

PRELIMINARY AGREEMENT

THIS PRELIMINARY AGREEMENT is between Auburn Industrial Development Authority (the "Authority") and Bluefield Manor Housing, Inc. (the "Company").

Article 1. Preliminary Statement.

Among the matters of mutual inducement which have resulted in the execution of this Agreement are the following:

1.01. The Authority is authorized and empowered by the provisions of the Auburn Industrial Development Authority Act, constituting Title 15 of Article 8 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State of New York, as amended (the "Act") to issue its special obligation revenue bonds and to use the proceeds thereof to finance the cost of acquisition, construction and equipping of one or more "projects" (as said quoted term is defined in the Act).

1.02. The purposes of the Act are to promote industry and develop trade and thereby advance the job opportunities, health, general prosperity and economic welfare of the inhabitants of the City of Auburn and the State of New York by inducing manufacturing, industrial and commercial enterprises to locate or remain in the City of Auburn. The Act vests the Authority with all powers necessary to enable it to issue industrial development revenue bonds.

1.03. The Company has presented an application verified on July 14, 1998 (the "Application") to the Authority requesting that the Authority undertake to finance certain costs of the following described project (hereinafter referred to as the "Project"):

(i) acquisition of approximately sixteen (16) acres of land on Bluefield Road in the City of Auburn, New York;

(ii) construction thereon of approximately 50,000 square foot congregate building surrounded by approximately nine (9) duplex buildings and approximately three (3) single buildings; and

(iii) installation therein of equipment and furnishings for use as housing facilities primarily designed to be occupied by individuals sixty (60) years of age or older.

1.04. Pursuant to the Application, the Company has heretofore requested that the Authority consider undertaking: (i) to issue its industrial development revenue bonds in one or more issues or series in the principal amount of approximately Five Million Two Hundred Thousand and 00/100 Dollars (\$5,200,000.00) (the "Bonds") in order to finance

all or a portion of the cost of acquiring, constructing and equipping the Project; (ii) to acquire, construct and equip the Project, or to cause the Project to be acquired, constructed and equipped; and (iii) to lease (with an obligation to purchase) or sell the Project to the Company or such other person as may be designated by the Company and agreed upon by the Authority.

1.05. The Company hereby represents to the Authority that:

(a) The completion of 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 to another area of the State of New York or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located in the State of New York.

(b) The site of the Project is located wholly within the City of Auburn, New York.

(c) The financing of the Project through the issuance of the Authority's Bonds will encourage and assist the Company in providing the Project.

(d) Neither the Company nor any "related person" has commenced "acquisition" or "construction" of the Project as of the date of this Preliminary Agreement (as said quoted terms are defined in Section 144 of the Internal Revenue Code of 1986, as amended, (the "Code") and the regulations of the United States Treasury Department thereunder).

(f) It is estimated at the present time that the costs of the planning, development, acquisition, construction and equipping of the Project, including the costs incurred in connection with the issuance of the Bonds (collectively, the "Project Costs") will be approximately Five Million Two Hundred Thousand and 00/100 Dollars (\$5,200,000.00).

(g) The Company intends that the Project will comply with all applicable federal, state and local laws, ordinances, rules and regulations and the Company will obtain all necessary approvals and permits required thereunder.

(h) The total cost of the Project will not exceed Fifteen Million and 00/100 Dollars (\$15,000,000.00).

1.06. By resolution adopted on August __, 1998, the Authority has approved the execution of this Preliminary Agreement. The Authority intends this Preliminary Agreement to constitute its official binding commitment, subject to the terms hereof: (i) to issue its Bonds in one or more series or issues pursuant to the Act in the principal amount of approximately Five Million Two Hundred Thousand and 00/100 Dollars (\$5,200,000.00), the actual principal amount of said Bonds to be agreed upon by the Authority and the Company when the Project Costs are more definitely established; and (ii) to use the proceeds of the Bonds to finance the Project Costs.

1.07. The Authority intends this commitment to be an expression of the Authority's official intent pursuant to Treas. Reg. § 1.150-2.

Article 2. Undertakings on the Part of the Authority.

Based upon the statements, representations and undertakings of the Company and subject to the conditions set forth herein, the Authority agrees as follows:

2.01. The Authority will authorize, sell and deliver its Bonds, pursuant to the terms of the Act as then in force for the purpose of financing the Project Costs, in one or more series or issues from time to time in an aggregate principal amount necessary and sufficient to finance the Project Costs (the precise amount to be fixed by the resolution of the Authority at a later date and to be agreed to by the Company, but not to exceed the lesser of the Project Costs or Five Million Two Hundred Thousand and 00/100 Dollars (\$5,200,000.00) and, upon the sale of the Bonds, the Authority will expend the proceeds of the Bonds to finance the Project Costs, either by assuming the acquisition, construction and equipping of the Project (and reimbursing the Company for its funds expended on the Project Costs prior to such assumption by the Authority), or by acquiring the Project from the Company upon the completion thereof and paying to the Company the purchase price of the Project, whichever shall be agreeable to the Authority and the Company and shall not exceed the actual Projects Costs; PROVIDED, HOWEVER, that the Bonds are to be secured by and payable from the revenues to be derived by the Authority either in accordance with the terms of an agreement of lease (with an obligation to purchase) to be entered into by and between the Authority and the Company, or in accordance with both the terms of an agreement of sale and the obligation or obligations of the Company received by the Authority as consideration under such agreement of sale, or other similar financing agreements, or any combination thereof (all said agreements being hereinafter collectively referred to as the "Repayment Agreement"); PROVIDED, FURTHER, HOWEVER, that the foregoing obligation of the Authority to assist in acquiring, constructing and equipping the Project and in financing such acquisition, construction and equipping by the issuance of the Bonds is subject to the conditions hereinafter contained in this Preliminary Agreement and to the following additional conditions:

(a) The Bonds shall in all respects comply with the requirements of, and limitations contained in, the Act and shall further specifically provide that they are payable solely from the revenue derived by the Authority from the sale, lease or other disposition of the Project (except payable out of proceeds of the Bonds); that principal and interest thereon shall not be a general obligation of the Authority and the Bonds shall not constitute an indebtedness or pledge of the general credit of the Authority; that no holder of any of such Bonds shall have the right to compel any exercise of the taxing power of the Authority (if any), or the State of New York or any political subdivision thereof, including the City of Auburn; and that the Bonds shall not create a debt or loan of credit of the City of Auburn or the State of New York, but the Bonds shall be a special obligation of the Authority secured and payable solely as provided herein, and such facts shall be plainly stated on the face of each of such Bonds;

(b) The Company shall have executed the Repayment Agreement between the Authority and the Company, the terms of which shall be acceptable in form and content to the Authority and the purchasers of the Bonds, and whereby the Company shall be obligated to make payments to, or on behalf of, the Authority in accordance with the terms of such Repayment Agreement, which payments shall be in such sums as shall be sufficient to pay the principal of, premium, if any, and interest on the Bonds, as and when the same become due and payable, together with any required payments in lieu of taxes and the fees and expenses incurred by the Authority in connection with the Project, it being understood that the Company will, prior to or contemporaneously with the issuance of the Bonds, enter into such Repayment Agreement;

(c) No event shall have occurred which constitutes (or which after notice or lapse of time or both would constitute) an event of default under the Repayment Agreement;

(d) One or more purchasers shall agree to purchase the Bonds, it being understood that the Company will use all reasonable efforts to find one or more purchasers for the Bonds;

(e) The Company shall provide the Authority and the purchasers of the Bonds with all information required to facilitate compliance with all applicable securities laws and all other information reasonably necessary in connection with the issue, sale, delivery and any resale of the Bonds;

(f) The Company shall provide the Authority with all information and statements which may be required by the Authority in order to facilitate compliance by the Authority with Article 8 of the Environmental Conservation Law (the "SEQR Act");

(g) If the costs of the Project exceed the amount of the proceeds of the Bonds or if the Bonds shall not be issued, the Company will pay such excess costs and shall not be entitled to any reimbursement for any such excess costs from the Authority;

(h) The Bonds shall bear such dates, mature at such time or times, bear interest at such rate or rates, and contain such other terms and provisions as shall be determined by subsequent action of the Authority and approved by the Company;

(i) The Authority shall receive, in form and substance satisfactory to the Authority, such rulings, approvals, resolutions, consents, certificates, opinions of counsel and other instruments and proceedings as shall be specified by the Authority in connection with the Bonds and the tax exempt status of the interest thereon, the Project, the Repayment Agreement and the various other documents to be executed in connection with the Project, such rulings, approvals, resolutions, consents, certificates, opinions of counsel and other instruments and proceedings to be obtained from Bond Counsel, counsel to the Authority and such other governmental and nongovernmental agencies and entities as may have or assert competence or jurisdiction over or interest in matters pertaining thereto, and the same shall be in full force and effect at the time of the issuance of the Bonds;

(j) The issuance of the Bonds shall be conditioned upon the total cost of the Project not exceeding Fifteen Million and 00/100 Dollars (\$15,000,000.00) and the Company providing to the Authority, upon the Authority's request, reasonable proof that the Project's rental units are, in fact, being rented to individuals sixty (60) years of age or older.

