

MEETING HELD MAY 20, 1999

A meeting of the Industrial Development Agency of the Village of Port Chester, New York, was held on Thursday, May 20, 1999 at 7:00 P.M., in the Conference Room at 10 Pearl Street, Port Chester, New York with Chairperson, Marianne Cotter presiding.

Present were members Angelo Rubino, Jr., Robert Rodriguez and John Ryan.

It should be noted that members Louis Passerelli, Al Wesley and John Hiensch were absent.

Also present were Mark Tulis, IDA counsel and L.H. Heithaus, FA for American Foundation for Affordable Housing (Kingsport), Inc.

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Mr. Tulis and Mr. Heithaus explained that this is the second step in the approval process for the tax exempt civic bonds needed by the AFAH to make this project viable. This resolution will authorize the issuance and sale of the bonds in the approximate amount of \$8,207,513, but not to exceed \$10,000,000. Also, there will be a public hearing concerning these bonds on May 28, 1999 at 10:00 a.m. in the Rye Town Courtroom, 10 Pearl Street, Port Chester, New York.

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At a meeting of the Village of Port Chester Industrial Development Agency, Westchester County, New York (the "Issuer"), held at Village of Port Chester, Village Hall, 10 Pearl Street, Port Chester, New York, on the 20th day of May, 1999, the following members of the issuer were:

Present: Marianne Cotter, Angelo Rubino, Jr., John Ryan and Robert Rodriguez

Absent: Louis Passerelli, John Heinsch and Alfred Wesley

Also Present: Mark Tulis and Bud Heithaus

After the meeting had been duly called to order, the Chairperson announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to the issuance and sale of the Issuer's proposed Civic Facility Revenue Bonds, Series 1999 (American Foundation for Affordable Housing (Kingsport), Inc. Civic Facility) in the aggregate principal amount presently estimated to be approximately \$8,207,513, but not to exceed \$10,000,000.

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

AYES: Commissioners Cotter, Rubino, Ryan and Rodriguez
NAYES: None

PRELIMINARY RESOLUTION AUTHORIZING THE ISSUANCE AND SALE
OF THE ISSUER'S CIVIC FACILITY REVENUE BONDS, SERIES 1999
(AMERICAN FOUNDATION FOR AFFORDABLE HOUSING (KINGSPORT), INC.
CIVIC FACILITY), IN THE AGGREGATE PRINCIPAL AMOUNT PRESENTLY
ESTIMATED TO BE APPROXIMATELY \$8,207,513 BUT NOT TO EXCEED
\$10,000,000, AND THE EXECUTION OF RELATED DOCUMENTS

WHEREAS, by title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended and chapter 632 of the Laws of 1972 of the State of New York (collectively the "Act"), the Issuer was created with the authority and power to issue its special revenue bonds for the purpose of, among other things, acquiring certain industrial facilities as authorized by the Act; and

WHEREAS, there was submitted to the Issuer a proposal to issue its Civic Facility Revenue Bonds, Series 1999 (American Foundation for Affordable Housing (Kingsport), Inc. Civic Facility) (the "Bonds") to finance the costs of a civic facility under Section 145 of the Internal Revenue Code of 1986, as amended (the "Code") consisting of the acquisition of approximately 1.3 acres of land and the building thereon, approximately 96,000 square feet in size, to be used for civic facility purposes as an affordable 128-unit apartment complex whose occupancy is restricted to elderly and handicapped residents, to be located at Kingsport Apartments, 245 King Street, in the Village of Port Chester, New York (the "Facility"); and

WHEREAS, the Issuer by resolution duly adopted on April 20, 1999, decided to proceed under the provisions of the Act to issue the Bonds for the purpose of financing the costs of acquiring, constructing and equipping the facility; and

WHEREAS, American Foundation for Affordable Housing (Kingsport), Inc., a Virginia not-for-profit corporation duly qualified to do business in the State of New York, and an organization described in Section 501(c)(3) of the Code and exempt from federal income taxation pursuant to Section 501(a) of the Code (the "Company"), has proposed that the Issuer sell the Facility to the Company pursuant to the terms of the Installment Sale Agreement (as hereinafter defined); and

