

A regular meeting of the Town of Colonie Industrial Development Agency (the "Agency") was convened in public session at the Town of Colonie Public Operations Center, 347 Old Niskayuna Road, Latham, Albany County, New York on December 12, 2011 at 6:30 p.m. o'clock p.m., local time.

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

PRESENT: David Rowley  
David Hernandez  
John Kearney  
Gary Rinaldi  
David DeLuca

ABSENT: Sharon Bright Holub  
Ben Syden

The following persons were also present:

Joseph LaCivita	Executive Director
M. Cornelia Cahill, Esq.	Barclay Damon, LLP

The following resolution was offered by Gary Rinaldi, seconded by John Kearney, to wit:

**RESOLUTION AUTHORIZING THE EXECUTION OF AN UNDERLYING LEASE, LEASE AGREEMENT AND PAYMENT IN LIEU OF TAX AGREEMENT IN CONNECTION WITH A CERTAIN PROJECT FOR SHAKER POINTE AT CARONDELET, INC. ("COMPANY") AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH.**

WHEREAS, Town of Colonie Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of Laws of 1969 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 232 of the Laws of 1977 of New York, as amended, constituting Section 911-d 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, renovating, improving, maintaining, equipping and furnishing of commercial 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 acquire, construct, reconstruct and install “projects” (as defined in the Act) 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, Shaker Pointe at Carondelet, Inc. (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 a leasehold interest in approximately 30.5 acres of land located at 42 and 48 Delatour Road, in the Town of Colonie, Albany County, New York (the “Land”), and the existing buildings located thereon (the “Existing Buildings”), (2) the demolition of the Existing Buildings, (3) construction of up to thirteen (13) buildings consisting of various apartments with common areas, single family, duplex and triplex housing units, a multi-faceted community building, and several one-story parking garages in locations as shown on the site plan approved by the Town of Colonie Planning Board with multiple car capacity (collectively, the “Facility”), and (4) the acquisition and installation therein and thereon of various machinery and equipment (the “Equipment”) (the Land, the demolition of the Existing Buildings, the Facility and the Equipment being collectively referred to as the “Project Facility”); (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing including potential exemption from real estate taxes (the “Financial Assistance”); and (C) 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, in compliance with the provisions of Section 859-a of the Act, the Preliminary Inducement Resolution indicated that the undertakings of the Agency contained therein are contingent upon the Agency making a determination to proceed with the Project following compliance by the Agency with the public notice and public hearing requirements set forth in Section 859-a of the Act; and

WHEREAS, pursuant to the authorization contained in the Preliminary Inducement Resolution, the Agency (A) caused notice of public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed to the chief executive officers of the county, the City and the school district in which the Project Facility is, or is to be located, (B) caused notice of the Public Hearing to be published in the Times Union, a newspaper of general circulation available to the residents of the Town of Colonie, Albany County, New York, and (C) conducted the Public Hearing on December 12, 2011 at 6:30 p.m. at the Town of Colonie Public Operations Center, 347 Old Niskayuna Road, Latham, New York; and

WHEREAS, the Agency caused a letter dated December 2, 2011 (the “PILOT Deviation Letter”) to be mailed to the chief executive officers of each Affected Tax Jurisdiction, informing said individuals that the Agency would, at its meeting to be held on December 12, 2011, consider a proposed deviation from the Agency’s uniform tax exemption policy with respect to the payment in lieu of tax agreement to be entered into by the Agency with respect to the Project Facility upon the terms set forth in Exhibit A (the “PILOT Agreement”); and

WHEREAS, in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents: (A) an underlying lease agreement (and a memorandum thereof) dated as of December 1, 2011 (the "Underlying Lease") by and among the Company, the Society of the Sisters of St. Joseph (the "Society"), and the Agency, pursuant to which, among other things, the Agency will acquire a leasehold interest in the Land and the improvements now or hereafter located on the Land from the Company, (B) a lease agreement (and a memorandum thereof) dated as of December 1, 2011 (the "Lease Agreement") by and between the Agency and the Company, pursuant to which, among other things, the Company agrees to undertake and complete the Project as agent of the Agency and the Company further agrees to lease the Project Facility from the Agency and, as rental thereunder, to pay the Agency's administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project; (C) a payment in lieu of tax agreement dated December 1, 2011 by and between the Agency and the Company, pursuant to which the Company agrees to make payments in lieu of taxes; and (D) various certificates relating to the Project; and

WHEREAS, in order to secure the performance by the Company of its obligations under the PILOT Agreement, the Company and the Society will execute a mortgage dated as of December 1, 2011 (the "PILOT Mortgage") in favor of the Agency granting to the Agency a mortgage lien on the Company's leasehold interest in the Project Facility; and

WHEREAS, in order to finance the costs of the Project, at the request of the Company, the Town of Colonie Local Development Corporation (the "Colonie LDC"), is expected to issue not to exceed \$10,000,000 aggregate principal amount of multi-modal revenue bonds (the "Bonds") and to loan the proceeds of the Bonds to the Company; and

WHEREAS, as security for the Bonds, the Company and Manufacturers and Traders Trust Company (the "Bank") will enter into a Letter of Credit Reimbursement Agreement dated as of December 1, 2011 (the "Reimbursement Agreement"), pursuant to which the Company will deliver to the Trustee, an irrevocable direct-pay letter of credit issued by the Bank; and

WHEREAS, to secure the Company's obligations under the Reimbursement Agreement, the Company has requested that the Agency join with the Company, in the execution of a mortgage, assignment of rents and security agreement dated as of December 1, 2011 (the "Bank Mortgage" and, collectively, with the Underlying Lease, the Lease Agreement, the PILOT Agreement and any other document executed by the Agency in connection with the Project, the "Agency Documents") from the Agency and the Company to the Bank granting to the Bank a mortgage lien on the Project Facility and granting to the Bank certain other rights with respect to such Project Facility; and

WHEREAS, prior to the date hereof, the Agency responded to all communications and correspondence received from the Affected Tax Jurisdiction regarding the proposed deviation from the Policy; and

WHEREAS, the Agency allowed representatives from the Affected Tax Jurisdictions present at this meeting to address the Agency regarding such proposed deviation; and

WHEREAS, the Company is a not-for profit corporation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, notwithstanding the not-for profit status of the Company, the assessor for the Town of Colonie (the "Assessor") has determined that the Project Facility is not eligible for listing on the exempt rolls for real property tax purposes (the "Determination of the Assessor"); and

WHEREAS, the Agency desires to grant Financial Assistance to the Company in the form of a real property tax exemption pursuant to the terms of the PILOT Agreement; and

WHEREAS, the Agency will file with the assessor and mail to the chief executive officers of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form RP-412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (a "Real Property Tax Exemption Form") relating to the Project;

WHEREAS, the requirements of 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 (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York being 6NYCRR Part 617, as amended (the "Regulations collectively with the SEQR Act, "SEQRA") applicable to the Project have been complied with; and

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

Section 1. The Agency, based upon the representations made by the Company to the Agency in the Application hereby finds and determines that:

(A) By virtue of the Act, the Agency 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) The Project is not a "civic facility" and constitutes a "project" within the meaning of the Act; and

(C) The Agency, based upon its review of the following factors, finds and determines that it is desirable and in the public interest of the Agency to deviate from its uniform tax exemption policy and to approve the execution and delivery of the PILOT Agreement:

- 1. The nature of the proposed Project (e.g., manufacturing, commercial, warehouse):**

The Project is a comprehensive development of property owned by The Society of the Sisters of St. Joseph into a senior services program with residences. The Sisters engaged in extensive planning to assure the project met the needs of the community. Studies and focus groups were conducted across broad lines. Results of the studies suggested the need for a senior living continuum with services for town residents and their families facing an aging population shift.

The program is designed to address the socialization, medical and spiritual needs of persons age 55 and older who cannot qualify for subsidized housing alternates. The Sisters have formed Shaker Pointe at Carondelet, Inc., which is a 501(c) (3) tax exempt entity in its own right to develop and operate the project on land leased to it by the Sisters. The Project is operated on a no eviction basis and although seniors will have to pay some costs of their care they will never be asked to leave if they should be unable to pay for the services received.

**2. The nature of the property before the Project begins (e.g., vacant land, vacant buildings):**

The property was vacant land used by the Sisters as a part of their Provincial House property. The property has been tax exempt for the last 45 years.

**3. The economic condition of the area at the time of the Application:**

The property is located in the Town in a multifamily residential area.

**4. The extent to which a project will create or retain permanent, private sector jobs:**

The Project will create 43.25 full time equivalent positions creating opportunities for professional staff, service staff and for student jobs. In addition, the Project will create up to 300 construction jobs during the build out period.

**5. The estimated value of tax exemptions to be provided:**

The estimated value of the real property tax exemptions will be varied over the term of the PILOT Agreement based upon the tax exempt uses that are inherent in the uses proposed. Therefore, the net savings to the Company are estimated to

be at least \$1,500,000 over the term of the PILOT Agreement. These estimates are based on current taxable assessed values, tax rates and equalization rates.

**6. The extent to which the proposed Project will provide additional sources of revenue for municipalities and school districts in which the project is located:**

The Project will generate 43.25 more full time jobs for the community and up to 300 construction jobs which will generate additional sales tax. Moreover the transportation program operated by the project will assure that residents conduct their shopping within the Town and the County providing for additional sales tax revenue from resident consumption.

**7. The impact of the Project and the proposed tax exemptions on affected tax jurisdictions:**

The Project will have no tax impact on the affected tax jurisdictions as the property has been exempt from taxation for the last 45 years. If the Sisters did not undertake this Project the property would remain exempt from real property taxation.

Moreover, the Project consists of senior activities and will have no impact on the utilization of the School District. While students of the School District will have opportunities for part time jobs and learning experiences in a stable service-filled environment with long standing credible not-for-profit sponsorship.

The County will not be adversely affected and may well be positively impacted by deferring, delaying and avoiding the incurrence of Medicaid costs from a population that would otherwise be served by skilled nursing facilities. The Project alleviates the burden of government. Residents are expected to come from a 6 mile radius of the Project site so the Project is not importing a senior population but rather serving a population that already exists.

The Town is not adversely affected since the project will pay for services it utilizes through the PILOT Payments. Payments are targeted at costs of EMT and emergency services that may be required over time by residents of the Project. The Project has paid and will pay substantial permitting fees and will pay for costs of water and sewer services as delivered. Residents will also be taken to local shopping within the Town through the regularly scheduled transportation program of the Project. This will have the positive impact on sales tax revenue by assuring residents buy their groceries and other consumer items within the Town and County.

**8. The impact of the proposed project on existing and proposed business and economic development projects within the vicinity:**

The Project is a new concept and does not compete with existing businesses within the Town. The Project supports local vendors and generates full time equivalent positions of persons residing in the Town. Employees of the Project also will be patronizing local businesses.

**9. The amount of private sector investment generated or likely to be generated by the proposed Project:**

The cost of the Project build out is in excess of \$54,000,000 with a significant equity investment made by the Project sponsor.

**10. The likelihood of accomplishing the proposed Project in a timely fashion:**

The Project has received all zoning and planning approvals and attained predevelopment milestones so financing for the first phase is underway. The early stages of development and construction were funded by the Project sponsor serving as a catalyst for the future phases. A five year timeline is anticipated for the full build out of the Project with the Project becoming operational in stages throughout this time.

**11. The effect of the proposed project on the environment:**

The Project is designed around existing Town roads to limit impact of development for site infrastructure. Sponsorship is building principal components of the project to LEEDS standards. Of a 30 acre site, 23 acres will remain forever wild. The Project already has restored and returned wet lands to the environment. Storm water management implementation also has had a positive effect on neighboring lands.

**12. The extent to which the proposed Project will require the provision of additional services including, but not limited to, additional educational, transportation, police, emergency medical or fire services:**

The Project will require no provision for education or transportation services. The Project provides transportation for residents so it has the positive effect of alleviating the need for additional transportation. Buildings are fully sprinkled with and security services will be provided by the Project. However, the Project likely will have a demand on fire and emergency services (EMT) and the payments under the Proposed PILOT Agreement is intended to reimburse the Town for the costs of those services. Minimal demand for police services is anticipated.

**13. The extent to which the proposed Project will follow local input from local planning agencies:**

The Town was heavily involved in and influenced the Project planning. The Project attained a Planned Development District (PDD) designation after extensive review by the Town Planning Board and all other Town departments such as Latham Water, Pure Waters, Building and Town Public Works, and Engineering, as well as the Town Board.

