

WILLOW BROOK OF MANLIUS, LLC

**APPROVING RESOLUTION
(3101-19-01A)**

A regular meeting of the Onondaga County Industrial Development Agency (the "Agency") was convened in public session on May 14, 2019, at 8:00 a.m. at 333 W. Washington Street, Syracuse, New York.

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: Patrick Hogan
Janice Herzog
Victor Ianno
Susan Stanczyk
Kevin Ryan
Fanny Villarreal

ABSENT: Steve Morgan

ALSO PRESENT: Robert M. Petrovich, Executive Director
Anthony P. Rivizzigno, Esq., Agency Counsel
Amanda M. Mirabito, Esq., Agency Counsel

The following resolution was offered by Janice Herzog, seconded by Fanny Villarreal, to wit:

RESOLUTION AUTHORIZING EXECUTION OF DOCUMENTS IN CONNECTION WITH A LEASE/LEASEBACK TRANSACTION FOR A PROJECT FOR WILLOW BROOK OF MANLIUS, LLC (THE "COMPANY").

WHEREAS, Onondaga 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 435 of the Laws of 1970 of the State of New York and Chapter 676 of the Laws of 1975, as amended, constituting Section 895 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 (the "State"), 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, Willow Brook of Manlius, LLC, a New York limited liability company (the “Company”), has submitted an application (the “Application”), on behalf of itself and entities formed or to be formed on its behalf, to the Agency, a copy of which Application is on file at the office of the Agency, which Application requests that the Agency consider undertaking a project (the “Project”) for the benefit of the Company and/or entities formed or to be formed on its behalf, said Project consisting of the following: (A)(1) acquisition of an interest in approximately six acres of land located at 314, 330, 332 and 406 Fayette Street (tax map nos. 024.-01-10.1, 024.-01-09.1, 024.-01-08.1 and 024.-01-05.1) in the Village of Manlius, Town of Manlius, Onondaga County, New York (the “Land”) and the existing buildings thereon (the “Existing Buildings”); (2) the demolition of the Existing Buildings and the construction on the Land of an approximately 105,000 square foot mixed use building, an approximately 16,000 square foot enclosed parking facility, an approximately 194,000 square foot surface parking lot, a gazebo and site work (collectively, the “Facility”); and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the “Equipment”) (the Land, the Facility and the Equipment being collectively referred to as the “Project Facility”), such Project Facility to be used as a mixed use lifestyle center consisting of service oriented retail space, professional office space, residential apartment units, approximately 30 enclosed parking spaces and approximately 270 outdoor parking spaces; (B) the granting of certain “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 (subject to certain statutory limitations) (the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Agency previously has adopted a Uniform Tax Exemption Policy (the “UTEP”); and

WHEREAS, the Company has requested that the terms of the payment in lieu of tax agreement to be entered into in connection with the Project contain terms that deviate from the UTEP; and

WHEREAS, the members of the Agency adopted a resolution on April 9, 2019 (the “Public Hearing Resolution”) authorizing a public hearing with respect to the Project in compliance with the provisions of Section 859-a of the Act and the deviation process in compliance with the provisions of Section 874-b of the Act and the UTEP; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on April 10, 2019 to the chief executive officers of the county and of each city, town, village and

school district (collectively the “Affected Tax Jurisdictions”) in which the Project Facility is located, (B) caused notice of the Public Hearing to be published on April 11, 2019 in The Post-Standard, a newspaper of general circulation available to the residents of the Village of Manlius, and the Town of Manlius, Onondaga County, New York, (C) conducted the Public Hearing on May 7, 2019 at 3:00 p.m., local time at the Village Hall, Village of Manlius located at One Arkie Albanese Avenue in the Village of Manlius, Onondaga County, New York, and (D) prepared a report of the Public Hearing (the “Public Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution and in compliance with the provisions of Section 874(4)(b) of the Act, the Agency caused a letter (the “PILOT Deviation Letter”) to be mailed on May 1, 2019 to the chief executive officers of each Affected Tax Jurisdiction, informing said individuals that the Agency would, at its meeting to be held on May 14, 2019, consider a proposed deviation from the UTEP with respect to the payment in lieu of tax agreement to be entered into by the Agency with respect to the Project Facility based upon the schedule of payments in lieu of taxes set forth in Exhibit A; and

