

## PRELIMINARY AGREEMENT

### **HUDSON VALLEY PROPERTY HOLDINGS, LLC Project, Series 2015**

**THIS PRELIMINARY AGREEMENT** (the "Preliminary Agreement"), made as of June 16, 2015 between the **DUTCHESS COUNTY LOCAL DEVELOPMENT CORPORATION**, a not-for-profit corporation, organized and existing under the Not-For-Profit Corporation Law of the State of New York, having offices at Three Neptune Road, Poughkeepsie, New York 12601 (the "Issuer"), and **HUDSON VALLEY PROPERTY HOLDINGS, LLC**, a Delaware limited liability company, organized and existing under the laws of the State of Delaware and authorized to do business in the State of New York, having offices c/o Westchester County Health Care Corporation, 100 Woods Road, Valhalla, New York 10595 (the "Company").

**WHEREAS**, the Issuer was duly formed under §102(a)(5) of the New York Not-for-Profit Corporation Law ("N-PCL") as a local development corporation, a Type C Corporation under §201 of the N-PCL, for the purpose of conducting activities that will: relieve and reduce unemployment in Dutchess County, New York (the "County"); promote and provide for additional and maximum employment in the County; better and maintain job opportunities in the County; instruct or train individuals in the County to improve or develop their capabilities for such jobs; carry on scientific research for the purpose of aiding the County by attracting new industry to the County; encourage the development of, or retention of, an industry in the County; and lessen the burdens of government and acting in the public interest; and

**WHEREAS**, the Issuer's corporate powers include, but are not limited to, the power to finance facilities for not-for-profit corporations, acquire, improve, maintain, equip and furnish projects, to lease such projects and collect rent; to sell and convey any and all of its property whenever the Board of Directors of the Issuer shall find such action to be in furtherance of the purposes for which it was organized; and to issue bonds for the purpose of carrying out any of its powers; all bonds to be payable solely out of revenues and receipts derived from the leasing or sale by the Issuer of its projects; and

**WHEREAS**, Hudson Valley Property Holdings, LLC, a Delaware limited liability company (the "Company"), has submitted an application to the Issuer, a copy of which application is on file at the office of the Issuer, which application requested that the Issuer consider undertaking a Project (as defined below) for the benefit of the Company to be located at One Webster Avenue, Poughkeepsie, New York bearing Tax Map No. 134689-6162-09-090607-0000 (the "Property"), consisting of the following:

- (A) The acquisition of an existing four (4) story building plus basement containing approximately 148,896 square feet known as the Atrium Health Center located on the Property, to be owned by the Company, to be operated as a multi-purpose facility, portions of which are: (i) leased to and used by the Westchester County Health Care Corporation for various administrative

and support functions (including, but not limited to, a laboratory, kitchen, cafeteria, storage space, gift shop, patient registration, pre-admission testing, patient accounting and employee health and wellness) and various patient care services (including, but not limited to radiology, wound care, specialty clinics, vascular surgery, and trauma department) and (ii) leased or subleased to, and used by, certain physicians, physician groups, or associations providing a variety of health care services (including, but not limited to, urology, internal medicine, pediatrics, digestive disease treatment, psychiatry, oncology and prosthetic and orthotic devices) (collectively, the "Facility");

- (B) paying of all or a portion of the costs incidental to the issuance of the Bonds (defined below), including issuance costs of the Bonds (collectively, paragraphs (A) and (B) shall be referred to herein as the "Project"); and
- (C) the financing of all or a portion of the costs of the foregoing Project by the issuance of tax-exempt revenue and/or taxable bonds of the Issuer in one or more issues or series in an aggregate principal amount sufficient to pay the cost of undertaking the Project, all presently estimated to be approximately Twenty-five Million Five Hundred Thousand and 00/100 Dollars (\$25,500,000.00) but not to exceed Twenty-Seven Million and 00/100 Dollars (\$27,000,000.00) (the "Bonds"); and

**WHEREAS**, the Issuer has determined that the financing of the Project will promote and further its corporate purposes; and

**WHEREAS**, on June 16, 2015, the Issuer adopted a Preliminary Resolution (the "Preliminary Resolution") authorizing the Project and the execution of this Preliminary Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the Issuer and the Company agree as follows:

1. Undertakings of the Issuer. Based upon the statements, representations, and undertakings of the Company and subject to the conditions set forth herein and in the Preliminary Resolution, the Issuer agrees as follows:

(a) The Issuer shall authorize, sell, and deliver an issue of its Bonds, pursuant to the terms of the Act as then in force, in an aggregate principal amount presently estimated to be Twenty-Five Million Five Hundred Thousand and 00/100 Dollars (\$25,500,000.00) and not to exceed Twenty-Seven Million and 00/100 Dollars (\$27,000,000.00) for the purpose of financing the Project and paying necessary incidental expenses in connection therewith.

(b) The Issuer shall adopt, or cause to be adopted, such proceedings and authorize the execution of such documents as may be necessary or advisable for (i) the authorization, issuance, and sale of the Bonds, (ii) the financial assistance contemplated by the Project including the issuance of the Bonds and providing a potential exemption from mortgage recording taxes, and (iii) the loaning of the proceeds of the Bonds to the Company, all as shall be authorized by law and be mutually satisfactory to the Issuer and the Company.

(c) The Issuer shall enter into an agreement to loan the proceeds of the Bonds to the Company pursuant to a loan agreement by and between the Issuer and the Company (the "Loan Agreement"), whereby the Company will be obligated under such agreement or loan agreement, as the case may be, among other things to make payments to the Issuer in amounts and at times so that payments will be adequate to pay the principal of, premium, if any, and interest on all such Bonds.

(d) The Issuer shall take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof.

2. Representations of the Company. The Company hereby represents to the Issuer that:

(a) The Facility is located in the County;

(b) The financing of the Project through the issuance of the Bonds will encourage and assist the Company in providing the Project;

(c) The proposed financing will contribute to the retention of employment at the Company and will enhance the competitiveness of the Company; and

(d) The Company intends that the Project will comply with all applicable federal, state, and local laws, ordinance, rules, and regulations and the Company shall have obtained all necessary approvals and permits required thereunder.

3. Undertakings of the Company. Based upon the statements, representations, and undertakings of the Issuer and subject to the conditions set forth herein and in the Preliminary Resolution, the Company agrees as follows:

(a) The Company shall use all reasonable efforts to find, or cause to be found, one or more purchasers for the Bonds.

(b) The Company shall use all reasonable efforts necessary or desirable to enter into a contract or contracts to borrow the proceeds of the Bonds from the Issuer and execute the Loan Agreement.

(c) The Company shall contemporaneously with the delivery of the Bonds, enter into the Loan Agreement with the Issuer containing the terms and conditions described in Section 1(c) hereof.

(d) (i) The Company shall defend and indemnify the Issuer and hold the Issuer harmless from all losses, expenses, claims, damages and liabilities arising out of or based on: (1) labor, services, materials and supplies, including equipment, ordered or used in connection with the Project (including any expense incurred by the Issuer in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether such claims or liabilities arise as a result of the Company acting as agent for the Issuer pursuant to this Preliminary Agreement or otherwise; or (2) any untrue statement or alleged untrue statement of a material fact included in the Company's application to the Issuer or the omission or alleged omission to state therein a material fact necessary in order to make the statements herein, in the light of the circumstances under which they were made, not misleading (except that the Company shall not indemnify the Issuer for such untrue or omitted information supplied by the Issuer about the Issuer or its actions in relation to the issuance of the Bonds).

(ii) The Company shall indemnify and hold the Issuer harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation to the Project, including any expenses incurred by the Issuer in defending any claims, suits or actions which may arise as a result of the foregoing, except that the Company shall not be required to indemnify the Issuer for the willful misconduct or grossly negligent conduct of the Issuer.

(e) The Company shall take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

#### 4. General Provisions.

(a) This Preliminary Agreement shall take effect on the date of execution hereof until the Loan Agreement becomes effective. It is the intent of the Issuer and the Company that this Preliminary Agreement be superseded in its entirety by the Loan Agreement.

(b) It is understood and agreed by the Issuer and the Company that the issuance of the Bonds and the execution of the Loan Agreement and related documents are subject to: (i) obtaining all necessary governmental approvals, (ii) approval of the members of the Issuer; and (iii) agreement by the Issuer, the Company and the purchasers of the Bonds upon mutually acceptable terms for the Bonds and for the Loan Agreement.

(c) The Company agrees that it will reimburse the Issuer for all reasonable and necessary direct out-of-pocket expenses which the Issuer may incur as a consequence of executing

this Preliminary Agreement or performing its obligations hereunder, including but not limited to, the cost of causing a notice of any public hearing held with respect to the Project to be published, the cost of making and transcribing records of said hearings and the reasonable fees and expenses charged and incurred by Bond Counsel and Issuer's Counsel in connection with their representation of Issuer in this matter and their preparation of any documents pertaining to the issuance of the Bonds.


(d) All commitments of the Issuer under Section 1 hereof and of the Company under Sections 2 and 3 hereof (excepting the obligations of the Company set forth in subsections 3(d) and 4(c) hereof, which shall survive the termination of this Preliminary Agreement) are subject to the condition that the Bonds have been issued no later than fifteen (15) months from the date hereof (or such other date as shall be mutually satisfactory to the Issuer and the Company).

**IN WITNESS WHEREOF**, the parties hereto have entered into this Preliminary Agreement as of the 16<sup>th</sup> day of June, 2015.

DUTCHESS COUNTY LOCAL DEVELOPMENT CORPORATION

By:   
Sarah Lee, Chief Executive Officer

HUDSON VALLEY PROPERTY HOLDINGS, LLC

By:   
Trustee / Board of Managers  
Anthony E. Costello