

AUTHORIZING RESOLUTION
(Batavia Senior Housing Preservation, LLC Project)

At a regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on October 1, 2020.

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

Resolution No. 10/2020 - __01__

RESOLUTION AUTHORIZING THE ISSUANCE, EXECUTION, SALE AND DELIVERY OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY'S TAX-EXEMPT MULTIFAMILY HOUSING REVENUE BONDS (BATAVIA SENIOR HOUSING PRESERVATION, LLC PROJECT), SERIES 2020, IN ONE OR MORE SERIES IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$8,500,000 AND THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "State"), as amended, and Chapter 565 of the Laws of 1970 of the State of New York, as amended (hereinafter collectively called the "Act"), the **GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY d/b/a GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER** (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, **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 (i) 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, in accordance with Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), the Issuer conducted a public hearing with respect to the issuance of the Bonds on August 17, 2020, at 10:30 a.m., following the publication August 4, 2020, in *The Batavia Daily News* of a notice of said public hearing; and

WHEREAS, it is anticipated that the County Manager of Genesee County (the "County Manager"), as the applicable elected representative (as such term is defined under section 147(f)(2)(E) of the Code), will give his unconditional approval of the issuance of the Bonds; and

WHEREAS, pursuant to Section 146 of the Code, the Issuer has secured an allocation of the private activity volume cap from the State of New York through Empire State Development Corporation sufficient for the issuance of the Bonds; and

WHEREAS, the Bonds are being issued pursuant to an Indenture of Trust, to be dated as of December 1, 2020 (the "Indenture"), or such other date acceptable to the Chair, President/CEO or the Senior Vice President of Operations of the Issuer (each an "Authorized Officer"), by and between the Issuer and the trustee to be determined (the "Trustee"); and

WHEREAS, in connection with the issuance of the Bonds, the Issuer and Company shall enter into a Lease Agreement, dated as of December 1, 2020 (or such other date as agreed to by an Authorized Officer) (the "Lease Agreement"), pursuant to which the Company will lease the Facility to the Issuer for the purpose of specifying the terms and conditions to which the Issuer agrees to undertake the Project and the Issuer will sublease its interest in the Facility back to the Company pursuant to a Leaseback Agreement, dated as of December 1, 2020 (the "Leaseback Agreement"); and

WHEREAS, to secure the Company's obligations under the Leaseback Agreement, the Company will grant the Trustee a security interest in certain cash collateral; and

WHEREAS, as security for the Bonds, the Issuer will assign to the Trustee its rights (other than the Unassigned Rights (as defined in the Indenture)) under the Leaseback Agreement pursuant to the Pledge and Assignment, dated as of December 1, 2020 (the "Pledge and Assignment"), from the Issuer to the Trustee with acknowledgment by the Company; and

WHEREAS, the Bonds are being initially purchased or placed by such underwriter(s) or placement agent(s), as the case may be, selected by the Company (the "Underwriter"), pursuant to a certain Bond Purchase Agreement, to be dated a date certain (the "Bond Purchase Agreement"), by and among the Underwriter, the Issuer and the Company; and

WHEREAS, the Issuer and the Company will enter into that certain Tax Compliance Agreement, dated the date of delivery of the Bonds (the "Tax Compliance Agreement"), in which the Issuer and the Company will make certain representations and covenants, establish certain conditions and limitations and create certain expectations, relating to compliance with the requirements imposed by the Code and the Issuer will execute a completed Internal Revenue Service ("IRS") Form 8038 (Information Return for Private Activity Bonds) relating to the Bonds ("Form 8038"), pursuant to Section 149(e) of the Code and will cause the Form 8038 to be filed with the IRS; and

**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. Based upon the representations made by the Company to the Issuer, the Issuer hereby makes the following findings and determinations:

- (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 constitutes a "project" within the meaning of the Act;
- (C) The Project and the financing thereof by the Issuer through the issuance of the Bonds will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of Genesee County, New York and the State of New York and improve their standards of living, and thereby serve the public purposes of the Act;
- (D) The Project will not result in the removal of a commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project 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 Project 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 Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries;

- (E) It is desirable and in the public interest for the Issuer to issue its Bonds to finance the Project Costs, together with certain related costs and amounts, in an aggregate amount presently estimated to be \$8,500,000, all in furtherance of the Issuer's purposes; and
- (F) The Company is not undertaking the Project in place of, on behalf of, for the benefit of, or at the request of the Issuer.

Section 2. In consequence of the foregoing, the Issuer hereby determines to:

- (A) approve the issuance of the Bonds in an aggregate principal amount not to exceed \$8,500,000; and
- (B) execute the Indenture as approved by an Authorized Officer; and
- (C) execute the Tax Agreement as approved by an Authorized Officer; *provided, however,* (i) the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project and (ii) the terms of the Tax Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with; and
- (D) execute the Lease Agreement as approved by an Authorized Officer; and
- (E) execute the Leaseback Agreement as approved by an Authorized Officer; and
- (F) execute the Bond Purchase Agreement with such amendments or modifications as approved by an Authorized Officer; and
- (G) issue and deliver the Bonds to the Trustee, subject however to the approval of the final terms for the Bonds and the terms and conditions of the Indenture consistent with this Resolution, and the prior written approval of all terms contained therein, and the terms of the Bonds, by an Authorized Officer of the Issuer and by the Company; and

