

**RESOLUTION AUTHORIZING REFINANCING
MT. IDA APARTMENTS, LLC PROJECT**

A regular meeting of Rensselaer County Industrial Development Agency (the "Agency") was convened in public session in the 3rd Floor Conference Room at the Quackenbush Building located at 333 Broadway in the City of Troy, Rensselaer County, New York on October 12, 2017 at 4:00 o'clock p.m., local time.

The meeting was called to order by the ~~(Vice)~~ Chairman of the Agency and, upon roll being called, the following members of the Agency were:

PRESENT:

John H. Clinton, Jr.	Chairman
Michael Della Rocco	Vice Chairman
Cynthia A. Henninger	Secretary/Treasurer
Ronald Bounds	Assistant Secretary/Treasurer
Douglas Baldrey	Member
James Church	Member
Renee Powell	Member

ABSENT:

R. Powell

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Robert L. Pasinella, Jr.	Executive Director
Robin LaBrake	Assistant
Peter R. Kehoe, Esq.	Agency Counsel
George W. Cregg, Jr., Esq.	Special Counsel

The following resolution was offered by R. Bounds, seconded by C. Henninger, to wit:

Resolution No. 1017-11

RESOLUTION AUTHORIZING THE EXECUTION BY RENSSELAER COUNTY INDUSTRIAL DEVELOPMENT AGENCY OF A CERTAIN MORTGAGE AND RELATED DOCUMENTS IN CONNECTION WITH THE MT. IDA APARTMENTS, LLC PROJECT.

WHEREAS, Rensselaer 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 1 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 128 of the 1974 Laws of New York, as amended, constituting Section 903-d 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, warehousing, research, commercial and industrial 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 June 22, 2006 (the "Closing"), the Agency undertook the following project (the "Project") for the benefit of Mt. Ida Apartments, LLC (the "Company") consisting of the following: (A) (1) the acquisition of an interest in an approximately 2.2 acre parcel of land located at 384 Congress Street in the City of Troy, Rensselaer County, New York (the "Land"), (2) the construction on the Land of an approximately 140-bed student apartment-type housing facility to contain approximately 67,000 square feet of space and related improvements (collectively, the "Facility") and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment"), all of the foregoing to be subleased by the Company to Student Residence Management Corp., a New York not-for-profit corporation (the "Tenant") and operated by the Tenant as a dormitory facility for students at Rensselaer Polytechnic Institute (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"); (B) the granting of certain other "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the Company pursuant to a lease agreement dated as of June 1, 2006 (the "Lease Agreement") by and between the Company and the Agency; and

WHEREAS, simultaneously with the Closing, (A) the Company executed and delivered to the Agency (A) a certain lease to agency dated as of June 1, 2006 (the "Underlying Lease") by and between the Company, as landlord and the Agency, as tenant pursuant to which the Company leased to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises") for a lease term ending on December 31, 2017, (B) a certain license agreement dated as of June 1, 2006 (the "License to Agency") by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company granted to the Agency a license to enter upon the balance of the Land (the "Licensed Premises") for the purpose of undertaking and completing the Project and, in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement, (C) a bill of sale dated as of June 1, 2006 (the "Bill of Sale to Agency"), which conveyed to the Agency all right, title and interest of the Company in the Equipment; and

WHEREAS, on or about August 15, 2006, the Company and the Agency executed and delivered a payment in lieu of tax agreement dated as of August 1, 2006 (the "Original Payment in Lieu of Tax Agreement") by and between the Agency and the Company, as amended pursuant to an amendment to payment in lieu of tax agreement dated as of June 1, 2009 (the "First Amendment to Payment in Lieu of Tax Agreement", and collectively with the Original Payment in Lieu of Tax Agreement, the "Payment in Lieu of Tax Agreement"); and

WHEREAS, in connection with the First Amendment to Payment in Lieu of Tax Agreement, the Company and the Agency entered into a modification agreement dated as of June 1, 2009 (the "Modification Agreement"), which Modification Agreement provided for the extension of the lease term to end on December 31, 2027; and

WHEREAS, in order to finance a portion of the costs of the Project, the Company obtained a loan in the principal sum of up to \$9,152,000 (the "Loan") from Berkshire Bank (the "Lender"), which Loan was secured by (1) a mortgage dated as of June 1, 2006 (the "Mortgage") from the Agency and the Company to the Lender and (2) an assignment of leases and rents dated as of June 1, 2006 (the "Assignment of Rents") from the Agency and the Company to the Lender; and

WHEREAS, by correspondence dated October 10, 2017 (the "Request"), which Request is attached hereto as Exhibit A, the Agency was informed that the Company will be refinancing the Loan, (the "Refinanced Loan"), which Refinanced Loan will be secured by a mortgage (the "Refinanced Mortgage"); and

