

OFFICIAL INTENT RESOLUTION
(Batavia Senior Housing Preservation, LLC Project)

A regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on Thursday, July 2, 2020.

The following resolution was duly offered and seconded, to wit:

Resolution No. 07/20 - 03

RESOLUTION OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER (1) TAKING OFFICIAL ACTION TOWARD THE ISSUANCE OF UP TO \$8,500,000 PRINCIPAL AMOUNT INDUSTRIAL DEVELOPMENT REVENUE BONDS FOR THE PURPOSE OF FINANCING A CERTAIN PROJECT (AS SET FORTH BELOW) FOR THE BENEFIT OF BATAVIA SENIOR HOUSING PRESERVATION, LLC; (2) DESCRIBING THE FORMS OF FINANCIAL ASSISTANCE BEING CONTEMPLATED BY THE ISSUER WITH RESPECT TO SUCH PROJECT; AND (3) AUTHORIZING A PUBLIC HEARING WITH RESPECT TO SUCH FINANCING AND THE UNDERTAKING OF SUCH PROJECT

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 565 of the Laws of 1970 of the State of New York, as amended (hereinafter collectively called the "Act"), **GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER** (hereinafter called the "Issuer") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, the Act authorizes and empowers the Issuer to issue its small issue manufacturing revenue bonds to promote, develop, encourage and assist projects such as the Project (as hereinafter defined) and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, **BATAVIA SENIOR HOUSING PRESERVATION, LLC**, a New York limited liability company, on its own behalf or of an entity or entities formed or to be formed on its behalf (collectively, the "Company"), has submitted an application (the "Application") to the Issuer requesting the Issuer's assistance with a certain project (the "Project") consisting of: (i) the acquisition by the Issuer of title to or a leasehold interest in certain property located at 1 State Street in the City of Batavia, Genesee County, New York, such land being more particularly described as tax map number 84.011-1-52 (the "Land"); (ii) the reconstruction, renovation, refurbishment and equipping on the Land of an approximately 107,160 square-foot six-story elevator-serviced building to consist of (a) approximately 130 Section 8 residential rental units for seniors aged sixty-two (62) years old and older, sixteen (16) of which units will be designated as handicapped units; and (b) a staff unit (together, the "Improvements"); (iii) the acquisition in

and around the Improvements and of certain items of equipment and other tangible personal property and equipment (the "Equipment"; and, collectively with the Land and the Improvements, the "Facility"); (iv) the issuance by the Issuer of its Industrial Development Revenue Bonds (Batavia Senior Housing Preservation, LLC Project) in a principal amount not to exceed \$8,500,000 (the "Bonds") for the purpose of financing the acquisition, reconstruction, renovation, refurbishment and equipping of the Facility; (v) funding a debt service reserve fund, if any, and paying capitalized interest, if any, and certain other costs incidental to the issuance of the Bonds (the costs associated with items (i) through (v) above being hereinafter collectively referred to as the "Project Costs"); and (vi) the lease (with the obligation to purchase) or sale of the Issuer's interest in the Facility back to the Company; and

WHEREAS, the Issuer is contemplating providing financial assistance to the Company with respect to the Project (collectively, the "Financial Assistance") in the form of: (1) the issuance of the Bonds in an amount not to exceed the lesser of the Project Costs or \$8,500,000, (2) an exemption from all New York State and local sales and use taxes with respect to the qualifying personal property included within the Facility or used in reconstruction, renovation, refurbishment and equipping of the Facility, (3) an exemption from New York State and local mortgage recording taxes, as permitted by New York State law, with respect to any qualifying mortgage on the Facility (or such interest in the Facility as is conveyed to the Issuer) to secure the Bonds, and (4) the retention of title to or a leasehold (or other) interest in the Facility by the Issuer for a period of time so as to enable the Company to enter into an agreement with the Issuer regarding payments in lieu of real property taxes (the "Tax Agreement"), subject to compliance with the Issuer's policies with respect to Tax Agreements and, if necessary, a Tax Agreement Mortgage (the "PILOT Mortgage") with the Issuer, each for the benefit of each municipality having taxing jurisdiction over the Facility; and

WHEREAS, pursuant to Section 147(f) of the Code, interest on the Bonds will not be excluded from gross income for federal income tax purposes unless the issuance of the Bonds is approved by the "applicable elected representative" of the Genesee County, New York (the "County") after a public hearing has been held on the Project (the "Public Hearing"); and

WHEREAS, prior to the Public Hearing, public notice of the hearing will be given as required by Section 147(f) of the Code and pursuant to Section 859-a and the Act, and such public notice will comply with all requirements of the Code and the Act; and

WHEREAS, the Public Hearing will be held to hear all persons with views in favor of or opposed to the issuance of the Bonds, the Project, and the other Financial Assistance contemplated by the Issuer; and

WHEREAS, the Company has agreed to indemnify the Issuer against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the issuance of the Bonds and the financing of the Project; and

WHEREAS, the Issuer reasonably expects that it will (1) pay or incur certain capital expenditures in connection with the Project prior to the issuance of the Bonds, (2) use funds from sources other than proceeds of the Bonds which are or will be available on a short-term basis to

pay for such capital expenditures, and (3) reimburse itself for the use of such funds with proceeds of the Bonds; and

WHEREAS, pursuant to Article 18-A of the General Municipal Law the Issuer desires to adopt a resolution describing the Project and the Financial Assistance that the Issuer is contemplating with respect to the Project.

NOW, THEREFORE, BE IT RESOLVED by the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (a majority of the members thereof affirmatively concurring) that:

Section 1. The Company has presented the Application in a form acceptable to the Issuer. Based upon the representations made by the Company to the Issuer in the Company's Application, the Issuer hereby finds and determines that:

- (a) By virtue of the Act, the Issuer has been vested with all 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; and
- (b) It is desirable and in the public interest for the Issuer to (i) acquire title to or a leasehold (or other) interest in the Land, the Improvements and the Equipment constituting the Facility, (ii) lease or sell the Issuer's interest in the Land, the Improvements and the Equipment constituting the Facility to the Company pursuant to a lease agreement or sale agreement to be negotiated, and (iii) issue the Bonds to pay all or a portion of the Project Costs; and
- (c) The Issuer has the authority to take the actions contemplated herein under the Act; and
- (d) The action to be taken by the Issuer will induce the Company to undertake the Project, thereby increasing employment opportunities in Genesee County, New York, and otherwise furthering the purposes of the Issuer as set forth in the Act; and
- (e) The Project will not result in the removal of a facility or plant of the Company or any other proposed occupant of the Facility from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Facility located within the State; and the Issuer hereby finds that, based on the Company's Application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Company from removing such other facility or plant to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Company in its industry.

- Section 2. (a) The financing of the Project by the Issuer, through the issuance of the Bonds pursuant to the Act, and the provision of other Financial Assistance in connection therewith pursuant to the Act, will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the Genesee County and the people of the State of New York and improve their standard of living, and thereby serve the public purposes of the Act; and
- (b) It is desirable and in the public interest for the Issuer to issue the Bonds for the purposes of financing the costs of all or a portion of the Project, together with necessary incidental expenses in connection therewith as reflected in the Company's application to the Issuer, as amended from time to time prior to the issuance of the Bonds. The aggregate principal amount of the Bonds shall not exceed \$8,500,000.

Section 3. Subject to the approval of the issuance of the Bonds by the County Executive of Genesee County, New York, and the compliance with any other applicable provisions of the Code and the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and its implementing regulations at 6 N.Y.C.R.R. Part 617 (collectively referred to as "SEQRA"), the Issuer shall (i) issue the Bonds in an amount and with maturities, an interest rate, redemption terms and other terms and provisions to be determined by a further resolution of the Issuer, (ii) lease or sell the Facility to the Company pursuant to the terms of a Lease or other agreement whereby the Company will be obligated, among other things, to make rental payments to or for the account of the Issuer in amounts and at times so that such rental payments will be adequate to pay the principal of, premium, if any, and interest on the Bonds, and (iii) secure the Bonds in such manner as the Issuer, the Company and the purchaser(s) of the Bonds mutually deem appropriate.

Section 3. The proposed Financial Assistance being contemplated by the Issuer includes (i) financing all or a portion of the costs of the Project by the issuance of the Bonds in an amount not to exceed the lesser of the Project Costs or \$8,500,000, (ii) an exemption from all state and local sales and use taxes with respect to the qualifying personal property included within the Facility or used in the acquisition, construction and/or equipping of the Facility;, (iii) an exemption from all New York State and local mortgage recording taxes with respect to any qualifying mortgage on the Facility (or such interest in the Land as is conveyed to the Issuer) to secure the Bonds, and (iv) the retention of title to or a leasehold (or other) interest in the Facility by the Issuer for a period of time so as to enable the Company to enter into the Tax Agreement and, if necessary, the Tax Mortgage.

Section 4. The Company is hereby authorized to undertake the financing of all or a portion of the Project Costs through the issuance of the Bonds.

Section 5. The law firm of Harris Beach PLLC is hereby appointed Bond Counsel to the Issuer in connection with the issuance of the Bonds.

Section 6. Bond Counsel is hereby authorized to work with Counsel to the Company and others to prepare, for submission to the Issuer, all documents necessary to effect the authorization, issuance and sale of the Bonds.

Section 7. The Chairman, Vice Chair, Senior Vice President of Operations and/or the President/CEO of the Issuer are hereby authorized and directed (i) to distribute copies of this resolution to the Company, (ii) to hold a public hearing in compliance with Section 147(f) of the Code and pursuant to Section 859-a and the Act, (iii) to request the County Executive of Genesee County, New York, to approve the issuance of the Bonds following the public hearing, (iv) to comply with the volume cap limitation set forth in Section 146 of the Code and with any applicable New York State law, such that interest on the Bonds shall not be included in gross income for purposes of Federal income taxation; and (v) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 8. This resolution shall constitute the adoption of "official intent" (within the meaning of the United States Treasury Regulations Section 1.150-2(d)) with respect to issuance of the Bonds and the original expenditures which are reasonably expected to be reimbursed from the proceeds of the Bonds.

Section 9. This resolution shall take effect immediately and shall be continuously available for inspection by the general public during normal business hours at the Issuer's office.

The resolutions were duly moved, seconded, discussed and adopted with the following members voting:

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Paul Battaglia	[X]	[]	[]	[]
Peter Zeliff	[X]	[]	[]	[]
Craig Yunker	[X]	[]	[]	[]
Matthew Gray	[X]	[]	[]	[]
Todd Bender	[X]	[]	[]	[]
Andrew Young	[X]	[]	[]	[]
Amy Vanderhoof	[X]	[]	[]	[]

The resolution was thereupon duly adopted.

SECRETARY'S CERTIFICATION
(Batavia Senior Housing Preservation, LLC Project)

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

I, the undersigned Secretary of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center, DO HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency"), including the resolution contained therein, held on July 2, 2020, with the original thereof on file in the offices of the Agency, 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 related to the subject 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 affixed the seal of said Agency this 2nd day of July, 2020.

Secretary 