WHEREAS, prior to the date hereof, the Agency responded to all communications and correspondence received from the Affected Tax Jurisdictions regarding the proposed deviation from the UTEP; and

WHEREAS, the Agency allowed representatives from the Affected Tax Jurisdictions present at this meeting to address the Agency regarding such proposed deviation; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “SEQRA”), by resolution adopted by the members of the Agency on May 14, 2019, the Agency determined (A) to conduct an uncoordinated review of the Project, (B) that the Project is an “Unlisted” action which will not have a significant effect on the environment and, therefore, that an environmental impact statement is not required to be prepared with respect to the Project, and (C) as a consequence of the foregoing, to prepare a negative declaration with respect to the Project; and

WHEREAS, the Agency has given due consideration to the Application, and to representations by the Company that (A) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Company to undertake the Project in Onondaga County, New York and (B) the completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State to another area in the State and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State; and

WHEREAS, the Agency desires to encourage the Company to preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of Onondaga County, New York by undertaking the Project in Onondaga County, New York; and

WHEREAS, in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents (hereinafter collectively referred to as the "Agency Documents"): (A) a certain underlying lease agreement (and a memorandum thereof) (the "Underlying Lease") by and between the Company and the Agency pursuant to which the Company will lease to the Agency the Land and all improvements now or hereafter located on the Land; (B) a certain lease agreement (and a memorandum thereof) (the "Lease Agreement") by and between the Company and the Agency pursuant to which the Company agrees to undertake the Project as agent of the Agency and the Company further agrees to lease the Project Facility from the Agency and, as rental thereunder, to pay the Agency's administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project; (C) a payment in lieu of tax agreement (the "PILOT Agreement") by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility; (D) a project agreement (the "Project Agreement") by and between the Agency and the Company that complies with the requirements of Section 859-a(6) of the Act; (E) a New York State Department of Taxation and Finance form entitled "IDA Appointment of Project Operator or Agency for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report") and any additional report to the Commissioner of the State Department of Taxation and Finance concerning the amount of sales tax exemption benefit for the Project (the "Additional Thirty-Day Project Report"); (F) if the Company intends to finance the Project with borrowed money, a mortgage and any other security documents and related documents (collectively, the "Mortgage") from the Agency and the Company to the Company's lender with respect to the Project (the "Lender"), which Mortgage will grant a lien on and security interest in the Project Facility to secure a loan from the Lender to the Company with respect to the Project (the "Loan"); and (G) various certificates relating to the Project (the "Closing Documents"); and

WHEREAS, the Agency will file with the assessor and mail to the chief executive officers of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form RP-412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (a "Real Property Tax Exemption Form") relating to the Project; and

WHEREAS, simultaneously with the execution and delivery of the Agency Documents, the Agency will file with the State Department of Taxation and Finance the Thirty-Day Sales Tax Report and provide a copy of the Thirty-Day Sales Tax Report to the Company; and

WHEREAS, for purposes of exemption from the State sales and use taxation as part of the Financial Assistance requested, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight;

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

Section 1. The Agency, based upon the representations made by the Company to the Agency in the Application, hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act;

(B) The Project constitutes a “project,” as such term is defined in the Act;

(C) The Project site is located entirely within the boundaries of Onondaga County, New York;

(D) It is estimated at the present time that the costs of the planning, development, renovation, construction and installation of the Project Facility (collectively, the “Project Costs”) will be approximately \$21,693,000.00;

(E) The completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State to another area in the State and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State;

(F) (1) The Project Facility does not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project, and accordingly the Project is not prohibited by the provisions of Section 862(2)(a) of the Act, and (2) accordingly the Agency is authorized to provide financial assistance in respect of the Project pursuant to Section 862(2)(a) of the Act;

(G) The acquisition, construction and equipping of the Project Facility and the leasing of the Project Facility to the Company is reasonably necessary to induce the Company to maintain and expand its business operations in the State;

(H) Based upon representations of the Company and counsel to the Company, the Project Facility conforms with the local zoning laws and planning regulations of Onondaga County and all regional and local land use plans for the area in which the Project Facility is located;