WHEREAS, the Company has agreed to indemnify the Issuer against certain losses, claims, expenses, damages and liabilities which may arise in connection with the transactions contemplated by the sale of the Facility and the issuance and purchase of the Bonds; and

WHEREAS, in compliance with Section 147(f) of the Code, the Issuer on May 28, 1999, held a public hearing on the issuance of the Bonds following public notice on April 20, 1999; and

WHEREAS, by Certificate of Approval to be executed by the [Mayor of the Village of Port Chester] [Board of Trustees of the Village of Port Chester], New York on or after May 28, 1999, the "applicable elected representative" as required under Section 147(f) of the Code will have approved the issuance of the Bonds; and

WHEREAS, the company has received a commitment from Zephyr Management L.P. and SP - Port Chester, LLC (collectively, the "Bond Purchasers") to purchase in the aggregate principal amount presently estimated to be approximately \$8,207,513, but not to exceed \$10,000,000; and

WHEREAS, the Issuer may only approve the final bond documents and authorized the issuance of the bonds following the holding of the required public hearing and the approval of the applicable elected representative (collectively, the "Necessary Approvals"); and

NOW, THEREFORE, BE IT RESOLVED by the Village of Port Chester Industrial Development Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Issuer hereby finds and determines subject to the occurrence of the Necessary Approvals and the adoption of the subsequent final bond resolution of the Issuer authorizing the issuance of the Bonds:

(a) By virtue of the Act, the Issuer has been vested with all powers necessary and convenient to carry out the effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(b) The Facility constitutes a "project", as such terms is defined in the Act; and

(c) The acquiring, constructing and equipping of the Facility and the sale of the Facility to the Company pursuant to the Installment Sale Agreement will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Village of Port Chester and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(d) It approves of the location of the site of the Facility; and

(e) The Facility conforms with the local zoning laws and planning regulations of the Village of Port Chester and all regional and local land use plans for the area in which the Facility is located; and

(f) The financing of the Facility is reasonably necessary to induce the Company to maintain and expand its operations within the State of New York; and

(g) The Facility and the operations conducted therein will not cause or result in the violation of the health, labor or other laws of the United States of America, the State of New York, or the Village of Port Chester; and

(h) Based upon the Environmental Assessment Form completed by the Company and reviewed by the Issuer and other representations and information furnished by the Company regarding the Facility, the Issuer determines that the action relating to the financing, acquisition, construction, equipping and operation of the Facility is an "unlisted" action, as that term is defined in the State Environmental Quality Review Act ("SEQRA") (Article Eight of the Environmental Conservation Law). The Issuer also determines that the action will not have a "significant effect" on the environment and, therefore, an environmental impact statement will not be prepared. This determination constitutes a negative declaration for purposes of the SEQRA. Notice of this determination shall be filed to the extent required by the applicable regulations under that Act or as may be deemed advisable by the Chairman or Secretary of the Issuer or counsel to the Issuer.

(i) It is desirable and in the public interest for the Issuer to issue and sell the Bonds in the aggregate principal amount presently estimated to be approximately \$8,207,513, but not to exceed \$10,000,000 upon the terms and conditions set forth in certain Bond Placement Agreements, to be dated as determined by the Chairperson (collectively, the "Bond Placement Agreements"), by and among the Issuer, the Bond Purchasers and the Company for the purpose of financing the cost of acquiring, construction and equipping the Facility, together with necessary incidental expenses in connection therewith; and

(j) Subject to the approval of the Issuer of the substantially final form thereof by the Issuer's subsequent final resolution, the Indenture of Trust, dated as of June 1, 1999 (the "Indenture"), by and between the Issuer and United States Trust Company of New York, as trustee for the benefit of the owners of the Bonds (the "Trustee"), will be an effective instrument which, among other things, secures the Bonds, assigns to the Trustee certain rights and remedies of the Issuer under the Installment Sale Agreement, and authorizes the Trustee to accept and execute trusts of the character set forth in the Indenture; and

(k) Subject to the approval of the Issuer of the substantially final form thereof by the Issuer's subsequent final resolution, the Installment Sale Agreement, dated as of June 1, 1999 (the "Installment Sale Agreement"), by and between the Issuer and the Company is an effective instrument whereby the Issuer will sell the Facility to the Company; and

