

SECOND AMENDED RESOLUTION OF THE TOWN OF LANCASTER INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING TERRACE BLVD RK, LLC (THE "LESSEE") TO RENOVATE A 8,000 SQUARE FOOT VACANT MEDICAL BUILDING ON A .5 ACRE PARCEL OF LAND OWNED BY THE LESSEE LOCATED AT 571 TERRACE BOULEVARD, IN THE VILLAGE OF DEPEW AND TOWN OF LANCASTER, AS AGENT FOR THE AGENCY FOR LEASE TO THE AGENCY AND SUBSEQUENT LEASEBACK TO THE LESSEE FOR SUB-SUBLEASE TO LAKESHORE PRIMARY CARE ASSOCIATES LLP (THE "SUBLESSEE") FOR A MEDICAL OFFICE, AND TO TAKE OTHER PRELIMINARY ACTION.

WHEREAS, this Resolution amends and supersedes the Inducement Resolution adopted by the Agency on January 20, 2021 and on May 4, 2021, which is now being amended to reflect the additional benefits requested in a third application submitted by the Lessee and Sublessee dated June 11, 2021.

WHEREAS, TERRACE BLVD RK, LLC (the "Lessee") has continued negotiations with the officials of the Town of Lancaster Industrial Development Agency (the "Agency") with respect to the renovation and equipping by the Agency through a lease with mortgage or lease only transaction of a vacant 8,000 square foot medical building on a .5 acre parcel of land located at 571 Terrace Boulevard, in the Village of Depew and the Town of Lancaster, by the Lessee, as Agent for the Agency, for lease by the Lessee to the Agency for leaseback by the Agency to the Lessee for sub-sublease to Lakeshore Primary Care Associates, LLP, (the "Sublessee") who will be the majority occupant of the facility, all for the provision of a medical office Facility (the "Project"); and

WHEREAS, the Lessee and Sublessee have submitted an Eligibility Questionnaire and other materials and information to the Agency to initiate the accomplishment of the above; which was induced by the Agency on January 20, 2021; and thereafter the Lessee and Sublessee submitted an amended Eligibility Questionnaire in May, 2021; and thereafter the Lessee and Sublessee submitted a second amended Eligibility Questionnaire in June, 2021 (collectively hereinafter the "Eligibility Questionnaire") to the Agency seeking additional benefits; and

WHEREAS, the Eligibility Questionnaire sets forth certain information with respect to the Lessee, including the following: that the Lessee desires Agency to construct a building to allow for the expansion of the Sublessee which is necessary to support the growth of the Sublessee and the expansion of its operations into Depew/Lancaster, New York; that if the assistance is granted, the Sublessee anticipates hiring 5 FTE at the Project location in the Town of Lancaster within two years following the completion of the Project; that the Project will result in substantial capital investment; that there will be no adverse disruption of existing employment at facilities of a similar nature in the Town of Lancaster; if Agency financing or other assistance is disapproved, the Lessee would have to scale back the Project negatively impacting future growth in New York; and that, therefore, Agency financing or other assistance is necessary to encourage the Lessee and the Sublessee to proceed with the Project in the Town of Lancaster; and

WHEREAS, the Agency is not required to hold a public hearing on the Project as the benefits are less than \$100,000.00 pursuant to Section 859-A of the General Municipal Law; and

WHEREAS, the Agency desires to further encourage the Lessee and the Sublessee with respect to the acquisition and renovation of the Project, if by so doing it is able to induce the Lessee and the Sublessee to proceed with the Project in the Town of Lancaster; and

WHEREAS, the Project should not be delayed by the requirement of determining the details of a lease with mortgage if financing is utilized, which cannot be immediately accomplished, and the Lessee and the Sublessee have agreed to extend its own funds with respect to the Project, subject to reimbursement from the proceeds of the notes, if applicable;

NOW, THEREFORE, THE TOWN OF LANCASTER INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby determines that the acquisition, construction and installation of the Project and the financing or other assistance thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act. The Agency further hereby determines, on the basis of the Eligibility Questionnaire and supplemental information furnished by the Lessee, as follows: (a) it would not have financed or otherwise assisted the Project except to induce the location of the Project in the area to be served by the Project as there is a demonstrable need for the Project; (b) that Agency financing and/or other assistance is reasonably necessary to promote economic development and to induce the Lessee and the Sublessee to proceed with the Project; (c) there will be no substantial adverse disruption of existing employment or facilities of a similar nature to the Project in such area; (d) the Project will allow the Sublessee to expand into the Town of Lancaster; (e) the Project will create additional employment and provide substantial capital investment; The Agency further determines, on the basis of the Lessee's Eligibility Questionnaire that; (f) the Project as represented is reasonably necessary to provide the purposes of the Act, subject to verification and confirmation of such representations prior to the into a lease with mortgage or lease only transaction and (g) the Project is an integral part of the Lessee's and Sublessee's plan to proceed with the Project in the Town of Lancaster.

Section 2. The Agency hereby authorizes the Lessee and the Sublessee to proceed with the Project as herein authorized, which Project will be financed through a lease with mortgage or without financing with a lease only transaction.

Section 3. The Agency will undertake, as soon as it is furnished with sufficient information as to the details of a mortgage enter into a lease with mortgage or if it is determined that financing is not necessary a lease only transaction.

Section 4. The Chairman, Vice Chairman, Executive Director, Secretary and Assistant Secretary 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 Lessee to assist in the acquisition and construction of the Project.

Section 5. The Lessee is authorized to on the already owned .5 +/- acre parcel of land located at 571 Terrace Boulevard, commence the renovation of an approximately 8,000 square foot vacant building thereon and authorizes the Lessee to proceed with the acquisition and installation of machinery, equipment, furnishings and fixtures required in connection therewith at combined cost not to exceed **\$1,892,335.00**, subject to the obtaining of all required approvals from the Village of Depew, Town of Lancaster and other involved governmental agencies, and to advance such funds as may be necessary to accomplish such purposes. The Agency is hereby authorized to enter into such agreements with the Lessee, as the Chairman, Vice Chairman, Executive Director or other officer may deem necessary in order to accomplish the above.

Section 6. The Sublessee is authorized to make purchases of goods and services relating to the Project that would otherwise be subject to New York State and local sales and use tax up to **\$150,000.00** which may result in a New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$13,125.00**. The Agency may consider any requests by the Sublessee for increases in the amount of sales and use tax benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services necessary for the completion of the Project.

The Lessee is authorized to make purchases of goods and services relating to the Project that would otherwise be subject to New York State and local sales and use tax up to **\$456,900.00** which may result in a New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$39,980.00**. The Agency may consider any requests by the Lessee for increases in the amount of sales and use tax benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services necessary for the completion of the Project.

Section 7. Any such action heretofore taken by the Lessee and Sublessee in initiating the construction and renovation of the Project is hereby ratified, confirmed and approved.

Section 8. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Lessee. By acceptance hereof, the Lessee agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, officers, 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 and the financing thereof.

Section 9. This resolution is subject to **three year payment in lieu of taxes freeze at an assessment of \$450,000.00** for municipal services policy of the Agency on the building and thereafter make a full payment in lieu of taxes. The provisions of this resolution shall continue to be effective until one year from the date hereof whereupon this resolution shall cease to be effective (except with respect to matters contained in Section 6 hereof) unless prior to the expiration of such one year (a) the Agency shall by subsequent resolution extend the effective date of this resolution, or (b) the Agency shall enter into a lease with mortgage or lease only transaction with the Lessee.

Section 10. The provisions of this resolution shall continue to be effective until one year from the date hereof whereupon this resolution shall cease to be effective (except with respect to matters contained in Section 7 hereof) unless prior to the expiration of such period (a) the Agency shall by subsequent resolution extend the effective date of this resolution or (b) the Agency enters into a lease with mortgage or lease only transaction or (c) the Lessee shall continue to take affirmative steps to secure financing for the Project.

Section 11. The execution and delivery of a Project Agreement, Lease to Agency and a Leaseback Agreement between the Agency and the Lessee, each being substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman, Executive Director or Assistant Secretary is hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and 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 execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 12. The execution and delivery of a mortgage from the Agency and the Lessee to a lender selected by the Lessee and approved by the Chairman, Vice Chairman, Executive Director or Assistant Secretary in an amount not to exceed **\$1,096,000.00** and other ancillary documents, if required, which mortgage and ancillary documents shall be substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman, Executive Director or Assistant Secretary is hereby authorized. The mortgage tax benefit shall not exceed **\$8,220.00**. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and 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 execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

The execution and delivery of a Subordination Agreement of the Agency's interests to an SBA mortgage from the Lessee to a SBA lender selected by the Lessee and approved by the Chairman, Vice Chairman, Executive Director or Assistant Secretary in an amount not to exceed **\$311,000.00** and other ancillary documents, if required, which subordination and ancillary documents shall be substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman, Executive Director or Assistant Secretary is hereby authorized. The SBA mortgage is exempt from mortgage tax in its own and no IDA benefits are needed in regard to this mortgage. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and 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 execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 13. The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status,

fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Lessee's purposes or needs. The Lessee and Sublessee are satisfied that the Project is suitable and fit for their purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused, and the Lessee and Sublessee hereby indemnify and hold the Agency harmless from any such loss, damage or expense.

Section 14. The provisions of the new Section 875 of the General Municipal Law which became effective on March 28, 2013 shall apply to this Project. In the event it is determined that an agent, project operator or other person or entity obtained state sales and use exemptions benefits for which they were not entitled or which were in excess of the amount authorized or which are for property or services not authorized or taken in cases where such Lessee, its agents, project operators or other person or entity failed to comply with a material term or condition to use property or services in the manner required by Agreements entered into between the Agency and the applicant with respect to the Project, the agent, project operator or other person or entity shall comply with all the provisions of Section 875 and pay back to the Agency the amount of the state sales and use tax exemptions benefits that they obtained but were not entitled to.

Section 15. Should the Agency's participation in this Project be challenged by any party, in the courts or otherwise, the Lessee and Sublessee shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from such challenge, including, but not limited to, the fees and disbursements of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Lessee or Sublessee hereunder or otherwise.

Section 16. This resolution is subject to compliance with all local building and zoning requirements.

Section 17. The Village of Depew acted as lead agency for the construction of this Project and has issued a negative declaration.

Section 18. The provisions of the Town of Lancaster Industrial Development Agency Policy for Recapture and/or Termination or Modification of Financial Assistance are applicable to this Project.

ADOPTED: July 13, 2021

ACCEPTED:

TERRACE BLVD RK, LLC

as Lessee

By _____

Name:

Title:

LAKESHORE PRIMARY CARE ASSOCIATES, LLP
as Sublessee

By _____

Name:

Title: