

**BOND RESOLUTION
NG HERKIMER APARTMENTS PRESERVATION LLC PROJECT**

A special meeting of the Herkimer County Industrial Development Agency (the "Agency") was convened in public session at the Herkimer County Chamber of Commerce Conference Room at 420 E. German Street, Suite 101A, Herkimer, New York on April 6, 2022 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:

Vincent James Bono	Chairman
John Scarano	Secretary
Michael Werenczak	Treasurer
Ann Gaworecki	Director
Cory Albrecht	Director
Catherine Ricci	Director

Each of the members present participated in the meeting either in person or remotely pursuant to the signing into law on September 2, 2021 of Chapter 417 of the Laws of 2021, as amended on January 14, 2022.

ABSENT:

David Chlus	Vice Chairman
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AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

John J. Piseck, Jr.	Chief Executive Officer
Victoria Adams	Administration & Grant Coordinator
Ryan Palmiotto	Marketing/Communication Specialist
A. Joseph Scott, III, Esq.	Bond Counsel

The following resolution was offered by Michael Werenczak, seconded by Cory Albrecht, to wit:

Resolution No: 0422-

RESOLUTION (A) AUTHORIZING THE ISSUANCE, AND SALE OF THE HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY TAX-EXEMPT MULTIFAMILY HOUSING REVENUE BONDS (NATHAN GALINSKY APARTMENTS PRESERVATION LLC PROJECT), IN ONE OR MORE SERIES, IN AN AGGREGATE PRINCIPAL AMOUNT OF \$16,000,000; AND (B) THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS.

WHEREAS, Herkimer County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 410 of 1970 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 410 of the 1970 Laws of New York, as amended, constituting Section 898 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, and recreation 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 issue its revenue bonds to finance the cost of acquisition, construction and installation of one or more “projects” (as defined in the Act), to acquire, construct and install said projects or to cause said projects to be acquired, constructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, Nathan Galinsky Apartments Preservation LLC (the “Company”), has submitted an application (the “Application”) to the Agency on or about October, 2021 a copy of which is on file at the office of the Agency, requesting the Agency to issue up to \$27,000,000 of its Tax-Exempt Multifamily Housing Revenue Bonds (Nathan Galinsky Apartments Preservation LLC Project), Series 2022, to be issued in one or more series to assist in financing all or a portion of a certain project (the “Project”) consisting of: (A) (1) the acquisition of an interest or interests in a parcel of land located at 105 Protection Avenue in the Village of Herkimer, Herkimer County, New York (the “Land”), together with the existing building located on the Land and known as the Nathan Galinsky Apartments (the “Facility”); (2) the reconstruction and renovation of the Facility, and (3) the acquisition and installation thereon and therein of various machinery and equipment (the “Equipment”) (the Land, the Facility and the Equipment hereinafter collectively referred to as the “Project Facility”), all of the foregoing to constitute a housing facility containing approximately 112 apartment units to be owned and operated by the Company, and any other directly or indirectly related activities; (B) the financing of all or a portion of the costs of the foregoing by the issuance of taxable and/or tax-exempt revenue bonds of the Agency in one or more issues or series in an aggregate principal amount sufficient to pay all or a portion of the cost of undertaking the Project, together with necessary incidental costs in connection therewith, presently estimated to equal approximately \$15,000,000, but in any event not to exceed \$27,000,000 (the “Series 2022 Bonds”); (C) the payment of a portion of the costs incidental to the issuance of the Series 2022 Bonds, including issuance costs of the Series 2022 Bonds and any reserve funds as may be necessary to secure the Series 2022 Bonds; (D) the granting of certain other “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including exemption from certain sales taxes, deed transfer taxes, mortgage recording taxes and real property taxes (collectively with the Series 2022 Bonds, the “Financial Assistance”); and (E) the lease (with an obligation to purchase) or sale of the Project Facility to the Institution or such other person as may be designated by the Institution and agreed upon by the Agency; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the board of directors of the Agency on November 17, 2021 (the “Preliminary Inducement Resolution”), the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act and Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”), to hear all persons interested in the Initial Project and the financial assistance being contemplated by the Agency with respect to the Initial Project, to be mailed on January 12, 2022 to the chief executive officers of the county and of each city, town, village and school district in which the Initial Project Facility is to be located, (B) caused notice of the Public Hearing to be posted on January 12, 2022 at the Herkimer County Office Building located at 109 Mary Street, in the Village of Herkimer, Herkimer County, New York and on the Agency’s website, (C) caused notice of the Public Hearing to be published on January 12, 2022 in The Times Telegram, a newspaper of general circulation available to the residents of Town of Herkimer, Herkimer County, New York, (D) conducted the Public Hearing on January

25, 2022 at 8:00 o'clock a.m., local time at Herkimer County Chamber Conference Room located at 420 E. German Street, in the Town of Herkimer, Herkimer County, New York, and (E) prepared a report of the Public Hearing (the "Report") fairly summarizing the views presented at such Public Hearing and caused copies of said Report to be made available to the members of the board of directors of the Agency and to the County Legislature of Herkimer County; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Agency on April 6, 2022 (the "SEQR Resolution"), the Agency determined (A) that pursuant to Sections 617.5(c)(2) of the Regulations, the Project is a "Type II action" (as said quoted term is defined in the Regulations), and (B) that, therefore, no environmental impact statement or any other determination or procedure was required under the Regulations; and

WHEREAS, pursuant to Section 874(4) of the Act: (A) the Agency's Uniform Tax Exemption Policy (the "UTEP Policy") provides a standardized method for the determination of payments in lieu of taxes for a facility similar to the Project Facility, (B) in connection with the Application, the Company made a request to the Agency (the "Pilot Request") that the Agency deviate from the UTEP Policy with respect to Project Facility, (C) the Chief Executive Officer of the Agency caused a letter dated March 25, 2022 (the "Pilot Deviation Notice Letter") to be mailed to the chief executive officers of the "affected tax jurisdictions" (within the meaning of such quoted term in Section 854(16) of the Act) (the "Affected Tax Jurisdictions") pursuant to Section 874(4) of the Act, informing said individuals that the Agency would, at its special meeting on April 6, 2022, consider a proposed deviation from the Policy with respect to the payment in lieu of tax agreement to be entered into by the Agency with respect to the Project Facility (the "Payment in Lieu of Tax Agreement"), and the reasons for said proposed deviation; and (D) by resolution adopted by the members of the Agency on April 6, 2022 (the "Pilot Deviation Approval Resolution"), the members of the Agency determined to deviate from the Policy with respect to the Project and approved a proposed deviation from the Policy with respect to the terms of the Payment in Lieu of Tax Agreement to be entered into by the Agency with respect to the Project Facility; and

WHEREAS, the Company reasonably expects that it will (i) pay or incur certain capital expenditures in connection with the Project prior to the issuance of the Series 2022 Bonds, (ii) use funds from sources other than proceeds of the Series 2022 Bonds which are or will be available on a short-term basis to pay for such capital expenditures, and (iii) reimburse itself for the use of such funds with proceeds of the Series 2022 Bonds; and

WHEREAS, it is contemplated that the Series 2022 Bonds will be issued as Multifamily Housing Revenue Bonds and, as such, pursuant to Section 142(d) of the Code, at least ninety-five percent (95%) of the net proceeds of the Series 2022 Bonds must be used to provide a "qualified residential rental project," as defined in Section 142 of the Code to include a project for residential rental property where, for a period of at least as long as the Affordable Housing Revenue Bonds remain outstanding, at least twenty percent (20%) of such units are occupied by individuals whose income is fifty percent (50%) or less of Area Median Gross Income as determined by the United States Department of Housing and Urban Development ("HUD") or at least forty percent (40%) of such units are occupied by individuals whose income is sixty percent (60%) or less of Area Median Gross Income as determined by HUD; and

WHEREAS, the Agency now desires to authorize the issuance of the Series 2022 Bonds in an aggregate principal amount of \$16,000,000 for the purpose of financing a portion of the costs of the Project under this resolution (the "Bond Resolution"), and the execution and delivery of a funding loan agreement,

dated as of April 1, 2022 (the “Funding Loan Agreement”), by and between the Agency, Manufacturers and Traders Trust Company, as fiscal agent (the “Fiscal Agent”) and PNC Bank National Association as initial funding lender for the Series 2022 Bonds (the “Initial Funding Lender”), together with one or more endorsements provided therein; and

WHEREAS, the Agency will lease its interest in the Project Facility to the Company pursuant to a certain Lease Agreement, to be dated the appropriate date as agreed to by an authorized officer of the Agency (the “Lease Agreement”), pursuant to the terms of which Lease Agreement (A) the Company will agree (1) to cause the Project to be undertaken and completed, (2) as agent of the Agency, to undertake and complete the Project, (3) to lease the Project Facility from the Agency, and (4) to make certain rent payments (or cause such payments to be made) to or upon the order of the Agency in connection with the lease of the Project Facility, which rent payments shall include amounts equal to the debt service payments due on the Series 2022 Bonds, and (B) the Agency will agree to (1) undertake the Project, (2) appoint the Company as agent of the Agency to undertake and complete the Project, and (3) lease the Project Facility to the Company; and

WHEREAS, simultaneously with the issuance of the Series 2022 Bonds and the execution and delivery of the Lease Agreement, (A) the Company and the Agency will execute and deliver a certain company lease agreement, dated as of April 1, 2022 (the “Company Lease”) by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease the Land and the Facility to the Agency for a term ending on the completion of the Project, and (B) the Company and the Agency will execute and deliver (1) a certain payment in lieu of tax agreement, dated as of April 1, 2022 (the “Payment in Lieu of Tax Agreement”) by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility, (2) a certain recapture agreement (the “Section 875 GML Recapture Agreement”) by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes and (3) a certain uniform agency project agreement, dated as of April 1, 2022 (the “Uniform Agency Project Agreement”) relating to the granting of the Financial Assistance by the Agency to the Company; and

WHEREAS, as security for the Series 2022 Bonds, among other things, (i) the Guarantor (as such term is defined in the Funding Loan Agreement) will guaranty completion of construction of the Improvements pursuant to the term of a certain Guaranty of Completion – TEL, dated the Delivery Date, for the benefit of the Funding Lender (as that term is defined in the Funding Loan Agreement) (the “Completion guaranty”); (ii) the Guarantor will guaranty until completion of the Improvements the payment of a portion of the operating expenses of the Project pursuant to the terms of a certain Operating Deficit Guaranty – TEL, dated the Delivery Date, for the benefit of the Funding Lender (the “Operating Deficit Guaranty”); (iii) the Guarantor will guaranty payment and performance of certain non-recourse carve-out events until the Maturity Date pursuant to the terms of a certain Guaranty – Multistate – TEL, dated the Delivery Date, for the benefit of the Funding Lender (the “Non-Recourse Carve-out Guaranty”, and collectively with the Completion Guaranty and the Operating Deficit Guaranty, the “Guaranty”), dated the Delivery Date, for the benefit of the Funding Lender (as that term is defined herein) (the “Guaranty”); (iv) the Agency will assign to the Fiscal Agent substantially all of its rights under the Lease Agreement (except the Unassigned Rights), pursuant to a certain Pledge and Assignment, dated as of April 1, 2022, from the Agency to the Fiscal Agent (the “Pledge and Assignment”); and (v) the Agency and the Company shall grant to the Fiscal Agent, for the benefit of the Funding Lender, a mortgage lien on and security interest in the Project, both fee and leasehold, pursuant to a certain Multifamily Mortgage, Assignment Rents and Security Agreement, dated as of April 1, 2022, from the Agency and the Company to the Fiscal Agent (the “Security Instrument”); and

WHEREAS, Series 2022 Bonds will be initially purchased by the Initial Funding Lender pursuant to the Funding Loan Agreement. The Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise (“Freddie Mac”), has entered into a commitment with the Initial Funding Lender, dated April __, 2022 (the “Freddie Mac Commitment”), whereby Freddie Mac has agreed to purchase the Funding Loan upon the date of satisfaction of the conditions set forth in the Freddie Mac Commitment (the “Freddie Mac Purchase Date”). On the Freddie Mac Purchase Date, the Initial Funding Lender will assign to Freddie Mac all of its rights and interest in the Series 2022 Bonds, the Funding Loan Agreement, the Continuing Covenant Agreement (as hereinafter defined) and the other Financing Documents (as defined in the Funding Loan Agreement); and

WHEREAS, on and after the Freddie Mac Purchase Date, Freddie Mac will act as the Funding Lender and the Funding Lender Representative with respect to the Funding Loan and the other Financing Documents (in such capacity and any successor in such capacity, the “Funding Lender Representative”). PNC Bank, National Association, as servicer (the “Servicer”), will act as initial servicer for the Funding Loan and the other Financing Documents on behalf of the Funding Lender Representative; and

WHEREAS, the Company will further enter into a Continuing Covenant Agreement, dated the Closing Date, with the Initial Funding Lender (the “Continuing Covenant Agreement”), which sets forth various other requirements with respect to the Project, and which agreement will be assigned to Freddie Mac on the Freddie Mac Purchase Date; and

WHEREAS, the Company will enter into a certain Tax Regulatory Agreement, dated the date of delivery of the Series 2022 Bonds (the “Tax Regulatory Agreement”), in which the Company will make certain representations and covenants, establish certain conditions and limitations and create certain expectations, relating to compliance with the requirements imposed by the Code and the Agency will execute a completed Internal Revenue Service (“IRS”) Form 8038 (Information Return for Private Activity Bonds) relating to the Tax-Exempt Multifamily Housing Revenue Bonds (Nathan Galinsky Apartments Preservation LLC Project), Series 2022 (“Form 8038”), pursuant to Section 149(e) of the Code and will cause the Form 8038 to be filed with the IRS; and

WHEREAS, it is further contemplated that the Agency will (i) designate the Company as its agent for the purpose of undertaking the Project pursuant to the Lease Agreement, (ii) negotiate and enter into a the Lease Agreement and related Company Lease Agreement with the Company, pursuant to which the Agency will retain a leasehold interest in the Project Facility; and (iii) provide (a) an exemption benefit from all New York State and local sales and use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction, reconstruction and/or renovation, rehabilitation or equipping of the Facility, (b) a mortgage recording tax exemption benefit for the financing related to the Project, and (c) a real property tax abatement pursuant to the terms of the Payment in Lieu of Tax Agreement; and

WHEREAS, approval of the County Legislature of Herkimer County, being the highest elected official of Herkimer County, and an allocation of sufficient Volume Cap are required as conditions to the issuance of Series 2022 Bonds pursuant to the Code; and

WHEREAS, by a resolution executed by the County Legislature of Herkimer County (the “County Legislature”) on February 16, 2022 (the “TEFRA Approval”), the County Legislature approved the issuance of the Series 2022 Bonds for purposes of Section 147(f) of the Code; and

WHEREAS, pursuant to Section 146 of the Code, in order for interest on the Series 2022 Bonds to be excludable from gross income of the holder thereof the Agency must allocate the private activity volume

cap ("Volume Cap") to the Series 2022 Bonds in an amount equal the face amount of the Series 2022 Bonds; and

WHEREAS, pursuant to a (i) a letter dated January 10, 2022, (ii) a letter dated February 18, 2022, and (iii) a letter dated March 15, 2022, each from the New York State Department of Economic Development, the Agency received an allocation of 2022 Volume Cap from the State in an amount equal to the maximum amount of Series 2022 Bonds expected to be issued; and

WHEREAS, the Agency has given due consideration to the Application and the representations by the Company that undertaking the Project and issuing the Series 2022 Bonds (a) will be an inducement to the Company to acquire, renovate, reconstruct, equip and operate the Project Facility in the Village of Herkimer, Herkimer County; and (b) will not result in the removal of any commercial, industrial, fabricating or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State; and

WHEREAS, the Agency has considered the policy, purposes and requirements of the Enabling Act in making its determinations with respect to taking official action regarding the Project; and

WHEREAS, as required by Section 2824(8) of the New York Public Authorities Law, the Agency's Finance and Audit Committee, on April 6, 2022, at 8:00 a.m., reviewed the proposal for the issuance of debt by the Agency related to the Project, recommended that the Agency undertake the Project and proceed with the issuance thereof, and determined that it is in the best interest of economic development in Herkimer County for the Agency to issue the Series 2022 Bonds.

NOW, THEREFORE, be it resolved by the Agency as follows:

Section 1. It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration.

Section 2. It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

Section 3. The Company has presented an Application in a form acceptable to the Agency. Based upon representations made by the Company to the Agency and any other correspondence submitted by the Company to the Agency, public hearing comments, if any, the Agency's review of and recommendations related to the Project and pursuant to the terms of the Preliminary Inducement Resolution, Agency board member review, discussion, and consideration of same, and such other information and investigation as the Agency has deemed appropriate, the Agency makes the following findings and determinations and hereby authorizes the undertaking of the Project and the provision of the Financial Assistance to the Company as described herein:

- (a) The Project constitutes a "project" within the meaning of the Act.

(b) The issuance of the Series 2022 Bonds and the grant of the other Financial Assistance will be an inducement to the Company to acquire, renovate, construct, equip and operate the Project Facility in the Village of Herkimer, Herkimer County, thereby advancing job opportunities, general prosperity and economic welfare of the people of the State and Herkimer County in furtherance of the Act.

(c) It is desirable and in the public interest for the Agency to appoint the Company as its agent for purposes of acquiring, reconstructing and/or renovating and equipping the Project.

(d) The Agency has the authority to take the actions contemplated herein under the Act.

(e) (1) The Project does not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project, and accordingly the Project is not prohibited by the provisions of Section 862(2)(a) of the Act, and (2) accordingly the Agency is authorized to provide financial assistance in respect of the Project pursuant to Section 862(2)(a) of the Act.

(f) The Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York.

(g) The Agency has prepared a written cost-benefit analysis identifying the extent to which the Project will create or retain permanent, private sector jobs, the estimated value of any tax exemption to be provided, the amount of private sector investment generated or likely to be generated by the Project, the likelihood of accomplishing the Project in a timely fashion, and the extent to which the Project will provide additional sources of revenue for municipalities and school districts, and any other public benefits that might occur as a result of the Project.

(h) It is desirable and in the public interest for the Agency to issue its Series 2022 Bonds to finance the costs of the Project, together with certain related costs, reserves and other amounts, in an aggregate amount of \$16,000,000.

(i) The Agency reasonably expects to reimburse the Company for expenses made for the Project from the Series 2022 Bonds.

(j) The Company has provided a written statement confirming that the Project as of the date of the Application is in substantial compliance with all provisions the Act.

(k) The issuance of the Series 2022 Bonds by the Agency with respect to the Project will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of Herkimer County, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act.

(l) The Project qualifies for Agency Financial Assistance as it is compliant with the Agency's Uniform Criteria for the Evaluation of Projects Policy and meets and is consistent with the Agency's evaluative criteria for projects, said criteria established by the Agency as required under General Municipal Law Section 859-a(5).

Section 4. The form and substance of the Series 2022 Bonds are hereby approved.

Section 5. The form and substance of the Funding Loan Agreement (or other similar document) (in substantially the form presented to this meeting) are hereby approved.

Section 6. The form and substance of the Lease Agreement (or other similar document) (in substantially the form presented to this meeting) are hereby approved.

Section 7. The form and substance of the Multifamily Mortgage, Assignment Rents, and Security Agreement and Pledge and Assignment (or other similar documents) (in substantially the forms presented to this meeting) are hereby approved.

Section 8. The form and substance of the Company Lease Agreement (or other similar document) (in substantially the form presented to this meeting) are hereby approved.

Section 9. The form and substance of the Tax Regulatory Agreement (or other similar document) (in substantially the form presented to this meeting) are hereby approved.

Section 10. The Chairman (or Vice Chairman) of the Agency are hereby appointed as authorized officers of the Agency (the "Authorized Officer") for purposes of the Project, including (a) negotiating and approving the form and substance of the various documents and (b) executing and delivering the 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 the forms thereof as the Chairman (or Vice Chairman), as Authorized Officer, shall approve, the execution thereof by the Chairman (or Vice Chairman) to constitute conclusive evidence of such approval.

Section 11. The Agency hereby authorizes its Authorized Officer to approve the Funding Loan Agreement, in a form consistent with the intent and substance of this resolution, such approval to be conclusively evidenced by the execution of the Funding Loan Agreement by the Authorized Officer in accordance with Section 17 hereof.

Section 12. The Agency hereby authorizes its Authorized Officer to approve the Lease Agreement, in a form consistent with the intent and substance of this resolution, such approval to be conclusively evidenced by the execution of the Lease Agreement by the Authorized Officer in accordance with Section 17 hereof.

Section 13. The Agency hereby authorizes its Authorized Officer to approve the Multifamily Mortgage, Assignment Rents and Security Agreement and Pledge and Assignment, in a form consistent with the intent and substance of this resolution, such approval to be conclusively evidenced by the execution of the Multifamily Mortgage, Assignment Rents and Security Agreement and Pledge and Assignment by the Authorized Officer in accordance with Section 17 hereof.

Section 14. The Agency hereby authorizes its Authorized Officer to approve the Company Lease Agreement, in a form consistent with the intent and substance of this resolution, such approval to be conclusively evidenced by the execution of the Company Lease Agreement by the Authorized Officer in accordance with Section 17 hereof.

Section 15. The Agency hereby authorizes the Authorized Officer to approve the Tax Regulatory Agreement, in a form consistent with the intent and substance of this resolution, such approval to be conclusively evidenced by the execution of the Tax Regulatory Agreement by the Authorized Office in accordance with Section 17 hereof.

Section 16. The Agency hereby determines to execute the Form 8038 in such form as is hereafter approved by the Authorized Officer in accordance with Section 17 hereof, and to file the same with the IRS.

Section 17. (a) The Authorized Officer is hereby authorized, on behalf of the Agency, to execute and deliver the Lease Agreement, the Multifamily Mortgage, Assignment Rents and Security Agreement, the Pledge and Assignment, the Company Lease Agreement, the Tax Regulatory Agreement, the Series 2022 Bonds and any document or instrument necessary and incidental thereto as approved by Bond Counsel to the Agency (hereinafter collectively called the "Financing Documents"), and the Secretary of the Agency is hereby authorized to affix the seal of the Agency thereto where appropriate and to attest the same, all in substantially the forms thereof presented to this meeting with such changes (including without limitation any change in the dated date of such documents), variations, omissions and insertions as the Authorized Officer shall approve. The execution of the Financing Documents and the Form 8038 by the Authorized Officer shall constitute conclusive evidence of such approval.

(b) The Authorized Officer is hereby further authorized and directed, on behalf of the Agency, to approve, without further action of the Agency, any variations in the terms of the Series 2022 Bonds from those set forth in the form of Series 2022 Bond, respectively, submitted to this meeting, including, without limitation, the aggregate principal amounts of the Series 2022 Bonds (not in excess of the maximum aggregate principal amount authorized in Section 3(h) of this resolution), the interest rates, maturities, redemption premiums, optional redemption dates and sinking fund redemption dates and amounts. The execution and delivery of the Funding Loan Agreement by the Authorized Officer shall constitute conclusive evidence of such approval.

(c) The Authorized Officer is further hereby authorized, on behalf of the Agency, to designate any additional authorized representatives of the Agency.

Section 18. 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 by the provisions of the Financing Documents, and to execute and deliver all such additional certificates, instruments and documents, including the Financing Documents and the Form 8038, and to do all such further acts 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 Financing Documents binding upon the Agency.

Section 19. Subject to the conditions set forth herein and the Company executing the Uniform Agency Project Agreement and the delivery to the Agency of a binder, certificate or other evidence of insurance for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, renovation, construction, upgrading and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, renovate, reconstruct, upgrade and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such Agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the Company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf, provided, however, the appointment of the Company as agent of the Agency, if utilized, shall expire one year from the date of this resolution (unless extended for good cause by the Authorized Officer). With respect to the foregoing, and based upon the representations and warranties made by the Company in its application for Financial Assistance, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project and that would

otherwise be subject to New York State and local sales and use tax, which may result in New York State and local sales and use tax exemption benefits (“sales and use tax exemption benefits”) not to exceed \$400,000.

The Agency may consider any requests by the Company for increases to the amount of sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services. Pursuant to Section 875(3) of the Act, and per the policies of the Agency, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any New York State and local sales and use tax exemption benefits, and/or mortgage recording tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the State and local sales and use tax exemption benefits; (ii) the State and local sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the State and local sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; (iv) the Company has made a material false statement on its application for Financial Assistance; and/or (v) the State and local sales and use tax exemption benefits and/or mortgage recording tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, fails to comply with the Company commitments as identified in the Uniform Agency Project Agreement, being a material term or condition to use property or services in the manner approved by the Agency in connection with the Project. As a condition precedent of receiving Financial Assistance, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) cooperate with the Agency in its efforts to recover or recapture any Financial Assistance, and (ii) promptly pay over any such amounts to the Agency that the Agency demands. As an additional condition precedent of receiving Financial Assistance, and as a material term or condition as approved by the Agency in connection with the Project, the Company covenants and agrees and understands that it must, subject to potential modification, termination and/or recapture of Financial Assistance for failure to meet and maintain its commitments, submit, on an annual basis or as otherwise indicated below through the conclusion of the later of two (2) years following either (i) the construction completion date, or (ii) the termination of the Uniform Agency Project Agreement, a certification, as so required by the Agency confirming compliance with the Company commitments identified in the Uniform Agency Project Agreement.

Section 20. Subject to the terms of this resolution, the Authorized Officer is hereby authorized, on behalf of the Agency, to negotiate, execute and deliver (a) the Uniform Agency Project Agreement, (b) the Lease Agreement whereby the Company leases the Project to the Agency, (c) the related Company Lease Agreement whereby the Agency leases the Project back to the Company, and (d) related documents; provided, however, that the rental payments under the Lease Agreement to the Company include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project.

Section 21. Subject to the conditions set forth herein and in the last sentence of this Section 21, the Agency will (a) issue the Series 2022 Bonds in such principal amount and with such maturities, interest rate or rates, redemption terms and other terms and provisions as may be determined by the Agency; (b) acquire a leasehold interest in the Project Facility and acquire, renovate, reconstruct, equip and install the Project Facility; (c) lease with an obligation to purchase or sell the Project Facility to the Company or its designee pursuant to an agreement to be entered into between the Agency and the Company whereby

the Company will be obligated, among other things, to make payments to the Agency in amounts and at a time so that such payments will be adequate to pay the principal of, premium, if any, and interest on the Series 2022 Bonds; (d) secure the Series 2022 Bonds in such manner as the Agency, the Company and the purchaser(s) of the Series 2022 Bonds mutually deem appropriate and (e) grant the other Financial Assistance. The Issuance of the Series 2022 Bonds and the grant of the other Financial Assistance contemplated by this Resolution are subject to (i) obtaining all necessary governmental approvals; (ii) agreement by the Agency, the Company and the purchaser(s) of the Series 2022 Bonds upon mutually satisfactory terms for the Series 2022 Bonds (and any such additional bonds) and for the sale and delivery thereof; (iii) the condition that there are no changes in the Code and State Law, including regulations thereunder, which prohibit or limit the Agency from fulfilling its obligations hereunder; and (iv) payment by the Company of the Agency's Bond Issuance Fee, the State Bond Issuance Charge and all costs and expenses of the Agency with respect to the Series 2022 Bond transaction and the granting of the other Financial Assistance.

Section 22. Subject to the conditions contained within this Resolution and the acceptance by the Company of this Resolution, the Company is appointed the true and lawful agent of the Agency (1) to acquire, renovate, reconstruct equip and install the Project Facility, and (2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent of the Agency, and in general to do all things which may be requisite or proper for acquiring, renovating, reconstructing, equipping and installing the Project Facility, all with the same powers and same validity as if the Agency were acting on its own behalf.

