

**BOND RESOLUTION
ELLCOTT PARK TOWNHOMES COMMUNITY
PARTNERS, LP PROJECT**

A regular meeting of Erie County Industrial Development Agency (the “Issuer”) was convened in public session at the Center of Excellence in Bioinformatics and Life Sciences in the Event Space/Conference Room (2nd floor) located at 701 Ellicott Street in the City of Buffalo, New York on October 26, 2022 at 12:00 o’clock p.m., local time.

The meeting was called to order by the (Vice) Chairperson of the board of the Issuer and, upon roll being called, the following members of the Issuer were:

PRESENT:

Brenda McDuffie	Chairperson
Richard Lipsitz	Vice Chairperson
Denise Abbott	Member
Hon. Joseph Emminger	Member
Hon. Howard Johnson	Member
Tyra Johnson	Member
Hon. Brian Kulpa	Member
Denise McCowan	Member
Hon. Mark Poloncarz	Member
Hon. Darius Pridgen	Member
Kenneth Schoetz	Member

ABSENT:

Hon. Diane Benczkowski	Member
Rev. Mark Blue	Member
Hon. Byron Brown	Member
James Doherty	Member
Dottie Gallagher	Member
Michael Hughes	Member
Glenn Nellis	Member
Paul Vukelic	Member

ISSUER STAFF PRESENT INCLUDED THE FOLLOWING:

John Cappellino	President and Chief Executive Officer
Mollie Profic	Vice President and Treasurer
Jerry Manhard	Assistant Treasurer/Assistant Secretary
Atiqa Abidi	Assistant Treasurer
Elizabeth O’Keefe	Vice President of Operations and Secretary
Carrie Hocienec	Assistant Secretary
Robert G. Murray, Esq.	Issuer Counsel
Terrence M. Gilbride, Esq.	Bond Counsel

The following resolution was offered by Mr. Poloncarz, seconded by Mr. Kulpa, to wit:

Resolution No. __

RESOLUTION (A) AUTHORIZING THE ISSUANCE, AND SALE OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY MULTIFAMILY HOUSING REVENUE BONDS (ELLICOTT PARK TOWNHOMES COMMUNITY PARTNERS, LP PROJECT), IN ONE OR MORE SERIES, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$33,000,000; (B) THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS; AND (C) MAKING A FINDING IN COMPLIANCE WITH THE NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT.

WHEREAS, the Erie County Industrial Development Agency (the “Issuer”) is authorized and empowered by Article 18-A of the General Municipal Law of the State of New York (the “State”), as amended (the “Enabling Act”), together with Section 891-a of the General Municipal Law, as amended (said Section and the Enabling Act, 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, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Issuer is authorized and empowered under the Act to issue its revenue bonds to finance the cost of the acquisition, construction, installation and equipping of one or more “projects” (as defined in the Act), to acquire, construct, equip and install said projects or to cause said projects to be acquired, constructed, equipped and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, Ellicott Park Townhomes Community Partners, LP, a New York limited partnership, on behalf of itself and/or an entity or entities formed or to be formed on behalf of the foregoing (collectively, the “Company”), submitted an application (the “Application”) to the Issuer, a copy of which Application is on file at the office of the Issuer, which Application requested that the Issuer issue up to \$33,000,000 Multifamily Housing Revenue Bonds (Ellicott Park Townhomes Community Partners, LP Project), Series 2023, to be issued in one or more series (the “Series 2023 Bonds”), to assist in financing all or a portion of a certain project (the “Project”) for the benefit of the Company, said Project consisting of the following: (A) (1) the acquisition of an interest in a portion of approximately 8.9 acres of land located at 221 William Street in the City of Buffalo, Erie County, New York and 291 William Street in the City of Buffalo, Erie County, New York, respectively (collectively, the “Land”), (2) the acquisition, reconstruction and renovation of twenty-one (21) two-story existing townhouse style buildings consisting of 220 apartment units and containing approximately 271,902 square feet in the aggregate known as the Ellicott Park Townhomes located on the Land (the “Facility”) and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other personal property (the “Equipment”) (the Land, the Facility and the Equipment being collectively referred to hereinafter as the “Project Facility”), all of the foregoing to constitute a low-income housing facility to be operated by the Company and leased to residential tenants, and any other directly and indirectly related activities; (B) the financing of all or a portion of the costs of the foregoing by the issuance of the Series 2023 Bonds; (C) the payment of a portion of the costs incidental to the issuance of the Series 2023 Bonds, including issuance costs of the Series 2023 Bonds and any reserve funds as may be necessary to secure the Series 2023 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 and mortgage recording taxes (collectively with the Obligations, the “Financial Assistance”); and (E) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Issuer; and

