

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**RESOLUTION**

*(Marina Vista Preservation, L.P. Project)*

A regular meeting of the Erie County Industrial Development Agency was convened on Wednesday, February 27, 2019 at 12:00 p.m.

The following resolution was duly offered and seconded, to wit:

**RESOLUTION (A) AUTHORIZING THE ISSUANCE, EXECUTION, SALE AND DELIVERY OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY TAX-EXEMPT AND/OR TAXABLE MULTIFAMILY HOUSING REVENUE BONDS (MARINA VISTA PRESERVATION, L.P. PROJECT), IN ONE OR MORE SERIES, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$13,300,000; (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**, **RELATED AFFORDABLE, LLC** and **MARINA VISTA PRESERVATION, L.P.** on behalf of themselves and/or an entity or entities formed or to be formed on behalf of the foregoing (collectively, the "Company"), has submitted an application (the "Application") to the Issuer on or about January 10, 2019, a copy of which is on file at the office of the Issuer, requesting the Issuer to issue up to \$13,300,000 of its Tax-Exempt and/or Taxable Multifamily Housing Revenue Bonds (Marina Vista Preservation, L.P. Project), Series

2019, to be issued in one or more series (the "Bonds"), to assist in financing all or a portion of a certain project (the "Project") consisting of: (i) the acquisition by the Issuer of title to or a leasehold interest in approximately 5.4 acres of land with an address of 32 Hertel Avenue, City of Buffalo, Erie County, New York, such land being more particularly described as tax map 88.24-4-1 (the "Land"), and the existing improvements located thereon, consisting principally of two (2) 13-story towers containing approximately 188,000+/- square feet in the aggregate (the "Existing Improvements"), (ii) the renovation, reconstruction and refurbishment of the Existing Improvements called "Marina Vista Apartments" and containing ninety-seven (97) one-bedroom units, ninety-seven (97) two-bedroom units, and a non-revenue employee unit, management office, community room, two (2) laundry rooms and outdoor barbeque area (collectively, the "Improvements"); (iii) the acquisition in and around the Improvements and of certain items of equipment and other tangible personal property and equipment (the "Equipment"; and, collectively with the Land and the Improvements, the "Project Facility"); 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 Bonds in an amount not to exceed \$13,300,000, (ii) an exemption from sales and use taxes and (iii) an exemption from all mortgage recording taxes with respect to any qualifying mortgage on the Land and the Improvements to secure the Bonds (collectively, the "Financial Assistance"); and

**WHEREAS**, in accordance with Section 147(f) the Code and pursuant to Section 859-a of the Act, the Issuer conducted a public hearing with respect to the issuance of the Bonds, the Project and the Financial Assistance on February 4, 2019, at 9:00 a.m. at 95 Perry Street, Suite 403, Buffalo, New York 14203, following the publication on January 21, 2019, in *The Buffalo News* of a notice of said public hearing; 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 Bonds, (ii) use funds from sources other than proceeds of the 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 Bonds; and

**WHEREAS**, it is contemplated that the Bonds will be issued as Multifamily Housing Revenue Bonds and, as such, pursuant Section 142(d) of the Code, at least ninety-five percent (95%) of the net proceeds of the 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 Multifamily 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 Bonds are being issued pursuant to an Indenture of Trust (the "Indenture"), to be dated such appropriate date as agreed to by the Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial

Officer/Treasurer and/or the Assistant Treasurer of the Issuer, each an "Authorized Officer"), by and between the Issuer and a designated trustee (the "Trustee"); and

**WHEREAS**, the Issuer will loan the net proceeds derived from the issuance of the Bonds to the Company pursuant to a certain Loan Agreement, to be dated such appropriate date as agreed to by an Authorized Officer, by and between the Issuer and the Company (the "Loan Agreement"), with the payments made by the Company thereunder being sufficient to pay the principal of, premium, if any, purchase price and interest on the Bonds; and

**WHEREAS**, as security for the 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, to be dated such appropriate date as agreed to by an Authorized Officer from the Company to the Issuer (the "Mortgage"), which such Mortgage will be assigned by the Issuer to the Trustee pursuant to a certain Assignment of Mortgage, to be dated such appropriate date as agreed to by an Authorized Officer, from the Issuer to the Trustee (the "Assignment of Mortgage"); and (iii) the Issuer will assign its rights under the Loan Agreement to the Trustee pursuant to that certain Pledge and Assignment, to be dated such appropriate date as agreed to by an Authorized Officer, from the Issuer to the Trustee (the "Pledge and Assignment"); and