Section 23 The law firm of Hodgson Russ LLP is hereby appointed bond counsel to the Agency in relation to the proposed issuance of the Series 2022 Bonds contemplated by the Application.

Section 24. The Agency hereby declares that this Resolution shall represent its declaration of "official intention" in accordance with Treasury Regulation Section 1.150-2. The Agency reasonably expects to reimburse the Company for its expenditures incurred in connection with the Project Facility with the proceeds of the Series 2022 Bonds.

Section 25. Bond counsel for the Agency are hereby authorized to work with the Company, the purchaser(s) of the Series 2022 Bonds and others to prepare, for submission to the Agency, all documents necessary to effect the authorization, issuance, sale and delivery of the Series 2022 Bonds.

Section 26. The Authorized Officer is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 27. No covenant, stipulation, obligation or agreement contained in this Resolution shall be deemed to be the covenant, stipulation, obligation or agreement of any member, director, agent or employee of the Agency in his or her individual capacity and neither the member or directors of the Agency nor any officer executing the Series 2022 Bonds shall be liable personally on the Series 2022 Bonds or be subject to any personal liability or accountability by reason of the issuance thereof. Neither the member, directors or officers of the Agency, nor any person executing the Series 2022 Bonds or other documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution, issuance or delivery thereof. The Series 2022 Bonds and the interest therein shall not be a debt of the State or Herkimer County or any political subdivision thereof (other than the Agency), and none of the State, Herkimer County nor any political subdivision thereof (other than the Agency) shall be liable thereon. The Series 2022 Bonds shall be issued solely for the purposes set forth in this Resolution. The Series 2022 Bonds and the interest thereon shall constitute a special, limited

obligation of the Agency payable solely from the revenues derived or to be derived from the lease or sale of the Project Facility and from the enforcement of the security pledged to the payment of the Series 2022 Bonds.

Section 28. Any expense incurred by the Agency with respect to the Project and the financing thereof shall be reimbursed out of the proceeds of the Series 2022 Bonds or, in the event such proceeds are insufficient after payment of other costs of the Project, or the Series 2022 Bonds are not issued by the Agency for any reason whatsoever, shall be paid by the Company. By acceptance hereof, the Company hereby agrees to pay such expenses and further agrees to indemnify the Agency, its members, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency with respect to the Project and the financing thereof.

Section 29. The provision by the Agency of Financial Assistance with respect to the Project as described herein is subject to the payment of the Agency's Administrative Fee (the "Administrative Fee") calculated in accordance with the Agency's terms, one-half of which was collected at the time of execution and delivery of the Preliminary Inducement Agreement by and between the Agency and the Company, and the other half of which within sixty (60) days of the date of Closing. In the event the Agency has not received the remaining Administrative Fee within such sixty (60) day period, this resolution shall become automatically null and void and of no further effect and the Agency shall have no liability to the Company hereunder or otherwise, unless extended in the discretion of the Authorized Officer for good cause shown.

Section 30. This resolution shall take effect immediately.

The question of the adoption of the foregoing Bond Resolution was duly put to a vote on roll call, which resulted as follows:

Vincent Jim Bono	VOTING	<u>YES</u>
David Chlus	VOTING	<u>ABSENT</u>
John Scarano	VOTING	<u>YES</u>
Michael Werenczak	VOTING	<u>YES</u>
Ann Gaworecki	VOTING	<u>YES</u>
Catherine Ricci	VOTING	<u>YES</u>
Cory Albrecht	VOTING	<u>YES</u>

The foregoing resolution was thereupon declared duly adopted.

[Remainder of page left blank intentionally]

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

I, the undersigned (~~Assistant~~) Secretary of Herkimer 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 April 6, 2022 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 Chapter 417 of the Laws of 2021, as amended on January 14, 2022 (the "2022 Laws"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given; and (D) there was a quorum of the members of the Agency, either in person or attending remotely in accordance with the 2022 Laws, 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 6th day of April, 2022.



(Assistant) Secretary

(SEAL)