

FINAL APPROVING RESOLUTION

A regular meeting of the County of Oswego Industrial Development Agency was convened in public session on May 17, 2012, 9:30 a.m., at 44 West Bridge Street, Oswego, New York.

The meeting was called to order by the Chair and, upon the roll being duly called, the following members were:

PRESENT: Jonathan Daniels, Donald H. Kunzwiler, Arthur W. Ospelt,
Carolyn A. Rush, H. Leonard Schick, Morris Sorbello, and
Gary T. Toth

ABSENT: None

ALSO PRESENT: Kevin C. Caraccioli, David S. Dano, and L. Michael
Treadwell

The following resolution was duly offered and seconded:

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A CERTAIN PROJECT UNDERTAKEN AT THE REQUEST OF THE COMPANY

WHEREAS, the County of Oswego Industrial Development Agency (the “*Agency*”) is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the “*State*”), as amended, together with Chapter 234 of the Laws of 1973 of the State of New York, as amended from time to time (collectively, the “*Act*”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, 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 grant “financial assistance” (as defined in the Act) in connection with the

acquisition, construction and equipping of one or more “projects” (as defined in the Act); and

WHEREAS, Whitewater Commons, Inc., a New York business corporation, or an entity to be formed (the “*Company*”), submitted an application to the Agency on or about April 18, 2012 (“*Application*”), a copy of which is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the “*Project*”) consisting of: (A) (i) the acquisition of a leasehold interest in approximately 2.19 acres of real property improved by two buildings commonly known as the Whitewater Building and the Berkley Building, all located at 7 Bridie Square, Oswego, New York, Oswego County (the “*Land*”); (ii) the construction of an approximately 6,270 square foot addition to the Whitewater Building for use as five (5) apartment units and the construction of a 6,264 square foot addition to the Berkley Building for use as three (3) apartment units and office space, each located on the Land (collectively, the “*Facilities*”); and (iii) the acquisition of and installation in the Facilities of various machinery, equipment and furnishings (collectively the “*Equipment*”) (the Land, Facilities and Equipment are hereinafter collectively referred to as the “*Project Facility*”); (B) granting certain financial assistance in the form of exemptions from real property tax, mortgage recording tax, sales and use taxation and a loan from the Agency’s Economic Development Fund in an amount not to exceed \$125,000 (collectively the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction and equipping of the Project Facility; and (D) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, the Company also requested that the Agency consider payment in lieu of tax (“*PILOT*”) schedule, and such schedule conforms with the Agency’s Uniform Tax Exemption Policy (“*UTEP*”) established pursuant to Section 874(4) of the Act for manufacturing facilities; 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*”), the Agency is required to make a determination whether the “action” (as said quoted term is defined in SEQRA) to be taken by the Agency may have a “significant impact on the environment” (as said quoted term is utilized in SEQRA), and the preliminary agreement of the Agency to undertake of the Project constitutes such an action; and

WHEREAS, the City of Oswego acted as lead agency for the purpose of conducting a coordinated environmental review of the Project under SEQRA, 6 NYCRR Part 617, and determined that the Project constitutes a "Unlisted Action" under SEQRA, will not result in any significant adverse environmental impacts and issued a negative declaration for the Project dated May 17, 2012; and

WHEREAS, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on May 8, 2012 pursuant to Section 859-a of the Act, notice of which was published on April 28, 2011 in the Palladium Times, a newspaper of general circulation in the County of Oswego, New York and given to the chief executive officers of the affected tax jurisdictions by letters dated April 26, 2012; and

WHEREAS, the Agency adopted a resolution on May 2, 2012 (the “*Initial Resolution*”) entitled:

RESOLUTION DETERMINING THAT THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF ADDITIONS TO COMMERCIAL FACILITIES AT THE REQUEST OF THE COMPANY FOR USE AS OFFICE SPACE AND APARTMENT UNITS CONSTITUTES A PROJECT; DESCRIBING THE FINANCIAL ASSISTANCE REQUESTED IN CONNECTION THEREWITH AND AUTHORIZING A PUBLIC HEARING

which resolution is in full force and effect and has not been amended or modified;

WHEREAS, the Agency adopted a resolution on May 17, 2012 (the “*Inducement Resolution*”) entitled:

