

**PRELIMINARY INDUCEMENT RESOLUTION
ALBANY PLACE DEVELOPMENT LLC PROJECT**

A regular meeting of Town of Guilderland Industrial Development Agency (the “Agency”) was convened in public session at the offices of the Agency located at the Guilderland Town Hall on Western Avenue, Route 20 in the Town of Guilderland, Albany County, New York on April 14, 2017 at 8:00 o’clock a.m., local time.

The meeting was called to order by the (Vice) Chairman of the Agency and, upon roll being called, the following members of the Agency were:

PRESENT:

William N. Young, Jr.	Chairman
James Shahda	Vice Chairman
Christopher Bombardier	Treasurer/Assistant Secretary
Walter Pacholczak	Secretary/Assistant Treasurer
Vera Dordick	Member
Kevin Hicks	Member

ABSENT:

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Hon. Patricia Slavick	Town Board Liaison
Donald Csaposs	Chief Executive Officer
William Adams	Chief Financial Officer
Linda Cure	Administrative Assistant
A. Joseph Scott, III, Esq.	Agency Counsel

The following resolution was offered by _____, seconded by _____, to wit:

Resolution No. _____

RESOLUTION TAKING OFFICIAL ACTION TOWARD THE ISSUANCE OF HOUSING REVENUE BONDS IN AN AMOUNT SUFFICIENT TO FINANCE THE ACQUISITION, RENOVATION, RECONSTRUCTION, INSTALLATION AND LEASING OF THE ALBANY PLACE DEVELOPMENT LLC PROJECT AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PRELIMINARY AGREEMENT WITH RESPECT TO SUCH TRANSACTION.

WHEREAS, Town of Guilderland Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) and Chapter 146 of the 1973 Laws of New York, as amended, constituting Section 909-a of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing,

warehousing, research, commercial and industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to issue its revenue bonds to finance the cost of the acquisition, construction, reconstruction and installation of one or more “projects” (as defined in the Act), to acquire, construct, reconstruct and install said projects or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, Albany Place Development LLC (the “Company”), has presented an application (the “Application”) to the Agency, requesting that the Agency consider undertaking a project (the “Project”) consisting of the following: (A) (1) the acquisition of an interest or interests in a parcel of land containing approximately 5.8 acres located at 1228 Western Avenue in the Town of Guilderland, Albany County, New York (the “Land”), together with the existing buildings containing in the aggregate approximately 115,000 square feet of space located on the Land (collectively, the “Facility”), currently known as the Best Western Sovereign Hotel; (2) the reconstruction and renovation of the Facility; and (3) the acquisition and installation thereon and therein of various machinery and equipment (the “Equipment”) (the Land, the Facility and the Equipment hereinafter collectively referred to as the “Project Facility”), all of the foregoing to be owned by the Company and operated as a residential assisted senior living healthcare facility and related activities; (B) the financing of all or a portion of the costs of the foregoing by the issuance of taxable and/or tax-exempt revenue bonds of the Agency in one or more issues or series in an aggregate principal amount sufficient to pay the cost of undertaking the Project, together with necessary incidental costs in connection therewith, presently estimated to equal approximately \$25,035,000, but in any event not to exceed \$30,000,000 (the “Bonds”); (C) the payment of a portion of the costs incidental to the issuance of the Bonds, including issuance costs of the Bonds and any reserve funds as may be necessary to secure the Bonds; (D) the granting of certain other “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including exemption from certain sales taxes, deed transfer taxes, mortgage recording taxes and real property taxes (collectively with the Bonds, the “Financial Assistance”); and (E) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (the “DEC Regulations”, and collectively with the “SEQR Act”, “SEQRA”), the Agency (or any other “involved agency”) (as such quoted phrase is defined in SEQRA) has not yet made a preliminary determination as to the potential environmental significance of the Project and therefore has not yet determined whether an environmental impact statement is required to be prepared with respect to the Project; and

WHEREAS, pursuant to the Act, any preliminary approval of the Project contained herein is contingent upon a determination by the members of the Agency to proceed with the Project following satisfaction of (A) all requirements of SEQRA that relate to the Project and (B) the public hearing and notice requirements and other procedural requirements contained in Section 859-a of the Act; and

WHEREAS, the Agency has given due consideration to the Application, and to representations by the Company that (A) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Company to undertake the Project in the Town of Guilderland, New

York and (B) the completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York; and

WHEREAS, the Agency desires to encourage the Company to preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of the Town of Guilderland, New York by undertaking the Project in the Town of Guilderland, New York; and

WHEREAS, although the resolution authorizing the Project has not yet been drafted for approval by the Agency, a preliminary agreement (the "Preliminary Agreement") relative to the proposed undertaking of the Project by the Agency is being considered for approval by the Agency; and

