

A special meeting of Broome County Industrial Development Agency (the "Agency") was convened in public session at the offices of the Broome County Public Library in the City of Binghamton, Broome County, New York on Thursday, February 26, 2015 at 12:15 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:**

Terrence M. Kane	Chairman
Wayne L. Howard	Vice Chairman
James G. Rounds, Jr.	Secretary
John J. Stevens	Treasurer
James V. Baumgartner	Member
John M. Bernardo	Member
Jeffery K. Davis	Member
Jeffrey K. Smith	Member
Robert N. Nielsen, Jr.	Member

**ABSENT:**

**THE FOLLOWING PERSONS WERE ALSO PRESENT:**

Kevin McLaughlin	Executive Director
Joseph B. Meagher, Esq.	Agency Counsel

The following resolution was offered by Mr. Davis, seconded by Mr. Smith, to wit:

**RESOLUTION AUTHORIZING A CERTAIN LEASE AND LEASEBACK TRANSACTION TO FACILITATE THE FINANCING OF THE CONSTRUCTION, RENOVATION, AND EQUIPPING OF A RESIDENTIAL COMMUNITY CONSISTING OF THREE (3) SEPARATE PARCELS: ONE PARCEL IS TO BE LOCATED ALONG EAST FRANKLIN STREET, JUST WEST OF ITS INTERSECTION WITH SKYE ISLAND DRIVE, AND THE OTHER TWO PARCELS SHALL BE EXTENSIONS OF TWO DEAD END STREETS (OVERTON AND GROATS) THAT ARE LOCATED ATOP THE HILL BEHIND THE EAST FRANKLIN STREET PORTION OF THE PROJECT IN THE VILLAGE OF ENDICOTT, TOWN OF UNION, COUNTY OF BROOME AND STATE OF NEW YORK TO BE USED AS A 55 AND OLDER RESIDENTIAL RENTAL COMMUNITY TO BE NAMED "SKYE VIEW HEIGHTS" (THE "FACILITY"), APPOINTING AMERICAN HORIZONS GROUP, LLC (THE "COMPANY") AS THE AGENT FOR THE PURPOSE OF THE CONSTRUCTION, RENOVATION, AND EQUIPPING OF THE FACILITY AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PAYMENT-IN-LIEU-OF-TAX AGREEMENT ("PILOT") DEVIATING FROM THE BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY'S UNIFORM TAX EXEMPT POLICY AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS WITH RESPECT THERETO.**

WHEREAS, the Broome County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of 1969 Laws of New York, constituting Title I 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 564 of the 1970 Laws of New York, as amended by Chapter 402 of the 1987 Laws of the State of New York, constituting Section 895-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 industrial, manufacturing, warehousing, commercial, research, recreation and civic 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 equip one or more "projects" (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and equipped, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, American Horizons Group, LLC (the "Company") has presented an application (the "Application") to the Broome County Industrial Development Agency (the "Agency"), a copy of which was presented at this meeting and copies of which are on file at the office of the Agency, requesting that the Agency consider undertaking a project consisting of the following: (A) (1) the acquisition, by lease, of three (3) parcels of land, i.e. one parcel is to be located along East Franklin Street, just west of its intersection with Skye Island Drive, and the other two (2) parcels shall be extensions of two dead end streets (Overton and Groats) that are located atop the hill behind the East Franklin Street portion of the project in the Village of Endicott, Town of Union, County of Broome and State of New York (the "Land"), (2) the construction and renovation on the Land of a residential rental community (the "Facility") and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment being hereinafter collectively referred to as the "Project"), all of the foregoing to be leased by the Company as a 55 and older residential rental community to be named "Skye View Heights" and any other directly or indirectly related activities; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including certain exemptions from sales taxes, mortgage recording taxes and real estate taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project 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 undertakings of the Agency 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, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the "Public Hearing"), 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 on December 11, 2014 to the chief executive officers of the county and of each city, town, village and school district in which the Project is to be located, (B) caused notice of the Public Hearing to be published on December 13, 2014 in the Press and Sun Bulletin, a newspaper of general circulation available to residents of the Village of Endicott and Town of Union, (C) conducted the Public Hearing on December 29, 2014 at 6:00 o'clock p.m., local time, at the Village of Endicott Municipal Building in the Village of Endicott, Broome

County, New York, and (D) prepared a report of the Public Hearing (the "Report") which fairly summarized the views presented at said Public Hearing and distributed same to the members of the Agency; and

WHEREAS, on March 17, 2014, the Village of Endicott, acting as Lead Agency, determined that the Facility would not have a significant impact on the environment, and adopted a negative declaration for the Facility; and

WHEREAS, on August 26, 2014, the Village Board of Trustees of the Village of Endicott adopted a resolution in support of a Payment-In-Lieu-Of-Tax Agreement ("PILOT Agreement") deviating from the Agency's uniform tax-exemption policy. A copy of the approved PILOT payment schedule is attached hereto as Exhibit "A"; and

