

**COUNTY OF CATTARAUGUS INDUSTRIAL
DEVELOPMENT AGENCY**

SECOND AMENDATORY INDUCEMENT RESOLUTION

**OLEAN MANOR, INC., AND/OR INDIVIDUAL(S) OR AFFILIATE(S),
SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS
BEHALF**

A regular meeting of the County of Cattaraugus Industrial Development Agency was convened on Tuesday, October 15, 2024 at 11:15 a.m.

The following resolution was duly offered and seconded, to wit:

RESOLUTION OF THE COUNTY OF CATTARAUGUS INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF OLEAN MANOR, INC., AND/OR INDIVIDUAL(S) OR AFFILIATE(S), SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (INDIVIDUALLY, AND/OR COLLECTIVELY, THE "COMPANY") IN CONNECTION WITH A CERTAIN PROJECT DESCRIBED BELOW; (ii) RATIFYING THE SCHEDULING, NOTICING, AND CONDUCTING OF A PUBLIC HEARING IN CONNECTION WITH THE PROJECT; (iii) MAKING A DETERMINATION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT; (iv) APPOINTING THE COMPANY, OR ITS DESIGNEE, AS ITS AGENT TO UNDERTAKE THE PROJECT; (v) AUTHORIZING THE UNDERTAKING OF THE PROJECT TO PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES TAX EXEMPTION BENEFIT FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT, AND (B) A PARTIAL ABATEMENT FROM REAL PROPERTY TAXES BENEFIT THROUGH THE PILOT AGREEMENT; AND (vi) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT, A PAYMENT-IN-LIEU-OF-TAX AGREEMENT, AN AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

WHEREAS, County of Cattaraugus 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 536 of the 1971 Laws of New York, as amended, constituting Section 890-b 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, the Company previously applied for Agency assistance with respect to a certain project, as described below and the Agency, by approving resolution dated February 2, 2017, duly authorized the provision of certain assistance for the benefit of the Company in connection with (i) the acquisition of an interest in an approximately six (6) acre portion of an approximately 51.60 acre parcel of land located on N. Seventh Street in the Town of Allegany, Cattaraugus County, New York (being a portion of Tax Map No. 97.037-1-24) (the “Initial Land”), (ii) the construction on the Land of approximately 10-12 buildings containing approximately 12,000+/- square foot adult assisted living facilities (the “Initial Facility” and collectively with the Initial Land, the “Initial Project”), and related to the aforementioned approving resolution, the Agency has conferred on the Company in connection therewith certain benefits, exemptions and other financial assistance consisting of: (a) an exemption benefit from all New York State and local sales and use tax for purchases related to the Initial Project with respect to the qualifying personal property included in or incorporated into the Initial Project Facility or used in the acquisition, construction or equipping of the Initial Project Facility; (b) an exemption benefit from mortgage recording taxes and (c) a real property taxes abatement benefit in the form of a Payment-in-lieu-of Taxes Agreement; and

WHEREAS, related thereto, by resolution dated February 2, 2017 (the “Initial Project Commercial Project Determination Resolution”), the Agency found that the Initial Project provides independent senior living, extended senior levels of care, assisted senior living, respite care, and senior daycare services, and that the Initial Project increases job opportunities for all residents and further determined that the undertaking of the Initial Project will allow local area seniors to continue to live in Cattaraugus County, and afford them the peace of mind they and their families will want and need and resolved that (1) the Initial Project Facility will provide necessary services to the aging population, (2) the completion of the Initial Project Facility will have an impact upon the creation, retention and expansion of employment opportunities in Cattaraugus County and in the State of New York, (3) the completion of the Initial Project will assist in promoting employment opportunities and assist in preventing economic deterioration in Cattaraugus County, New York, and (4) that the Initial Project constitutes a “commercial” project within the meaning of the Act; and

WHEREAS, the Company’s Initial Project provides licensed senior assisted living, independent living, and memory care services as well as various adult day care, health and wellness services to residents addressing a critical shortage of senior living housing, healthcare, nutrition services, social services and wellness services within the County of Cattaraugus; and

WHEREAS, the Initial Project has provided significant economic and community benefits to the County of Cattaraugus facilitating the creation of new jobs, new investment, and allowing County of Cattaraugus seniors to age in place by addressing a critical senior housing and assisted living challenge and shortage within the County of Cattaraugus; and

WHEREAS, building on the success of the Initial Project, and the continued demand for the services theretofore provided, the Company has submitted an application to the Agency (the “Application”) requesting the Agency’s continued assistance with this next phase and expansion of the Initial Project (the “Project”) consisting of: (i) the acquisition by the Agency of a leasehold interest in certain property located at 3260 North 7th Street in the Village of Allegany, Cattaraugus County, New York and all other lands in the Village of Allegany where, by license or easement or other agreement, the Company or its designees are making improvements that benefit the Project (the “Land”), (ii) as part of a unified project to effectuate the purposes of the Initial Project, the construction on the Land of approximately 42,000 square feet of senior living cottages and associated recreational infrastructure including walking trails and gazebos, as a component continuum and unified part of the Company’s Initial Project and overall assisted living and memory care facility and operations (the “Improvements”); and (iii) the acquisition by the Company in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the “Equipment”; and, together with the Land and the Improvements, the “Project Facility”); and

WHEREAS, pursuant to General Municipal Law Section 859-a, on October 7, 2024 at 10:30 a.m., at the Allegany Town Hall, 52 West Main Street, Allegany, New York, the Agency held a public hearing with respect to the Project and the proposed Financial Assistance (as hereinafter defined) being contemplated by the Agency (the “Public Hearing”) whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views; and

WHEREAS, it is contemplated that the Agency will (i) designate the Company as its agent for the purpose of undertaking the Project pursuant to an Agent and Financial Assistance Project Agreement (the “Agent Agreement”), (ii) negotiate and enter into a lease agreement (the “Lease Agreement”) and related leaseback agreement (the “Leaseback Agreement”) with the Company, pursuant to which the Agency will retain a leasehold interest in the Land, the Existing Improvements, the Improvements, the Equipment and personal property constituting the Facility; and (iii) provide Financial Assistance to the Company in the form of (a) an exemption benefit from all New York State and local sales and use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction, reconstruction and/or renovation, rehabilitation or equipping of the Facility, and (b) a partial abatement from real property taxes benefit through a ten (10) year term PILOT Agreement for the benefit of each municipality and school district having taxing jurisdiction over the Project, (collectively, the sales and use tax exemption benefit, and the partial abatement from real property taxes benefit, are hereinafter collectively referred to as the “Financial Assistance”); and

WHEREAS, pursuant to and in accordance with applicable provisions of the State Environmental Quality Review Act (“SEQR”), the Company has submitted to the Agency an Environmental Assessment Form (the “EAF”) with respect to the Project; and

WHEREAS, the Initial Project and the Project, collectively, and each and every component thereof, including the assisted living facility commercial space and residential space, the related health and wellness services space, the open space and infrastructure, is an essential element and integral to the success of the Agency’s stated purposes of promoting employment opportunities and preventing economic deterioration in and around the County of Cattaraugus

and is in furtherance of the Agency's purposes to encourage economic development, job opportunities and the health, general prosperity and economic welfare and to improve the prosperity and standard of living of the residents of the County of Cattaraugus; and

WHEREAS, the Project cannot be undertaken separate and apart from the Initial Project and relies upon a unified approach to address the needs of aging seniors living in a rural county and is anticipated, along with the Initial Project, to result in over 96 total jobs after construction, a net increase in tax revenue for the Town, County and School District from real property taxes, sales taxes, and other revenue sources, new senior housing accommodations allowing Cattaraugus County senior residents to not otherwise leave the area to reside in similar facilities situate in other Towns or Counties as part of a concerted effort to allow seniors to age in place; and

WHEREAS, pursuant to Article 18-A of the Act, the Agency desires to adopt a resolution describing the Project and the Financial Assistance that the Agency is contemplating with respect to the Project.

