

BOND RESOLUTION
(Kendal at Ithaca, Inc. Project)

A regular meeting of the Tompkins County Development Corporation was convened in public session on November 13, 2014, at 4:00 p.m., local time, at the Tompkins County Legislative Chambers, Ithaca, New York 14850.

The meeting was called to order by the Chair, with the following members being:

PRESENT: *Jim Dennis, Nathan Shinagawa, Will Burbank
Grace Chang, Martha Robertson*

ABSENT: *Scottie Myrick*

ALSO PRESENT:

On motion duly made and seconded, the following resolution was placed before the members of the Tompkins County Development Corporation:

Resolution No. 11/14 - __

RESOLUTION AUTHORIZING THE ISSUANCE, EXECUTION, SALE AND DELIVERY OF THE ISSUER'S CONTINUING CARE RETIREMENT COMMUNITY REVENUE BONDS (KENDAL AT ITHACA, INC. PROJECT), SERIES 2014, IN ONE OR MORE SERIES, IN THE AGGREGATE PRINCIPAL AMOUNT OF UP TO \$60,000,000 AND THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS

WHEREAS, by Section 1411 of the Not-for-Profit Corporation Law ("N-PCL") of the State of New York (the "State"), as amended (hereinafter collectively called the "Act"), the Tompkins County Development Corporation (the "Issuer") was established as a not-for-profit local development corporation of the State with the authority and power to own, lease and sell personal and real property for the purposes of, among other things, acquiring, constructing and equipping certain projects exclusively in furtherance of 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, 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 Act authorizes the Issuer to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of and interest on any such bonds so issued and any agreements made in connection

therewith, to pledge the revenues and receipts from the lease or sale thereof to secure the payment of such bonds and interest thereon; and

WHEREAS, Kendal at Ithaca, Inc. (the "Company") has requested the Issuer to issue its up to \$60,000,000 Continuing Care Retirement Community Revenue Bonds (Kendal at Ithaca, Inc. Project), Series 2014, in one or more series, of which one or more series will be publicly offered (the "Publicly Offered Bonds") and one or more series will be privately placed (the "Privately Placed Bonds", and, together with the Publicly Offered Bonds, the "Bonds") for the purpose of financing a certain project (the "Project") consisting of: (A) the financing, refinancing, and/or reimbursing the costs of certain improvements located on the Institution's continuing care retirement community on an approximately 105-acre parcel located in the Village of Cayuga Heights, with a mailing address of 2230 North Triphammer Road, Ithaca New York 14850 (the "Land"), including (1) the acquisition, construction and equipping of an approximately 84,101 square foot addition to the existing facility to accommodate a two-story, 24 unit independent living apartment building with 32 covered parking spaces in the expanded parking lot known as the South Parking Lot and 38 covered spaces in the new parking lot to be known as Parking Lot 1, providing a total of 70 covered parking spaces, a 48 bed skilled nursing facility consisting of 3 households of 16 private units, a new centralized entrance and reception area (the "Additions"); (2) the renovation of approximately 70,000 square feet of the existing facility to construct and equip a new dining café, new fitness and aerobics rooms, improved office space for the Licensed Home Care Services Agency, improved areas for visiting practitioners, relocated and improved administrative offices for health services, nursing, human resources, facility services, information technology offices, and a new data server room and related improvements and upgrades ("Renovations" and together with the Additions, the "Improvements"); and (3) the installation of certain items of equipment, machinery, furniture and other tangible personal property in and around the Improvements (the "Equipment" and, together with the Land and the Improvements, the "Facility"); (B) the refinancing of the outstanding principal amount of the Tompkins County Industrial Development Agency's \$5,000,000 original principal amount Continuing Care Retirement Community Revenue Bonds (Kendal at Ithaca, Inc. Project), Series 2003B (the "Series 2003B Bonds"); (C) the refinancing of the outstanding principal amount of the Tompkins County Industrial Development Agency's \$8,250,000 Variable Rate Demand Continuing Care Retirement Community Revenue Bonds (Kendal at Ithaca, Inc. Project), Series 2000 (the "Series 2000 Bonds"); and (D) the paying of all or a portion of the costs incidental to the issuance of the Bonds, including capitalized interest and any reserve funds as may be necessary to secure the Bonds (the costs associated with items (A) through (D) above being hereinafter collectively referred to as the "Project Costs"); and

