

**FINAL AUTHORIZING RESOLUTION
(Tompkins Terrace Housing, L.P. 2023 Project)**

At a regular meeting of the Dutchess County Industrial Development Agency (the “Agency”) convened in public session at 8:15 a.m., local time at Three Neptune Road, Poughkeepsie, New York on the 12th day of July, 2023, the following members of the Agency were:

PRESENT: Timothy Dean, Chairman
Mark Doyle, Vice Chairman (via Zoom)
Kathleen M. Bauer, Secretary/Treasurer
Alfred D. Torreggiani
Donald R. Sagliano
Ronald J. Piccone, II
Amy L. Bombardieri

ABSENT:

ALSO PRESENT: Sarah Lee, Executive Director
Jane Denbaum, Chief Financial Officer
Donald Cappillino, Counsel
Elizabeth A. Cappillino, Counsel

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to acquisition of title to equipment in connection with an affordable multifamily apartment complex (Tompkins Terrace Housing, L.P. 2023 Project) and the leasing of the equipment as more particularly described below:

RESOLUTION OF THE DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ACQUISITION, RENOVATION, INSTALLATION, FURNISHING AND EQUIPPING OF CERTAIN EQUIPMENT AND PERSONAL PROPERTY FOR TOMPKINS TERRACE HOUSING, L.P. (TOMPKINS TERRACE HOUSING, L.P. 2023 PROJECT) AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 335 of the Laws of 1977 of the State of New York (collectively, the “**Act**”), the Agency was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, Tompkins Terrace Housing, L.P., a New York limited partnership having offices at 30 Hudson Yards, 72nd Floor, New York, New York 10001 (the “**Borrower**”), has submitted an application to the Agency requesting the Agency provide certain “financial assistance” (within the meaning of the Act) with respect to the Facility (hereinafter defined), including potential exemptions from certain sales and use taxes (the “**Financial Assistance**”) for a project consisting of the acquisition, renovation, installation and equipping of certain equipment

and personal property located on approximately 16.3 acres of land at 194 Tompkins Terrace (aka 1-193 Tompkins Terrace), Beacon, Dutchess County, New York, together with an approximately 157,000 square foot building containing 193-units (a mix of garden-style and townhouse buildings) (the “**Equipment**” and the “**Facility**”), which Equipment is to be leased by the Agency to the Borrower, and which Facility is to be used by Tompkins Terrace Housing Development Fund Company, Inc., a not-for-profit corporation formed pursuant to Article XI of the Private Housing Finance Law (the “**HDFC**”) as nominee for and on behalf of the Borrower as an affordable multifamily apartment complex (the “**Project**”); and

WHEREAS, the Project includes the following, as they relate to the acquisition, construction, improvement, reconstruction, repair, renovation, installation, furnishing, equipping, and completion of such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with acquisition, construction, improvement, reconstruction, repair, and renovation of the Facility; and (ii) purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with acquisition, construction, improvement, reconstruction, repair and renovation of the Facility and installation of the equipment; and

WHEREAS, the Agency by resolution duly adopted on June 14, 2023 (the “**Preliminary Resolution**”), decided to proceed under the provisions of the Act; and

WHEREAS, the Agency will acquire title to the Equipment pursuant to a certain Bill of Sale, dated the Closing Date (as defined in the hereinafter defined Equipment Lease Agreement) (the “**Equipment Bill of Sale**”), from the Borrower to the Agency; and

WHEREAS, the Agency will lease the Equipment to the Borrower pursuant to a certain Equipment Lease and Project Agreement, dated as of July 1, 2023 or such other date as the Chairman or Executive Director of the Agency and counsel to the Agency shall agree (the “**Equipment Lease Agreement**”), by and between the Agency and the Borrower; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Borrower consistent with the policies of the Agency, in the form of (i) exemptions from sales and use taxes in an amount not to exceed \$471,671 in connection with the purchase or lease of equipment, building materials, services or other personal property with the respect to the Facility; and

WHEREAS, in compliance with §859-a of the Act, the Agency on July 11, 2023, held a public hearing on the grant of financial assistance as set forth herein following publication in the *Poughkeepsie Journal* on June 27, 2023 of a notice of the public hearing; and

WHEREAS, the Borrower has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the leasing of the Equipment by the Agency to the Borrower.

NOW, THEREFORE, BE IT RESOLVED, by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Agency further hereby finds and determines:

(a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(b) The Equipment constitutes a “project”, as such term is defined in the Act; and

(c) The public hearing held by the Agency on July 11, 2023, concerning the grant of Financial Assistance as set forth herein and the nature and location of the Facility was duly held in accordance with the laws of the State of New York, including but not limited to the giving of public notice of the meeting a reasonable time before the meeting and affording a reasonable opportunity for persons with differing views to be heard on Agency’s providing the financial assistance contemplated herein and the location and nature of the Facility; and

(d) The Project Work (as defined in the Equipment Lease Agreement) and the leasing of the Equipment to the Borrower will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Dutchess County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(e) There is a lack of modern affordable housing in Dutchess County; and