RESOLUTION UNDERTAKING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A CERTAIN PROJECT; APPOINTING THE COMPANY AGENT OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT; APPROVING FINANCIAL ASSISTANCE IN THE FORM OF REAL PROPERTY TAX, MORTGAGE RECORDING TAX, SALES AND USE TAX EXEMPTIONS; AND A LOAN FROM THE AGENCY’S ECONOMIC DEVELOPMENT FUND IN AN AMOUNT NOT TO EXCEED \$125,000 AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY AND THE COMPANY

which resolution is in full force and effect and has not been amended or modified;

WHEREAS, the Agency adopted a resolution on May 17, 2012 (the “*PILOT Resolution*”) and together with the Initial Resolution and Inducement Resolution collectively referred to herein as the “*Resolutions*”) entitled:

RESOLUTION APPROVING A PAYMENT IN LIEU OF TAX SCHEDULE AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A CERTAIN PROJECT UNDERTAKEN AT THE REQUEST OF THE COMPANY

which resolution is in full force and effect and has not been amended or modified.

NOW, THEREFORE, be it resolved by the members of the County of Oswego Industrial Development Agency, as follows:

Section 1. It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

Section 2. Based upon the representations and projections made by the Company to the Agency and after considering those representations, the Agency hereby makes the following determinations:

- a) Ratifies all its prior resolutions adopted in connection with this Project.
- b) The granting of the approved Financial Assistance and approval of the requested PILOT schedule will be an inducement to the Company to develop the Project Facility in the City of Oswego, County of Oswego.
- c) The commitment of the Agency to provide Financial Assistance to the Company will enable the Company to acquire, construct and equip the Project Facility, provide increased employment opportunities and ensure the continued physical and financial viability of the Project.
- d) The acquisition, construction and equipping of the Project Facility will promote employment opportunities and help prevent economic deterioration in the County of Oswego by the creation and/or retention of both full and part-time jobs.
- e) The construction and operation of the Project Facility and the attendant promotion of the local economy will advance the job opportunities, health, prosperity and economic welfare of the people of the County of Oswego and the granting of the other Financial Assistance is necessary to finance the costs of the construction and development of the Project.
- f) The Project will not result in the removal of any commercial, industrial or manufacturing plant or facility of the Company or of any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act.

Section 3. Subject to the conditions set forth in Section 4.02 of the Agreement (as defined in the Inducement Resolution), the Agency will, upon advice of counsel: (A) acquire a controlling interest in the Project Facility, (B) lease the Land and Facility from the Company pursuant to a lease agreement between the Agency and the Company (the “*Company Lease*”) and that certain bill of sale from the Company to the Agency relative to the Equipment (the “*Bill of Sale*”) and sublease the Project Facility to the Company, pursuant to a sublease agreement which shall be consistent with this resolution and approved by the Chief Executive Officer or (Vice) Chairperson of the Agency upon the advice of counsel to the Agency (the “*Agency Lease*” and with the Company Lease, the “*Lease Documents*”), (C) execute and deliver a payment in lieu of tax agreement (“*PILOT Agreement*”) providing for the payment schedule in accordance with the Agency’s UTEP for manufacturing facilities, and (D) execute and deliver any other documents necessary to effectuate the transfers contemplated by and consistent with this resolution, upon the advice of counsel to the Agency and upon terms and conditions acceptable to the Agency in its sole discretion.

Section 4. The (Vice) Chairperson or Chief Executive Officer are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified herein and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to herein and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution.

Section 5. No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to above shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

Section 6. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

Section 7. The Chief Executive Officer of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 8. Counsel to the Agency and special Agency counsel are hereby authorized to work with the Company, and others to prepare, for submission to the Agency, all documents necessary to effect the grant of Financial Assistance and to consummate the transactions contemplated by this Resolution.

Section 9. This Resolution shall take effect immediately.

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

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Jonathan Daniels	X			
Donald H. Kunzwiler	X			
Arthur W. Ospelt	X			
Carolyn A. Rush	X			
H. Leonard Schick	X			
Morris Sorbello	X			
Gary T. Toth	X			

The resolution was thereupon declared duly adopted.

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

I, the undersigned Chief Executive Officer of the County of Oswego Industrial Development Agency, Do Hereby Certify that (i) I have compared the annexed extract of the minutes of the meeting of the County of Oswego Industrial Development Agency (the “*Agency*”) held on May 17, 2012, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

I Further Certify that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency on May 17, 2012.

L. Michael Treadwell
Chief Executive Officer

(SEAL)