

**RESOLUTION INDUCING THE FINANCING OF A COMMERCIAL FACILITY TO BE DEVELOPED BY 105 ROCKAWAY REALTY LLC AS A STRAIGHT LEASE TRANSACTION AND AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF AGREEMENTS IN CONNECTION THEREWITH**

**WHEREAS**, New York City Industrial Development Agency (the “Agency”) is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Chapter 1082 of the 1974 Laws of New York, as amended (collectively, the “Act”), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

**WHEREAS**, 105 Rockaway Realty LLC (the “Company”), which was established as a joint venture of Rock Beach Realty Group, LLC and Healthcare Limited Partners, LLC, an affiliate of Community Healthcare Associates LLC, a developer of community-based health care facilities, has entered into negotiations with officials of the Agency in connection with a project consisting of the construction, furnishing and equipping of an approximately 55,450 square foot building and related parking facilities on an approximately 65,150 square foot parcel of land located at 105-02 to 105-42 Rockaway Beach Boulevard in Rockaway, New York (collectively, the “Facility”) to be operated by the Company, for lease by the Company to the Agency, and sublease by the Agency to the Company for subsequent sub-sublease by the Company to primarily not-for profit health care providers (together with the Facility, the “Project”); and

**WHEREAS**, the Company has submitted a Project Application (the “Application”) to the Agency to initiate the accomplishment of the above; and

**WHEREAS**, the Company has submitted to the Agency the 2014 Nassau Queens Performing Provider System (NPQ) Community Needs Assessment report and other supporting documentation which designated the Rockaways as an area lacking critical health care services (the “Health Study”); and

**WHEREAS**, the Application sets forth certain information with respect to the Company and the Project, including the following: that the construction, furnishing and equipping of the Facility will generate approximately 30 direct construction jobs and, at full occupancy, it is estimated that 100 full-time equivalent employees will be employed at the Facility and that, based upon the financial assistance provided through the Agency, the Company desires to proceed with the Project; and

**WHEREAS**, based upon the Application, the Agency hereby determines that Agency financial assistance and related benefits in the form of a straight-lease transaction between the Agency and the Company are necessary to induce the Company to establish and expand its operations in New York City (the “City”); and

**WHEREAS**, the Company may enter into loan commitments with commercial banks, institutional lenders or governmental entities lenders acceptable to the Company and the Agency (collectively, the “Lender”), which may provide funds to the Company in the form of one or more loans to finance a portion of the cost of the Project, and the Agency, the Company will grant one or more mortgages on the Facility to the Lender (collectively, the “Mortgage”), and

**WHEREAS**, in order to provide financial assistance to the Company for the Project, the Agency intends to grant the Company financial assistance through a straight-lease transaction in the form of sales tax exemptions and a mortgage recording tax exemption all pursuant to the Act;

**NOW, THEREFORE, NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:**

**Section 1.** The Agency hereby determines that the Project and the provision by the Agency of financial assistance to the Company pursuant to the Act in the form of a straight-lease transaction will promote and is authorized by and will be in furtherance of the policy of the State of New York as set forth in the Act and hereby authorizes the Company to proceed with the Project. The Agency further determines that:

(a) the Project shall not result in the removal of any facility or plant of the Company or any other occupant or user of the Facility from outside of the City (but within the State of New York) to within the City or in the abandonment of one or more facilities or plants of the Company or any other occupant or user of the Facility located within the State of New York (but outside of the City);

(b) no funds of the Agency shall be used in connection with the Project for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promotional materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given in connection with the Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State of New York;

(c) based upon the information contained in the Application, the Health Study and information supplied by the Company, the Agency hereby determines, in accordance with Section 862(2)(b) of the General Municipal Law of the State of New York, that the predominant purpose of the Project would be to make available certain health care services which would not, but for the Project, be reasonably accessible to the residents of the Rockaways because of a lack of reasonably accessible retail trade facilities offering such goods or services; and

(d) in accordance with Section 862(2)(c) of the General Municipal Law of the State of New York, the Agency determines after the public hearing required by Section 859-a of the General Municipal Law ML that undertaking the Project will serve the public purposes of Article 18-A of the General Municipal Law by increasing the overall number of permanent, private sector jobs in New York State.

**Section 2.** To accomplish the purposes of the Act and to provide financial assistance to the Company for the Project, a straight-lease transaction is hereby authorized subject to the provisions of this Resolution.