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

Section 1. The Company has presented an application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's application and any other correspondence submitted by the Company to the Agency, public hearing comments, if any, and Agency board member review of and recommendations related to the Project and its resolution to approve the Project subject to the terms and conditions as described herein, the Agency board member review of the Project's cost benefit ratio, the costs of incentives so applied for, the anticipated new tax revenues to be generated by the Project, as well as the Project's contemplated community benefits, and Agency board member review, discussion, and consideration of same, the Agency 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; and

(B) It is desirable and in the public interest for the Agency to appoint the Company as its agent for purposes of acquiring, constructing and/or renovating and equipping the Project; and

(C) The Agency has the authority to take the actions contemplated herein under the Act; and

(D) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing and/or retaining employment opportunities in Cattaraugus County, New York and otherwise furthering the purposes of the Agency as set forth in the Act; and

(E) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant

of the Project located within the State; and the Agency hereby finds that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries, and, to the extent occupants are relocating from one plant or facility to another in another area of the State, the Agency has complied with the Act's abandonment procedures; and

(F) The Agency has assessed all material information included in connection with the Application necessary to afford a reasonable basis for the decision by the Agency to provide Financial Assistance for the Project as described herein; and

(G) The Agency has prepared a written cost-benefit analysis satisfactorily identifying the extent to which the Project will create or retain permanent, private sector jobs, the estimated value of any tax exemption to be provided, the amount of private sector investment generated or likely to be generated by the Project, the likelihood of accomplishing the Project in a timely fashion, and the extent to which the Project will provide additional sources of revenue for municipalities and school districts, and any other public benefits that might occur as a result of the Project; and

(H) The Company has provided a written statement confirming that the Project as of the date of the Application is in substantial compliance with all provisions the Act; and

(I) The Project involves an "Unlisted Action" as said term is defined pursuant to 6 N.Y.C.R.R. Section 617.2(al) of the SEQRR regulations. The Agency has conducted an uncoordinated review of the Project pursuant to 6 N.Y.C.R.R. Section 617.6(b)(4)(i). Based upon a comprehensive and thorough review by the Agency of the EAF and related documents delivered by the Company to the Agency, the criteria set forth in 6 N.Y.C.R.R. Section 617.7 of the SEQRR regulations, and the additional representations made by the Company to the Agency in connection with the Project, the Agency hereby finds that the Project will not have a potential significant adverse environmental impact warranting the preparation of an environmental impact statement. The Agency thus issues a "negative declaration" as that term is defined pursuant 6 N.Y.C.R.R. Section 617.2(z); and

(J) The Project qualifies for Agency Financial Assistance as it meets the Agency's general uniform criteria for project evaluation, said criteria established by New York State and the Agency as required under General Municipal Law Section 859-a(5) as evidenced by the following:

- (i) Extent to which the Project will create or retain jobs: The Project will create 8 new FTE employee position.
- (ii) The estimated total value of Financial Assistance is approximately \$1,310,154 over the 10-year real property tax abatement benefit period.
- (iii) The estimated amount of private sector investment to be made by the Company is \$9,810,000.

- (iv) Likelihood of the Project being accomplished in a timely fashion: There is a high likelihood that the Project will be completed in a timely manner.
- (v) Extent of new revenue provided to local taxing jurisdictions: By establishing new senior living housing and accommodations, it is expected that the Project will result in new and increased real property tax and sales tax revenues.
- (vi) The extent to which the Project will create local construction jobs. The Company will utilize local construction contractors to the best of its ability

Section 2. The Agency hereby ratifies and confirms the findings and determinations as provided within its Initial Project Commercial Project Determination Resolution and extends the findings therein to include and cover the Project as so unified with the Initial Project and authorizes the undertaking of the Project, as a continuation of the Initial Project being an additional phase thereto and the provision of Financial Assistance to the Company as described herein.

Section 3. Subject to the Company executing an Agent Agreement and the delivery to the Agency of a binder, certificate or other evidence of insurance for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, construct and/or renovate and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the Company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; provided, however, the appointment of the Company as agent of the Agency, if utilized, shall expire one year from the date of this resolution (unless extended for good cause by the Chair, the Vice Chair, and/or the Executive Director).