WHEREAS, pursuant to the Request, as the Agency has a leasehold and license interest in the Land, the Agency is being asked to enter into the Refinanced Mortgage and any related documents (collectively, the "Refinanced Documents"); and

WHEREAS, in connection with the execution and delivery of the Refinanced Documents, the Agency will not be providing any benefits to the Company via exemption from the mortgage recording tax; and

WHEREAS, the Agency will be subjecting only its leasehold interest in the Project Facility to the lien of the Refinanced Mortgage; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the "Regulations" and collectively with the SEQR Act, "SEQRA"), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to proceed with the Request; and

WHEREAS, pursuant to SEQRA, the Agency has examined the Request in order to make a determination as to whether the Request is subject to SEQRA, and it appears that the Request constitutes a Type II action under SEQRA;

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

Section 1. Based upon an examination of the Request, the Agency hereby makes the following determinations:

(A) The Request constitutes a "Type II action" pursuant to 6 NYCRR 617.5(c)(23), and therefore that, pursuant to 6 NYCRR 617.6(a)(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Request.

(B) The Agency will not be granting any mortgage recording tax exemption relating to the Request.

(C) That since compliance by the Agency with the Request will not result in the Agency providing more than \$100,000 of "financial assistance" (as such quoted term is defined in the Act) to the Company, Section 859-a of the Act does not require a public hearing to be held with respect to the Request.

Section 2. Subject to (A) approval of the form of the Refinanced Documents, by Agency counsel and Special Agency counsel and (B) receipt by the Executive Director of (1) the Agency's administrative fee relating to the Request, if any, and (2) counsel's fees relating to the Request, the Agency hereby authorizes the execution by the Agency of the Refinanced Documents.

Section 3. Subject to the satisfaction of the conditions described in Section 2 hereof, the Chairman (or Vice Chairman) of the Agency is hereby authorized to execute and deliver the Refinanced Documents to the Company, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the form thereof presented to this meeting, with such changes, variations, omissions and insertions as the Chairman (or Vice Chairman) shall approve, the execution thereof by the Chairman (or Vice Chairman) to constitute conclusive evidence of such approval.

Section 4. 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 or provided for by the provisions of the Refinanced Documents, and to execute and deliver all such additional 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 Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Refinanced Documents binding upon the Agency.

Section 5. 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:

John H. Clinton, Jr.	VOTING	<u>YES</u>
Michael Della Rocco	VOTING	<u>YES</u>
Cynthia A. Henninger	VOTING	<u>YES</u>
Ronald Bounds	VOTING	<u>YES</u>
Douglas Baldrey	VOTING	<u>YES</u>
James Church	VOTING	<u>YES</u>
Renee Powell	VOTING	<u>ABSENT</u>

The foregoing Resolution was thereupon declared duly adopted.


STATE OF NEW YORK)
) SS.:
COUNTY OF RENSSELAER)

I, the undersigned (Assistant) Secretary of Rensselaer County Industrial Development Agency (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on October 12, 2017 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 matters therein referred to.

I FURTHER CERTIFY that (A) all members 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 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 rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 12th day of October, 2017.


(Assistant) Secretary

(SEAL)

EXHIBIT A

REQUEST

- SEE ATTACHED -

Debra J. Lambek, Esq.

302 Washington Avenue Extension
Albany, New York 12203

(518) 862-9133 Ext. 4225
dlambek@columbiadev.com

October 10, 2017

Via Email to rpasinella@rensco.com

Robert L. Pasinella, Jr.
Executive Director
Rensselaer County Industrial Development Agency
County Office Building
1600 Seventh Avenue
Troy, New York 12180

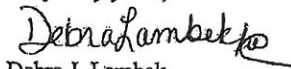
Re: Mt. Ida Apartments LLC ("Company") with
Rensselaer County Industrial Development Agency ("Agency")
Project Location: 384 Congress Street, Troy ("Project")

Dear Sarah:

The Company is in the process of refinancing its existing financing for the above Project with Berkshire Bank. As a result of the existing PILOT Agreement from the Agency we require the Agency to execute the mortgage agreement in connection with the loan. We are not requesting any additional financial assistance from the Agency.

Please let me know what else you require in order to proceed. Thank you.

Very truly yours,


Debra J. Lambek
Counsel

DJL:mmm

cc: A Joseph Scott, Esq. (Via Email to ascott@hodgsonruss.com)

J:\ADM\Administrative\aj\13047\14472 (Mt Ida Apartment)\2017 Refinance\voids letter.doc