

Authorizing The Required Steps For The Golden Hill Health Care Center Transfer And Related Financial Procedures

Legislators Harris and Lomita offer the following:

WHEREAS, it is the policy of the State of New York to promote the economic welfare and prosperity of its inhabitants and to actively promote, attract, encourage and develop economically sound commerce and industry, and

WHEREAS, the County of Ulster has the responsibility and burden to promote the health, safety and general welfare of the residents of the County by, among other things, preventing unemployment and economic deterioration, increasing and maintaining employment opportunities, and attracting and sustaining economically sound commerce, and

WHEREAS, it is essential for the County to support the operation of not-for-profit corporations within the County to increase the employment opportunities for residents of the County and, in furtherance of that objective, the ability to provide financing through the issuance of tax exempt and taxable bonds for projects of not-for-profit corporations is essential to the continued development, construction, improvement, and operation of projects by not-for-profit corporations, and

WHEREAS, the County of Ulster owns and operates the Golden Hill Health Care Center, a 280-bed nursing facility located in the City of Kingston, County of Ulster, State of New York, and

WHEREAS, the County Legislature has examined the operations at the Golden Hill Health Care Center in order to determine the feasibility of continuing its operation as a County facility including, but not limited to, business impediments unique to municipalities such as rising municipal labor and employee benefit costs and the unreliability of continued intergovernmental transfer ("IGT") payments and the cost of providing for major infrastructure improvements and/or reconstruction, among other impediments, and

WHEREAS, the County Legislature desires to ensure the continued operation of the Golden Hill Health Care Center as well as maintaining the 280 beds within Ulster County, therefore the County desires to examine the possible eventual disposition of the Golden Hill Health Care Center to a private entity to facilitate redevelopment of the facility to provide improved services in a modern, efficient, and economical setting, and

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WHEREAS, Section 1411 of the Not-For-Profit Corporation Law of the State of New York (the "LDC Act") authorizes the establishment of not-for-profit local development corporations operated exclusively for the charitable or public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, instructing or training individuals to improve or develop their capabilities for such jobs, carrying on scientific research for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area, and lessening the burdens of government and acting in the public interest, and

WHEREAS, the LDC Act further authorizes the legislative body of a county, by resolution, to determine that certain real property of the County not required for use by the County may be sold or leased to a not-for-profit local development corporation for purposes that include lessening the burdens of government and acting in the public interest, and

WHEREAS, Section 1411(d) of the LDC Act further provides that the sale or lease may be on such terms as may be agreed upon by the County and a local development corporation, without appraisal or public bidding, and

WHEREAS, in furtherance of the public purposes set forth above, the County Legislature proposes to transfer its interest in certain portions of the land, buildings, equipment and assets of the Golden Hill Health Care Center (collectively, the "Facility") to the Golden Hill Local Development Corporation, formed pursuant to Section 1411(a) of the LDC Act (hereinafter the "Corporation"), subject to the County's reserved leasehold interest in the Facility (collectively, the "Disposition"), with the foregoing Disposition allowing the County to continue operation of the Facility until such time as the Corporation transfers ownership of the Facility to a third party or parties, and

WHEREAS, pursuant to the LDC Act, the Disposition of the Facility to the Corporation may be on such terms and for such amount or amounts as may be agreed upon by the County Legislature and the Corporation, and as provided herein, the County shall require that the net proceeds of the Disposition and of any eventual sale to a third party are paid to the County, and

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WHEREAS, the Disposition of the Facility will entail one parcel of real property with improvements thereon that totals approximately 27 acres, being more particularly identified as a portion of tax map parcel SBL No. 56.40-1-19 (the "Land"), and

WHEREAS, during the term of the County's retained leasehold interest, the employees of the Golden Hill Health Care Center will continue as County employees with all County rights and benefits associated therewith, and

WHEREAS, to accomplish the purposes and powers as set forth within the LDC Act and the purposes and powers of the Corporation, including relieving the burdens of the County and the undertaking of the Disposition, the County desires to task the Corporation with such burdens and responsibilities and authorizes the Corporation to issue bonds on behalf of the County for such purposes pursuant to and in accordance with applicable provisions of the Internal Revenue Code (the "Code"), and

