

**BOND RESOLUTION
SUTTON PLACE PRESERVATION LIMITED PARTNERSHIP PROJECT**

A regular meeting of the members of the Town of Amherst Industrial Development Agency (the "Issuer") was convened in public session at the offices of the Issuer located at 4287 Main Street in the Town of Amherst, Erie County, New York on April 29, 2022 at 8:30 o'clock, a.m., local time.

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

PRESENT:

Carlton N. Brock, Jr.	Chairperson
William W. Tuyn	Vice Chairperson
Anthony Agostino	Treasurer
Hon. Timothy Drury	Secretary
Hadar Borden	Member
Frank LoTempio III	Member
Nicole Gavigan	Member

Members of the Agency participated in the meeting remotely pursuant to New York Assembly Bill A09006C/Senate Bill S08006-C, Part WW, as signed into law on April 9, 2022.

ABSENT:

ISSUER STAFF PRESENT INCLUDED THE FOLLOWING:

David S. Mingoia	Chief Executive Officer
Kevin J. Zanner, Esq.	Issuer Counsel
Terrence M. Gilbride, Esq.	Bond Counsel

The following resolution was offered by Anthony Agostino, seconded by Frank L. LoTempio III, to wit:

Resolution No. __

RESOLUTION AUTHORIZING THE ISSUANCE AND SALE BY TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY OF ITS REVENUE BONDS (SUTTON PLACE PRESERVATION LIMITED PARTNERSHIP PROJECT) IN ONE OR MORE SERIES, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$50,000,000 AND THE EXECUTION OF RELATED DOCUMENTS.

WHEREAS, Town of Amherst Industrial Development Agency (the "Issuer") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 579 of the 1973 Laws of New York, constituting Section 914-a of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, warehousing, research, commercial and industrial

facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, the Issuer is authorized and empowered by the provisions of the Enabling Act to relieve and reduce unemployment, promote and provide for additional and maximum employment, better and maintain job opportunities, and lessen the burdens of government and act in the public interest, and in carrying out the aforesaid purposes and in exercising the powers conferred in the Enabling Act, the Enabling Act declares that the Issuer will be performing essential governmental functions; and

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

WHEREAS, on January 4, 2022, Sutton Place Preservation Limited Partnership, 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 (the "Institution") 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 consider undertaking a project (the "Project") for the benefit of the Institution, said Project consisting of the following: (A) (1) the acquisition of a leasehold interest in a portion of approximately 21.77 acres of land located at 113 Travers Boulevard in the Town of Amherst, New York (the "Land"), (2) the acquisition, reconstruction and renovation of twenty-four (24) existing two-story facilities consisting of 246 apartment units and containing approximately 213,100 square feet in the aggregate known as the Sutton Place Apartments 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 Institution 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 taxable and/or tax-exempt revenue bonds of the Issuer in one or more issues or series in an aggregate principal amount sufficient to pay the cost of undertaking the Project, together with necessary incidental costs in connection therewith, in an amount then estimated to be approximately \$45,000,000 and in any event not to exceed \$50,000,000 (the "Obligations"); (C) the payment of a portion of the costs incidental to the issuance of the Obligations, including issuance costs of the Obligations and any reserve funds as may be necessary to secure the Obligations; (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 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 Sutton Place Housing Development Fund Company, Inc., a New York not-for-profit corporation (the "HDFC"), as nominee for and on behalf of the Institution or such other person as may be designated by the Institution 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 March 23, 2022 in the Amherst Bee, a newspaper of general circulation available to the residents of the Town of Amherst, Erie County, New York, (B) caused notice of the Public Hearing to be mailed on March 18, 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 remotely on April 7, 2022 at 8:30 o'clock a.m., local time via Zoom as part of a meeting of the Executive Committee of the Issuer 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 Town Board (the "Town Board") of the Town of Amherst, New York (the "Town"); and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Issuer on April 29, 2022 (the "SEQR Resolution"), the Issuer determined (A) that pursuant to Sections 617.5(c)(2) of the Regulations, the Project is a "Type II action" (as said quoted term is defined in the Regulations), and (B) that, therefore, no environmental impact statement or any other determination or procedure was required under the Regulations; and

WHEREAS, the Institution reasonably expects that it will (i) pay or incur certain capital expenditures in connection with the Project prior to the issuance of the Initial Bonds (as defined herein), (ii) use funds from sources other than proceeds of the Initial 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 Initial Bonds; and

WHEREAS, it is contemplated that the Initial 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 Initial 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, the Issuer now desires to authorize issuance of its Revenue Bonds (Sutton Place Preservation Limited Partnership Project), Series 2022 in an aggregate principal amount not to exceed \$50,000,000 (the "Initial 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 acting as trustee for the holders of the Initial Bonds (the "Trustee"); and

WHEREAS, prior to or simultaneously with the issuance of the Initial Bonds, (A) the Institution, the HDFC and the Issuer will execute and deliver a lease agreement (the "Underlying Lease"), pursuant to which the Institution and the HDFC will agree to lease the Land to the Issuer, (B) the Institution will execute and deliver a bill of sale (the "Bill of Sale") from the Institution to the Issuer, pursuant to which the Institution will convey to the Issuer the Institution'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, as modified by a certain HUD addendum (the "Installment Sale Agreement") by and between the Issuer, as seller, and the Institution and the HDFC, as purchaser, pursuant to the which (1) the Institution 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 Initial Bonds, and (2) the Issuer will agree to (a) undertake the Project, (b) appoint the Institution as agent of the Issuer to undertake and complete the Project, and (c) sell the Project Facility to the Institution and (D) the Institution and the Issuer will execute and deliver (1) a recapture agreement (the "Section 875 GML Recapture Agreement") by and between the Institution and the Issuer, required by the Act, regarding the recovery or recapture of certain sales and use taxes and (2) a certain uniform agency project agreement (the "Uniform Agency Project Agreement") relating to the granting of the Financial Assistance by the Issuer to the Institution; and

WHEREAS, as security for the Initial Bonds, the Issuer will execute and deliver to the Trustee a pledge and assignment (the "Pledge and Assignment") and acknowledged by the Institution and the HDFC, which Pledge and Assignment will assign to the Trustee certain of the Issuer's rights under the Installment Sale Agreement; and

WHEREAS, the Initial Bonds will be initially purchased by KeyBanc Capital Markets Inc., acting as underwriter for the Initial Bonds (the "Underwriter"), pursuant to a bond purchase agreement (the "Bond Purchase Agreement") by and among the Underwriter, the Issuer and the Institution; and

WHEREAS, simultaneous with the issuance of the Initial Bonds, the Institution will assume an existing mortgage loan held by Dwight Capital LLC, a Delaware limited liability company (the "Lender"), in the original principal amount of \$20,000,000.00, insured by the Federal Housing Administration, acting on behalf of the Secretary of the U.S. Department of Housing and Urban Development under Section 207 pursuant to Section 223(f) of the National Housing Act, as amended, (the "223(f) Loan"). The 223(f) Loan is secured by, among other things, a first mortgage encumbering the fee and leasehold interests in the Project Facility executed by the Institution, HDFC and joined by the Issuer (the "223(f) Security Instrument"); and

WHEREAS, the Lender has also agreed to make a supplemental loan to the Institution, in an amount to be determined, to be insured by the Federal Housing Administration, acting on behalf of the Secretary of the U.S. Department of Housing and Urban Development under Section 207 pursuant to Section 241(a) of the National Housing Act, as amended, (the "241(a) Loan", together, with the 223(f) Loan, collectively, the "HUD Loan"), the proceeds of which will be used to secure the Initial Bonds under the Indenture. The 241(a) Loan will be secured by, among other things, a second mortgage encumbering the fee and leasehold interests in the Project Facility executed by the Institution, HDFC and joined by the Issuer (the "241(a) Security Instrument"); and

WHEREAS, in addition to the 241(a) Loan proceeds to be funded by Lender, the Initial Bonds will be secured by cash collateral including (a) an equity bridge loan from Key Community Development Corporation or its affiliates, and (b) a purchase money loan from Sutton Place of Amherst LLC, a New York limited liability company; and

WHEREAS, the Institution and the HDFC will enter into a certain Tax Regulatory Agreement, dated the date of delivery of the Initial Bonds (the "Tax Regulatory Agreement"), in which the Institution 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 Initial 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, it is further contemplated that the Issuer will (i) designate the Institution as its agent for the purpose of undertaking the Project pursuant to the Installment Sale 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 Town Board, being the highest elected official of Town, and an allocation of sufficient Volume Cap (as defined herein) are required as conditions to the issuance of the Initial Bonds pursuant to the Code; and

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

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

WHEREAS, the Issuer has given due consideration to the Application and the representations by the Institution that undertaking the Project and issuing the Initial Bonds (a) will be an inducement to the Institution to acquire, renovate, reconstruct, equip and operate the Project Facility in the Town; and (b) will not result in the removal of any commercial, industrial, fabricating or manufacturing plant or facility of the Institution 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 Institution 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 April 29, 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 Town for the Issuer to issue the Initial Bonds.

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 Institution has presented an Application in a form acceptable to the Issuer. Based upon representations made by the Institution to the Issuer and any other correspondence submitted by the Institution 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 Institution as described herein:

- (a) The Project constitutes a "project" within the meaning of the Act.
- (b) The issuance of the Initial Bonds and the grant of the other Financial Assistance will be an inducement to the Institution to acquire, renovate, construct, equip and operate the Project Facility in the Town, thereby advancing job opportunities, general prosperity and economic welfare of the people of the State and the Town in furtherance of the Act.
- (c) It is desirable and in the public interest for the Issuer to appoint the Institution 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) (1) The Project does not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project, and accordingly the Project is not prohibited by the provisions of Section 862(2)(a) of the Act, and (2) accordingly the 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 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 the Initial 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 \$50,000,000.
- (i) The Issuer reasonably expects to reimburse the Institution for expenses made for the Project from the Initial Bonds.
- (j) The Institution has provided a written statement confirming that the Project as of the date of the Application is in substantial compliance with all provisions the Act.

(k) The issuance of the Initial 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 Town and the State and improve their standard of living, and thereby serve the public purposes of the Act.

(l) 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).

Section 4. The Chairperson, Vice Chairperson or Chief Executive Officer 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 or Chief Executive Officer of the Issuer, as Authorized Officer, shall approve, the execution thereof by the Chairperson, Vice Chairperson or Chief Executive Officer to constitute conclusive evidence of such approval.

Section 5. The Issuer hereby authorizes the Authorized Officer to approve the Underlying Lease, the Indenture, the Installment Sale Agreement, the Pledge and Assignment, the Section 875 GML Recapture Agreement, the Uniform Agency Project Agreement, the Bond Purchase Agreement, the 223(f) Security Instrument and the 241(a) Security Instrument (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 7 hereof.

Section 6. The Issuer hereby determines to execute the Form 8038 in such form as is hereafter approved by the Authorized Officer in accordance with Section 7 hereof, and to file the same with the IRS.

Section 7. (a) The Authorized Officer is hereby authorized, on behalf of the Issuer, to execute and deliver 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 Authorized Officer shall approve. The execution of the Financing Documents and the Form 8038 by the Authorized Officer shall constitute conclusive evidence of such approval.

(b) The Authorized Officer is hereby further authorized and directed, on behalf of the Issuer, to approve, without further action of the Issuer, any variations in the terms of the Initial Bonds from those set forth in the form of the Initial Bonds, respectively, submitted to this meeting, including, without limitation, the aggregate principal amounts of the Initial 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 8. 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 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 9. Subject to the conditions set forth herein and the Institution executing the Uniform Agency 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 Institution to proceed with the acquisition, renovation, construction, upgrading and equipping of the Project and hereby appoints the Institution as the true and lawful agent of the Issuer: (i) to acquire, renovate, reconstruct, upgrade and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the 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 Institution 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. With respect to the foregoing, and based upon the representations and warranties made by the Institution in its application for Financial Assistance, the Issuer hereby authorizes and approves the Institution, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax, which may result in New York State and local sales and use tax exemption benefits (“sales and use tax exemption benefits”) not to exceed \$787,500 and a New York State mortgage recording tax exemption benefits (the “mortgage recording tax exemption benefits”) not to exceed \$117,750, respectively.