A. Financial Assistance. With respect to the foregoing, and based upon the representations and warranties made by the Company in its application for Financial Assistance, the Agency hereby:

- (i) authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount estimated up to \$8,800,000, and, therefore, the value of the sales and use tax exemption benefits ("sales and use tax exemption benefits") authorized and approved by the Agency cannot exceed \$704,000, however, the Agency may consider any requests by the Company for increases to the amount of sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services; and

(ii) authorizes and approves that the real property tax abatement benefits ("PILOT benefits") to be provided over the term of the PILOT Agreement are estimated to be approximately \$605,154, resulting in estimated total PILOT payments of \$1,524,749 over the term of the PILOT Agreement.

B. Terms and Conditions of Financial Assistance. Pursuant to Section 875(3) of the New York General Municipal Law, and per the policies of the Agency, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any New York State and local sales and use tax exemption benefits, and/or partial abatements from real property taxes benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the New York State and local sales and use tax exemption benefits; (ii) the New York State and local sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the New York State and local sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; (iv) the Company has made a material false statement on its application for Financial Assistance; and/or (v) the New York State and local sales and use tax exemption benefits and/or the partial abatement from real property taxes benefits are taken in cases where the Company fails to comply with the Investment Commitment and the Employment Commitment, said commitments, as described below, being a material term or condition to use property or services in the manner approved by the Agency in connection with the Project.

As a condition precedent of receiving Financial Assistance, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must cooperate with the Agency in its efforts to recover or recapture any Financial Assistance, and promptly pay over any such amounts to the Agency that the Agency demands.

C. Commitments. As an additional condition precedent of receiving Financial Assistance, and as a material term or condition as approved by the Agency in connection with the Project, the Company covenants and agrees and understands that it must, subject to potential modification, termination and/or recapture of Financial Assistance for failure to meet and maintain the commitments and thresholds as described below, submit, on an annual basis or as otherwise indicated below through the conclusion of the later of two (2) years following either (i) the construction completion date, or (ii) the termination of the Agent Agreement, a certification as so required by the Agency, confirming:

- (i) Investment Commitment - the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$9,810,000, being the total project cost as stated in the Company's application for Financial Assistance.
- (ii) Employment Commitment – that that within two (2) years of Project completion, the Company has created FTE employment at the Facility equal to 8 FTE employees.

Section 4. Subject to the terms of this Resolution, the Chair, the Vice Chair, and/or the Executive Director, are hereby authorized, on behalf of the Agency, to negotiate, execute and deliver (A) an Agent Agreement, (B) the Lease Agreement whereby the Company leases the Project to the Agency, (C) the related Leaseback Agreement whereby the Agency leases the Project back to the Company, and (D) the PILOT Agreement and (E) related documents; provided, however, that (i) the rental payments under the Leaseback Agreement to the Company include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the PILOT Agreement are consistent with the Agency's Uniform Tax Exemption Policy, or procedures for deviation have been complied with accordingly.

Section 5. Subject to the terms of this Resolution, the Chair, the Vice Chair, and/or the Executive Director, are hereby authorized, on behalf of the Agency, to negotiate, execute and deliver any mortgage, assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by any lender identified by the Company (the "Lender") up to a maximum principal amount necessary to undertake the Project, acquire the Facility and/or finance or refinance acquisition and Project costs or equipment and other personal property and related transactional costs (hereinafter, with the Lease Agreement, Leaseback Agreement, and related documents, collectively called the "Agency Documents"); and, where appropriate, the Secretary or the Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chair, the Vice Chair, and/or the Executive Director of the Agency shall approve, the execution thereof by the Chair, the Vice Chair, and/or the Executive Director of the Agency to constitute conclusive evidence of such approval; provided in all events recourse against the Agency is limited to the Agency's interest in the Project.

Section 6. 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 and to negotiate, execute and deliver all such 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 resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 7. This resolution shall take effect immediately, and shall expire one (1) year from the date hereof unless extended for good cause by the Chair, the Vice Chair, and/or the Executive Director.

Dated: October 15, 2024