WHEREAS, in order to facilitate the Disposition pursuant to Section 1411(d) of the LDC Act, the Ulster County Legislature may authorize the issuance of tax exempt bonds on behalf of the County, the proceeds of which would be paid to the County by the Corporation as a portion of the total purchase price of the Facility and other costs associated therewith, and

WHEREAS, pursuant to and in accordance with Section 1411(d) of the LDC Act, a public hearing relating to the Disposition was duly scheduled, noticed and conducted by the Ulster County Legislature prior to the adoption of this resolution which hearing was held on November 29, 2011, now, therefore, be it

RESOLVED, the Ulster County Legislature hereby authorizes the following:

1. Pursuant to Section 1411(d) (1) of the LDC Act and upon due consideration of the presentations and comments received during the public hearing, the County Legislature hereby determines that title to the Facility is not required for use by the County; and

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2. Pursuant to Section 1411(d) of the LDC Act, the County of Ulster hereby authorizes the undertaking of the Disposition, including transfer of title and/or a leasehold of up to ninety-nine years, to the Facility (including the Land, as defined herein) together with the equipment and assets situate thereon, to the Corporation pursuant to a deed and/or lease to be approved by the County Attorney (the "Deed" and/or "Lease"), all for an amount not to exceed the sum of \$10,000,000.00, such amount to be funded by and through the Corporation's issuance of one or more series of tax exempt bonds (the "Bonds"), and
3. The transfer of title and/or a leasehold of up to ninety-nine years from the County to the Corporation shall be subject to the County's reserved leasehold interest in the Facility for continued operation thereof by the County, such leasehold interest to be memorialized within a lease agreement by and between the County and the Corporation for a term of up to 20 years, provided rental shall be subject to annual appropriations and be in amounts sufficient for the Corporation to pay all reasonable costs and debt service related to the Corporation's involvement with the ownership interest contemplated herein, and the term shall be subject to early termination by the Corporation (the "Lease Agreement", to be approved by the County Attorney), a memorandum of such Lease Agreement shall be recorded in the Offices of the Ulster County Clerk and Clerk of the Ulster County Legislature immediately prior to the recording of the Deed; and
4. The Corporation is hereby designated as and on behalf of issuer of the County pursuant to the Code for the purposes of issuing the Bonds and any other bonds, notes and other instruments with authority to exercise on the County's behalf all lawful powers as may be deemed necessary to accomplish its public purposes including to enhance, create and preserve employment opportunities for residents of the County, such purposes and powers to include, but not be limited to, those powers contained within the LDC Act and the purposes and powers of the Corporation, with the power to issue tax exempt and taxable bonds, notes, or other instruments on behalf of the County in furtherance of its purposes, provided however that any obligations issued by the Corporation shall never be a debt of the State of New York, the County or any political subdivision thereof (other than the Corporation) and neither the State of New York, the County or any political subdivision thereof (other than the Corporation) shall be liable thereon; and

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5. The Chairman of the Ulster County Legislature and/or the County Executive, as may be set forth in the Ulster County Charter and Administrative Code and/or as may be required otherwise, are hereby authorized to execute any and all documents related to the Disposition, including the Deed and Lease Agreement(s), subject to approval by the County Attorney, along with any other agreements, forms, certificates or applications necessary to effectuate the foregoing; and
6. During the interim, the employees of the Facility will remain employees of the County until such time as the County's leasehold is terminated or modified and/or the Corporation sells the Facility following termination of the Lease Agreement, and such employment during the interim shall be subject to Civil Service law and regulations and applicable collective bargaining agreements; and, be it further

RESOLVED, that the Disposition shall be subject to the following terms and conditions:

1. Notwithstanding the fact that the certificate of incorporation has general powers contemplated by the Local Development Corporation statute, except for the authority set forth above and herein, the Corporation will be limited to acquiring, financing and disposing of the land and facilities transferred to the Corporation, and upon completion, the Corporation shall be dissolved and all net proceeds shall be paid to the County; and
2. The Corporation shall seek to transfer the land and facilities to the highest qualified bidder. In doing so, it shall examine and consider, where applicable, the bidder's:
 - a. competency and character;
 - b. history of employee relations and practices;
 - c. quality of care of residents;
 - d. record of retaining facilities subsequent to acquisition;
 - e. willingness to agree to build a new facility at the site;
 - f. willingness to continue to care for all existing residents at the time of acquisition (unless otherwise indicated by the New York State Department of Health criteria);
 - g. financial stability; and
 - h. willingness to consider existing staff as potential employees.

