

RESOLUTION OF THE TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING SOUTH PARK EQUITY ENTERPRISES, LLC and/or AN ENTITY TO BE FORMED (THE "NEW LESSEE") TO ACQUIRE FROM THE OAKS AT SOUTH PARK LLC (THE "CURRENT LESSEE") A 27 ACRE PARCEL OF LAND LOCATED AT 5138 SOUTH PARK AVENUE IN THE TOWN OF HAMBURG, CONTAINING 19 TWO-STORY BUILDINGS TOTALING 152 HOUSING UNITS, BASEBALL AND SOFTBALL FIELDS AND OTHER AMENITIES, AS AGENT FOR THE AGENCY AND TO ASSUME THE EXISTING PILOT, ALL FOR THE CONTINUED OPERATION OF A RESIDENTIAL HOUSING COMPLEX WITH ADDITIONAL SERVICES

WHEREAS, In 2019 the Agency induced the Current Lessee in regard to the acquisition of 27 acre parcel of land located at 5138 South Park Avenue in the Town Of Hamburg, for the adaptive re-use of a former school building and re-development of the parcel of land for the construction of 19 two-story buildings totaling 152 housing units and the installation of baseball and softball fields and other amenities and to acquire and install machinery and equipment required in connection therewith, as Agent for the Agency, all for a residential housing complex with additional services (the "2019 Project"); and

WHEREAS, the Current Lessee is under contract to sell the real property to the New Lessee; and

WHEREAS, there is an existing PILOT on the real property that the New Lessee wishes to assume; and

WHEREAS, the New Lessee is seeking an assignment of Current Lessee's existing mortgage financing by Current Lessee's lender ("Current Lessee's Lender") to New Lessee's lender Walker & Dunlop and/or Fannie Mae ("New Lessee's Lender") and in connection therewith: (i) a Consolidation, Extension and Modification Agreement and/or Subordination Agreement will be entered into with New Lessee, New Lessee's Lender and Agency and (ii) the New Lessee is not seeking any additional mortgage tax abatements; and

WHEREAS, **SOUTH PARK EQUITY ENTERPRISES, LLC and/or AN ENTITY TO BE FORMED** (the "New Lessee") has entered into negotiations with the officials of the Town of Hamburg Industrial Development Agency (the "Agency") for the assignment and assumption of the 2019 Project; and

WHEREAS, the assistance contemplated by the Agency will include a Consolidation, Extension and Modification Agreement and/or Subordination Agreement relating to the mortgage on the Property; with no mortgage tax abatement; and the continuation, without amendment of the real property tax abatement in accordance with existing Agency Uniform Tax Exemption Policy Guidelines; and

WHEREAS, the New Lessee has submitted an Eligibility Questionnaire and other

materials and information to the Agency (collectively hereinafter the "Eligibility Questionnaire") to initiate the accomplishment of the above; and

WHEREAS, no public hearing is required to be held by the Agency; and

WHEREAS, the Eligibility Questionnaire sets forth certain information with respect to the New Lessee, including the following: that the New Lessee desires Agency assistance with respect to the Project. If the assistance is granted, **the New Lessee anticipates retaining 6 FTE and 2 PTE at the Project location**; that there will be no adverse disruption of existing employment at facilities of a similar nature in the Village or Town of Hamburg; if Agency assistance is disapproved, the New Lessee would have to terminate or scale back the Project negatively impacting future growth in New York; and that, therefore, Agency assistance is necessary to encourage the New Lessee to proceed with the Project in the Village and Town of Hamburg; and

WHEREAS, the Agency desires to further encourage the New Lessee with respect to the Project, if by so doing it is able to induce the New Lessee to proceed with the Project in the Village of Hamburg.

NOW, THEREFORE, THE TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby determines that the assignment and assumption of the 2019 Project and the financing or other assistance thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act. The Agency further hereby determines, on the basis of the Eligibility Questionnaire and supplemental information furnished by the New Lessee, as follows: (a) it would not have financed or otherwise assisted the Project except to induce the location of the Project in the area to be served by the Project as there is a demonstrable need for the Project; (b) that Agency financing and/or other assistance is reasonably necessary to promote economic development and to induce the New Lessee to proceed with the Project; (c) there will be no substantial adverse disruption of existing employment or facilities of a similar nature to the Project in such area; (d) the Project will allow the New Lessee to expand its business in the Town of Hamburg; (e) the Project will create retain employment and provide substantial capital investment; The Agency further determines, on the basis of the New Lessee's Eligibility Questionnaire that; (f) the Project as represented is reasonably necessary to provide the purposes of the Act, subject to verification and confirmation of such representations prior to the entry into the proposed transaction and (g) the Project is an integral part of the New Lessee's plan to proceed with the Project in the Village of Hamburg.

