Company") and agreeing to enter into a "straight-lease transaction" with the Company and grant a mortgage on the Project, as hereinafter defined, to secure conventional financing therefore by resolution at a meeting duly held on January 18, 2011 (the "Inducement Resolution"); and **WHEREAS**, in order to assist the Company in the financing of (i) the acquisition, construction, equipping and furnishing of an approximately 42,000 square foot facility for use as a senior assisted living community to be constructed on the site of the former Willsboro High School in the Town of Willsboro in Lake Champlain Valley, New York and (ii) certain necessary preliminary and incidental expenses related thereto (hereinafter collectively referred to as the "Project"), the Agency by resolution dated March 17, 2011, (the "Approving Resolution") authorized the lease of certain property (the "Leased Property") to the Company for a lease term ending on December 31, 2022, subject to renewal, pursuant to a Ground Lease, dated January 11, 2012, between the Agency and the Company (the "Ground Lease") and a Ground Lease and Project Agreement, between the Agency and the Company, dated January 11, 2012 (the "Project Agreement") and certain "financial assistance" (as defined in Section 854(15) of the General Municipal Law of the State of New York), whereby the Company is obligated to lease the Leased Property from the Agency and to purchase the property from the Agency at the end of the lease term for a price unrelated to the Project Agreement; and **WHEREAS**, to further provide for the consummation of the transaction, the Agency entered into a Payment-in-Lieu-of-Taxes

Agreement by and among the Agency, the County of Essex, the Company, the Willsboro Central School District, and the Town of Willsboro, dated January 11, 2012 (the "PILOT Agreement"); and **WHEREAS**, pursuant to a Mortgage and Security Agreement, dated January 11, 2012 (the "2012 Mortgage"), the Agency granted a mortgage and security interest in and with respect to the Project and assigned the Project Agreement as collateral, to Square 1 Bank as mortgagee, (the "Mortgagee"), which loan is guaranteed by USDA, located in Washington DC; and **WHEREAS**, in order to continue the Project, the Company now desires to enter a Healthcare Mortgage, Assignment of Leases and Rents and Security Agreement, dated as of January 1, 2017 (the "Security Instrument"), with Bellwether Enterprise Real Estate Capital, LLC, a limited liability company organized and existing under the laws of Ohio (the "Lender") covering the Leased Property and securing a loan in the amount of \$7,557,200 (the "2017 Mortgage"), to be insured by the U.S. Department of Housing and Urban Development ("HUD"); and **WHEREAS**, the Lender requires the Ground Lease and the leasehold interests and estates created thereby to be subordinate to the lien or charge of the Security Instrument pursuant to a Subordination Agreement of Ground Lease, dated as of January 1, 2017 (the "Subordination Agreement") so long as in consideration for such subordination non-attornment provisions are added to the Ground Lease and the Project Agreement; and **WHEREAS**, the Agency hereby determines that the continuation of the Project will further the public purpose of the Act and that it is in the best interest of the public for the Agency to retain title to the Project and to continue to pass on State law tax benefits to the Company; and **WHEREAS**, in order for the Company to secure the loan from the Lender and continue the Project, the Agency desires to enter into the Subordination Agreement with the Company and the Lender; and **NOW, THEREFORE, BE IT RESOLVED** by the Essex County Industrial Development Agency, as follows:

Section 1. Subordination Agreement and Terms Thereof. The Agency hereby authorizes and approves the Subordination Agreement. The Chairman, Vice Chairman or any other appropriate officer of the Agency, alone or in conjunction with such officers, are authorized and directed to execute, deliver and, if applicable file, for and in the name and on behalf of the Agency, the Subordination Agreement and any certifications, financing statements, assignments and other instruments and documents which are necessary or appropriate to consummate the transactions contemplated in the Subordination Agreement, including but not limited to necessary amendments to the Ground Lease and the Project Agreement and any documents necessary to satisfy the 2012 Mortgage.

Section 2. Amendments to Ground Lease and Project Agreement. The Agency hereby authorizes and approves the following amendment to the Project Agreement:

Addition of **ARTICLE X. SECTION 10.12. Non-Attornment**. Lessee shall maintain a leasehold interest in the Project and the Land pursuant to the straight lease arrangement herein and Lessee shall not be bound to Lender or HUD or such other party under the terms, covenants and conditions of this Amended Project Agreement, and Lessee shall not attorn to, and shall not be liable to and shall not recognize Lender or HUD or such other party as Lessee's new landlord for the balance of the Term of this Amended Project Agreement upon and subject to all the terms and conditions thereof, and this Amended Project Agreement and the rights of Lessee there under shall continue in full force and effect as a direct lease between Lessor and Lessee or such other party upon all the terms, covenants, and agreements set out in the Original Project Agreement.

The Agency hereby authorizes and approves the following amendment to the Ground Lease:

Addition of **SECTION 11. Non-Attornment**. Lessee shall maintain a leasehold interest in the Project and the Land pursuant to the straight lease arrangement herein and Lessee shall not be bound to Lender or HUD or such other party under the terms, covenants and conditions of this Amended and Restated Ground Lease, and Lessee shall not attorn to, and shall not be liable to and shall not recognize Lender or HUD or such other party as Lessee's new landlord for the balance of the Term of this Amended and

Restated Ground Lease upon and subject to all the terms and conditions thereof, and this Amended and Restated Ground Lease and the rights of Lessee thereunder shall continue in full force and effect as a direct lease between Lessor and Lessee or such other party upon all the terms, covenants, and agreements set out in the Original Ground Lease.

Any and all other terms and provisions of the PILOT Agreement, the Inducement Resolution, the Approving Resolution, the Ground Lease and the Project Agreement shall remain in full force and effect and are hereby ratified, affirmed and extended by the Agency.

This motion was made by James Bowen and seconded by Gerald Morrow. All members were in favor.

Adjourn Meeting

Motion #2017-2: A motion to adjourn the meeting at 10:19AM was made by Jamie Rogers and seconded by James Bowen. All members were in favor.