WHEREAS, in order to complete the documentation necessary to consummate the aforesaid Project described in the Notice of the Public Hearing, the Agency proposes to enter into the following documents (hereinafter collectively referred to as the "Agency Documents"):

- (A) lease agreement (and a memorandum thereof) (the "Lease Agreement") by and between the Agency and the Company, pursuant to which, among other things, the Agency acquires an interest in the Project;
- (B) leaseback agreement (and a memorandum thereof) (the "Leaseback 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 from the Agency and, as rental thereof, to pay the Agency's administrative fee relating to the Project and pay all expenses incurred by the Agency with respect to the Project;
- (C) the PILOT Agreement, deviating from the Agency's Uniform Tax-Exemption Policy, by and among the Company and the Agency, pursuant to which the Company agrees to make payments in lieu of taxes with respect to the Project and which reserves the right to the Agency to terminate the PILOT Agreement upon the following:
  - (1) lease of a residential unit within the Project to a sole tenant less than fifty-five years of age or to a pair or group of tenants, none of whom are fifty-five years of age or older, and otherwise fail to maintain the Project in conformity with the requirements of the Housing for Older Persons Act of 1995;
  - (2) change in the majority ownership of the Company and/or the use of the Project for other than a fifty-five years of age and older residential community without the prior consent of the Agency, which consent shall not be unreasonably withheld;
  - (3) substantive change in the building schedule for the Project not related to, or caused by, weather conditions, the elements, or acts of God; and
  - (4) substantive change in the employment figure set forth in the Company's application to the Agency for financial assistance;

- (D) Agency Agreement authorizing the Company to act as the agent of the Agency for the purpose of the construction, renovation, and equipping of the Project;
- (E) sales tax exemption letter exempting the Company from sales tax for purchases related to the Project which would, otherwise, be subject to such tax; and
- (F) various certificates relating to the Project; and all other documents necessary to effect this transaction.

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

Section 1. 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 Project constitutes a "project", as such term is defined in the Act; and

(C) The construction, renovation and equipping of the Project and the leaseback of the Project to the Company will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of Broome County, New York and the State of New York and improve their standard of living; and

(D) Having reviewed the Report of the Public Hearing and having fully considered all comments contained therein, the Agency hereby further determines that it is desirable and in the public interest for the Agency to proceed with the Project and enter into the Agency Documents.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (A) proceed with the Project; (B) acquire by lease the Land, the Facility and all other improvements now or hereafter located on the Land (collectively, the "Premises") from the Company; (C) construct, renovate, and equip the Project, or cause the Project to be constructed, renovated, and equipped; (D) leaseback the Project to the Company pursuant to a Leaseback Agreement between the Agency and the Company pursuant to which, among other things, the Company shall be obligated (1) to pay all costs incurred by the Agency with respect to the Project, 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 (2) to comply with the provisions of the Act applicable to beneficiaries of financial assistance from the Agency; and (E) enter into the Payment-in-Lieu-of-Tax Agreement.

Section 3. The Agency is hereby authorized to acquire (A) a leasehold interest in the Project pursuant to a lease agreement (the "Lease") from the Company to the Agency, and (B) title to the Equipment pursuant to a bill of sale (the "Bill of Sale") from the Company to the Agency and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisitions are hereby approved, ratified and confirmed.

Section 4. The Agency hereby authorizes the Company to act as its agent with respect to the acquisition, construction, renovation, and equipping of the Project and to do all things

necessary or appropriate for the accomplishment thereof.

Section 5. The Village Board of Trustees of the Village of Endicott has adopted a resolution encouraging the Agency to deviate from its uniform tax exemption policy in the manner set forth in the attached PILOT Agreement, and the Agency has determined that such deviation will assist the Company in the development of the Project which will provide a significant economic impact on the Village of Endicott and County of Broome.

Section 6. The form and substance of the Agency Documents (in substantially the forms presented to this meeting) are hereby approved.

Section 7. (A) The Chairman, Vice Chairman, Secretary, or Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents and, where appropriate, the Secretary or Executive Director of the Agency are hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the forms thereof presented to this meeting, with such changes, variations, omissions and insertions thereto as the Chairman, Vice Chairman, Secretary, or Executive Director shall approve, the execution thereof by the Chairman, Vice Chairman, Secretary, or Executive Director to constitute conclusive evidence of such approval.

(B) The Chairman, Vice Chairman, Secretary, or Executive Director of the Agency are hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 8. 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 9. 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:

Terrence M. Kane	voting	Yes
Wayne L. Howard	voting	No
James G. Rounds, Jr.	voting	No
John J. Stevens	voting	Yes
James V. Baumgartner	voting	Yes
John M. Bernardo	voting	Yes
Jeffery K. Davis	voting	Yes
Jeffrey K. Smith	voting	Yes
Robert N. Nielsen, Jr.	voting	No

The Resolution was thereupon declared duly adopted.