**Section 3.** The Agency hereby authorizes the Company to proceed with the Project as herein authorized. The Company is authorized to proceed with the Project on behalf of the Agency as set forth in this Resolution; provided, however, that it is acknowledged and agreed by the Company that (i) nominal leasehold title to or other interest of the Agency in the Facility shall be in the Agency for purposes of granting financial assistance, and (ii) the Company is hereby constituted the agents for the Agency solely for the purpose of effecting the Project, and the Agency shall have no personal liability for any such action taken by the Company for such purpose.

**Section 4.** The execution and delivery of a Company Lease Agreement from the Company leasing the Facility to the Agency, an Agency Lease Agreement from the Agency subleasing the Facility to the Company (collectively, the “Lease Agreement”), a Sales Tax Letter from the Agency to the Company and the Mortgage (each document referenced in this Section 4 being, collectively, the “Agency Documents”), each being substantively the same as approved by the Agency for prior transactions, is hereby authorized. The Chairman, Vice Chairman, Executive Director, Deputy Executive Director and General Counsel of the Agency are each hereby authorized to execute, acknowledge and deliver each such Agency Document. The execution and delivery of each such agreement by one of said officers shall be conclusive evidence of due authorization and approval.

**Section 5.** The officers of the Agency and other appropriate officials of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Company to assist in the Project.

**Section 6.** All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution and contained in the Agency Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this Resolution or the Agency Documents shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

**Section 7.** No covenant, stipulation, obligation or agreement herein contained or contained in the Agency Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member, director, officer, agent or employee of the Agency in his or her individual capacity and neither the members nor the directors of the Agency nor any officer executing any Agency Document shall be liable personally for any amounts payable thereunder or arising from claims thereon or be subject to any personal liability or accountability by reason of the execution and delivery or acceptance thereof.

**Section 8.** The officers of the Agency are hereby designated the authorized representatives of the Agency, and each of them is hereby authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution. The Agency recognizes that due to the unusual complexities of the transaction it may become necessary that certain of the terms approved hereby may require modifications which will not affect the intent and substance of the authorizations and approvals by the Agency herein. The Agency hereby authorizes the Chairman, Vice Chairman, Executive Director, Deputy Executive Director or General Counsel to approve modifications to the terms approved hereby which do not affect the intent and substance of this Resolution. The approval of such modifications shall be evidenced by a certificate of determination of an Agency officer.

**Section 9.** All fees and expenses incurred by the Agency with respect to the Project shall be paid by the Company. By acceptance hereof, the Company agrees to pay such fees and expenses and further agrees to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project.

**Section 10.** This Resolution is subject to approval based on an investigative report with respect to the Company. The provisions of this Resolution shall continue to be effective for one year from the date hereof, whereupon the Agency may, at its option, terminate the effectiveness of this Resolution (except with respect to the matters contained in Section 9 hereof).

**Section 11.** The Agency, as lead agency, is issuing this determination pursuant to the State Environmental Quality Review Act (“SEQRA”) (Article 8 of the Environmental Conservation Law) and implementing regulations contained in 6 N.Y.C.R.R. Part 617. This determination is based upon the Agency’s review of information provided by the Company and such other information as the Agency has deemed necessary and appropriate to make this determination.

The Agency hereby determines that the Project, an unlisted action, pursuant to SEQRA and the implementing regulations, will not have a significant effect on the environment and that a Draft Environmental Impact Statement will not be prepared for the Project. The reasons supporting this determination with respect to the Project are as follows:

(a) The Project will not result in a substantial adverse change in existing traffic, air quality, or noise levels. The site is adjacent to public transit and will accommodate all required parking on site.

(b) The Project will not result in significant adverse impacts on cultural, archaeological, architectural, or aesthetic resources or the existing neighborhood.

(c) The Project will not result in significant adverse impacts to natural resources, critical habitats, or water quality. The Project site is located within the City’s coastal zone boundary. Having reviewed the materials submitted by the Company regarding this action, the Agency finds that the proposed action is consistent with the policies comprising New York City’s Waterfront Revitalization Program (the “WRP”) and that the proposed action would not hinder the achievement of the WRP.

(d) The Project will not result in a change in existing zoning or land use. The proposed building would be constructed as-of-right under existing zoning and would comply with all relevant standards and regulations related to construction within the flood zone.

(e) The Project site is subject to an e-designation (E-215), placed on the site as part of the 2008 Rockaway Neighborhood Rezoning. The Company has been in coordination with the New York City Office of Environmental Remediation (“NYCOER”) and on February 12, 2016 NYCOER issued a notice to proceed for the construction of the Project. NYCOER has certified that the Company has filed a hazardous materials remedial action work plan and an air quality remedial action plan and has prepared a construction health and safety plan for the construction of the Project. With the implementation of these measures, the construction of the proposed Project would not result in any impacts related to hazardous materials.

**Section 12.** In connection with the Project, the Company covenants and agrees to comply, and to cause each of their respective contractors, subcontractors, agents, persons or entities to comply, with the requirements of General Municipal Law Sections 875(1) and (3), as such provisions may be amended from time to time.

(a) The Company acknowledges and agrees that pursuant to General Municipal Law Section 875(3) the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Company New York State sales or use tax savings taken or purported to be taken by the

Company, and any agent or any other person or entity acting on behalf of the Company, to which the Company is not entitled or which are in excess of the maximum sales or use tax exemption amount authorized in Section 13 of this Resolution or which are for property or services not authorized or taken in cases where the Company, or any agent or any other person or entity acting on behalf of the Company, failed to comply with a material term or condition to use property or services in the manner required by this Resolution or any agreements entered into among the Agency, the Company and/or any agent or any other person or entity acting on behalf of the Company. The Company shall, and shall require each agent and any other person or entity acting on behalf of the Company, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such New York State sales or use tax savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of the New York State Department of Taxation and Finance (the "Commissioner") to assess and determine New York State sales or use taxes due from the Company under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

(b) The Company is hereby notified (provided that such notification is not a covenant or obligation and does not create a duty on the part of the Agency to the Company or any other party) that the Agency is subject to certain requirements under the General Municipal Law, including the following:

(i) In accordance with General Municipal Law Section 875(3)(c), if the Agency recovers, recaptures, receives, or otherwise obtains, any amount of New York State sales or use tax savings from the Company, any agent or other person or entity, the Agency shall, within thirty days of coming into possession of such amount, remit it to the Commissioner, together with such information and report that the Commissioner deems necessary to administer payment over of such amount. The Agency shall join the Commissioner as a party in any action or proceeding that the Agency commences to recover, recapture, obtain, or otherwise seek the return of, New York State sales or use tax savings from the Company or any other agent, person or entity.

(ii) In accordance with General Municipal Law Section 875(3)(d), the Agency shall prepare an annual compliance report detailing its terms and conditions described in General Municipal Law Section 875(3)(a) and its activities and efforts to recover, recapture, receive, or otherwise obtain State sales or user tax savings described in General Municipal Law Section 875(3)(b), together with such other information as the Commissioner and the New York State Commissioner of Economic Development may require. Such report shall be filed with the Commissioner, the Director of the Division of the Budget of The State of New York, the New York State Commissioner of Economic Development, the New York State Comptroller, the Council of the City of New York, and may be included with the annual financial statement required by General Municipal Law Section 859(1)(b). Such report shall be filed regardless of whether the Agency is required to file such financial statement described by General Municipal Law Section 859(1)(b). The failure to file or substantially complete such report shall be deemed to be the failure to file or substantially complete the statement required by such General Municipal Law Section 859(1)(b), and the consequences shall be the same as provided in General Municipal Law Section 859(1)(e).

(c) The foregoing requirements of this Section 12 shall apply to any amounts of New York State sales or use tax savings that the Agency recovers, recaptures, receives, or otherwise obtains, regardless of whether the Agency, the Company or any agent or other person or entity acting on behalf of the Company characterizes such benefits recovered, recaptured, received, or otherwise obtained, as a penalty or liquidated or contract damages or otherwise. The foregoing

requirements shall also apply to any interest or penalty that the Agency imposes on any such amounts or that are imposed on such amounts by operation of law or by judicial order or otherwise. Any such amounts or payments that the Agency recovers, recaptures, receives, or otherwise obtains, together with any interest or penalties thereon, shall be deemed to be New York State sales or use taxes and the Agency shall receive any such amounts or payments, whether as a result of court action or otherwise, as trustee for and on account of New York State.

**Section 13.** In connection with the Project, the Agency intends to grant the Company sales and use tax exemptions in an amount not to exceed \$665,716 and mortgage recording tax exemption.

**Section 14.** This Resolution shall take effect immediately.

Adopted: November 10, 2016

Accepted: \_\_\_\_\_, 2016

**105 ROCKAWAY REALTY LLC**

By: \_\_\_\_\_  
Name:  
Title: