

## **TOWN BOARD RESOLUTION**

Before you tonight is a resolution to adopt, and approve for authorized signature the Agreement Allocating PILOT Payments (“Allocation Agreement”) being entered into by and between the New Hartford School District, the County of Oneida, the Town of New Hartford and the OCIDA.

The sum and substance of the Allocation Agreement is as follows:

1. The Town will incur debt in the amount of \$2.3 million by and through the issuance of Bond Anticipation Notes. Tentative issuance date November \_\_\_\_, 2008.
2. The debt service on the \$2.3 million BAN has been calculated and determined for the Town by John Shehadi of Fiscal Advisors and Marketing, Inc. John’s amortization schedule has been attached to the Allocation Agreement as Exhibit G.
3. The Town’s annual debt service will be paid first with monies received by the Town from the OCIDA from monies collected by the OCIDA from and pursuant to its PILOT Agreement with The Hartford and Ryan. (1 agreement)
4. When the property owned by Ryan and occupied by The Hartford is fully assessed for real property tax purposes, the amount of PILOT revenue the Town can reasonably

expect from the PILOT Agreement has been calculated and determined by the Town's Assessor Paul Smith. Paul's affidavit has been attached to the Allocation Agreement as Exhibit K.

5. Any shortfall in, or difference between, the Town's annual debt service on the subject \$2.3 million and the PILOT monies received by the Town from the OCIDA pursuant to its PILOT Agreement with The Hartford and Ryan or other later PILOT agreements approved by the OCIDA and Affected Tax Jurisdictions as referenced in the sixth

WHEREAS clause of the Allocation Agreement shall be paid by the developer, its members, successors and assigns, by, through and with a Letter of Credit. Said Letter of Credit has been calculated and determined for the Town by Bond Counsel, Orrick, Herrington & Sutcliffe, LLP out of Manhattan, Thomas Myers, Esq., of counsel. The attorney approved Letter of Credit has been/or will be attached to the Allocation Agreement as Exhibit J.

6. With said \$2.3 million, the Town will perform work and make public improvements in accordance with:

- Bid Contract #1 “as is” without change or deletion. (Roads C and D – Approximate price \$1.4 million with paving and work extras). The Town shall remain free of liability and obligation on the subject contract until (a) all of the land upon which Roads C and D are to be constructed are legally transferred to the Town with good and proper title (this includes the land at or near the Cell Tower and National Grid parcel); (b) the 3 taxing authorities have fully executed the corresponding Allocation Agreement; (c) the Developers have provided the Town with a Letter of Credit satisfactory to the Town as to form, duration and amount; and (d) the Developers have duly executed with the Town a separate Agreement and Individual Guaranty. Bid Contract #1 has been attached to the Allocation Agreement as Exhibit A. Any work performed under Bid Contract #1 before these prerequisites are met is at the Developers’ risk and assumption of liability; and
- Bid Contract #2 “as is” without change or deletion. (Rt. 5 Int. – Approximate price \$.9 mil.) The Town shall remain free of liability and obligation to commence work until (a) said contract has been legally and properly awarded; (b) the 3 taxing authorities have fully executed the corresponding Allocation Agreement; (c) the Developers have provided the Town with a Letter of Credit satisfactory to the Town as to form, duration and amount; and (d) the Developers have duly executed with the Town a separate Agreement and Individual Guaranty. Bid Contract #2 has been attached to the Allocation Agreement as Exhibit B. Any work performed under Bid Contract #2 before these prerequisites are met is at the Developers’ risk and assumption of liability.

7. In connection with Bid Contract #1 and Bid Contract #2, the developer and its principals, members, successors and assigns, by and through a separate 'Agreement and Individual Guaranty' with the Town also agrees to be responsible for and pay any incidental costs related to Bid Contracts #1 and #2 that may arise from or in connection with the performance of those contracts, but which may not be expressly stated or contained therein. Such incidental costs would include, but not necessarily be limited to, escalation costs, inspection fees, engineering costs and paving costs. Said Agreement and Individual Guaranty has been/will be attached to the Allocation Agreement as Exhibit I.

So, in essence, you are voting tonight first to approve the Allocation Agreement subject to the following conditions:

1. That the other 2 taxing authorities will also approve and sign said Allocation Agreement in the same form as presented to you tonight without change or modification;
2. The Developers provide the Town with a satisfactory letter of credit as determined by Bond Counsel Tom Myers;
3. The Developers execute the above-referenced Agreement and Individual Guaranty; and
4. Town attorney is given opportunity for final review and approval.