**WHEREAS**, the Bonds will initially be purchased by the Company, pursuant to a certain Bond Purchase Agreement, to be dated such appropriate date as agreed to by an Authorized Officer (the "Bond Purchase Agreement"), by and between the Issuer and the Company; and

**WHEREAS**, the Issuer and the Company will enter into a certain Tax Compliance Agreement, dated the date of delivery of the Tax-Exempt Multifamily Housing Revenue Bonds (Marina Vista Preservation, L.P. Project), Series 2019 (the "Tax Compliance 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 Tax-Exempt Multifamily Housing Revenue Bonds (Marina Vista Preservation, L.P. Project), Series 2019 ("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 an Agent and Financial Assistance Project Agreement (the "Agent Agreement"), (ii) negotiate and enter into a lease agreement (the "Lease Agreement") and related leaseback agreement (the "Leaseback 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, and (b) a mortgage recording tax exemption benefit for the financing related to the Project; and

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

**WHEREAS**, pursuant to a letter dated January 2, 2019 from Empire State Development Corporation, the Issuer received an allocation of 2019 Volume Cap from the State in an amount greater than the maximum amount of 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 Bonds (a) will be an inducement to the Company to acquire, renovate, construct, equip and operate the Project Facility in the City of Buffalo, Erie 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 Issuer has received the Environmental Assessment Form (the "EAF") from the Company; 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 February 27, 2019, at 11:30 a.m., 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 Erie County for the Issuer to issue the Bonds; and

**WHEREAS**, approval of the County Executive of Erie County, being the highest elected official of Erie County, and an allocation of sufficient Volume Cap are required as conditions to the issuance of Bonds pursuant to the Code.

**NOW, THEREFORE**, be it resolved by the Issuer 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 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 3.** The Company has presented an Application in a form acceptable to the Issuer. Based upon representations made by the Company to the Issuer and any other correspondence submitted by the Company to the Issuer, public hearing comments, if any, the Issuer's Policy Committee review of and recommendations related to the Project and its February 7, 2019 resolution to approve the Project subject to the terms and conditions as described therein, 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 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 of Buffalo, Erie County, thereby advancing job opportunities, general prosperity and economic welfare of the people of the State and Erie County 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, constructing, and/or renovating and equipping the Project.
- d) The Issuer has the authority to take the actions contemplated herein under the Act.
- e) The issuance of the Bonds to undertake the Project and the Project itself constitutes a Type II action under the State Environmental Quality Review Act ("SEQR") and therefore no other determination or procedures under SEQR are required.
- f) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located within the State; and the Issuer hereby finds that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their

respective industries, and, to the extent occupants are relocating from one plant or facility to another in another area of the State, the Issuer has complied with the Intermunicipal Movement procedures as required in the Countywide Industrial Development Agency Uniform Tax Exemption Policy.

- g) 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.
- h) It is desirable and in the public interest for the Issuer to issue its Bonds to finance the costs of the Project, together with certain related costs, reserves and other amounts, in an aggregate amount not to exceed \$13,300,000.
- i) The Issuer reasonably expects to reimburse the Company for expenses made for the Project from the 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 Project is compliant with the Countywide IDA Eligibility Policy, constitutes a commercial facility as defined in the General Municipal Law and will promote employment opportunities and prevent economic deterioration in the City of Buffalo. The Agency has reviewed the opinion of the State Comptroller (OSC Op. 85-51) and hereby specifically finds that the Project will create temporary construction jobs and maintain approximately five (5) full-time jobs, and, thus, by rehabilitating existing and creating new affordable housing units, will reverse deterioration trends within this sensitive area of the City of Buffalo.
- l) The Project qualifies for Issuer Financial Assistance as it is compliant with the Agency's Community Development Project Policy and meets and is consistent with the Issuer's evaluative criteria for Community Development projects, said criteria established by the Issuer as required under General Municipal Law Section 859-a(5) as evidenced by the following:

(i) the Project is in compliance with the investment and growth criteria of the Framework for Regional Growth;

(ii) the Project has received the support of local governmental entities;

(iii) the Project is located in a highly distressed census tract;

(iv) the Project is challenged in relying on conventionally financing only; and

(v) the facility is on several bus routes thus meeting transit oriented development criteria.