(k) Agreements as to payments by the Company to or on behalf of the Authority of amounts in lieu of real property taxes, as to indemnity of the Authority and the members and officers of the Authority by the Company, and as to the payment by the Company of the expenses incurred by the Authority in connection with the Project (including counsel fees and out-of-pocket expense) and the administrative fee of the Authority shall have been made and such agreements shall be satisfactory in form and substance to the Authority; and

(l) If interest on the Bonds is to be treated as exempt from federal income taxation, all the requirements of the Code relative to tax exempt bonds shall have been met.

2.02. The obligations of the Authority pursuant to this Preliminary Agreement are subject to the conditions elsewhere contained in this Agreement and to the additional condition that the Authority shall not acquire, construct or equip the Project, nor issue its Bonds to finance the Project Costs, unless and until the Authority shall have complied with the provisions of the SEQR Act.

2.03. Subject to the conditions stated in this Preliminary Agreement, the Authority from time to time will adopt, or cause to be adopted, such proceedings and authorize the execution of such documents as may be necessary or advisable for: (i) the authorization, issuance and sale of the Bonds; (ii) the acquisition, construction and equipping of the Project; (iii) the use of the proceeds of the Bonds to finance the Project Costs; and (iv) the sale or lease of the Project to the Company, all as shall be authorized by law and be mutually satisfactory to the Authority, the Company and the purchasers of the Bonds. If acceptable to the Company and the purchasers of the Bonds, such actions and documents may permit the issuance from time to time in the future of additional bonds on terms which shall be set forth therein, whether in pari passu with other series of bonds or otherwise, for the purpose of defraying the cost of completion of the Project.

2.04. The Authority will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof.

Article 3. Undertakings on the Part of the Company.

Based upon the statements, representations and undertakings of the Authority and subject to the conditions set forth herein, the Company agrees as follows:

3.01. The Company will use all reasonable efforts to find or cause to be found one or more purchasers for the Bonds and will use reasonable efforts to insure that the Bonds are sold; provided, however, that the terms of such Bonds and the sale and delivery thereof shall be mutually satisfactory to the Authority and the Company.

3.02. Contemporaneously with the sale and delivery of the Bonds, the Company will enter into the Repayment Agreement with the Authority containing the terms and conditions described in Section 2.01 hereof. The Company will agree in the Repayment Agreement that if the Project Costs exceed the amount of the proceeds of the Bonds, the Company will pay such excess costs and shall not be entitled to any reimbursement for any such excess costs either from the Authority or from the purchasers or holders of the Bonds. **THE AUTHORITY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, THAT THE PROCEEDS OF THE BONDS WILL BE SUFFICIENT TO PAY ALL PROJECT COSTS, OR THAT THE PROJECT WILL BE SUITABLE FOR THE COMPANY'S PURPOSE OR NEEDS.** The Company will further agree in the Repayment Agreement to pay all costs of operation and maintenance of the Project, including but not limited to all taxes and other governmental and other charges.

3.03. The Company hereby agrees to indemnify, defend and hold the Authority harmless from all claims and liabilities for labor, services, materials and supplies, including equipment, ordered or used in connection with the acquisition, construction and

equipping of the Project (including any expenses incurred by the Authority in defending any claims, suits or actions which may arise as a result of any of the foregoing). The Company shall not permit to stand, and will, at its own expense, take steps reasonably necessary to remove, any mechanic's or other liens against the Project for labor or material furnished in connection with the acquisition, construction and equipping of the Project.

3.04. The Company hereby agrees to indemnify, defend and hold the Authority (and its members, officers, agents and employees) harmless from any and all: (i) claims and liabilities for the loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation to the Project, including any expenses incurred by the Authority (and its members, officers, agents and employees) in defending any claims, suits or actions which may arise as a result of the foregoing; and (ii) claims and liability arising from or expenses incurred by the Authority's financing, acquisition, construction, equipping, owning and leasing of the Project, including all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing.

3.05. The Company shall provide to the Authority, upon the Authority's request from time to time, reasonable proof that the Project's rental units are, in fact, being rented to individuals sixty (60) years of age or older.

3.06. The Company hereby agrees to comply with the terms of the Construction Letter and furnish proof of such compliance at the Authority's request.

3.07. The Company will take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

Article 4. General Provisions.

4.01. All commitments of the Authority under Article 2 hereof and of the Company under Article 3 hereof (excepting the obligations of the Company set forth in Sections 3.03 and 3.04 hereof, which shall survive the termination of this Agreement) are subject to the conditions that the following events shall have occurred not later than two (2) years from the date hereof (or such other date as shall be mutually satisfactory to the Authority and the Company):

(i) The Authority, the Company and the purchasers of the Bonds shall have agreed on mutually acceptable terms and conditions of the Bonds, the Repayment Agreement and any agreements securing the Bonds and any other agreements referred to in Articles 2 or 3 hereof;

(ii) All necessary governmental approvals shall be obtained; and

(iii) All other conditions expressed in this Agreement shall have been satisfied.

4.02. Subject to the terms and conditions of Section 4.03 hereof, the Company shall have the right to unilaterally cancel this Preliminary Agreement at any time prior to the time that the Bonds are issued by the Authority upon thirty (30) days prior written notice of cancellation delivered to the Authority at the address set forth in Section 4.04 hereof.

4.03. If the events set forth in Section 4.01 hereof do not take place within the time set forth in said Section 4.01, or any extension thereof, or if the Company exercises its right of cancellation as set forth in Section 4.02 hereof, the Company agrees that: (i) it will promptly reimburse the Authority (and its officers, members, agents or employees) for all reasonable and necessary direct out-of-pocket expenses which the Authority (or its officers, members, agents or employees) may incur with respect to the execution of this Agreement and the performance of its obligations hereunder, including attorneys fees and expenses of the Authority; and (ii) the obligations of the Company set forth in Sections 3.03 and 3.04 hereof shall survive the termination of this Agreement and shall remain in full, force and effect until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters described therein may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by the Authority (and its officers, members, agents or employees) relating to the enforcement of the provisions therein stated Authority shall have received from the Company security or indemnity satisfactory to the Authority for protection against all such liability and for the reimbursement of all such fees, expenses and other costs.

4.04. All notices and other communications hereunder shall be in writing and shall be deemed given when mailed by United States registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

(i) If to the Authority:

Auburn Industrial Development Authority
Memorial City Hall
Auburn, New York 13021
Attention: Christopher J. DeAngelis, Chairman

with a copy to:

Hancock & Estabrook, LLP
1500 MONY Tower I
Syracuse, New York 13202
Attention: Richard W. Cook, Esq.

(ii) If to the Company:

Bluefield Manor Housing, Inc.
60 Clark Street
Auburn, New York 13021
Attention: Ann R. Petrus, President

with a copy to:

Boyle & Anderson, P.C.
110 Genesee Street
Suite 300
Auburn, New York 13021
Attn: Charles Lynch, Esq.

4.05. All covenants and agreements herein contained by or on behalf of the Authority and the Company shall bind and inure to the benefit of the respective successors and assigns of the Authority and the Company whether so expressed or not.


4.06. The obligations and agreements of the Authority contained herein shall be deemed the obligations and agreements of the Authority, and not of any member, officer, agent or employee of the Authority in his individual capacity, and the members, officers, agents and employees of the Authority shall not be liable personally hereon or be subject to any personal liability or accountability based upon or in respect hereof or of any transaction contemplated hereby. The obligations and agreements of the Authority contained herein shall not constitute or give rise to an obligation of the State of New York or of the City of Auburn, New York, and neither the State of New York nor the City of Auburn, New York shall be liable thereon, and further, such obligations and agreements shall not constitute or give rise to a general obligation of the Authority, but rather shall constitute limited obligations of the Authority payable solely from the revenues of the Authority derived and to be derived from the lease, sale or other disposition of the Project.

Notwithstanding any provision of this Preliminary Agreement to the contrary, the Authority shall not be obligated to take any action pursuant to any provision hereof unless (i) the Authority shall have been requested to do so in writing by the Company and (ii) if

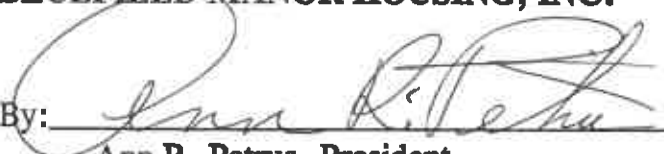
compliance with such request is reasonably expected to result in the incurrence by the Authority (or any member, officer, agent or employee of the Authority) in any liability, fees, expense or other costs, the Company shall have provided sufficient indemnity therefore.

IN WITNESS WHEREOF, the parties hereto have entered into this Preliminary Agreement as of the 15 day of ~~August~~^{September}, 1998.

**AUBURN INDUSTRIAL DEVELOPMENT
AUTHORITY**

By: 
Christopher J. DeAngelis, Chairman

BLUEFIELD MANOR HOUSING, INC.

By: 
Ann R. Petrus, President

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