WHEREAS, interest on the Bonds will not be excludable from gross income for federal income tax purposes unless (A) pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations of the United States Treasury Department thereunder (the "Treasury Regulations"), the issuance of the Bonds is approved by the "applicable elected representative" of the Town of Guilderland, New York after the Agency has held a public hearing on the nature and location of the Project Facility and the issuance of the Bonds; (B) the requirements of Section 142 of the Code are satisfied relating to "qualified residential rental projects"; and (C) pursuant to Section 146 of the Code, there is allocated to the Bonds a portion of the private activity bond volume cap of the Agency and/or the State of New York sufficient to equal the face amount of the Bonds;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF TOWN OF GUILDERLAND INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Agency has reviewed the Application and, based upon the representations made by the Company to the Agency in the Application and at this meeting and, based thereon, the Agency hereby makes the following findings and determinations with respect to the Project:

(A) Based on a preliminary review of the Application and subject to further review by the Agency staff, the Project constitutes a "project" within the meaning of the Act; and

(B) The completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York; and

(C) The granting of the Financial Assistance by the Agency with respect to the Project, through the issuance of the Bonds and the granting of the various tax exemptions described in Section 2(F) of this Resolution, will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of the Town of Guilderland, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act; and

(D) Upon compliance with the provisions of the Act and SEQRA, the Agency would then be authorized under the Act to undertake the Project in order to promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of the Town of Guilderland, New York and the State of New York and improve their standard of living.

Section 2. Following full compliance with the requirements of the Act, including, but not limited to the holding of a public hearing pursuant to Section 859-a of the Act, the Agency will (A) authorize the issuance of the Bonds in such principal amount and with such maturities, interest rate or rates, redemption terms and other terms and provisions as shall be determined by a further resolution of the Agency; (B) acquire an interest in the Project Facility from the Company pursuant to a deed, lease agreement or other documentation to be negotiated between the Agency and the Company (the "Acquisition Agreement"); (C) renovate and reconstruct the Facility and acquire and install the Equipment in the Facility or elsewhere on the Land; (D) lease (with the obligation to purchase) or sell the Project Facility to the Company pursuant to a lease agreement or an installment sale agreement (hereinafter, the "Project Agreement") between the Agency and the Company whereby the Company will be obligated, among other things, (1) to make payments to the Agency in amounts and at times so that such payments will be adequate to enable the Agency to timely pay all amounts due on the Acquisition Agreement and (2) to pay all costs incurred by the Agency with respect to the Project and/or the Project Facility, including all costs of operation and maintenance, all taxes and other governmental charges, any required payments in lieu of taxes, and the reasonable fees and expenses incurred by the Agency with respect to or in connection with the Project and/or the Project Facility; (E) secure the Bonds in such manner as the Agency, the Company and the purchasers of the Bonds shall mutually deem appropriate; and (F) provide the Financial Assistance with respect to the Project, in accordance with the Agency's uniform tax exemption policy, including (1) exemption from mortgage recording taxes with respect to any documents recorded by the Agency with respect to the Project in the office of the County Clerk of Albany County, New York or elsewhere, (2) exemption from sales taxes relating to the acquisition, reconstruction, renovation and installation of the Project Facility, (3) exemption from deed transfer taxes on real estate transfers to and from the Agency with respect to the Project, and (4) exemption from real estate taxes (but not including special assessments and special ad valorem levies) relating to the Project Facility, subject to the obligation of the Company to make payments in lieu of taxes with respect to the Project Facility, all as contemplated by the Preliminary Agreement.

Section 3. The undertaking and completing of the Project by the Agency, and the granting of the Financial Assistance with respect to the Project as contemplated by Section 2 of this Resolution, shall be subject to: (A) the determination by the members of the Agency to proceed with the Project following a determination by the members of the Agency that all requirements of (1) SEQRA that relate to the Project have been fulfilled and (2) the public hearing requirements under Section 859-a of the Act have been satisfied; (B) execution and delivery by the Company of the Preliminary Agreement, which sets forth certain conditions for the undertaking and completing of the Project by the Agency, and satisfaction by the Company of all the terms and conditions of the Preliminary Agreement applicable to the Company; (C) agreement by the Agency, the Company and the purchasers of the Bonds on mutually acceptable terms for the Bonds and for the sale and delivery thereof and mutually acceptable terms and conditions for the security for the payment thereof; (D) agreement between the Company and the Agency as to payment by the Company of payments in lieu of taxes with respect to the Project Facility, together with the administrative fee of the Agency with respect to the Project; (E) if interest on the Bonds is to be treated as excludable from gross income for federal income tax purposes, (1) satisfaction of the requirements contained in Section 142 of the Code relating to "qualified residential rental projects", (2) the Town Board of the Town of Guilderland, New York must have approved the issuance of the Bonds after a public hearing on the issuance of the Bonds and the nature and location of the Project Facility has been held by the Agency, as required by Section 147(f) of the Code, and (3) unless the Agency has sufficient unused allocation of private activity bond volume limit from the State of New York for the particular calendar year in which the Bonds are proposed to be issued and has determined to allocate to the Bonds a portion of such unused allocation of private activity bond volume limit, the Agency must have received notice from the New York State Commissioner of Economic Development that the Agency has received a supplemental allocation for the Bonds from a statewide bond reserve established pursuant