Section 2. The Chairman, Vice Chairman, Executive Director, Secretary and Assistant Secretary of the Agency and other appropriate officials of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the New Lessee to assist in the acquisition and refinancing of the 2019 Project.

Section 3. The New Lessee is authorized to initiate the Project at a total Project Cost of

approximately \$34,000,000, subject to the obtaining of all required approvals from the Village of Hamburg and other involved governmental agencies, and to advance such funds as may be necessary to accomplish such purposes.

Section 4. The Agency is hereby authorized to enter into such agreements with the New Lessee, as the Chairman, Vice Chairman, Executive Director, Secretary or Assistant Secretary or other officer may deem necessary in order to accomplish the above.

Section 5. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the New Lessee. By acceptance hereof, the New Lessee agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, officers, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project and the financing thereof.

Section 6. The Agency hereby authorizes and approves the continuation in the name of the New Lessee the real property tax abatement benefits structured through the existing **seven year PILOT** ("PILOT Agreement").

Section 7. The Agency hereby authorizes and approves that the value of the assigned, consolidated, extended and modified mortgage to be placed upon the facility of approximately \$21,775,000.00; but that **there will be no** mortgage tax exemption benefit.

Section 8. The execution and delivery of a Project and Agent Agreement, Closing Agreement, an Assignment and Assumption Agreement and/or Amended and Restated Lease to Agency, and Amended and Restated Leaseback Agreement between the Agency and the New Lessee, each being substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman, Executive Director, Secretary or Assistant Secretary is hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 9. The execution and delivery of a Consolidation, Extension and Modification Agreement and/or Subordination Agreement from the Agency and the New Lessee to a lender selected by the New Lessee and approved by the Chairman, Vice Chairman, Executive Director, Secretary or Assistant Secretary of approximately \$21,775,000 and other ancillary documents, if required, which mortgage and ancillary documents shall be substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman, Executive Director, Secretary or Assistant Secretary is hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 10. The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the New Lessee's purposes or needs. The New Lessee is satisfied that the Project is suitable and fit for New Lessee's purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused, and the New Lessee hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

Section 11. The provisions of Section 875 of the General Municipal Law shall apply to this Project. In the event it is determined that an agent, project operator or other person or entity obtained state sales and use exemptions benefits for which they were not entitled or which were in excess of the amount authorized or which are for property or services not authorized or taken in cases where such New Lessee, its agents, project operators or other person or entity failed to comply with a material term or condition to use property or services in the manner required by Agreements entered into between the Agency and the applicant with respect to the Project, the agent, project operator or other person or entity shall comply with all the provisions of Section 875 and pay back to the Agency the amount of the state sales and use tax exemptions benefits that they obtained but were not entitled to.

Section 12. Should the Agency's participation in this Project be challenged by any party, in the courts or otherwise, the New Lessee shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from such challenge, including, but not limited to, the fees and disbursements of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the New Lessee hereunder or otherwise.

Section 13. This resolution is subject to compliance with all local building and zoning requirements.

Section 14. The Agency has reviewed the Application and has determined that this action is a Type II action under the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation Law.

Section 15. The provisions of the Town of Hamburg Industrial Development Agency Policy for Recapture and/or Termination or Modification of Financial Assistance and Local Labor Policy shall be applicable to this Project.

Section 16. This Resolution shall take effect immediately and shall continue in full force

and effect for one (1) year from the date hereof and on or after such one (1) year anniversary, the Agency may, at its option (a) terminate the effectiveness of this Resolution (except with respect to the obligations of the New Lessee pursuant to Sections 10, 11, 12 and 15 of this Resolution which shall survive any expiration or termination) or (b) allow the New Lessee additional time in which to close the transactions contemplated by this Resolution based upon affirmative actions taken by the New Lessee to complete such transactions. Upon any allowance of additional time to close, the Agency may charge the New Lessee an extension fee in accordance with the Agency's fee schedule.

ADOPTED: _____, 2024

ACCEPTED: _____, 2024

SOUTH PARK APARTMENT ENTERPRISES, LLC
as the New Lessee

By _____
Name: Michael T. Gacioch
Title: Authorized Representative