(l) Subject to the approval of the Issuer of the substantially final form thereof by the Issuer's subsequent final resolution, the Pledge and Assignment with Acknowledgment by the Company, dated as of June 1, 1999 (the "Assignment") will be an effective instrument under which the Issuer assigns to the Trustee certain of its rights and remedies thereunder, including the right to collect and receive certain moneys due and to become due thereunder (except for Unassigned Rights as defined in the Indenture); and

(m) Subject to the approval of the Issuer of the substantially final form thereof by the Issuer's subsequent final resolution, the Mortgage and Security Agreement, dated

as of June 1, 1999 (the "Mortgage"), from the Issuer and the Company to the Trustee will be an effective instrument whereby the Issuer assigns to the Trustee a present and continuing security interest in all property and rights described in Granting Clauses I to VI, thereunder, to better secure payment of the Bonds and performance of its other obligations under the Bond Placement Agreements; and

(n) Subject to the approval of the Issuer of the substantially final form thereof by the Issuer's subsequent final resolution, the Guaranty Agreement, dated as of June 1, 1999, (the "Guaranty"), from the Company to the Trustee and the Issuer will be an effective instrument, whereby the Company will guarantee to the Trustee and the Issuer the full and prompt payment when due of the principal of, premium, if any, and interest on the Bonds, and the payment and performance of the Company's obligations under the Company's Documents and will enhance the marketability of the Bonds; and

(o) Subject to the approval of the Issuer of the substantially final form thereof by the Issuer's subsequent final resolution, the Tax Compliance Agreement, dated the Closing Date, by and between the Company and the Issuer (the "Tax Compliance Agreement") will be an effective instrument whereby the Company and the Issuer set forth certain representations, expectations, conditions and covenants establishing compliance with the restrictions imposed by the Code relating to hearings and approval by the Issuer, activities of the Company, the Bonds, the Facility and the application of Bond Proceeds; and

(p) Subject to the approval of the Issuer of the substantially final form thereof by the Issuer's subsequent final resolution, the Environmental Compliance and Indemnification Agreement, dated as of June 1, 1999 (the "Environmental Compliance and Indemnification Agreement"), between and among the Issuer, the Trustee and the Company, will be an effective instrument whereby the Company covenants that the acquisition, construction and equipping and operation of the Facility will be in compliance with all laws and regulations, and the Company will indemnify and hold the Issuer and the Trustee harmless from any violation of the environmental laws and regulations with respect to the Facility; and

Section 2. Subject to the Necessary Approval and the adoption of a final resolution of the Issuer approving the substantially final form of the Bond Documents, in consequence of the foregoing, the Issuer hereby determines to: (i) issue and sell the Bonds to the Bond Purchasers pursuant to an in accordance with the Bond Placement Agreements, (ii) use the proceeds of the Bonds to acquire, construct and equip the Facility, (iii) sell the Facility to the Company pursuant to the Installment Sale Agreement, (iv) secure the Bonds by vesting certain powers and duties in the Trustee pursuant to the Indenture, and by assigning to the Trustee certain of the Issuer's rights and remedies under the Installment Sale Agreement, including the right to collect and receive amounts payable thereunder (except for Unassigned Rights as defined in Schedule A to the Indenture) pursuant to the Assignment, (v) secure the Bonds by

granting a lien upon and security interest in the facility to the Trustee pursuant to the Mortgage, (vi) obtain the certification by a State official designated by State law or, if there is no such State official, the Governor of the State, that the Bonds meet the requirements of Section 146 of the Code, and (viii) file the Information Return for Private Activity Bond Issues, Form 8038 (the "Information Return") in the manner and at the places provided in the Code.

Section 3. Subject to the Necessary Approvals and the adoption of a final resolution of the Issuer approving the substantially final form of the Bond Documents, the Issuer is hereby authorized to acquire the real and personal property described in Exhibits A and B, respectively, to the Installment Sale Agreement and to do all things necessary or appropriate for the accomplishments thereof, and all acts heretofore taken by the Issuer with respect to such acquisition are hereby approved, ratified and confirmed.

Section 4. This resolution shall take effect immediately.

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RESOLUTION OF THE VILLAGE OF PORT CHESTER
INDUSTRIAL DEVELOPMENT AGENCY CONFIRMING
THE MODIFIED MARINA REDEVELOPMENT PROJECT
TO BE A QUALIFIED PROJECT UNDER THE ACT AND
CONCEPTUALLY APPROVING OF A LAND DISPOSITION
AGREEMENT AMONG THE VILLAGE OF PORT CHESTER,
THE AGENCY AND G & S PORT CHESTER LLC

On motion of Commissioner RUBINO, seconded by Commissioner RODRIGUEZ,
the following resolution was adopted by the Industrial Development Agency of the
Village of Port Chester, New York:

WHEREAS, the Village of Port Chester Industrial Development Agency (the "Agency") is a public benefit corporation authorized and empowered by the New York State Industrial Development Agency Act, chapter 1030 of the laws of 1969 of the State of New York (Article 18-A and Section 900-a of the General Municipal Law, as amended) (the "Act") to (i) promote the economic welfare, recreational opportunities and prosperity of its inhabitants, and (ii) promote, attract, encourage and develop recreation and economically sound commerce and industry through governmental action for the purpose of preventing and alleviating unemployment and economic deterioration; and

WHEREAS, in July, 1986, the Robert Martin Company submitted an application to the Agency requesting assistance in connection with a proposed urban renewal project

in the Village of Port Chester consisting of the acquisition and redevelopment of real property within contiguous portions of the Village Center Urban Renewal Plan area and Marina Redevelopment Urban Renewal Plan area of the Village, together with the acquisition and installation within improvements thereon of machinery and equipment related thereto (the "Marina Redevelopment Project"), all to be used for commercial and residential purposes; and

WHEREAS, on July 14, 1986, the Agency adopted a resolution inducing and authorizing the Marina Redevelopment Project and authorizing Robert Martin Company to undertake and complete the Marina Redevelopment Project, and authorizing the issuance by the Agency of its industrial development bonds up to a principal amount of \$37,000,000 for the purpose of paying the costs of acquisition and construction of the Marina Redevelopment Project (the "Inducement Resolution"); and

WHEREAS, on May 19, 1989, the Agency adopted a resolution amending the Inducement Resolution to among other things, modify the Robert Martin Company's obligations to pay certain costs of the Agency incurred with respect to the Marina Redevelopment Project, and to authorize the execution and delivery of a certain Development Agreement and a certain Procedural Agreement to be made among the Village of Port Chester, the Agency and the Robert Martin Company with respect to the Marina Redevelopment Project (collectively, the "Original Agreements"); and

WHEREAS, the Original Agreements were executed by the parties thereto as of June 5, 1989; and

WHEREAS, the Agency has been advised that Robert Martin Company transferred and assigned to G & S Port Chester LLC ("G & S") all of Robert Martin Company's right, title and interest in and to the Original Agreement (the "Assignment"); and

WHEREAS, on April 23, 1998, the Board of Trustees of the Village of Port Chester consented to the Assignment, and authorized the execution and delivery of a certain Amended and Restated Development Agreement to be made among the Village of Port Chester, the Agency and G & S with respect to proposed modifications of the Marina Redevelopment Project (as so modified, the "Modified Marina Redevelopment Project"); and

WHEREAS, the Parties entered into an Amended and Restated Development Agreement dated as of April 28, 1998 (the "Development Agreement"), which agreement set forth the general terms and conditions for a further proposed modification of the Project generally described as consisting of 360,000 square feet of retail and commercial uses, including an approximately 100,000 square foot cinema, an approximately 140,000 square foot wholesale membership warehouse club, and an approximately 5,000 square foot restaurant, together with approximately 2,172 parking spaces and a public park and promenade, subject to a full environmental review under the State Environmental Quality Review Act and the governing regulations thereof ("SEQRA"), and in which the parties acknowledged and agreed that based upon the findings issued in connection with said SEQRA review, the proposed Project could be further modified, reduced in scope or rejected in whole or part; and