WHEREAS, the Chief Executive Officer of the Issuer (A) caused notice of the public hearing of the Issuer (the “Public Hearing”) pursuant to Section 859-a(2) 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 Project and the financial assistance being contemplated by the Issuer with respect to the Project, to be published on September 30, 2022 in the Buffalo News, a newspaper of general circulation available to the residents of the City of Tonawanda, Erie County, New York (the “City”), (B) caused notice of the Public Hearing to be mailed on October 3, 2022 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is (or will be) located, (C) conducted the Public Hearing on October 11, 2022 at 9:00 a.m., local time, at the offices of the Issuer located at 95 Perry Street – Suite 403, Buffalo, Erie County, New York, and (D) prepared a report of the Public Hearing (the “Public Hearing Report”) which fairly summarized the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Issuer and to the County Executive (the “County Executive”) of Erie County, New York (the “County”); and

WHEREAS, the Issuer is contemplating providing financial assistance to the Company with respect to the Project in the form of (i) the issuance of the Series 2023 Bonds in an amount not to exceed \$33,000,000 and (ii) the Financial Assistance; and

WHEREAS, the Issuer now desires to authorize issuance of its Multifamily Housing Revenue Bonds (Ellicott Park Townhomes Community Partners, LP Project), Series 2023 in an aggregate principal amount not to exceed \$33,000,000 (the “Series 2023 Bonds”) for the purpose of financing a portion of the costs of the Project under this resolution, a trust indenture (the “Indenture”) by and between the Issuer and a financial institution to be determined which will act as trustee for the holders of the Series 2023 Bonds (the “Trustee”); and

WHEREAS, prior to or simultaneously with the issuance of the Series 2023 Bonds, (A) the Company and the Issuer will execute and deliver a lease agreement (the “Underlying Lease”), pursuant to which the Company will agree to lease the Land to the Issuer, (B) the Company will execute and deliver a bill of sale (the “Bill of Sale”) from the Company to the Issuer, pursuant to which the Company will convey to the Issuer the Company’s interest in the portion of the Project Facility constituting fixtures and other personal property, (C) the Issuer will execute and deliver an installment sale agreement (the “Installment Sale Agreement”) by and between the Issuer, as seller, and the Company, as purchaser, pursuant to the which (1) the Company will agree (a) to cause the Project to be undertaken and completed, (b) as agent of the Issuer, to undertake and complete the Project, (c) to purchase the Project Facility from the Issuer, and (d) to make certain installment purchase payments (or cause such payments to be made) to or upon the order of the Issuer as the purchase price for the Project Facility, which installment purchase payments shall include amounts equal to the debt service payments due on the Series 2023 Bonds, and (2) the Issuer will agree to (a) undertake the Project, (b) appoint the Company as agent of the Issuer to undertake and complete the Project, and (c) sell the Project Facility to the Company and (D) the Company will execute and deliver a certain agent and financial assistance project agreement (the “Project Agreement”) by and between the Issuer and the Company regarding the granting of the Financial Assistance by the Issuer to the Company; and

WHEREAS, as security for the Series 2023 Bonds, (i) the Company will pledge and grant a security interest to the Issuer in its revenues, (ii) the Company will grant to the Issuer a mortgage lien on and security interest in the Project Facility pursuant to a certain mortgage, assignment of leases and rents and security

agreement (the “Mortgage”), which such Mortgage will be assigned by the Issuer to the Trustee pursuant to a certain assignment of mortgage from the Issuer to the Trustee (the “Assignment of Mortgage”); and (iii) the Issuer will assign its rights under the Installment Sale Agreement to the Trustee pursuant to a certain pledge and assignment from the Issuer to the Trustee (the “Pledge and Assignment”); and

WHEREAS, the Series 2023 Bonds will be initially purchased by a holder to be determined (the “Holder”) pursuant to a bond purchase agreement (the “Bond Purchase Agreement”) by and among the Issuer, the Company and the Holder; and

WHEREAS, the Issuer and the Company will enter into a certain Tax Regulatory Agreement dated the date of delivery of the Series 2023 Bonds (the “Tax Regulatory Agreement”), in which the Issuer and 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 Issuer will execute a completed Internal Revenue Service (“IRS”) Form 8038 (Information Return for Private Activity Bonds) relating to the Series 2023 Bonds (“Form 8038”), pursuant to Section 149(e) of the Code and will cause the Form 8038 to be filed with the IRS; 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 2023 Bonds (as defined herein), (ii) use funds from sources other than proceeds of the Series 2023 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 2023 Bonds; and

WHEREAS, it is contemplated that the Series 2023 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 2023 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 such 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, it is further contemplated that the Issuer will (i) designate the Company as its agent for the purpose of undertaking the Project pursuant to Project Agreement, (ii) negotiate and enter into the Underlying Lease and the Installment Sale Agreement, pursuant to which the Issuer 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 and (b) a mortgage recording tax exemption benefit for the financing related to the Project; and

WHEREAS, approval of the County Executive, being the applicable elected representative (as such term is defined in Section 147(f) of the Code) of the County, and an allocation of sufficient Volume Cap (as defined herein) are required as conditions to the issuance of the Series 2023 Bonds pursuant to the Code; and

WHEREAS, pursuant to Section 146 of the Code, in order for interest on the Series 2023 Bonds to be excludable from gross income of the holder thereof the Issuer must allocate the private activity volume cap (“Volume Cap”) to the Series 2023 Bonds in an amount equal the face amount of the Series 2023 Bonds; and

WHEREAS, the Issuer is expected to receive an allocation of Volume Cap for 2023 from the State in an amount equal to the maximum amount of the Series 2023 Bonds expected to be issued; and

WHEREAS, the Issuer has given due consideration to the Application and the representations by the Company that undertaking the Project and issuing the Series 2023 Bonds (a) will be an inducement to the Company to acquire, renovate, reconstruct, equip and operate the Project Facility in the City; 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 Issuer 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 Issuer's Finance and Audit Committee on October 17, 2022 reviewed the proposal for the issuance of debt by the Issuer related to the Project, recommended that the Issuer undertake the Project and proceed with the issuance thereof, and determined that it is in the best interest of economic development in the City for the Issuer to issue the Series 2023 Bonds; 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"), the Issuer must satisfy the requirements contained in SEQRA and the Regulations prior to making a final determination whether to undertake the Project; and

WHEREAS, pursuant to SEQRA, the Issuer has examined the Application and an environmental assessment form completed by the Company (the "EAF" and together with the Application, the "Reviewed Documents") in order to make a determination as to the potential environmental significance of the Project; and

WHEREAS, the Project does not appear to constitute a "Type I Action" (as said quoted term is defined in the Regulations), and therefore coordinated review and notification is optional with respect to the actions contemplated by the Issuer with respect to the Project; and

WHEREAS, the Issuer desires to conduct an uncoordinated review of the Project and to make its initial determination of significance with respect to the Project;

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

Section 1. The Issuer has received copies of, and has reviewed, the Reviewed Documents and, based upon said Reviewed Documents and the representations made by the Company to the Issue with respect to the Project, and based further upon the Issuer's knowledge of the area surrounding the Project Facility and such further investigation of the Project and its environmental effects as the Issuer has deemed appropriate, the Issuer makes the following findings and determinations with respect to the Project: The Project consists of the rehabilitation or reconstruction of a structure or facility, in kind, on the same site.

Section 2. Based upon the foregoing, the Issuer makes the following findings and determinations with respect to the Project:

(A) The Project constitutes an “Unlisted Action” (as said quoted term is defined in SEQRA) and therefore coordinated review and notification of other involved agencies is strictly optional. The Issuer hereby determines not to undertake a coordinated review of the Project, and therefore will not seek lead agency status with respect to the Project.

(B) The Project will result in no major impacts and, therefore, is one which will not cause significant damage to the environment. Therefore, the Issuer hereby determines that the Project will not have a significant effect on the environment, and the Issuer will not require the preparation of an environmental impact statement with respect to the Project.

(C) As a consequence of the foregoing, the Issuer thus issues a Negative Declaration pursuant to 6 N.Y.C.R.R. § 617.7 of the SEQRA regulations, which concludes the Issuer’s uncoordinated review of the Project.

Section 3. 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 4. It is among the purposes of the Issuer 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 5. Based upon representations made by the Company to the Issuer in the Application and any other correspondence submitted by the Company to the Issuer, public hearing comments, if any, the Issuer’s review of and recommendations related to the Project, Issuer board member review, discussion, and consideration of same, and such other information and investigation as the Issuer has deemed appropriate, the Issuer 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 2023 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 City, thereby advancing job opportunities, general prosperity and economic welfare of the people of the State and the City in furtherance of the Act.

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

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

(e) (i) 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 (ii) accordingly the Issuer 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 Issuer has assessed all material information included in connection with the Application necessary to afford a reasonable basis for the decision by the Issuer to provide Financial Assistance for the Project as described herein.

(h) The Issuer 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.

(i) It is desirable and in the public interest for the Issuer to issue the Series 2023 Bonds to finance the costs of the Project, together with certain related costs, reserves and other amounts, in an aggregate principal amount not to exceed \$33,000,000.

(j) The Issuer reasonably expects to reimburse the Company for expenses made for the Project from the Series 2023 Bonds.

(k) 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.

(l) The issuance of the Series 2023 Bonds by the Issuer with respect to the Project will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of the City and the State and improve their standard of living, and thereby serve the public purposes of the Act.

(m) The Project qualifies for the Financial Assistance as it meets and is consistent with the Issuer's evaluative criteria for projects, said criteria established by the Issuer as required under General Municipal Law Section 859-a(5), as evidenced by the following:

(i) *Distressed Census Tract*: Project is located within distressed census tract #14.03.

(ii) *Age of Structure (must be at least 20 years old and present functional challenges to redevelopment)*: Project represents renovation of an existing facility that is over 50 years old.

(iii) *Structure has been vacant or underutilized for a minimum of 3 years (defined as a minimum of 50% of the rentable square footage of the structure being utilized for a use for which the structure was not designed or intended). Project promotes the elimination of slum and blight*: Exterior renovation plans include: window replacement, brick masonry repairs, roof replacement. Site work includes repave and restriping of asphalt parking lot, new playground, gazebo and dog park. BBQ grills, bike racks, tree trimming and path of travel improvements.

(iv) *Structure is not generating significant rental income (defined as 50% or less than the market rate income average for that property class)*: Not Applicable.

(v) *Project is in compliance with the investment and growth criteria of the Framework for Regional Growth. The redevelopment supports or aligns with Regional or Local Development*

Plans: This project complies with the investment and growth criteria of the Framework for Regional Growth.

(vi) *Environmental/Safety Issues: Structure or site presents significant public safety hazard and/or environmental remediation costs:* Not Applicable.

(vii) *LEED/Renewable Resources:* Not Applicable.

(viii) *Building or site has historic designation:* Not Applicable.

(ix) *Site or structure has delinquent property or other local taxes:* Property taxes are current on this property.

(x) *MBE/WBE Utilization:* Company is committed to providing women, minorities, MWBE businesses, disadvantaged businesses and Section 3 businesses with equal opportunities in the performance of contracts. The Company's in-house Diversity & Community Engagement Manager oversees supplier diversity management and community development and supports Company based mentoring and outreach events to ensure inclusion opportunities in support of its workforce and trade partners. The Company has a policy to utilize and help grow MWBE and low-income subcontractors on all private and public projects when possible in order to ensure that State and Federal participation goals are met. The Company is targeting 20% of MBW and 7% of WBE involvement or greater if possible.

(xi) *Transit Oriented Development:* Project is accessible via various NFTA Metro routes including, but not limited to: #1 William, #2 Clinton, #4 Broadway.

Section 6. The Chairperson, Vice Chairperson, President and Chief Executive Officer, Chief Financial Officer, Vice President and Assistant Treasurer of the Issuer are hereby appointed as authorized officers of the Issuer (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 such documents; and, where appropriate, the Secretary (or Assistant Secretary) of the Issuer is hereby authorized to affix the seal of the Issuer thereto and to attest the same, all in the forms thereof as the Chairperson, Vice Chairperson, President and Chief Executive Officer, Chief Financial Officer, Vice President and Assistant Treasurer of the Issuer, as Authorized Officer, shall approve, the execution thereof by the Chairperson, Vice Chairperson, President and Chief Executive Officer, Chief Financial Officer, Vice President and Assistant Treasurer of the Issuer to constitute conclusive evidence of such approval.

Section 7. The Issuer hereby authorizes the Authorized Officer to approve the Lease to Issuer, the Indenture, the Installment Sale Agreement, the Pledge and Assignment, the Mortgage Assignment, the Project Agreement, the Bond Purchase Agreement, the Arbitrage Certificate, the Form 8038 and any other documents necessary and incidental thereto including, but not limited to, any documents approved by counsel to the Issuer (collectively, the "Financing Documents") in forms consistent with the intent and substance of this resolution, such approval to be conclusively evidenced by the execution of such documents by the Authorized Officer in accordance with Section 9 hereof.

Section 8. Subject to receipt by the Issuer of (a) a certificate of the County Executive approving issuance of the Series 2023 Bonds for purposes of Section 147(f) of the Code and (b) an allocation of Volume Cap for 2023 in an amount equal to the face amount of the Series 2023 Bonds, the Issuer is hereby authorized to issue, execute, sell and deliver to the Trustee for authentication the Series 2023 Bonds in the aggregate principal amount of not to exceed \$33,000,000 or so much thereof as shall have been approved for purchase pursuant to the terms of the final Bond Purchase Agreement, in the form heretofore approved in Section 7 of this resolution, and upon authentication thereof the Trustee is hereby authorized to deliver the Series 2023 Bonds to the purchasers thereof against receipt of the purchase price thereof, all pursuant to the Act and in accordance with the provisions of the Indenture, this resolution and the Bond Purchase Agreement, provided that:

(A) The Series 2023 Bonds authorized to be issued, executed, sold and delivered pursuant to this Section 8 shall (i) be issued, executed and delivered at such time as the Authorized Officer shall determine, and (ii) bear interest at the rate or rates, be issued in such form, be subject to redemption prior to maturity and have such other terms and provisions and be issued in such manner and on such conditions as are set forth in the Series 2023 Bonds and the Indenture or as are hereinafter approved by the Authorized Officer in accordance with Section 7 hereof, which terms are specifically incorporated herein by reference with the same force and effect as if fully set forth in this resolution.

(B) The Series 2023 Bonds shall be issued solely for the purpose of providing funds to finance (1) the costs of the Project as described in the Financing Documents, and (2) all or a portion of the administrative, legal, financial and other expenses of the Issuer in connection with the Project and the Project Facility and incidental to the issuance of the Series 2023 Bonds.

(C) Neither the members nor officers of the Issuer, nor any person executing the Series 2023 Bonds or any of the Financing Documents on behalf of the Issuer, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution, issuance or delivery thereof. The Series 2023 Bonds and the interest thereon are not and shall never be a debt of the State of New York, or Erie County, New York or any political subdivision thereof (other than the Issuer), and neither the State of New York, or Erie County, New York nor any political subdivision thereof (other than the Issuer) shall be liable thereon.

(D) The Series 2023 Bonds, together with interest payable thereon, shall be special obligations of the Issuer payable solely from certain of the revenues and receipts derived from the leasing or other disposition of the Project Facility or from the enforcement of the security provided by the Financing Documents and the other security pledged to the payment thereof.

(E) Notwithstanding any other provision of this resolution, the Issuer covenants that it will make no use of the proceeds of the Series 2023 Bonds or of any other funds of the Issuer (other than the Issuer's administrative fees) which, if said use had been reasonably expected on the date of issuance of the Series 2023 Bonds, would have caused any of the Series 2023 Bonds to be an "arbitrage bond" within the meaning of Section 148 of the Code.

Section 9. (a) The Authorized Officer is hereby authorized, on behalf of the Issuer, to negotiate, execute and deliver the Financing Documents, and the Secretary (or Assistant Secretary) of the Issuer is hereby authorized to affix the seal of the Issuer thereto where appropriate and to attest the same, in forms consistent with the intent and substance of this resolution. The execution of the Financing Documents 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 Issuer, to approve, without further action of the Issuer, any variations in the terms of the Series 2023 Bonds, including, without limitation, the aggregate principal amounts of the Series 2023 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.

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

Section 10. The officers, employees, and agents of the Issuer are hereby authorized and directed for and in the name and on behalf of the Issuer 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 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 Issuer with all of the terms, covenants, and provisions of the Financing Documents binding upon the Issuer.

