

FINAL RESOLUTION

(Batavia Special Needs Apartments, L.P. Project)

A regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on November 25, 2008, at 8:00 a.m.

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

Resolution No. 11/2008-2

RESOLUTION OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER AUTHORIZING (i) THE PROVISION OF CERTAIN FINANCIAL ASSISTANCE TO BATAVIA SPECIAL NEEDS APARTMENTS, L.P. IN THE FORM OF (A) A SALES TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT (AS DESCRIBED BELOW), (B) A PARTIAL REAL PROPERTY TAX ABATEMENT THROUGH THE PILOT AGREEMENT, AND (C) A MORTGAGE RECORDING TAX EXEMPTION FOR THE FINANCING RELATED TO THE PROJECT, AND (ii) EXECUTE RELATED DOCUMENTS WITH RESPECT TO 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** (the "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, **BATAVIA SPECIAL NEEDS APARTMENTS, L.P.**, for itself or on behalf of an entity to be formed (the "Company"), has requested the Agency's assistance with a certain project (the "Project") consisting of: (i) the acquisition or retention by the Agency of fee title to or a leasehold interest in certain contiguous parcels of land located at 549, 555, 557, and 559 East Main Street in the City of Batavia, Genesee County, New York (collectively the "Land"), (ii) the razing of certain existing residential buildings located on the Land (the "Existing Improvements"), (iii) the construction and equipping on the Land by the Company of an approximately 42,600 square-foot, forty (40) bed supported apartments project for mentally handicapped and mentally challenged adults (the "Improvements") and (iv) the acquisition by the Company in and around the Improvements and at and 11 Holmes Avenue, in the City of Batavia, Genesee County New York of certain items of equipment and other tangible personal property (the "Equipment" and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); (B) the leasing of the Facility back to the Company, and (C) the providing of financial assistance to the Company for qualifying portions of the Project in the form of sales and use tax exemptions and a mortgage recording tax exemption, consistent with

the policies of the Agency, and a partial real property tax abatement pursuant to a Payment-In-Lieu-Of-Tax Agreement; and

WHEREAS, on February 27, 2008, the Agency adopted a resolution (the "Preliminary Resolution") accepting the Company's application, directing that a public hearing be held, and describing the forms of financial assistance being contemplated by the Agency; and

WHEREAS, pursuant to General Municipal Law Section 859-a, on April 24, 2008 at 4:00 p.m. local time, in the Conference Room at the Batavia City Hall, One Batavia City Centre, Batavia, New York 14020, the Agency held a public hearing with respect to the Project and the proposed financial assistance being contemplated by the Agency (the "Public Hearing"), whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views. A copy of the Minutes of the Public Hearing along with the Notice of Public Hearing published and forwarded to the affected taxing jurisdictions thirty (30) days prior to said Public Hearing are attached hereto as Exhibit A; and

WHEREAS, the City of Batavia's Planning and Development Committee (the "Committee"), acting as Lead Agency (as such term is defined in Article 8 of the Environmental Conservation Law and Regulations adopted pursuant thereto by the Department of Environmental Conservation of the State (collectively, "SEQR"), determined that the Project will have no material adverse impact on the surrounding environment thus constituting a "negative declaration" with respect to the Project. A copy of the minutes of the Committee's meeting at which said determination was made is attached hereto as Exhibit B; and

WHEREAS, on October 10, 2008, the Agency adopted a resolution (the "Initial Inducement Resolution") ratifying the Committee's SEQR determination with respect to the Project and authorizing the Agency to (i) designate the Company as its agent for the purpose of acquiring, constructing and equipping the Project pursuant to an agent agreement (the "Agent Agreement"), (ii) negotiate and enter into a lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement") and payment-in-lieu-of-tax agreement (the "PILOT Agreement") with the Company, (iii) take title to or a leasehold interest in the Land, the Improvements, the Equipment and personal property constituting the Project (once the Lease Agreement, Leaseback Agreement and PILOT Agreement have been negotiated), and (iv) provide financial assistance to the Company in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Project, (b) a partial real property tax abatement through the PILOT Agreement, and (c) a mortgage recording tax exemption for the financing or re-financing related to the Project; and

