



Putnam County Industrial Development Agency

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Patterson, NY 12563

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RESOLUTION NO. 2022-1-27-1

PUTNAM COUNTY INDUSTRIAL DEVELOPMENT AGENCY

**INDUCEMENT RESOLUTION
REGARDING
THE BRAEMAR AT CARMEL PROJECT**

WHEREAS, the New York State Industrial Development Agency Act and the Putnam County Industrial Development Agency's enabling legislation, respectively 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 399 of the 1987 Laws of New York (collectively the "Act"), authorize the Putnam County Industrial Development Agency (the "Agency") (1) to promote the economic welfare, recreational opportunities and prosperity of its inhabitants, and (2) to promote, attract, encourage and develop recreation, economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic deterioration; and

WHEREAS, Fishkill Realty GP LLC and its managing member, FilBen Group LLC (collectively, the "Applicant") has entered into negotiations with officials of the Agency requesting assistance in the form of property tax relief and corresponding PILOT payment for real property taxes in connection with the acquisition, construction, renovation, furnishing and equipping of a facility located on an approximately 19.89+/- acre parcel of land at 49 Seminary Hill Road, in the Town of Carmel, New York, for a 152 bed assisted living facility for lease to the Agency by the Applicant and for sublease by the Agency to the Applicant, and having an approximate total project cost of \$46,546,000 (the "Project"), as more fully described in an application (the "Application") prepared by the Applicant dated January 21, 2022; and

WHEREAS, the Application provides that the Project will both create local construction jobs and up to 76 permanent jobs at the facility, approximately 63 of which will be full time and approximately 13 of which shall be part-time and approximately 57 will be from the Labor Market Area; and

WHEREAS, the Applicant has also requested exemptions from sales tax on materials and equipment purchased and/or leased for development of the Project, and on mortgage recording tax to the extent available under applicable law; and

WHEREAS, the Planning Board of the Town of Carmel (the "Planning Board"), as lead agency, has issued its 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, that the Project is an Unlisted Action and that the Project will not have a significant effect on the environment and has adopted on October 30, 2019, a Negative Declaration (the "Negative Declaration") to such effect; 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 Applicant is necessary to induce the Applicant to proceed with the Project; and

WHEREAS, in order to provide financial assistance to the Applicant for the Project, the Agency intends to grant the Applicant financial assistance through a Straight-Lease Transaction in the form of real property tax abatements and exemptions, and sales tax exemptions and exemptions on mortgage recording tax to the extent available under applicable law, all pursuant to the Act;

NOW, THEREFORE, the Putnam County Industrial Development Agency hereby resolves as follows:

Section I. Qualification of the Project. The Agency hereby determines that:

(i) the Project will result in capital investment in the County, create construction jobs and maintain existing jobs within Putnam County (the "County"), and advance the job opportunities, health, general prosperity, and economic welfare of the people of the County and improve their prosperity and standard of living and that, with respect to the Project, the Agency is carrying out the purposes for which it was created;

(ii) the Project and the provision by the Agency of financial assistance to the Applicant 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 Applicant to proceed with the Project;

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

(iv) no funds of the Agency shall be used in connection with the 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; and

(v) not more than one-third of the total Project cost is in respect of facilities or property primarily used in making retail sales of goods or services to customers who personally visit such facilities within the meaning of Section 862 of the New York General Municipal Law.

Section 2. SEQRA. The Agency has reviewed the Negative Declaration and related proceedings of the Planning Board and pursuant thereto, hereby adopts such Negative Declaration

and related proceedings, which determined that (i) the Project is an Unlisted Action pursuant to SEQRA and (ii) that the Project will not have a significant effect on the environment.

Section 3. Authorization to Proceed. The Applicant is authorized to undertake and proceed with the Project. Any action heretofore taken by the Applicant in initiating the Project is hereby ratified, confirmed and approved.

Section 4. Assistance of Applicant. The members, representatives and agents of the Agency are hereby authorized and directed to take all actions deemed appropriate to assist the Applicant in commencing and carrying out the Project and to provide an abatement of real property taxes through a payment in lieu of taxes arrangement.

Section 5. No Recourse or Personal Liability. No provision of this Resolution or any other related document shall constitute or give rise to a charge upon the general credit of the Agency or impose upon the Agency a pecuniary liability. No recourse shall be had for the performance of any obligation in connection therewith against any member, representative, employee or agent of the Agency, nor is or shall any such person become personally liable for any such performance.