- (H) assign certain of its rights (excluding Unassigned Rights) under the Leaseback Agreement pursuant to the Pledge and Assignment; and
- (I) use the proceeds of the Bonds to finance all or a portion of the Project Costs, including payment of a portion of the costs of the acquisition, construction and equipping of the Facility, and to pay necessary incidental expenses in accordance with the Indenture and the Bond Purchase Agreement; and
- (J) execute the Tax Compliance Agreement, and a completed Form 8038 and file form 8038 with the IRS in connection with the issuance of the Bonds; and
- (K) execute and deliver all other certificates and documents required in connection with the issuance and sale of the Bonds required to accomplish the Project and qualify the interest on the Bonds for tax-exempt status under Section 103 of the Code (collectively, the documents referred to in paragraphs (B) through (J) being referred to herein as the "Financing Documents").

Section 3. The Issuer is hereby authorized to undertake the Project, to finance the costs of reconstruction, renovation and equipping of the Facility, the funding of a debt service reserve fund (if any) and capitalized interest (if any), and costs of issuance, by the issuance of the Bonds and to grant the other Financial Assistance and all acts previously taken by the Issuer with respect to the reconstruction, renovation and equipping of the Facility, the undertaking of the Project, the granting of Financial Assistance with respect to the Project and the issuance of the Bonds are hereby approved, ratified and confirmed.

Section 4. Subject to receipt of the approval of the County Manager of the issuance of the Bonds pursuant to, and solely for the purposes of, Section 147 of the Code, the Issuer is hereby authorized to issue, execute and deliver the Bonds to the Trustee in accordance with the provisions of the Indenture and the terms authorized in this Resolution. Each of the Authorized Officers of the Issuer are hereby authorized, on behalf of the Issuer, to execute (by manual or facsimile signature) and deliver the Financing Documents, on such terms and conditions as shall be consistent with this Resolution and approved by an Authorized Officer, the execution thereof by such Authorized Officer constituting conclusive evidence of such approval.

Section 5. Subject to receipt of the approval of the County Manager of the issuance of the Bonds pursuant to, and solely for the purposes of, Section 147 of the Code and the other limitations contained herein, the Issuer, through an Authorized Officer, is hereby authorized to issue, execute, sell and deliver to the Trustee the Bonds in the aggregate principal amount of up to \$8,500,000 in the form heretofore approved in Section 4 of 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 Section 5 (i) shall be issued, executed and delivered at such time as an Authorized Officer shall determine, (ii) shall be in such aggregate principal

amount (not to exceed \$8,500,000) as is hereafter approved by an Authorized Officer, (iii) shall bear interest at such rates as are set forth in the Bonds and the Indenture or as are hereinafter approved by an Authorized Officer, 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; and

- (b) the Bonds shall be issued solely for the purpose of providing funds to assist the Company to finance the Project Costs, the administrative, legal, financial, and other expenses of the Issuer in connection with such assistance and incidental to the issuance of the bonds, as such costs are more specifically set forth in the Financing Documents; and
- (c) the Bonds and the interest thereon are not and shall never be a debt of the State or Genesee County, New York, and neither the State nor Genesee County, New York, shall be liable thereon; and
- (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 Leaseback Agreement or from the enforcement of the security provided by the Financing Documents.

Section 6. 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 to be "arbitrage bonds" within the meaning of Section 148 of the Code.

Section 7. An Authorized Officer of the Issuer is hereby authorized and directed for and in the name and on behalf of the Issuer to do all acts and things required or provided by the provisions of the Financing Documents, and to execute and deliver all such additional certificates, instruments and documents, including the Financing Documents and Form 8038, and to do all such further acts and things as may be necessary or in the opinion of an Authorized Officer acting on behalf of the Issuer, desirable and proper to effect the purposes of this Resolution and to cause compliance by the Issuer with all of the terms, covenants, and provisions of the Financing Documents binding upon the Issuer.

Section 8. It is hereby found and determined that all formal actions of the Issuer concerning and relating to the adoption of this Resolution were adopted in an open meeting of the Issuer; and that all deliberations of the Issuer and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements.

Section 9. Due to the complex nature of this transaction, the Issuer hereby authorizes its Authorized Officers to approve, execute and deliver such further agreements, documents and certificates as the Issuer may be advised by Bond Counsel to be necessary or desirable to effectuate

compliance by the Issuer with all of the terms, covenants, and provisions of the Financing Documents binding upon the Issuer.

Section 8. It is hereby found and determined that all formal actions of the Issuer concerning and relating to the adoption of this Resolution were adopted in an open meeting of the Issuer; and that all deliberations of the Issuer and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements.

Section 9. Due to the complex nature of this transaction, the Issuer hereby authorizes its Authorized Officers to approve, execute and deliver such further agreements, documents and certificates as the Issuer may be advised by Bond Counsel to be necessary or desirable to effectuate the foregoing, such approval to be conclusively evidenced by the execution of any such agreements, documents or certificates by an Authorized Officer action on behalf of the Issuer.

Section 10. This resolution shall take effect immediately and the Bonds are hereby ordered to be issued in accordance with this Resolution.

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

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

The Resolutions were 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 October 1, 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 1 day of October, 2020.


Secretary