

**RESOLUTION APPROVING SETTLEMENT DOCUMENTS  
BIRCHWOOD VILLAGE LIMITED PARTNERSHIP PROJECT – PILOT LITIGATION**

A regular meeting of Ulster County Industrial Development Agency (the “Agency”) was convened in public session at the offices of the Agency located at 244 Fair Street in the City of Kingston, Ulster County, New York on May 13, 2015 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:

Michael Horodyski	Chairman
John Morrow	Secretary
Robert Kinnin	Assistant Chairman/Assistant Secretary
James Malcolm	Assistant Chairman/Assistant Secretary
Floyd Lattin	Member
John Livermore	Member
Mary Sheeley	Member

ABSENT:

CORPORATION STAFF PRESENT INCLUDED THE FOLLOWING:

Suzanne Holt	Director, Office of Economic Development
Linda Clark	Office of Economic Development
Karl Schlegel	Office of Economic Development
A. Joseph Scott, III, Esq.	Agency Counsel

The following resolution was offered by \_\_\_\_\_, seconded by \_\_\_\_\_, to wit:

Resolution No. \_\_\_\_

**RESOLUTION AUTHORIZING THE EXECUTION OF VARIOUS SETTLEMENT  
DOCUMENTS RELATING TO THE BIRCHWOOD VILLAGE LIMITED  
PARTNERSHIP PROJECT PILOT LITIGATION.**

WHEREAS, Ulster County 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 787 of the 1976 Laws of New York, as amended, constituting Section 923 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 commercial, manufacturing 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, on or about May 28, 2004, the Agency agreed to assist Birchwood Village Limited Partnership (the "Company") in undertaking a project (the "Project") consisting of the following: (A) (1) the acquisition of an interest in certain real estate containing approximately 3.479 acres located at 164-174R Flatbush Avenue in the City of Kingston, Ulster County, New York (the "Land"), (2) the construction of 12 buildings to contain in the aggregate approximately 87,060 square feet of space (the "Facility") and (3) the acquisition and installation thereon and therein of certain machinery and equipment located therein and thereon (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute an 80 unit affordable housing complex to be owned by the Company and leased to residential tenants; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from sales taxes, real property transfer taxes, mortgage recording taxes and real estate taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the Company; and

WHEREAS, in connection with the undertaking of the Project, the Agency entered into (A) a lease agreement dated as of May 1, 2004 (the "Lease Agreement") by and between the Agency and the Company, and (B) a payment in lieu of tax agreement dated as of May 1, 2004 (the "PILOT Agreement") by and between the Agency and the Company; and

WHEREAS, the Company has defaulted on its obligation to make payments in lieu of taxes under the PILOT Agreement, which has resulted in, among other things, the City of Kingston, New York (the "City") commencing various actions against the Company, and the Agency terminating the Lease Agreement (such actions hereinafter collectively referred to as the "Birchwood Village Litigation"); and

WHEREAS, the Agency has sought throughout the Birchwood Village Litigation to cooperate with the City, and the other affected taxing jurisdictions, in order to assist the City and the other affected taxing jurisdictions in recovering payments in lieu of taxes under the PILOT Agreement and real property taxes due and owing by the Company; and

WHEREAS, the Agency has been advised by special counsel to the City that the City, and the other affected taxing jurisdictions, have agreed to a stipulation and settlement of the Birchwood Village Litigation; and

WHEREAS, the Agency desires to cooperate with the City in order to provide for the settlement of the Birchwood Village Litigation, and, accordingly, desires to execute and deliver the settlement and stipulation documents (the "Settlement Documents");

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

Section 1. The Agency hereby approves the execution by the Chairman of the Agency of the Settlement Documents, subject to the satisfaction of the following conditions: (A) approval of the form of the Settlement Documents by Agency Counsel, (B) evidence of approval by the City and the other affected taxing jurisdictions to the terms of the Settlement Documents, (C) payment of (1) the administrative fee of the Agency, if any, and (2) the fees and expenses of Agency Counsel, and (D) the following additional conditions: \_\_\_\_\_.

Section 2. Subject to the satisfaction of the conditions described in Section 1 hereof, the Chairman of the Agency is hereby authorized to execute and deliver the Settlement 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, all in substantially the form thereof presented to this meeting, with such changes, variations, omissions and insertions as the Chairman (or Vice Chairman and Agency Counsel) shall approve, the execution thereof by the Chairman (or Vice Chairman and Agency Counsel) to constitute conclusive evidence of such approval.

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 or provided for by the provisions of the Settlement 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 Settlement Documents binding upon the Agency.

Section 4. 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:

Michael Horodyski	VOTING	_____
John Morrow	VOTING	_____
Robert Kinnin	VOTING	_____
James Malcolm	VOTING	_____
Floyd Lattin	VOTING	_____
John Livermore	VOTING	_____
Mary Sheeley	VOTING	_____

The Resolution was thereupon declared duly adopted.

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

I, the undersigned (Assistant) Secretary of Ulster County Industrial Development Agency (the “Agency”), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on May 13, 2015 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained 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 or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 13<sup>th</sup> day of May, 2015.

\_\_\_\_\_  
(Assistant) Secretary

(S E A L)