The Issuer may consider any requests by the Institution 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. Pursuant to Section 875(3) of the Act, and per the policies of the Issuer, the Issuer may recover or recapture from the Institution, 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 Institution, 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 Institution, 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 Institution, 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 Issuer as part of the Project; (iv) the Institution has made a material false statement on its application for Financial Assistance; and/or (v) the State and local sales and use tax exemption benefits and/or mortgage recording tax exemption benefits are taken in cases where the Institution, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, fails to comply with the Institution commitments as identified in the Uniform Agency Project Agreement, being a material term or condition to use property or services in the manner approved by the Issuer in connection with the Project. As a condition precedent of receiving Financial Assistance, the Institution, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) cooperate with the Issuer in its efforts to recover or recapture any Financial Assistance, and (ii) 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 Institution covenants and agrees and understands that it must, subject to potential modification, termination and/or recapture of Financial Assistance for failure to meet and maintain its commitments, submit, on an annual basis or as otherwise indicated below through the conclusion of the later of two (2) years following either (i) the construction completion date, or (ii) the termination of the Uniform Agency Project Agreement, a certification, as so

required by the Issuer confirming compliance with the Institution commitments identified in the Uniform Agency Project Agreement.

Section 10. Subject to the terms of this resolution, the Authorized Officer is hereby authorized, on behalf of the Issuer, to negotiate, execute and deliver (a) the Financing Documents and (b) related documents; provided, however, that the installment purchase payments under the Installment Sale Agreement include payments of all costs incurred by the Issuer arising out of or related to the Project and indemnification of the Issuer by the Institution for actions taken by the Institution and/or claims arising out of or related to the Project.

Section 11. Subject to the conditions set forth herein and in the last sentence of this Section 11, the Issuer will (a) issue the Initial 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 Institution and the HDFC or its designee pursuant to an agreement to be entered into between the Issuer and the Institution and the HDFC whereby the Institution 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 Initial Bonds; (d) secure the Initial Bonds in such manner as the Issuer, the Institution and the purchaser(s) of the Initial Bonds mutually deem appropriate and (e) grant the other Financial Assistance. The Issuance of the Initial 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 Institution and the purchaser(s) of the Initial Bonds upon mutually satisfactory terms for the Initial 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 Institution of the Issuer's administrative fee, the State Bond Issuance Charge and all costs and expenses of the Issuer with respect to the Initial Bonds transaction and the granting of the other Financial Assistance.

Section 12. Subject to the conditions contained within this resolution and the acceptance by the Institution of this resolution, the Institution 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 13 The law firm of Hodgson Russ LLP is hereby appointed bond counsel to the Issuer in relation to the proposed issuance of the Initial Bonds contemplated by the Application.

Section 14. 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 Institution for its expenditures incurred in connection with the Project Facility with the proceeds of the Initial Bonds.

Section 15. Bond counsel for the Issuer is hereby authorized to work with the Institution, the purchaser(s) of the Initial Bonds and others to prepare, for submission to the Issuer, all documents necessary to effect the authorization, issuance, sale and delivery of the Initial Bonds.

Section 16. The Authorized Officer is hereby authorized and directed to distribute copies of this resolution to the Institution and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 17. 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 Initial Bonds shall be liable personally on the Initial 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 Initial 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 Initial Bonds and the interest therein shall not be a debt of the State or the Town or any political subdivision thereof (other than the Issuer), and none of the State, the Town nor any political subdivision thereof (other than the Issuer) shall be liable thereon. The Initial Bonds shall be issued solely for the purposes set forth in this resolution. The Initial 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 Initial Bonds.

Section 18. Any expense incurred by the Issuer with respect to the Project and the financing thereof shall be reimbursed out of the proceeds of the Initial 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 Initial Bonds are not issued by the Issuer for any reason whatsoever, shall be paid by the Institution. By acceptance hereof, the Institution 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 19. The provision by the Issuer of Financial Assistance with respect to the Project as described herein is subject to the payment of the Issuer's administrative fee calculated in accordance with the Issuer's terms.

Section 20. 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:

Carlton N. Brock, Jr.	VOTING	YES
William W. Tuyn	VOTING	YES
Anthony Agostino	VOTING	YES
Hon. Timothy Drury	VOTING	YES
Hadar Borden	VOTING	YES
Frank LoTempio III	VOTING	YES
Nicole Gavigan	VOTING	YES

The foregoing resolution was thereupon declared duly adopted.

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

I, the undersigned Assistant Secretary of Town of Amherst 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 April 29, 2022 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), as modified by (i) Chapter 1 of the Laws of 2022, amending Chapter 417 of the Laws of 2021 and (ii) New York Assembly Bill A09006C/Senate Bill S08006-C, Part WW, as signed into law on April 9, 2022 (together, the "2022 Laws"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present, either in-person or by conference call or similar service in accordance with the 2022 Laws, throughout said meeting.

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Issuer this 31st day of May, 2022.


Assistant Secretary

(SEAL)