WHEREAS, it was determined subsequent to the adoption by the Agency of the Initial Inducement Resolution that the financial assistance contemplated under the proposed PILOT Agreement deviates from the Agency's uniform tax exemption policy ("Policy") in the following respects: (i) the annual amount payable under the PILOT Agreement will be fixed at twelve thousand dollars (\$12,000); and (ii) the term of the PILOT will be thirty (30) years; and

WHEREAS, pursuant to Section 874 of the Act, the Agency provided notice of its intention to deviate from its Policy by correspondence dated October 21, 2008, mailed or

delivered to Genesee County, the City of Batavia, and the Batavia City School District (collectively, the "Affected Tax Jurisdictions") a copy of which was made and is attached hereto as Exhibit C; and

WHEREAS, pursuant to the Act, the Agency has waited at least thirty (30) days for comments from the Affected Tax Jurisdictions and, having received no comments (and no Affected Tax Jurisdiction has requested to address the Agency at this meeting), the Agency desires to re-adopt and ratify the Initial Inducement Resolution; and

WHEREAS, the Lease Agreement, Leaseback Agreement and PILOT Agreement, and related documents have been negotiated and are presented to this meeting for approval and execution.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER AS FOLLOWS:

Section 1. The Chairman, Vice Chairman and/or the President/CEO of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Lease Agreement, Leaseback Agreement, PILOT Agreement and related documents in the forms presented at this meeting with such changes as shall be approved by the Chairman, Vice Chairman and/or the President/CEO upon execution.

Section 2. The Chairman, Vice Chairman and/or President/CEO of the Agency are each hereby authorized, on behalf of the Agency, to execute and deliver the Lease Agreement, Leaseback Agreement, PILOT Agreement and any documents necessary and incidental thereto, including but not limited to NYS Form RP-412-a, "Application for Real Property Tax Exemption," and the Secretary of the Agency is hereby authorized to affix the seal of the Agency thereto where appropriate and to attest the same, all in substantially the forms thereof presented to this meeting with such changes (including without limitation any change in the dated date of such documents), variations, omissions and insertions as the Chairman, Vice Chairman and/or President/CEO shall approve. The execution of the PILOT Agreement and the Application for Real Property Tax Exemption by the Chairman, Vice Chairman and/or President/CEO of the Agency shall constitute conclusive evidence of such approval. The Agency's approval of the PILOT Agreement, after due consideration, is consistent with the deviation notice letters transmitted by or on behalf the Agency on or about October 21, 2008, to each of the Affected Taxing Jurisdictions and shall provide abatements from real property taxes with respect to the Facility for a term of approximately thirty (30) years, with the annual amount payable under the PILOT Agreement fixed at twelve thousand dollars (\$12,000). After PILOT Year 30, the Facility shall be subject to full ad valorem real property taxes. The Agency's approval of the abatement and related deviation from the Agency's Policy have been provided to induce the Company to undertake the Project in Genesee County which will result in significant construction jobs and related employment. No comments regarding the proposed deviation were made by the Affected Tax Jurisdictions.

Section 3. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 4. The Agency hereby re-adopts and ratifies the Initial Inducement Resolution and such Initial Inducement Resolution is incorporated hereto by reference. A copy of the Initial Inducement Resolution is attached hereto as **Exhibit D.**

Section 5. These Resolutions shall take effect immediately.

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

	<u>Yea</u>	<u>Nay</u>	<u>Absent</u>	<u>Abstain</u>
John F. Andrews	[x]	[]	[]	[]
James L. Vincent	[x]	[]	[]	[]
James W. Fulmer	[x]	[]	[]	[]
Hollis Upson	[x]	[]	[]	[]
Michael Gerber	[]	[]	[x]	[]
L. William Benton	[x]	[]	[]	[]
Wolcott T. Hinchey	[x]	[]	[]	[]

The Resolutions were thereupon duly adopted.

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