

APPROVING THE TERMS AND CONDITIONS OF A CERTAIN FINANCIAL ASSISTANCE AGREEMENT TO BE ENTERED INTO BETWEEN ULSTER COUNTY INDUSTRIAL DEVELOPMENT AGENCY AND FIRST COLUMBIA BENEDICTINE, LLC IN CONNECTION WITH THE FIRST COLUMBIA BENEDICTINE, LLC PROJECT

The Economic Development / Education, Tourism and Cultural Affairs Committee (Chairman Harris and Legislators Cummings, Felicello, Roberti, Bartels, Loughran and Zimet) offers the following:

WHEREAS, by resolution adopted by the County Legislature of Ulster County (the "County Legislature") on September 11, 2003, the County Legislature consented to a payment in lieu of tax agreement by and between Ulster County Industrial Development Agency (the "Agency") and First Columbia Benedictine, LLC (the "Company") in connection with a project to be undertaken by the Agency consisting of the following: (A) (1) the acquisition of an interest in a parcel of real estate containing approximately 0.4 acres of land located between buildings located at 105 Mary's Avenue and 117 Mary's Avenue, Kingston, Ulster County, New York (the "Land"), (2) the construction on the Land of a new two story building to contain approximately 26,000 square feet of space (the "Facility"), and (3) the acquisition and installation thereon and therein of machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment being hereinafter collectively referred to as the "Project Facility"), all of the forgoing to constitute an outpatient radiation cancer treatment center and support areas and other related uses and activities to be owned by the Company and to be leased to Benedictine Hospital; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing, including potential exemptions from certain sales taxes, mortgage recording taxes, deed transfer taxes, and real property taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) of the Project Facility to the Company pursuant to a lease agreement dated as of November 1, 2003 (the "Lease Agreement"); and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company executed and delivered to the Agency (1) a certain lease to agency dated as of November 1, 2003 (the "Underlying Lease") by and between the Company, as landlord and the Agency, as tenant pursuant to which the Company leased to the Agency the Land and all improvements now or hereafter located on the land (collectively, the "Premises") for a lease term ending on December 31, 2029, and (2) a bill of sale dated as of November 1, 2003 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the

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Company in the Equipment, (B) the Company and the Agency executed and delivered a payment in lieu of tax agreement dated as of November 1, 2003 (the “Payment in Lieu of Tax Agreement” and sometimes also referred to as the “Financial Assistance Agreement”) by and between the Agency and the Company and consented to by the County Legislature, pursuant to which the Company agreed to pay certain payments in lieu of taxes with respect to the Project Facility, (C) the Agency filed with the assessor and mailed to the chief executive officer of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the “Real Property Tax Exemption Form”) relating to the Project Facility and the Payment in Lieu of Tax Agreement, (D) the Agency executed and delivered to the Company a sales tax exemption letter (the “Sales Tax Exemption Letter”) to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (E) the Agency filed with the New York State Department of Taxation and Finance the form entitled “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (the form required to be filed pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report”); and

WHEREAS, by a letter dated January 16, 2004 (the “January 16, 2004 Letter”) from the Company to the Agency, the Company stated that it would construct an additional story to the Facility (the “Additional Story); and

WHEREAS, the Company indicated that the projected increase in project costs for the addition of the third floor to the Facility is approximately \$1,518,069; and

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WHEREAS, pursuant to the January 16, 2004 Letter, the Company requested that the Agency (A) modify the description of the Project Facility to include the construction of the additional story, and thereby the Project Facility will contain in the aggregate approximately 36,501 square feet, (B) provide an exemption from sales tax in the approximate amount of \$42,505 and (C) provide a mortgage recording tax exemption in the approximate amount of \$15,180 for the additional project costs at the time the loan converts from construction financing to permanent financing (collectively, and as supplementing the Project, the “Modified Project”) and

WHEREAS, by a letter dated January 27, 2004 (the “January 27, 2004 Letter”)(the January 27, 2004 Letter and the January 16, 2004 Letter being hereinafter collectively referred to as the “Company Letters”) the Company represented to the Agency that (A) the entirety of the Modified Project will be leased to Benedictine Hospital, a not-for-profit entity, (B) the tenants of the Modified Project (the “Tenants”) that are not employed by Benedictine Hospital will consist of entities either using the space as an additional office for an expanding medical practice or relocating to the space after having lost their prior lease in Kingston, New York, and (C) any portions of the Modified Project that are occupied by the Tenants will be subject to rates of full real property taxation under the Payment in Lieu of Tax Agreement; and

WHEREAS, on February 4, 2004, the members of the Agency adopted a resolution (the “Project Modification Resolution”) whereby the Agency authorized the amending of the description of the Project Facility to reflect the changes set forth in the Company Letters in the Underlying Lease Agreement, the Lease Agreement, the Payment of Lieu of Tax Agreement, the Mortgage, the Specific Security Agreement, and the Assignment of Rents (capitalized terms not otherwise defined herein are defined in the Lease Agreement), and (B) various certificates relating to the Project (hereinafter collectively referred to as the “Amended Agency Documents”); and

WHEREAS, the Agency desires that the County, the City of Kingston and the Kingston City School District, as the affected tax jurisdictions with respect to the Project Facility, consent to the amendment of the Payment in Lieu of Tax Agreement to reflect the Modified Project.

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RESOLVED by the County Legislature of Ulster County as follows:

Section 1. For the purpose of satisfying the requirements contained in Section 8(D) of the Agency's Uniform Tax Exemption Policy, the County Legislature of Ulster County hereby approves the amendment of the Project description in the Payment in Lieu of Tax Agreement to reflect the Modified Project. The description of the Modified Project to be contained in the Payment in Lieu of Tax Agreement is substantially described in Schedule A attached hereto.

The payment terms previously approved by the County Legislature have not been altered, and the only amendment to the Payment in Lieu of Tax Agreement is to modify the description of the Facility to include the Additional Story.

Section 2. The Chairman of the County Legislature is hereby authorized, on behalf of the County, to consent to the amendments to the Payment in Lieu of Tax Agreement, said amendments to apply to the Payment in Lieu of Tax Agreement substantially in the form thereof presented at this meeting with such changes, variations, omissions and insertions as the Chairman of the County Legislature shall approve, the execution thereof by the Chairman of the County Legislature to constitute conclusive evidence of such approval.

Section 3. The officers, employees and agents of the County are hereby authorized and directed for and in the name and on behalf of the County to do all acts and things required or provided for by the applicable provisions of this Resolution in order to ensure compliance with such provisions as they relate to the consent to the amendments to the Payment in Lieu of Tax Agreement, and to execute and deliver all such additional certificates, instruments and documents, 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 resolution.

Section 4. This resolution shall take effect immediately.

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ADOPTED BY THE FOLLOWING VOTE:

AYES: 33 NOES: 0

FINANICAL IMPACT:  
NONE

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