Section 6. Fees and Expenses of Agency. Any expense incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Applicant. By acceptance hereof, the Applicant agrees to pay such expenses and further agrees to indemnify the Agency, its members, representatives, 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 with respect to the Project and the financing thereof. Within ten days following the adoption of this Resolution, the Applicant shall deliver to the Agency a certified or official bank check (or a federal funds wire transfer) in the amount of \$5,000.00, which amount shall be deposited by the Agency in a special account (the "Braemar Project Expense Account") separate and apart from all other funds of the Agency.

Amounts in the Braemar Project Expense Account shall be applied by the Agency to pay expenses of the Agency relating to the Project, including fees and expenses of the Agency's outside counsel, Hogan & Rossi pursuant to Retainer Agreement dated January 19, 2022. All interest on such deposit shall be credited to said account. If at any time the balance in the Braemar Project Expense Account is below \$5,000.00, the Agency may direct the Applicant to deliver additional funds to the Agency for deposit in said account, sufficient to cover anticipated costs of the Agency and the payments required pursuant to the Retainer Agreement, and the Applicant shall deliver such additional funds to the Agency within ten days following the Agency's direction. The Agency shall not be required to incur any costs in furtherance of the Project if the Braemar Project Expense Account is not funded or replenished in accordance with this Section. If this Resolution expires in accordance with Section 11 hereof or the Project is otherwise abandoned or terminated, and there are remaining unpaid fees or expenses of the Agency relating to the Project, the Agency shall apply funds on deposit in the Braemar Project Expense Account to meet such fees and expenses and, to the extent of any excess in such account, pay any balance to the Applicant.

Section 7. No Representations or Warranties. 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 Applicant's purposes or needs. 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 Applicant, by acceptance hereof, agrees to indemnify and hold the Agency and each member, representative, agent and employee thereof harmless from any such loss, damage or expense.

Section 8. Compliance With Laws. Any undertaking of the Agency set forth herein is expressly conditioned upon full compliance of the Applicant and the Project with all applicable laws, rules and regulations, and the Applicant shall be required to provide satisfactory evidence of the same to the Agency prior to the execution of any document in connection with the Project.

Section 9. Conditions. The undertakings of the Agency set forth herein are subject to and conditioned upon (a) full compliance with the SEQRA, (b) publication of notice and holding of a public hearing with respect to the Project and the proposed financial assistance as required by the Act, (c) execution by the Applicant of a Payment in Lieu of Taxes Agreement and provision of satisfactory security for payments due thereunder, (d) provision of full indemnities by an entity and in form and substance acceptable to the Agency, and (e) adoption by the Agency of an authorizing resolution for the Project following a public hearing for the Project and the completion of a cost-benefit analysis for the Project as required by the Act.

Section 10. Effect of Resolution. In adopting this Resolution, notwithstanding any other provision hereof, the Agency assumes no responsibility for obtaining or assisting the Applicant in obtaining financing for the Project. This Resolution is not a contract between the Agency and the Applicant and it shall not be construed as such.

Section 11. Expiration Date. This Resolution may be deemed by the Agency to have expired at any time after twelve (12) months from the date hereof, unless (a) extended by the Applicant with the written consent of the Agency and by payment by the Applicant of any applicable Agency extension fee, or (b) the Straight-Lease Transaction has closed. Any extension or renewal will be for an additional twelve-month period.

Section 12. Effective Date. The resolution shall take effect immediately upon its passage.

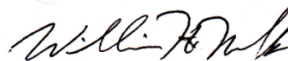
January 27, 2022
MEETING DATE

MOTION TO APPROVE RESOLUTION No. 2022-1-27 - 1

Motion: Ed Cooke ; Second: Mike Karlsson

Vote on Resolution:

<u>Board Member</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
William Nulk	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Joseph Downey	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Michael Karlsson	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Edward Cooke	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Steve Baranowski	<u> </u>	<u> </u>	<u> </u>	<u>✓</u> (resigned)
Serina Howes	<u> </u>	<u> </u>	<u> </u>	<u>✓</u> (resigned)



William H. Nulk

By accepting this Resolution, Fishkill Realty GP LLC and FilBen Group LLC agree to the terms and conditions set forth herein.

Accepted: _____, 2022

FISHKILL REALTY GP LLC

FILBEN GROUP LLC

By: _____

By: _____

Name:

Name:

Title:

Title: