

INITIAL RESOLUTION
(AvalonBay Communities, Inc. Project)

A regular meeting of the City of Yonkers Industrial Development Agency was convened on September 29, 2016.

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

Resolution No. 09/2016- 30

RESOLUTION OF THE CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY (i) ACCEPTING THE APPLICATION OF AVALONBAY COMMUNITIES, INC. WITH RESPECT TO A CERTAIN PROJECT (AS DESCRIBED BELOW) LOCATED AT 78-91, 80-94 AND 37-145 ALEXANDER STREET, IN THE CITY OF YONKERS, NEW YORK; (ii) AUTHORIZING A PUBLIC HEARING WITH RESPECT TO THE PROJECT; (iii) MAKING A DETERMINATION UNDER ARTICLE 8 OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW IN CONNECTION WITH THE PROJECT; AND (iv) DESCRIBING THE FORMS OF FINANCIAL ASSISTANCE BEING CONTEMPLATED BY THE AGENCY WITH RESPECT TO THE PROJECT.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 83 of the Laws of 1982 of the State of New York, as amended (hereinafter collectively called the "Act"), **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY** (hereinafter called 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, **AVALONBAY COMMUNITIES, INC.**, for itself or on behalf of an entity to be formed (the "Company") has submitted an application (the "Application") to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of (i) the acquisition of a leasehold interest in three parcels of land located at 78-91, 80-94 and 37-145 Alexander Street, City of Yonkers, New York, commonly known as the "ATI site", the Sun East site and the "Sun West site" (the "Land"); (ii) the construction of (a) on the Sun East site (the eastern side of Alexander Street), a five-story approximately 128-unit residential building with approximately 352 parking spaces, (b) on the Sun West site, a four-story approximately 239-unit residential building over one story of parking containing approximately 275 parking spaces, and (c) on the ATI site, a five-story approximately 242-unit residential building over a parking garage with approximately 279 parking spaces (the "Building Improvements"); (iii) the continuation of the Hudson River esplanade along the Hudson River to the west of the Sun West and ATI sites (the "Esplanade Improvements"; and, together with the Building Improvements, the "Improvements"); and (iv) the acquisition and installation in and around the Improvements of

certain items of equipment and other tangible personal property (the "Equipment", and collectively with the Land and the Improvements, the "Facility"); and

WHEREAS, pursuant to Article 18-A of the General Municipal Law the Agency desires to adopt a resolution describing the Project and the Financial Assistance (as defined below) that the Agency is contemplating with respect to the Project; and

WHEREAS, it is contemplated that the Agency will hold a public hearing and (i) negotiate and enter into an agent, financial assistance and project agreement, pursuant to which the Agency will designate the Company as its agent for the purpose of acquiring, constructing and equipping the Project (the "Agent Agreement"), (ii) negotiate and enter into a lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement") and tax agreement (the "Tax Agreement") with the Company, and, if required by the Agency, a Tax Agreement mortgage (the "Tax Agreement Mortgage"), (iii) take a leasehold interest in the Land, the Existing Improvements, the Improvements and personal property constituting the Project (once the Lease Agreement, Leaseback Agreement and Tax Agreement (and Tax Agreement Mortgage, if applicable) 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, and (b) a partial real property tax abatement structured through the Tax Agreement (the "Financial Assistance").

WHEREAS, pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at 6 N.Y.C.R.R. Part 617, as amended (collectively referred to as "SEQRA"), the Agency must satisfy the applicable requirements set forth in SEQRA, as necessary, prior to making a final determination whether to undertake the Project; and

WHEREAS, the City of Yonkers Planning Board, as lead agency, conducted a coordinated review of the Project pursuant to 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"), which resulted in the issuance of a negative declaration by the City of Yonkers Planning Board dated July 21, 2016 (the "Negative Declaration") attached hereto as Exhibit A, concluding the SEQRA process.

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

Section 1. The Company has presented an Application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's Application, the Agency 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 Agency has the authority to take the actions contemplated herein under the Act; and

(C) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in the City of Yonkers and otherwise furthering the purposes of the Agency as set forth in the Act;

(D) The Project will not result in the removal of a civic, 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 Agency 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; and

(E) The City of Yonkers Planning Board (the "Planning Board") has conducted a coordinated review of the Project pursuant to SEQRA. In addition to classifying the Project as a Type I Action pursuant to SEQRA, the Board also issued a Negative Declaration dated July 21, 2016, determining that the Project will result in no significant adverse impacts on the environment. The Agency, having reviewed the materials presented by the Company including, but not limited, to the Negative Declaration dated July 21, 2016, further determines that the Project will result in no significant adverse impacts on the environment and thus ratifies the Negative Declaration previously issued by the Commission pursuant to 6 N.Y.C.R.R. § 617.7.; and

(F) The Facility constitutes a commercial facility as defined in the Act and will promote employment opportunities and prevent economic deterioration in the City of Yonkers. The Agency has reviewed the opinion of the State Comptroller attached hereto as Exhibit B, and hereby specifically finds that the Project (i) will create approximately 387 temporary construction jobs during the construction of the Facility and approximately 26 full-time jobs upon the completion of the Facility, (ii) will be a first-class improvement in a sensitive area of the City of Yonkers and (iii) will offer a housing opportunity to "empty-nester" residents, freeing up valuable housing stock for young couples who represent an important work force to be attracted to the City of Yonkers.

Section 2. The Chairman, Vice Chairman, President, Executive Director and/or the CFO hereby authorized, on behalf of the Agency, to (A) hold a public hearing in compliance with the Act, and (B) negotiate, but not execute (1) an Agent Agreement, pursuant to which the Agency appoints the Company as its agent to undertake the Project, (2) a Lease Agreement, pursuant to which the Company leases the Project to the Agency, (3) a related Leaseback Agreement, pursuant to which the Agency leases its interest in the Project back to the Company, (4) a Tax Agreement, pursuant to which the Company agrees to make certain payments in lieu of real property taxes for the benefit of affected tax jurisdictions, (5) a Tax Agreement Mortgage,

and (6) related documents; provided (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 is consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation therefrom have been complied with.

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. 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:

	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>
Mayor Mike Spano	[✓]	[]	[]	[]
Martin Ball, Sr.	[✓]	[]	[]	[]
Deputy Mayor Susan Gerry	[✓]	[]	[]	[]
Melissa Nacerino	[]	[]	[]	[×]
Hon. Cecile D. Singer	[✓]	[]	[]	[]
Peter Kischak	[]	[]	[]	[×]
Robert Maccariello	[]	[]	[]	[×]

The Resolutions were thereupon duly adopted.

CERTIFICATION
(AvalonBay Communities, Inc. Project)

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

I, SUSAN GERRY, the undersigned Secretary of the City of Yonkers Industrial Development Agency DO HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the City of Yonkers Industrial Development Agency (the "Agency"), including the resolution contained therein, held on September 29, 2016, with the original thereof on file in my office, 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 29 day of September, 2016.


Susan Gerry, Secretary

Resolution No. 09/2016-30
Initial Resolution: AvalonBay Communities Inc.
September 29, 2016

Exhibit A

[Negative Declaration of City of Yonkers Planning Board]

Resolution No. 09/2016-30
Initial Resolution: AvalonBay Communities Inc.
September 29, 2016

Exhibit B

[Opinion of State Comptroller]

Attached Next Page.

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OPINIONS OF THE STATE COMPTROLLER

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district must continue to serve the village. Under these circumstances, the town would continue to levy and collect assessments therein for fire district services.

If the town board proceeds to diminish the area of a fire district in the manner provided for in Town Law, § 182, the fire district, nonetheless, must continue to perform services within the village until the first day of June following the first day of January next succeeding the date of incorporation (Village Law, § 2-252(1)(b)). Section 2-252 also provides that a town collector or receiver of taxes shall continue to perform his duties in respect to the property in the village until all taxes and assessments levied against such property have been collected (Village Law, § 2-252(3)). Although section 2-252 sets forth the procedure to be followed where, pursuant to other provisions of law, a fire district will cease to exist within the village, this section does not require either the diminution of the fire district or the cessation of its services within such village (Village Law, § 2-252(6)).

Should the area of a fire district be diminished, pursuant to Town Law, § 182(1), by the territory located within a subsequently incorporated village, the bonded or other indebtedness of the fire district allocable to such territory must be assumed and borne by the village in which the territory is located. The method for allocating, collecting and making payment to the fire district on such indebtedness is also set forth in Town Law, § 182(1).

Finally, we note that if fifty percent or more of the area of a newly incorporated village is situated within a fire district, the town board, upon petition of the village board of trustees and the board of fire commissioners, may adopt a resolution, subject to permissive referendum, extending the fire district to encompass the entire village. The petition for a referendum must be submitted by a specified number of electors residing within the area of the proposed extension (Town Law, § 170(4)).

August 1, 1985
Daniel Greenberg, Esq.
Central Islip Fire District

Opn No. 85-51

INDUSTRIAL DEVELOPMENT AGENCIES — Powers and Duties (construction of apartment complex)

GENERAL MUNICIPAL LAW, §§ 852, 854(4): Local officials must determine, based upon all the relevant facts, whether construction of an apartment complex will promote employment opportunities and prevent economic deterioration and thereby be a proper project for industrial development bond financing.

We have been asked whether construction of an apartment complex is a commercial purpose within the meaning of section 854(4) of the General Municipal Law and, thereby, a proper project for industrial development bond financing.

Article 18-A of the General Municipal Law (§§ 850-888) contains the provisions of law governing the creation, organization and powers of industrial development agencies in New York State. The legislation (L 1969, ch 1030), at the time of its original enactment in 1969, provided that its general purpose was "to promote the economic welfare of its [the State's] inhabitants and to actively promote, attract, encourage and develop economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic deterioration. . ." This intent was further evidenced by the original provision of § 858 of the General Municipal Law, which provided that:

"The purposes of the agency shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the state of New York and to improve their standard of living:..."

In approving chapter 1030 of the Laws of 1969, Governor Rockefeller noted that "industrial development agencies provide one means for communities to attract new industry, encourage plant modernization and create new job opportunities (McKinney's 1969 Session Laws, Vol. 2, p. 2572). Based upon the foregoing, it is our opinion that, at its inception, the primary thrust of the industrial development legislation was to promote the development of commerce and industry as a means of increasing employment opportunities.

The original legislation has been amended a number of times since 1969 to broaden the scope of permissible industrial development activities. Specifically, the definition of a "project" has been expanded to include construction of industrial pollution control facilities (L 1971, ch 978), winter recreation facilities and then recreation facilities generally (L 1974, ch 954; L 1977, ch 630), horse racing facilities (L 1977, ch 267), railroad facilities (L 1980, ch 803) and, most recently, educational or cultural facilities (L 1982, ch 541). None of these amendments would bring construction of an apartment complex specifically within the ambit of a permissible project for industrial development financing. Therefore, for an apartment complex to qualify as an eligible project under Article 18-A of the General Municipal Law, it must constitute a commercial project as that term was originally used in Article 18-A.

With respect to whether construction of an apartment complex may be viewed generally as a commercial activity within the meaning of Article 18-A, this Office has stated that, while the courts are inclined to construe the grant of powers to industrial development agencies broadly, an essential element of any valid commercial activity appears to be the promotion of employment opportunities and the prevention of economic deterioration in an area for whose benefit the industrial development agency was created (1982 Opns St Comp No. 82-360, p 455) In *Grossman v Herkimer County Industrial Development Agency*, 60 AD2d 172, 400 NYS2d 623, the court held that development of a mercantile building and attendant creation of 100 job opportunities was a proper project for an industrial development agency to finance. Thus, to qualify for industrial development bond financing, a project should be one which promotes employment opportunities and prevents economic deterioration in the area served by the industrial development agency.

This Office is not in a position to render an opinion as to whether a project which consists of the construction of an apartment complex is a commercial activity within the meaning of Article 18-A of the General Municipal Law. Such a determination must be made by local officials based upon all the facts relevant to the proposed project. We do note, however, that any such determination should take into account the stated purposes of the New York State Industrial Development Agency Act, that is, the promotion of employment opportunities and the prevention of economic deterioration. Please note that, in considering the question of State law raised by this inquiry, we have not considered any requirements of the Internal Revenue Code with respect to issuance of industrial development bonds nor the provisions of Executive Order No. 48, adopted October 3, 1984, prescribing industrial development bond allocations pursuant to the federal Deficit Reduction Act of 1984.

August 16, 1985
George A. O'Hanlon, Esq., Village Attorney
Village of Port Chester