

# ORANGE COUNTY LEGISLATURE

**Committee:**

**Sponsors:**

**Co-Sponsors:**

**Agenda No.**

**RESOLUTION NO.      OF 2014**

**AUTHORIZING THE ESTABLISHMENT OF THE ORANGE VALLEY VIEW DEVELOPMENT CORPORATION AND TRANSFER OF ALL RIGHT, TITLE AND INTEREST OF THE FACILITY (AS DESCRIBED BELOW), WITH RESERVATION OF RIGHTS TO THE COUNTY TO CONTINUE TO OPERATE AS A TENANT OF THE FACILITY.**

**WHEREAS**, the County of Orange (the "County") owns and operates The Valley View Center for Nursing Care and Rehabilitation facility located at Glenmere Cove, Goshen, Orange County, New York 10924 under NYSDOH Certificate No. 3523301N as a 360 bed Residential Health Care Facility (the "County License") on approximately 29 acres designated as (a portion of) tax parcel no. Town of Goshen, Section 20, Block 1, Lot 10.21 (the land to be designated as tax parcel no. Town of Goshen Section 20, Block 1, Lot 10.211, with appurtenant rights, buildings, furniture, fixtures, equipment and capital assets used or useful in the operation of the 360 bed Residential Health Care Facility is hereinafter referred to as the "Facility"); and

**WHEREAS**, the County has examined the operations at the Facility in order to determine the feasibility of continuing its operation as a County owned and operated facility, including but not limited to business impediments unique to municipalities such as rising benefit costs and the unreliability of continued intergovernmental transfer ("IGT") payments and the cost of providing for major infrastructure improvements and/or reconstruction within County fiscal constraints, among other impediments and on advice of counsel and other professionals involved in other county nursing home transitions there may be a preference by bidders and a potential for obtaining a higher price given the contractual certainty that can be created through the transfer contemplated herein; and

**WHEREAS**, the County desires to evaluate the possible disposition of the Facility to a private entity to facilitate redevelopment of the Facility to provide improved services in a modern, efficient and economical setting and thereby preserve jobs in the County and is aware of the favorable results that occurred with the Ulster County matter as described in recent press reports and confirmed through discussions with Ulster County representatives; and

**WHEREAS**, Section 1411 of the Not-For-Profit Corporation Law of the State of New York (the "LDC Act") authorizes not-for-profit local development corporations operated exclusively for 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 authorizes the legislative body of the 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, 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 the local development corporation, without appraisal or public bidding, provided the County first holds a public hearing on ten (10) days' notice; and

**WHEREAS**, in furtherance of the public purposes set forth in the LDC Act, the County held a public hearing on ten (10) days' notice on or prior to the date hereof and now desires to transfer to a newly created local development corporation under the name "Orange Valley View Development Corporation" (the "Corporation"), formed pursuant to Section 1411(a) of the Not for Profit Corporation Law, by ninety-nine (99) year lease with exclusive option to take fee title to the Facility at any time by deed from the County (the "Disposition"), reserving to the County the right to continue to operate the Facility under the County license until such time as the Corporation terminates said right ("Reservation of Rights Agreement") with the real property constituting the Facility transferred under the authority of the LDC Act by resolution of the Legislature<sup>1</sup> and the personal property constituting the Facility transferred under the authority of County Law Section 215(9) by resolution of the Legislature; and

**WHEREAS**, during the term of the Reservation of Rights Agreement the County will continue to be the licensed operator and the employees of the Facility will continue as county employees with all County rights and benefits associated therewith until such time as the Corporation identifies an alternative licensed operator and gives sixty (60) days' notice of termination of the County reserved rights; and

**WHEREAS**, the Corporation will be subject to and shall comply with the Open Meetings Law of the State of New York, as set forth within Article 7 of the Public Officers Law and will be subject to and shall comply with the Freedom of Information Law of the State of New York, as set forth within Article 6 of the Public Officers Law; and