**14. The extent to which the proposed Project will provide needed benefit (economic or otherwise) not otherwise available within the Town:**

The Project provides needed services for an aging population not otherwise available within the Town.

**15. The extent to which the Company or occupant will enter into apprenticeship agreements within the meaning of Section 816 of the Labor Law of the State of New York with respect to the construction, reconstruction or operation of the Project:**

The Project sponsor will provide apprenticeship opportunities for staffing in social services and geriatric services.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (A) proceed with the Project; (B) acquire a leasehold interest in the Land and all improvements now or hereafter located on the Land from the Company; (C) lease the Project Facility to the Company pursuant to the Lease Agreement; (D) acquire, construct and install the Project Facility, or cause the Project Facility to be acquired, constructed and installed, as provided in the Lease Agreement; (E) grant a mortgage lien on and security interest in its interest in the Project Facility to the Bank; and (F) grant to the Company an exemption from real property taxes upon the terms set forth in the PILOT Agreement.

Section 3. The Agency is hereby authorized to acquire a leasehold interest in the Project Facility pursuant to the Underlying Lease and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition, construction and installation are hereby ratified, confirmed and approved.

Section 4. The Agency is hereby authorized to acquire, construct and install the Project Facility as described in the Lease Agreement and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition, construction and installation are hereby ratified, confirmed and approved.

Section 5. The Agency is hereby authorized to join with the Company and grant a mortgage lien on and security interest in its interest in the Project Facility to the Bank as described in the Bank



Mortgage and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such mortgage lien and security interest are hereby ratified, confirmed and approved.

Section 6. The form and substance of the Agency Documents (in substantially the forms presented to this meeting and which, prior to the execution and delivery thereof, may be redated) are hereby approved.

Section 7. The Agency hereby agrees to reduce its administrative fee for the Project to ½ of 1% of the total cost of the Project as specified in the Application.

Section 8. (A) The Chairman (or Vice Chairman) of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same. The Agency Documents shall be in substantially the forms thereof presented to this meeting with such changes, variation, omissions and insertions as the Chairman (or Vice Chairman) shall approve, the execution thereof by the Chairman (or Vice Chairman) to constitute conclusive evidence of such approval.

(B) The Chairman of the Agency is hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency.

Section 9. 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 or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional 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 resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 10. This resolution shall take effect immediately upon adoption.

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

Sharon Bright-Holub	VOTING	ABSENT
David Hernandez	VOTING	AYE
John Kearney	VOTING	AYE
Gary Rinaldi	VOTING	AYE
David Rowley	VOTING	AYE
Benjamin Syden	VOTING	ABSENT
David Deluca	VOTING	RECUSED

The Resolution was thereupon declared duly adopted.

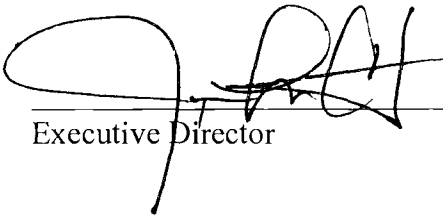
STATE OF NEW YORK    )  
  ) SS.:  
COUNTY OF ALBANY    )

I, the undersigned Secretary of the Town of Colonie Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing copy of the minutes of the meeting of the Agency, including the Resolution contained therein, held on December 12, 2011, with the original thereof on file in my office, and that the same is a true and correct copy of such proceedings of the Agency and such resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) 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 and rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 20<sup>th</sup> day of December, 2011.

  
\_\_\_\_\_  
Executive Director

(SEAL)

Exhibit A

February 1, 2012	\$250,000
December 1, 2012	500,000
Each year after 2012 through the date of issuance of a certificate of occupancy (the "CO Date")	10,000
CO Date – through the end of that calendar year	15,000 (pro-rated for period from CO Date though December 31 of that year)
1 <sup>st</sup> full calendar year after CO Date	20,000
2nd full calendar year after CO Date	25,000
3rd full calendar year after CO Date	30,000
4th full calendar year after CO Date	35,000
5 <sup>th</sup> full calendar year after CO Date	40,000
6th full calendar year after CO Date	45,000
7 <sup>th</sup> full calendar year after CO Date through and including 2051	70,000