**Section 4.** The form and substance of the Bonds (in substantially the form presented to this meeting) are hereby approved.

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

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

**Section 7.** The form and substance of the Mortgage, Assignment of Mortgage 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 Bond Purchase 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 Compliance Agreement (or other similar document) (in substantially the form presented to this meeting) are hereby approved.

**Section 10.** The Issuer hereby authorizes its Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and or the Assistant Treasurer to approve the Indenture, in a form consistent with the intent and substance of this resolution, such approval to be conclusively evidenced by the execution of the Indenture by the Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and or the Assistant Treasurer in accordance with Section 16 hereof.

**Section 11.** The Issuer hereby authorizes its Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and or the Assistant Treasurer to approve the 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 Loan Agreement by the Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and or the Assistant Treasurer in accordance with Section 16 hereof.

**Section 12.** The Issuer hereby authorizes its Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and or the Assistant Treasurer to approve the Mortgage, Assignment of Mortgage 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 Mortgage, Assignment of Mortgage and Pledge and Assignment by the Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and or the Assistant Treasurer in accordance with Section 16 hereof.

**Section 13.** The Issuer hereby authorizes its Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and or the Assistant Treasurer to approve the Bond Purchase Agreement, in a form consistent with the intent and substance of this resolution, such approval to be conclusively evidenced by the execution of the Bond Purchase Agreement by the Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and or the Assistant Treasurer in accordance with Section 16 hereof.

**Section 14.** The Issuer hereby authorizes its Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and or the Assistant Treasurer to approve the Tax Compliance 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 Compliance Agreement by the Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and or the Assistant Treasurer in accordance with Section 16 hereof.

**Section 15.** The Issuer hereby determines to execute the Form 8038 in such form as is hereafter approved by the Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and or the Assistant Treasurer of the Issuer in accordance with Section 17 hereof, and to file the same with the IRS.

**Section 16.** (a) The Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and or the Assistant Treasurer of the Issuer are hereby authorized, on behalf of the Issuer, to execute and deliver the Indenture, the Loan Agreement, the Mortgage, the Assignment of Mortgage, the Pledge and Assignment, the Bond Purchase Agreement, the Tax Compliance Agreement, the Bonds and any document or instrument necessary and incidental thereto as approved by Bond Counsel to the Issuer (hereinafter collectively called the "Financing Documents"), and the Secretary of the Issuer is hereby authorized to affix the seal of the Issuer 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 Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice



President, the Chief Financial Officer/Treasurer and or the Assistant Treasurer of the Issuer shall approve. The execution of the Financing Documents and the Form 8038 by the Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and or the Assistant Treasurer of the Issuer shall constitute conclusive evidence of such approval.

(b) The Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and or the Assistant Treasurer of the Issuer are 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 Bonds from those set forth in the form of Bond, respectively, submitted to this meeting, including, without limitation, the aggregate principal amounts of the 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 Indenture by the Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and or the Assistant Treasurer of the Issuer shall constitute conclusive evidence of such approval.

(c) The Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and or the Assistant Treasurer of the Issuer are further hereby authorized, on behalf of the Issuer, to designate any additional authorized representatives of the Issuer.

**Section 17.** The officers, employees, and agents of the Issuer are hereby authorized and directed for and in the name and or 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 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 Issuer with all of the terms, covenants, and provisions of the Financing Documents binding upon the Issuer.

**Section 18.** Subject to the conditions set forth herein and the Company executing an Agent 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 Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer, and/or the Assistant Treasurer).

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 in an estimated amount up to \$4,352,400.00, which may result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed \$380,835.00. 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 New York General Municipal Law, 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; (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 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 Agency in connection with the Project; and/or (vi) 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 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 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 (i) the construction completion date, or (ii) the termination of the Agent Agreement, a certification, as so required by the Agency, confirming:

- (i) Investment Commitment – the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$20,059,671 (which represents the product of 85% multiplied by \$23,599,613, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment – that there are at least five (5) 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 the Company has maintained FTE employment at the Facility equal to five (5) FTE employees.

In an effort to confirm and verify the Company’s employment numbers, the Agency requires that, at a minimum, the Company provide employment data to the Agency on a quarterly basis, said information to be provided on the Agency’s "Quarterly Employment Survey" form to be made available to the Company by the Agency.

- (iii) Local Labor Commitment – that the Company adheres to and complies with the Agency’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 Agency’s Pay Equity Policy.
- (v) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Agency’s Unpaid Real Property Tax Policy.

**Section 19.** Subject to the terms of this Resolution, the Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and/or the Assistant Treasurer, are hereby authorized, on behalf of the Agency, to negotiate, execute and deliver (A) an Agent Agreement, (B) the Lease Agreement whereby the Company leases the Project to the Issuer, (C) the related Leaseback Agreement whereby the Issuer leases the Project back to the Company, and (D) related documents; provided, however, that the rental payments under the Leaseback Agreement to the Company include payments of all costs incurred by the Issuer arising out of or related to the Project and indemnification of the Issuer by the Company for actions taken by the Company and/or claims arising out of or related to the Project.

**Section 20.** Subject to the conditions set forth herein and in the last sentence of this Section 21, the Issuer will (a) issue the Bonds in such principal amount and with such maturities, interest rate or rates, redemption terms and other terms and provisions to be determined by a further resolution of the Issuer; (b) acquire a leasehold interest in the Project Facility and acquire, renovate, construct, 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 Issuer and the Company 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 Bonds; (d) secure the Bonds in such manner as the Issuer, the Company and the purchaser(s) of the Bonds mutually deem appropriate and (e) grant the other Financial Assistance. The Issuance of the 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 Bonds upon mutually satisfactory terms for the 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 Bond Issuance Fee, the State Bond Issuance Charge and all costs and expenses of the Issuer with respect to the Bond transaction and the granting of the other Financial Assistance.

**Section 21.** 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, construct 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, constructing, 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 22.** The law firm of Harris Beach PLLC is hereby appointed bond counsel to the Issuer in relation to the proposed issuance of the Bonds contemplated by the Application.

**Section 23.** 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 Bonds.

**Section 24.** Bond counsel for the Issuer are hereby authorized to work with the Company, the purchaser(s) of the Bonds and others to prepare, for submission to the Issuer, all documents necessary to effect the authorization, issuance, sale and delivery of the Bonds.

**Section 25.** The Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and/or the Assistant Treasurer and any member of the Issuer are each 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 26.** 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 Issuer in his or her individual capacity and neither the member or directors of the Issuer nor any officer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof. Neither the member, directors or officers of the Issuer, nor any person executing the 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 Bonds and the interest therein shall not be a debt of the State or Erie County or any political subdivision thereof (other than the Issuer), and none of the State, Erie County nor any political subdivision thereof (other than the Issuer) shall be liable thereon. The Bonds shall be issued solely for the purposes set forth in this Resolution. The 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 Bonds.

**Section 27.** Any expense incurred by the Issuer with respect to the Project and the financing thereof shall be reimbursed out of the proceeds of the Bonds or, in the event such proceeds are insufficient after payment of other costs of the Project, or the 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 28.** The provision by the Agency of Financial Assistance with respect to the Project as described herein is subject to the execution and delivery of the Agency's Administrative Fee Agreement (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 Agency 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 Agency shall have no liability to the Company hereunder or otherwise, unless extended in the discretion of the Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer, or the Assistant Treasurer for good cause shown.

**Section 29.** This resolution shall take effect immediately, and shall expire one (1) year from the date hereof unless extended for good cause by the Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer, or the Assistant Treasurer.

ADOPTED: February 27, 2019

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

I, the undersigned Secretary of the Erie County Industrial Development Agency, DO  
HEREBY CERTIFY:

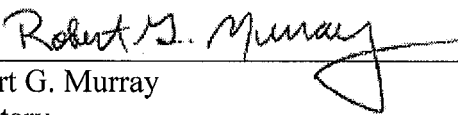
That I have compared the annexed extract of minutes of the meeting of the Erie County Industrial Development Agency (the "Agency"), including the resolution contained therein, held on February 27, 2019, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of the Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with Article 7.

I FURTHER CERTIFY, that there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY, that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 27<sup>th</sup> day of February, 2019.

  
\_\_\_\_\_  
Robert G. Murray  
Secretary

[SEAL]