---

<sup>1</sup> Harris Beach PLLC as special counsel in this matter noted that the bill jacket for the 1967 legislation that created what is today known as a local development corporation, includes a letter from the State Comptroller in which the State Comptroller writes that NYC has the ability to use a local law subject to permissive referendum without the need for this new general law provision. In the Memorandum of Support found in the 1967 bill jacket, the intent to have alternative general law authority to transfer is clear – "This Act will amend Article 19 of the Membership Corporation Law [now NPCL 1411] to provide that non-profit local development corporations created pursuant to this Article can lease or acquire land from local government units free of the restrictions contained in local laws." Within the bill jacket the State Attorney General expresses concern that this new general law is broad enough to permit a city to transfer otherwise inalienable lands under water and by its express terms does not require appraisals or competitive bidding. The Comptroller Report to the Governor on Legislation within the 1967 bill jacket argues against passage of the bill and notes that this bill was being pushed by NYC to deal with the Brooklyn Naval Yard yet replicates the authority to act by local law with permissive referendum. It is the opinion of Harris Beach PLLC as special counsel in this matter that the 1967 legislation was passed knowing that the provisions freed the local municipality from local law requirements and replicated local law abilities but does so without need for referendum or super majority vote, with the primary protections of the public interest being the public hearing and the requirement that future uses be consistent with LDC purposes.

**WHEREAS**, the Corporation shall comply with the State Environmental Quality Review Act, as set forth within Article 8 of the New York Environmental Conservation Law; and

**WHEREAS**, the books and records of account of the Corporation shall be subject to inspection and/or audit at any time by the Office of the New York State Comptroller; and

**WHEREAS**, the County Executive recommends that the Legislature of Orange County authorize the establishment of the Corporation and transfer the Facility to the Corporation as described herein so the board of the Corporation can balance County fiscal realities with quality of care for the patients, continuing availability of services for County residents, employment opportunities through operations of the Facility and the other enumerated concerns described below; and

**NOW THEREFORE BE IT,**

**RESOLVED**, that pursuant to 6 NYCRR Section 617.6, the Legislature of Orange County, on behalf of the County, being an involved agency under the State Environmental Quality Review Act, has reviewed the short form Environmental Assessment Form in this matter and hereby finds and determines that, this resolution constitutes an Unlisted Action and finds that the action will have no significant, adverse environmental impacts and issues a negative declaration; and be it further

**RESOLVED**, the Legislature of Orange County hereby determines in accordance with Section 1411(d) (1) of NPCL that the real property constituting a part of the Facility is "not required for use by" the County and that pursuant to County Law Section 215(9) that the personal property constituting a part of the Facility is no longer necessary for public use" in that the real and personal property interests retained under the Reservation of Rights Agreement permit uninterrupted and continued operation of the Facility by the County until a new licensed operator is identified by the Corporation; and be it further

**RESOLVED**, that the Legislature of Orange County hereby authorizes the formation and organization of the Orange Valley View Development Corporation pursuant to Section 1411 of Not-For-Profit Corporation Law of the State of New York subject to the Corporation being limited to acquiring, assisting in the financing and disposing of the Facility and, upon completion, the Corporation shall be dissolved and all net proceeds shall be paid to the County; and be it further

**RESOLVED**, that the Legislature of Orange County hereby approves of the Certificate of Incorporation and By-Laws presented at this meeting, in substantially the form attached and as made a part of this resolution; and be it further

**RESOLVED**, that the County shall be the sole member of the Corporation, acting by and through the County Executive, ex officio; and be it further

**RESOLVED**, that the Corporation shall be governed by seven voting directors, all of whom shall be appointed by the sole Member of the Corporation with one director appointed by the Member

upon recommendation of the Chairman of the Legislature; and one director appointed by the Member upon the recommendation of the Majority Leader of the Legislature; and one director appointed by the Member upon the recommendation of the Minority Leader of the Legislature; and three members being appointed by the Member upon his own recommendation; and a seventh director being appointed by the Member upon a recommendation of the Majority of the remaining directors within ten days of five such directors being otherwise appointed, provided, however, that if any person entitled to make a recommendation for a director fails to do so within thirty days of the adoption of this resolution, the Chairman of the Legislature, shall make such recommendation for appointment, and if he or she fails to do so within five days, the County Executive may appoint such director, and such directors as well as officers of the Corporation shall serve without compensation for two year terms and thereafter until their successor is appointed; and be it further

**RESOLVED**, that the Disposition and related Reservation of Rights Agreement are hereby approved with the Reservation of Rights Agreement term continuing until such time as the Corporation has given sixty (60) days written notice to the County terminating the reserved rights ("Termination Date"); provided the transition to the new licensed operator occurs on the Transition Date by means approved by the NYS Department of Health, and subject further to the County's retention of all supplies and inventory with any remaining supplies and inventory at the time of the Termination Date being disposed of by the County to a future licensed operator of the Facility; provided the Disposition and Reservation of Rights Agreement shall be subject to the Corporation, if it so chooses, seeking to transfer the Facility to the highest qualified bidder with the Corporation considering, 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 or to expand services;
- 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;
- h. demonstrated ability to address concerns of residents and family members at any facility that the bidder operates;
- i. willingness to consider existing staff as potential employees; and
- j. ability to finance the purchase and operations of the Facility and existing relationships with the NYS Department of Health; and be it further

**RESOLVED**, that the Legislature of Orange County authorizes the County Executive to execute any and all documents, instruments and agreements or applications necessary or ancillary to the foregoing to effectuate the intent and purpose of these resolutions, and shall document the Reservation of Rights Agreement from the Corporation to the County that provides that the County shall pay all costs of the Corporation and shall pay all operational costs of the Facility while a tenant, each of the foregoing being subject to the approval of the County Attorney; and be it further

**RESOLVED**, by these resolutions the Legislature does not intend to “create, alter, combine or abolish county administrative units not headed by elective officials” and expressly recognizes that the County Executive has the authority to assign duties to the Commissioner of Residential Health Care Services as contemplated by County Charter, and requests that he do so at this time, including but not limited to being a patient advocate for residents of nursing homes in the County, tracking former patients of the current, County owned nursing home during any transition of the Facility to a new licensed operator and serving as a resource for those County residents in need of nursing home care, and the Department of Residential Health Care Services continues to exist after the passage of these resolutions; and be it further.

**RESOLVED**, that if the Corporation shall fail to enter into a lease or transfer of the facility as authorized herein by December 31, 2017, the approval of the County Legislature to transfer the facility pursuant to the authority herein shall be limited to transferring the facility back to the County of Orange; and be it further

**RESOLVED**, that, unless litigation is initiated by a transferee (either by lease or sale from the Corporation), if any part of (or both of in their totality), the preceding two paragraphs of this Resolution are deemed to be in violation of any law as adjudged by any Court of competent jurisdiction, or has the impact of otherwise voiding the transfer of the facility by the Corporation, this Legislature specifically withdraws and voids such provisions as are deemed unlawful and the same may be stricken without the same affecting the remainder of this Resolution.

**APPROVED: APRIL 9, 2014**

---

**STEVEN M. NEUHAUS, COUNTY EXECUTIVE**

**STATE OF NEW YORK  
COUNTY OF ORANGE**

**THIS IS TO CERTIFY THAT I, JEAN M. RAMPPEN**, Clerk of the County Legislature of said County of Orange, have compared the foregoing copy of resolution with the original resolution now on file in my office and which was passed by the County Legislature of said County of Orange on the 9<sup>th</sup> day of April, 2014 and that the same is a correct and true transcript of such original resolution and the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and the official seal of said County Legislature this 10th day of April, 2014.

---

Clerk of the County Legislature of the County of Orange