WHEREAS, the Bonds will be issued pursuant to the terms of a certain Indenture of Trust, to be dated as of December 1, 2014, by and between the Issuer and The Bank of New York Mellon, as trustee (the "Trustee") (the "Indenture"); and

WHEREAS, pursuant to a certain Loan Agreement, to be dated as of December 1, 2014 (the "Loan Agreement"), by and between the Issuer and the Company, the Issuer will loan the proceeds of the Bonds to the Company with the debt service payments thereunder in an amount sufficient to pay, among other things, the principal of, sinking fund installments, redemption price of and interest on the Bonds; and

WHEREAS, as security for the Bonds: (i) the Issuer will assign to the Trustee all of its rights (except Reserved Rights, as defined in the Indenture) under the Loan Agreement, pursuant to the terms of a certain Pledge and Assignment, to be dated as of December 1, 2014, from the Issuer to the Trustee (the "Pledge and Assignment"), (ii) the Company will grant to the Issuer a mortgage lien on and security interest in the Mortgaged Premises (as defined in the Mortgage, as defined below) pursuant to a certain Mortgage and Security Agreement, to be dated as of December 1, 2014, from the Company to the Issuer (the "Mortgage"); which mortgage lien and security interest shall be assigned by the Issuer to the Trustee pursuant to a certain Assignment of Mortgage and Security Agreement, to be dated as of December 1, 2014, from the Issuer to the Trustee (the "Assignment of Mortgage"); and

WHEREAS, as additional security for the Bonds, (i) the Company will grant to the Trustee a security interest in the Gross Revenues (as defined in the Indenture) and in certain other collateral pursuant to the terms of a certain Security Agreement, to be dated as of December 1, 2014, from the Company to the Trustee (the "Security Agreement"); (ii) the Company will assign to the Trustee all of its right, title and interest in all Residency Agreements (as defined in the Assignment of Residency Agreements, as defined below) pursuant to the terms of a certain Assignment of Residency Agreements, to be dated as of December 1, 2014, by and between the Company and the Trustee (the "Assignment of Residency Agreements") and (iii) the Company will assign to the Trustee all of its right, title and interest in the Management Contract (as defined in the Assignment of Management Agreement Contract and Permits, as defined below) and Permits (as defined in the Assignment of Management Contract Agreement and Permits, as defined below), pursuant to a certain Assignment of Management Contract Agreement and Permits, to be dated as of December 1, 2014, from the Company to the Trustee (the "Assignment of Management Contract and Permits"); and

WHEREAS, the Publicly Offered Bonds are being purchased by B.C. Ziegler & Co. (the "Underwriter"), pursuant to a certain Bond Purchase Agreement, to be dated on or about December 15, 2014, by and among the Issuer, the Company and the Underwriter (the "Ziegler Bond Purchase Agreement"); and

WHEREAS, the Privately Placed Bonds are being privately placed by the Issuer to Manufacturers and Traders Trust Company (the "Bank"), to pursuant to a certain Bond Purchase Agreement, dated on or about December 15, 2014, by and among the Issuer, the Company and the Bank (the "M&T Bond Purchase Agreement"); and

WHEREAS, the Issuer has previously issued its \$8,985,000 original principal amount Tompkins County Development Corporation Continuing Care Retirement Community Revenue Bonds (Kendal at Ithaca, Inc. Project), Series 2012, dated November 20, 2012 (the "Series 2012 Bonds"), pursuant to a certain Indenture of Trust, dated as of November 1, 2012 (as may be amended and supplemented from time to time, the "Series 2012 Indenture"), by and between the Issuer and the Bank of New York Mellon, as trustee for the Series 2012 Bonds (the "Series 2012 Trustee"), which such Series 2012 Bonds were issued for the Company to assist in financing the Project (as defined in the Series 2012 Indenture) for the benefit of the Company

WHEREAS, in order to establish the rights and remedies of the Series 2012 Trustee and the Trustee, each on behalf of the holders of the Series 2012 Bonds and the Series 2014 Bonds, respectively, the Issuer, the Company, the Trustee and the Series 2012 Trustee will enter into a certain Amended and Restated Intercreditor Agreement, dated as of December 1, 2014 (as so amended and restated, the "Intercreditor Agreement"); and

WHEREAS, the New York State Continuing Care Retirement Community Council issued to the Company a Certificate of Authorization with respect to the Series 2014 Bonds in accordance with Section 4604-a of the New York State Public Health Law; and

WHEREAS, the Village of Cayuga Heights Planning Board issued a negative declaration (the "Negative Declaration") under Article 8 of the Environmental Conservation Law and Regulations adopted pursuant thereto by the Department of Environmental Conservation of the State (collectively, "SEQR") with respect to the Project; and

WHEREAS, by resolution adopted on November 6, 2014, the Board of Legislators of Tompkins County approved the issuance of the Bonds to finance the Project, in accordance with Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code").

NOW, THEREFORE, BE IT RESOLVED by Tompkins County Development Corporation as follows:

Section 1. The Issuer hereby finds and determines:

(a) By virtue of the Act, the Issuer has been vested with all the powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act;

(b) The Project will promote and maintain permanent private sector jobs, health, general prosperity and economic welfare of the citizens of the State of New York and improve their standard of living and will increase the overall number of permanent private sector jobs in the state and thereby serve the public purposes of the Act;

(c) The Project and the operations conducted therein will not cause or result in the violation of the health, labor or other laws of the United States of America, the State of New York, or Tompkins County, New York;

(d) It is desirable and in the public interest for the Issuer to issue and sell the Bonds to be dated on or about December 31, 2014 (or such other date as approved by Bond Counsel to the Issuer), upon the terms and conditions set forth in the Indenture and to secure the Bonds by, among other things, the execution and delivery to the Trustee of the Indenture, the Mortgage and the Assignment of Mortgage, all for the purposes of assisting in financing the cost of undertaking the Project, paying certain incidental costs and expenses in connection with the issuance of the Bonds, and funding a deposit to the Debt Service Reserve Fund established under the Indenture to secure the Bonds; and

(c) The public hearing held by the Issuer on October 17, 2014, concerning the issuance of the Bonds and the undertaking of the Project was duly held in accordance with the requirements of the Code, including but not limited to the giving of public notice of the meeting a reasonable time before the meeting and affording a reasonable opportunity for persons with differing views on both the issuance of the Bonds and the undertaking of the Project; and

(f) The Issuer hereby approves the issuance of the Bonds and the execution and delivery of all documents necessary and incidental thereto as further set forth herein; and

(g) The Village of Cayuga Heights Planning Board (the "Planning Board") has issued a Negative Declaration with respect to the Project. The Project involves an "Unlisted Action" as said term is defined under SEQR. The review is uncoordinated. Based upon the review by the Issuer of the Negative Declaration, the Full Environmental Assessment Form (the "EAF") and related documents delivered by the Company to the Issuer and other representations made by the Company to the Issuer in connection with the Project, the Issuer hereby ratifies the Planning Board's findings that (i) the Project will result in no major impacts and, therefore, is one which may not cause significant damage to the environment; (ii) the Project will not have a "significant effect on the environment" as such quoted terms are defined in SEQR; and (iii) no "environmental impact statement" as such quoted term is defined in SEQR, need be prepared for this action. This determination constitutes a negative declaration for purposes of SEQR.

Section 2. In consequence of the foregoing, the Issuer hereby determines to (i) issue the Bonds pursuant to the terms of the Indenture, (ii) use the proceeds of the Bonds to (A) assist in undertaking the refunding the Project, (B) pay certain incidental expenses in connection therewith, and (C) fund a deposit to the Debt Service Reserve Fund established under the Indenture to secure the Bonds, (iii) execute the Loan Agreement, pursuant to which the Issuer shall loan the proceeds of the Bonds to the Company, (iv) assign its mortgage lien on and security interest in the Facility to the Trustee pursuant to the terms of the Assignment of Mortgage, (v) execute a certain Tax Compliance Agreement, to be dated as of the date of issuance and delivery of the Bonds (the "Tax Compliance Agreement"), pursuant to which the Issuer and the Company make certain representations and covenants to ensure the continued tax-exempt status of the Bonds, (vi) execute and deliver the Ziegler Bond Purchase Agreement; (vii) execute and deliver the M&T Bond Purchase Agreement (viii) publish and disseminate to potential purchasers of the Publicly Offered Bonds an official statement relating to the issuance and initial sale of the Publicly Offered Bonds (the "Official Statement"), (ix) execute the Intercreditor Agreement, (x) execute an Internal Revenue Service Form 8038 (the "Information Return") in connection with the issuance of the Bonds, and (xi) execute and deliver any additional documents or instruments necessary and incidental thereto and approved by Bond Counsel to the Issuer.

Section 3. The form and substance of the Bonds are hereby approved, and the Secretary is hereby directed to include a copy of the form of the Bonds submitted to this meeting with the records of the Issuer.

Section 4. The form and substance of the Indenture is hereby approved, and the Secretary is hereby directed to include a copy of the form of the Indenture submitted to this meeting with the records of the Issuer.

Section 5. The form and substance of the Loan Agreement is hereby approved, and the Secretary is hereby directed to include a copy of the form of the Loan Agreement submitted to this meeting with the records of the Issuer.

Section 6. The form and substance of the Mortgage and Assignment of Mortgage are hereby approved, and the Secretary is hereby directed to include a copy of the form of Mortgage and Assignment of Mortgage submitted to this meeting with the records of the Issuer.

Section 7. The form and substance of the Tax Compliance Agreement are hereby approved, and the Secretary is hereby directed to include copies of the Tax Compliance Agreement and the Information Return submitted to this meeting with the records of the Issuer.

Section 8. The form and substance of the Ziegler Bond Purchase Agreement is hereby approved, and the Secretary is hereby directed to include copies of the Ziegler Bond Purchase Agreement submitted to this meeting with the records of the Issuer.

Section 9. The form and substance of the M&T Bond Purchase Agreement is hereby approved, and the Secretary is hereby directed to include copies of the M&T Bond Purchase Agreement submitted to this meeting with the records of the Issuer.

Section 10. The form and substance of the Official Statement is hereby approved and the Secretary is hereby directed to include copies of the Official Statement submitted to this meeting with the records of the Issuer.

Section 11. The form and substance of the Intercreditor Agreement is hereby approved and the Secretary is hereby directed to include copies of the Intercreditor Agreement submitted to this meeting with the records of the Issuer.

Section 12. The Issuer hereby determines to execute the Information Return in such form as is hereinafter approved by the Chair (or Vice Chair) or Administrative Director of the Issuer, and to file the same with the Internal Revenue Service.

Section 13. The Issuer is hereby authorized to issue, execute, sell and deliver to the Underwriter the Bonds in the aggregate principal amount of up to \$60,000,000 in the forms heretofore approved in this resolution, pursuant to the Act and in accordance with the Indenture; provided that:

(a) The Bonds authorized to be issued, executed, sold and delivered pursuant to this resolution (i) shall be issued, executed and delivered at such time as the Chair (or Vice Chair) or Administrative Director of the Issuer shall determine, (ii) shall be in such aggregate principal amount (not to exceed \$60,000,000) as is hereinafter approved by the Chair (or Vice Chair) or Administrative Director of the Issuer in accordance with this resolution, (iii) shall bear interest at

such rates as are set forth in the Bonds and the Indenture or as are hereinafter approved by the Chair (or Vice Chair) or Administrative Director of the Issuer in accordance with this resolution, and (iv) shall be subject to prepayment prior to maturity, and have such other provisions and be issued in such manner and on such conditions as are set forth in the Bonds and the Indenture, all of which provisions are specifically incorporated herein with the same force and effect as if fully set forth in this resolution.

(b) The Bonds shall be issued solely for the purpose of providing funds to finance the Project, the administrative, legal, financial, and other expenses of the Issuer in connection with the Project and incidental to the issuance of the Bonds, as such costs are more specifically set forth in the Loan Agreement, and the funding of a deposit to the Debt Service Reserve Fund established under the Indenture to secure the Bonds.

(c) The Bonds and the interest thereon are not and shall never be a debt of the State of New York, or Tompkins County, New York, and neither the State of New York, nor Tompkins County, New York shall be liable thereon.

(d) The Bonds, together with interest payable thereon, shall be special obligations of the Issuer payable solely from the revenues and receipts derived from the payments made by the Company pursuant to the Loan Agreement or from the enforcement of the security provided by the other Financing Documents (as hereinafter defined).

Section 14. Notwithstanding any other provision of this resolution, the Issuer covenants that it will make no use of the proceeds of the Bonds or of any other funds which, if such use had been reasonably expected on the date of issue of the Bonds, would cause the Bonds or any Series of Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code.

Section 15. (a) The Chair (or Vice Chair) or Administrative Director of the Issuer is hereby authorized, on behalf of the Issuer, to execute and deliver the Indenture, the Loan Agreement, the Mortgage, the Assignment of Mortgage, the Tax Compliance Agreement, the Ziegler Bond Purchase Agreement, the M&T Bond Purchase Agreement, the Official Statement, the Intercreditor Agreement, the Bonds, and any document or instrument necessary and incidental thereto as approved by Bond Counsel to the Issuer (hereinafter collectively called the "Financing Documents"), and the Information Return, and the Secretary of the Issuer is hereby authorized to affix the seal of the Issuer thereto where appropriate and to attest the same, with such changes, variations, omissions and insertions as the Chair (or Vice Chair) or Administrative Director shall approve. The execution of the Financing Documents and the Information Return by the Chair (or Vice Chair) or Administrative Director shall constitute conclusive evidence of such approval.

(b) The Chair (or Vice Chair) or Administrative Director of the Issuer is hereby further authorized and directed, on behalf of the Issuer, to approve, without further action of the Issuer, any variations in the terms of the Bonds from those set forth in the form of the Bonds, respectively, submitted to this meeting, including, without limitation, the aggregate principal amounts of the Bonds (not in excess of the maximum aggregate principal amount of \$60,000,000), the interest rates, maturities, redemption premiums, optional redemption dates and

The question of the adoption of the foregoing Resolution was duly put to vote on roll call, which resulted as follows:

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Martha Robertson	✓		✓	
Grace Chiang				
James Dennis	✓			
Nathan Shinagawa	✓			
Larry Baum				✓
William Burbank	✓			✓
Svante Myrick				✓

The Resolutions were thereupon duly adopted.

STATE OF NEW YORK)
COUNTY OF TOMPKINS) SS.:

The undersigned, being the ^{Chair} ~~Secretary~~ of Tompkins County Development Corporation,
DOES HEREBY CERTIFY THAT:

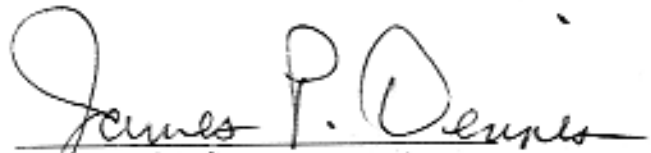
I have compared the foregoing extract of the minutes of the meeting of Tompkins County Development Corporation (the "Agency") including the resolution contained therein, held on the 13th day of November, 2014, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same relates to the subject in matters therein referred to.

I FURTHER CERTIFY that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY that there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Agency this 13th day of November 2014.


~~Swante Myrick, Secretary~~
Jim Dennis, Chair