Section 11 (a) Subject to the conditions set forth herein and the Company executing the Project Agreement and the delivery to the Issuer of a binder, certificate or other evidence of insurance for the Project satisfactory to the Issuer, the Issuer 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 Issuer: (i) to acquire, renovate, construct, 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 Issuer with the authority to delegate such Issuer, 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 Issuer could do if acting in its own behalf, provided, however, the appointment of the Company as agent of the Issuer, 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 the Application, the Issuer hereby:

(i) 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 in an amount estimated up to \$12,000,000 and, therefore, the value of the sales and use tax exemption benefits (the “sales and use tax exemption benefits”) authorized and approved by the Issuer cannot exceed \$1,050,000, however, the Issuer may consider any requests by the Company for increases to the amount of sales and use tax exemption benefits authorized by the Issuer upon being provided with appropriate documentation detailing the additional purchases of property or services; and

(ii) authorizes and approves that the value of the mortgage recording tax exemption benefit (“mortgage recording tax exemption benefits”) shall not exceed \$230,856.

(b) Pursuant to Section 875(3) of the General Municipal Law, and per the policies of the Issuer, the Issuer 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 if it is determined that: 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; 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; the State and local sales and use tax exemption benefits are for property or services not authorized by the Issuer as part of the Project; the Company has made a material false statement on its application for Financial Assistance; 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 Investment Commitment, the Employment Commitment, and/or the Local Labor Commitment, said commitments, as described below, being a material term or condition to use property or services in the manner approved by the Issuer in connection with the Project; and/or the State and local sales and use tax exemption benefits, and/or mortgage recording tax exemption benefits are taken in cases where the Company fails to comply with the Equal Pay Commitment and/or the Unpaid Real Property Tax Policy Commitment, as described below, being a material term or condition to use property or services in the manner approved by the Issuer 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 cooperate with the Issuer in its efforts to recover or recapture any Financial Assistance, and promptly pay over any such amounts to the Issuer that the Issuer demands.

As an additional condition precedent of receiving Financial Assistance, and as a material term or condition as approved by the Issuer 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 the commitments and thresholds as described below, submit, on an annual basis or as otherwise indicated below through the conclusion of the later of two (2) years following either the construction completion date or the termination of the Project Agreement, a certification, as so required by the Issuer, confirming:

(i) Investment Commitment – the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$46,464,650 (which represents the product of 85% multiplied by \$54,664,295, being the total project cost as stated in the Company’s application for Financial Assistance).

(ii) Employment Commitment – that there are at least two (2) existing full time equivalent (“FTE”) employees located at, or to be located at, the Facility as stated in the Company’s application for Financial Assistance (the “Baseline FTE”); and

- the number of current FTE employees in the then current year at the Facility; and
- that within two years of Project Completion, the Company has maintained and created FTE employment at the Facility equal to 4 FTE employees [representing the sum of (x) 2 Baseline FTE and (y) 2 FTE employees, being the product of 85% multiplied by 3 (being the 3 new FTE employee positions proposed to be created by the Company as stated in its Application)]. In an effort to confirm and verify the Company’s employment numbers, the Issuer requires that, at a minimum, the Company provide employment data to the Issuer on a quarterly basis, said information to be provided on the Issuer’s “Quarterly Employment Survey” form to be made available to the Company by the Issuer.

- the Company has that the Company has maintained Facility employment equal to three (3) FTE employees.

(iii) Local Labor Commitment – that the Company adheres to and complies with the Issuer’s Local Labor Workforce Certification Policy on a quarterly basis during the construction period.

(iv) Equal Pay Commitment – that the Company adheres to and complies with the Issuer’s Pay Equity Policy.

(v) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Issuer’s Unpaid Real Property Tax Policy.

Section 12. Subject to the conditions set forth herein and in the last sentence of this Section 12, the Issuer will (a) issue the Series 2023 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 Issuer; (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 the Installment Sale Agreement, whereby the Company will be obligated, among other things, to make payments to the Issuer 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 2023 Bonds; (d) secure the Series 2023 Bonds in such manner as the Issuer, the Company and the purchaser(s) of the Series 2023 Bonds mutually deem appropriate and (e) grant the other Financial Assistance. The Issuance of the Series 2023 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 Issuer, the Company and the purchaser(s) of the Series 2023 Bonds upon mutually satisfactory terms for the Series 2023 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 Issuer from fulfilling its obligations hereunder; and (iv) payment by the Company of the Issuer’s administrative fee, the State Bond Issuance Charge and all costs and expenses of the Issuer with respect to the Series 2023 Bonds transaction and the granting of the other Financial Assistance.

Section 13. 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 Issuer (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 Issuer, 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 Issuer were acting on its own behalf.

Section 14 The law firm of Hodgson Russ LLP is hereby appointed bond counsel to the Issuer in relation to the proposed issuance of the Series 2023 Bonds contemplated by the Application.

Section 15. The Issuer hereby declares that this resolution shall represent its declaration of “official intention” in accordance with Treasury Regulation Section 1.150-2. The Issuer reasonably expects to reimburse the Company for its expenditures incurred in connection with the Project Facility with the proceeds of the Series 2023 Bonds.

Section 16. Bond counsel for the Issuer are hereby authorized to work with the Company, the purchaser(s) of the Series 2023 Bonds and others to prepare, for submission to the Issuer, all documents necessary to effect the authorization, issuance, sale and delivery of the Series 2023 Bonds.

Section 17. 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 18. No covenant, stipulation, obligation or agreement contained in this resolution shall be deemed to be the covenant, stipulation, obligation or agreement of any member, agent or employee of the Issuer in his or her individual capacity and neither the members of the Issuer nor any officer executing the Series 2023 Bonds shall be liable personally on the Series 2023 Bonds or be subject to any personal liability or accountability by reason of the issuance thereof. Neither the members or officers of the Issuer, nor any person executing the Series 2023 Bonds or other documents referred to above on behalf of the Issuer, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution, issuance or delivery thereof. The Series 2023 Bonds and the interest therein shall not be a debt of the State or the City or any political subdivision thereof (other than the Issuer), and none of the State, the City nor any political subdivision thereof (other than the Issuer) shall be liable thereon. The Series 2023 Bonds shall be issued solely for the purposes set forth in this resolution. The Series 2023 Bonds and the interest thereon shall constitute a special, limited obligation of the Issuer 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 2023 Bonds.

Section 19. Any expense incurred by the Issuer with respect to the Project and the financing thereof shall be reimbursed out of the proceeds of the Series 2023 Bonds or another source in the transaction or, in the event such proceeds are insufficient after payment of other costs of the Project, or the Series 2023 Bonds are not issued by the Issuer 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 Issuer, its members, employees and agents and hold the Issuer 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 Issuer with respect to the Project and the financing thereof.

Section 20. The provision by the Issuer of the Financial Assistance with respect to the Project as described herein is subject to the execution and delivery of the Administrative Fee Agreement of the Issuer (the "Fee Agreement") and payment by the Company of an administrative fee calculated in accordance with the Fee Agreement, all within sixty (60) days of the date of this resolution. In the event the Issuer has not received the executed Fee Agreement and the appropriate fee within such sixty (60) day period, this resolution shall become automatically null and void and of no further effect and the Issuer shall have no liability to the Company hereunder or otherwise, unless extended in the discretion of the Authorized Officer for good cause shown.

Section 21. 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:

Brenda McDuffie	VOTING	Yes
Richard Lipsitz	VOTING	Yes
Denise Abbott	VOTING	Yes
Hon. Diane Benczkowski		
Rev. Mark Blue		
Hon. Byron Brown		
James Doherty		
Hon. Joseph Emminger	VOTING	Yes

Dottie Gallagher		
Michael Hughes		
Hon. Howard Johnson	VOTING	Yes
Tyra Johnson	VOTING	Yes
Hon. Brian Kulpa	VOTING	Yes
Denise McCowan	VOTING	Yes
Glenn Nellis		
Hon. Mark Poloncarz	VOTING	Yes
Hon. Darius Pridgen	VOTING	Yes
Kenneth Schoetz	VOTING	Yes
Paul Vukelic		

The foregoing resolution was thereupon declared duly adopted.

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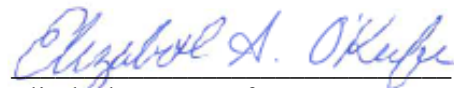
STATE OF NEW YORK)
) SS:
COUNTY OF ERIE)

I, the undersigned Secretary of Erie County Industrial Development Agency (the "Issuer"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Issuer, including the resolution contained therein, held on October 26, 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 Issuer 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 Issuer 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 Issuer this 26th day of October, 2022.



Elizabeth A. O'Keefe
Secretary