(I) The granting of the Financial Assistance by the Agency with respect to the Project will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of Onondaga County, New York and the State and improve their standard of living, and thereby serve the public purposes of the Act;

(J) The Agency has reviewed the Public Hearing Report and has fully considered all comments contained therein;

(K) The Project should receive the Financial Assistance in the form of exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes based on the description of expected public benefits to

occur as a result of this Project, as described in the Application, and failure by the Company to meet the expected public benefits will result in a recapture event, as described in the Lease Agreement;

(L) It is desirable and in the public interest for the Agency to enter into the Agency Documents;

(M) The Agency, based upon its review of the following factors, finds and determines that it is desirable and in the public interest of the Agency to deviate from its UTEP and to approve the execution and delivery of the PILOT Agreement with the terms specified in Exhibit A:

I. When fully operational, the Project will create 100 full time equivalent jobs within the first 2 years.

II. As a prerequisite to the Agency undertaking the Project, the Company will enter into an agreement that any financial assistance it receives from the Agency will be subject to recapture in the event the Project does not fulfill the purposes for which the tax exemptions were granted.

III. The Project will include the demolition of blighted buildings along a highly visible business corridor in the Town and Village of Manlius. The Project also includes remediation of several contaminated parcels of land in accordance with Department of Environmental Conservation recommendations. The completed Project Facility will include housing opportunities for residents and retail portions within the permissible limitations that will generate sales and tax revenue throughout the Affected Tax Jurisdictions. The creation of the additional jobs in connection with the provision of additional housing and retail opportunities will have a lasting beneficial impact on the economy of the Affected Tax Jurisdictions.

IV. The Company estimates that it will expend approximately \$21,693,000.00 on the construction of the Project Facility.

V. All information received to date shows great public support for the Project Facility.

VI. It is estimated that the Project will generate \$2,557,063.00 in PILOT payments during the term of the Proposed PILOT Agreement. The real property taxes on the Land without the Proposed PILOT Agreement over the same term using current tax rates would produce approximately \$1,597,943.00 in real property tax revenues. The real property taxes on the Project Facility without the Proposed PILOT Agreement over the same term using current tax rates would produce approximately \$4,659,298.00 in real property tax revenues.

VII. The distribution of PILOT payments to the Affected Tax Jurisdictions under the Proposed PILOT Agreement will comply with the provisions of the General Municipal Law.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (A) proceed with the Project; (B) acquire a leasehold interest in the Land and all improvements now

or hereafter located on the Land from the Company pursuant to the Underlying Lease and acquire the Equipment pursuant to the Bill of Sale; (C) lease the Project Facility to the Company pursuant to the Lease Agreement; (D) acquire, construct and equip the Project Facility, or cause the Project Facility to be acquired, constructed and equipped, as provided in the Lease Agreement; (E) secure any loan the proceeds of which will be used to acquire, construct and equip the Project Facility by granting a mortgage lien on the Agency's interest in the Project Facility and entering into one or more mortgages and/or assignments of leases and rents in favor of the lender(s); and (F) grant to the Company the Financial Assistance with respect to the Project. The amount of State and local sales and use tax exemption benefits and mortgage recording tax exemption benefits comprising the Financial Assistance approved herein shall not exceed \$386,720.00 and \$122,025.00, respectively. Based on an estimate of the current assessed value of the Land and the Facility and the current tax rates of the taxing jurisdictions, the amount of real property tax exemption benefits is approximately \$2,102,235.00. The Agency recognizes that such amount may vary over time due to changes in assessed value of the Land and the Facility and/or the tax rates of the taxing jurisdictions.

Section 3. The Agency is hereby authorized to acquire, construct and equip the Project Facility as described in the Agency Documents, to appoint the Company as agent of the Agency to undertake such acquisition, construction and equipping of the Project Facility as described in the Agency Documents, and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition, construction and equipping are hereby ratified, confirmed and approved.

Section 4. The Chairman (or Vice Chairman) and the Executive Director of the Agency, with the assistance of Agency Counsel, are authorized to negotiate and approve the form and substance of the Agency Documents.

Section 5. (A) The Chairman (or Vice Chairman) and the Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents, 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 the forms thereof as the Chairman (or Vice Chairman) and the Executive Director shall approve, the execution thereof by the Chairman (or Vice Chairman) and the Executive Director to constitute conclusive evidence of such approval.

(B) The Chairman (or Vice Chairman) and the Executive Director of the Agency are hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 6. The Agency shall maintain records of the amount of State and local sales and use tax exemption benefits provided to the Project and each agent or Project operator and shall make such records available to the State Commissioner of Taxation and Finance (the "Commissioner") upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for the Project, identifying the Project, along with any such other information and specificity as the Commissioner may prescribe. As a condition precedent to the Company's receipt of, or benefit from, any State or local sales and use tax exemptions, the Company must acknowledge and agree

to make, or cause its agents and/or operators to make, all records and information regarding State and local sales and use tax exemption benefits available to the Agency upon request. The provisions of Section 875 of the Act are hereby incorporated herein as if set forth herein and the Agency agrees that it shall comply with the requirements of such Section 875 of the Act.

Section 7. The Agency hereby delegates to the Company, as agent of the Agency, the authority to designate (following the execution and delivery of the Agency Documents), agents and sub-agents of the Agency (each, a "Sub-Agent") for purposes of utilizing the Agency sales and use tax exemption with respect to the acquisition, construction and equipping of the Project Facility; provided that any such sub-agency designation shall become effective only upon submission to the Agency within fifteen (15) days of such agency and sub-agency designation: (1) an executed sub-agent appointment agreement (in a form approved by the Agency) and (2) a completed Form ST-60 of the New York State Department of Taxation and Finance (IDA Appointment of Project Sublessee or Agent for Sales Tax Purposes). Such agents and sub-agents may include contractors and subcontractors involved in the acquisition, construction and installation of the Project Facility.

Section 8. The terms and conditions of subdivision 3 of Section 875 of the Act are herein incorporated by reference and the Company and/or any Sub-Agent shall agree to such terms as a condition precedent to receiving or benefiting from an exemption from State and local sales and use tax exemptions benefits.

Section 9. 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 Agency 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 Agency Documents binding upon the Agency.

Section 10. This Resolution shall take effect immediately upon adoption.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

| | <u>AYE</u> | <u>NAY</u> | <u>ABSENT</u> |
|------------------|------------|------------|---------------|
| Patrick Hogan | X | | |
| Janice Herzog | X | | |
| Victor Ianno | X | | |
| Steve Morgan | | | X |
| Susan Stanczyk | X | | |
| Kevin Ryan | X | | |
| Fanny Villarreal | X | | |

The Resolution was thereupon declared duly adopted.

EXHIBIT A
PILOT Schedule

| ROLL YEAR | TOWN/COUNTY YEAR | SCHOOL DISTRICT YEAR | PILOT PAYMENT |
|-----------|-------------------|----------------------|---------------|
| 1 | 1/1/21 – 12/31/21 | 7/1/20 – 6/30/21 | \$65,766.08 |
| 2 | 1/1/22 – 12/31/22 | 7/1/21 – 6/30/22 | \$103,776.05 |
| 3 | 1/1/23 – 12/31/23 | 7/1/22 – 6/30/23 | \$143,280.11 |
| 4 | 1/1/24 – 12/31/24 | 7/1/23 – 6/30/24 | \$184,322.82 |
| 5 | 1/1/25 – 12/31/25 | 7/1/24 – 6/30/25 | \$226,949.93 |
| 6 | 1/1/26 – 12/31/26 | 7/1/25 – 6/30/26 | \$271,208.39 |
| 7 | 1/1/27 – 12/31/27 | 7/1/26 – 6/30/27 | \$317,146.41 |
| 8 | 1/1/28 – 12/31/28 | 7/1/27 – 6/30/28 | \$364,813.47 |
| 9 | 1/1/29 – 12/31/29 | 7/1/28 – 6/30/29 | \$414,260.35 |
| 10 | 1/1/30 – 12/31/30 | 7/1/29 – 6/30/30 | \$465,539.19 |

STATE OF NEW YORK)
) ss.:
COUNTY OF ONONDAGA)

I, the undersigned Secretary of the Onondaga County Industrial Development 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 May 14, 2019, with the original thereof on file in my office, and that the same is a true and correct copy of such proceedings of the Agency 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 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 this 14th day of May, 2019.

(SEAL)


Genevieve A. Suits, Secretary