WHEREAS, pursuant to the Amended and Restated Development Agreement,

G & S has submitted to the Board of Trustees of the Village of Port Chester and to the Agency a proposed Land Disposition Agreement to be made among the Village of Port Chester, the Agency and G & S which sets forth the obligations of the parties thereto for the financing, acquisition, construction and operation of the Modified Marina Redevelopment Project; and

WHEREAS, on April 12, 1999 the Village Board of Trustees completed the environmental review process, and adopted the appropriate Findings, as lead agency, as required under SEQRA and its implementing regulations with respect to the Project (the "Board of Trustees Findings"); and

WHEREAS, the Agency now desires to confirm its acceptance of the Modified Marina Redevelopment Project as a modification of a project which was the subject of an Agency Inducement Resolution adopted prior to July 21, 1993 within the meaning of Section 38 of Chapter 356 of the 1993 Laws of the State of New York, and conceptually approve the Land Disposition Agreement; and

WHEREAS, the Agency has considered the relevant environmental issues, the Final Supplementary Environmental Impact Statement prepared for the Project dated March 1999 ("SFEIS"), the Board of Trustees Findings, and the Land Disposition Agreement, subject to a public hearing to be conducted by the Village Board of Trustees in connection, among other items, approval of the Land Disposition Agreement; and

NOW, THEREFORE, BE IT RESOLVED by the Village of Port Chester Industrial Development Agency, as follows:

1. Having considered the SFEIS, the Agency finds that:
 - (a) the requirements of 6 N.Y.C.R.R. Part 617 have been met;
 - (b) consistent with social, economic and other essential considerations from among the reasonable alternatives thereto, the propose action is one which minimizes or avoids adverse environmental effects to the maximum extent practicable, including the effects disclosed in the SFEIS; and
 - (c) consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided by incorporating as conditions to the decision those mitigative measures which were identified as practicable.

This Decision and the SFEIS constitutes the written statement of facts, and of social, economic and other factors and standards that form the basis of this determination, pursuant to 6 N.Y.C.R.R. §617.11.

2. To the extent that it is inconsistent with the Resolution, the Inducement Resolution, as the same has been previously amended, is further amended hereby. Except as amended hereby, the Inducement Resolution shall remain in full force and effect.

3. The Agency hereby determines that the undertaking and completion of the Modified Marina Redevelopment Project by G & S and the financial assistance thereof

by the Agency is authorized by the Act and will be in furtherance of the policy of the State of New York as set forth therein. In particular, the Agency hereby determines that: (i) the Modified Marina Redevelopment Project is in all material respects the same project as the Marina Redevelopment Project that was the subject of an Agency Inducement Resolution adopted prior to July 21, 1993, within the meaning of Section 38 of Chapter 356 of the 1993 Laws of the State of New York; (ii) the Inducement Resolution for the Marina Redevelopment Project was adopted by the Agency on July 14, 1986; and (iii) therefore, the Modified Marina Redevelopment Project is eligible for financial assistance under the Act.

4. the Agency hereby determines that the purposes of the Act will be served by the Agency entering into the Land Disposition Agreement and accepting the obligations thereunder, and the Land Disposition Agreement is hereby conceptually approved, subject to a public hearing to be conducted by the Village Board in accordance with Article 15 of the General Municipal Law.

5. Anything in the Inducement Resolution to the contrary notwithstanding, the term "financial assistance" as used in this resolution shall not mean the issuance by the Agency of Bonds (as defined in the Inducement Resolution).

6. In adopting this Resolution, notwithstanding any of the provisions hereof, the Agency assumes no responsibility for obtaining or assisting G & S in obtaining either construction or permanent financing for the Modified Marina Redevelopment Project. This Resolution is not a contract between the Agency and G & S and shall not be construed as such.

7. This Resolution shall take effect immediately upon its adoption by a majority of the members of the Agency.

ROLL CALL

AYES: Commissioners Cotter, Rubino, Rodriguez and Ryan

NOES: None

ABSENT: Commissioners Passerelli, Heinsch and Wesley

There being no further business on motion by Commissioner Rubino, Jr., seconded by Commissioner Rodriguez, the meeting was adjourned at 7:50 P.M.

Respectfully submitted,

Marianne Cotter
Chairperson