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3. The Corporation shall require the purchaser to be licensed for 280 beds with similar levels of care to those existing at the date of transfer with any later changes to be subject to New York State Department of Health approval; and be it further

RESOLVED, that the County has identified the Disposition as an “Unlisted Action” as said term is defined pursuant to the State Environmental Quality Review Act (SEQRA). The County’s review of the Disposition pursuant to SEQRA is uncoordinated. Based upon the review by the County of an Environmental Assessment Form (EAF) and related documents, the County hereby finds that (i) the Disposition will result in no major impacts and, therefore, is one which may not cause significant damage to the environment; (ii) the Disposition will not have a “significant effect on the environment” as such quoted terms are defined in SEQRA; and (iii) no “environmental impact statement” as such quoted term is defined in SEQRA, need be prepared for this action. This determination constitutes a negative declaration for purposes of SEQRA.

This resolution shall take effect immediately,

and move its adoption.

ADOPTED BY THE FOLLOWING VOTE:

AYES: 17

NOES: 14

(NOES: Legislators Aiello, Belfiglio, Donaldson, Fabiano, Felicello, Gregorius, Hansut, Loughran, Madsen, Maloney, Robert Parete, Provenzano, Wadnola and Zimet)

(1 Abstention: Legislator Rodriguez)

(Absent: Legislator Hayes)

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Legislator Maloney motioned, seconded by Legislator Provenzano to amend Resolution No. 266 removing the “WHEREAS” and “RESOLVED in the body of the resolution, as indicated by double strikethroughs and replacing the “WHEREAS” and “RESOLVED” with the following:

WHEREAS, the Golden Hill Local Development Corporation (“GHLDC”) was established on October 7, 2011 for the purpose of acquiring the Golden Hill Health Care Center (“GHHCC”), and

WHEREAS, Legislators Harris and Lomita offer a Resolution No. 266 which proposes that the Legislature transfer the title and facilities of GHHCC subject to the reserved interests of the County, and

WHEREAS, notwithstanding the foregoing, the Legislature has determined that it is in the public interest to further study and consider the transfer of the title and facilities of GHHCC to the GHLDC,

NOW, THEREFORE BE IT RESOLVED, by the County Legislature, as follows:

1. The Legislature has considered the transfer the GHHCC to the GHLDC and hereby refers the matter to the Special Committee to Study the Viability of Selling and/or Transferring GHHCC to a Local Development Corporation.
2. In any consideration or study of the transfer of the GHHCC to the GHLDC, the Legislature shall take into account meeting the healthcare, elder care and nursing care requirements of the residents of the County.
3. The Legislature shall approve the sale or said transfer of the GHHCC, and/or the sale of unneeded County facilities no longer required for public use of the County, during the County’s 2012 fiscal year in order to fund adequate revenues for the County’s adopted budget.

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MOTION DEFEATED BY THE FOLLOWING VOTE:

AYES: 14 NOES: 17
(AYES: Legislators Aiello, Belfiglio, Donaldson, Fabiano, Felicello, Gregorius, Loughran, Madsen, Maloney, Robert Parete, Petit, Provenzano, Wadnola, and Zimet)
(1 Abstention: Legislator Rodriguez)
(Absent: Legislator Hayes)

FINANCIAL IMPACT:
\$8,000,000.00 – NET REVENUE

120513

STATE OF NEW YORK
ss:
COUNTY OF ULSTER

This is to certify that I, the undersigned Clerk of the Legislature of the County of Ulster have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 5th day of December, 2011, and that the same is a true and correct transcript of said resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the County of Ulster this 6th Day of December in the year Two Thousand and Eleven.

/s/ Karen L. Binder
Karen L. Binder, Clerk
Ulster County Legislature

Submitted to the County Executive this
6th Day of December, 2011.

/s/ Karen L. Binder
Karen L. Binder, Clerk
Ulster County Legislature

Approved by the County Executive this
8th Day of December, 2011.

/s/ Michael P. Hein
Michael P. Hein, County Executive