to New York State law, all as provided in Section 146 of the Code, it being understood that by enacting this resolution the Agency is not committing itself to make such an allocation or to issue the Bonds if such an allocation is not made or received; (F) if any portion of the Financial Assistance to be granted by the Agency with respect to the Project is not consistent with the Agency's uniform tax exemption policy, the Agency must follow the procedures for deviation from such policy set forth in Section 874(b) of the Act prior to granting such portion of the Financial Assistance; and (G) the following additional condition(s): _____.

Section 4. The form, terms and substance of the Preliminary Agreement (in the form typically used by the Agency in similar financings) are in all respects approved, and the Chairman (or Vice Chairman) of the Agency is hereby authorized, empowered and directed to execute and deliver said Preliminary Agreement in the name and on behalf of the Agency, said Preliminary Agreement to be substantially in the form typically used by the Agency, as prepared by Agency Counsel, with such changes therein as shall be approved by the officer executing same on behalf of the Agency, the execution thereof by such officer to constitute conclusive evidence of such officer's approval of any and all changes or revisions therein from the form now before this meeting.

Section 5. From and after the execution and delivery of the Preliminary Agreement, the officers, agents and employees of the Agency are hereby authorized, empowered and directed to proceed with the undertakings provided for therein on the part of the Agency and are further authorized to do all such acts and things and to execute all such documents as may be necessary or convenient to carry out and comply with the terms and provisions of the Preliminary Agreement as executed.

Section 6. The Company is hereby authorized to conduct such environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary or convenient to enable the Agency to make its final determination whether to approve the Project.

Section 7. It is intended that this Resolution shall constitute an affirmative "official intent" toward the issuance of the Bonds within the meaning of Section 1.103-8(a)(5) and Section 1.150-2(e)(1) of the United States Treasury Regulations.

Section 8. The law firm of Hodgson Russ LLP is hereby appointed Bond Counsel to the Agency with respect to all matters in connection with the Project. Bond Counsel is hereby authorized, at the expense of the Company, to work with the Company, the purchasers of the Bonds and others to prepare, for submission to the Agency, all documents necessary to effect the authorization, issuance, sale and delivery of the Bonds. Bond Counsel for the Agency is hereby authorized, at the expense of the Company, to work with the Agency staff, the Agency Counsel, the Company, counsel to the Company and others to prepare, for submission to the Agency, all documents necessary to effect the transactions contemplated by this Resolution.

Section 9. The Agency hereby authorizes the Chairman of the Agency, prior to the issuance of any portion of the Bonds or the granting of any other Financial Assistance with respect to the Project, after consultation with the members of the Agency, Agency Counsel and Bond Counsel, (A) (1) to establish the time, date and place for a public hearing of the Agency to hear all persons interested in the Project and the proposed financial assistance being contemplated by the Agency with respect to the Project; (2) to cause notice of such public hearing to be given to the public by publishing a notice of such hearing in a newspaper of general circulation available to residents of the Town of Guilderland, New York, such notice to comply with the requirements of Section 859-a of the Act and Section 147(f) of the Code and to be published no fewer than fourteen (14) days prior to the date established for such public hearing; (3) to cause notice of said public hearing to be given to the chief executive officer of the county

and each town, village and school district in which the Project is to be located no fewer than fourteen (14) days prior to the date established for said public hearing; (4) to conduct such public hearing; and (5) to cause a report of said public hearing fairly summarizing the views presented at said public hearing to be promptly prepared and cause copies of said report to be made available to the members of the Agency and (B) to satisfy the public approval requirements contained in Section 147(f) of the Code.

Section 10. The Chairman, Vice Chairman and/or Chief Executive Officer of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 11. This Resolution 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:

William N. Young, Jr.	VOTING	_____
James Shahda	VOTING	_____
Christopher Bombardier	VOTING	_____
Walter Pacholczak	VOTING	_____
Vera Dordick	VOTING	_____
Kevin Hicks	VOTING	_____

The foregoing Resolution was thereupon declared duly adopted.