(f) Such lack of modern affordable housing has resulted in individuals leaving Dutchess County and therefore adversely affecting employers, businesses, retailers, banks, financial institutions, insurance companies, health and legal services providers and other merchants in Dutchess County and otherwise adversely impacting the economic health and well-being of the residents of Dutchess County, employers, and the tax base of Dutchess County; and

(g) The Facility, by providing such modern affordable housing will enable persons to remain in Dutchess County and thereby to support the businesses, retailers, banks, and other financial institutions, insurance companies, health care and legal services providers and other merchants in Dutchess County which will increase the economic health and well-being of the residents of Dutchess County, help preserve and increase permanent private sector jobs in furtherance of the Agency’s public purposes as set forth in the Act, and therefore the Agency finds and determines that the Facility is a commercial project within the meaning of Section 854(4) of the Act; and

(h) The Facility will provide services, i.e., modern affordable housing, which but for the Facility, would not otherwise be reasonably accessible to the residents of Dutchess County; and

(i) Based upon representations of the Borrower and counsel to the Borrower, the Facility conforms (or is legally non-conforming) with the local zoning laws and planning regulations of Dutchess County and all regional and local land use plans for the area in which the Facility is located; and

(j) It is desirable and in the public interest for the Agency to approve the requested Financial Assistance for this Project; and

(k) The Equipment Lease Agreement will be an effective instrument whereby: (1) the Agency leases the Equipment to the Borrower; (2) the Borrower agrees to comply with all Environmental Laws (as defined therein) applicable to the Facility and will indemnify and hold harmless the Agency for all liability under all such Environmental Laws; and (3) the Agency and the Borrower set forth the circumstances in which the Agency may recapture some or all of the benefits granted to the Borrower in the event any enumerated Recapture Event (as defined therein) occurs.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) acquire an interest in the Equipment pursuant to the Equipment Bill of Sale, and (ii) lease the Equipment to the Borrower pursuant to the Equipment Lease Agreement.

Section 3. The Agency is hereby authorized to acquire the personal property described in Exhibit A to the Equipment Lease Agreement, and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 4. The form and substance of the Equipment Lease Agreement (in substantially the form presented to the Agency and which, prior to the execution and delivery thereof, may be redated and renamed) is hereby approved.

Section 5. Recapture Provisions. The Agency has retained certain recapture rights under the terms and conditions of the Equipment Lease Agreement upon the occurrence of a Recapture Event as defined therein. Section 5.2 of the Equipment Lease Agreement relating to recapture rights by the Agency against the Borrower is attached hereto and made a part hereof as Exhibit A.

Section 6. Based upon the representation and warranties made by the Borrower in the Application, the Agency hereby authorizes and approves the following economic benefits to be granted to the Borrower in connection with the Project Work in the form of: (i) exemptions from sales and use taxes in an approximate amount not to exceed \$471,671 in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility. The Agency agrees to consider any requests by the Borrower 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, and, to the extent required, the Agency authorizes and conducts any supplemental public hearing(s).

Section 7. Subject to (i) execution of the Agency Documents (as hereinafter defined) by the Borrower and (ii) the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Facility satisfactory to the Agency, the Agency hereby authorizes the HDFC and the Borrower to proceed with the Project Work and appoints the Borrower as the true and lawful agent of the Agency.

Section 8.

(a) The Chairman, Vice Chairman, any member of the Agency or the Executive Director are hereby authorized, on behalf of the Agency, to execute and deliver the Equipment Lease Agreement in substantially the form thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, any member of the Agency or the Executive Director shall approve, and such other related documents as may be, in the judgment of the Executive Director and Agency Counsel necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the “**Agency Documents**”). The execution thereof by the Chairman, Vice Chairman, any member of the Agency or the Executive Director of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Vice Chairman, any member of the Agency and the Executive Director of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Equipment Lease Agreement). The Agency hereby appoints each Member of the Agency, Agency Counsel and Transaction Counsel to serve as an Assistant Secretary of the Agency for purposes of this transaction.

Section 9. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 10. This resolution shall take effect immediately.

This resolution was duly moved by Alfred D. Torreggiani seconded by Ronald J. Piccone, II, discussed and adopted with the following members voting:

Timothy Dean, Chairman	VOTING	“Aye”
Mark Doyle, Vice Chairman (via Zoom)	VOTING	“Aye”
Kathleen M. Bauer, Secretary/Treasurer	VOTING	“Aye”
Alfred D. Torreggiani	VOTING	“Aye”
Donald R. Sagliano	VOTING	“Aye”
Ronald J. Piccone, II	VOTING	“Aye”
Amy L. Bombardieri	VOTING	“Aye”

Adopted: July 12, 2023

STATE OF NEW YORK)
) ss.:
COUNTY OF DUTCHESS)

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

That I have compared the annexed extract of minutes of the meeting of the Dutchess County Industrial Development Agency (the "Agency"), including the resolution contained therein, held on July 12, 2023, 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 and original insofar as the same related to the subject matters herein referred to.

That the Equipment Lease Agreement contained in this transcript of proceedings is in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY, that all members of said 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 (the "Open Meetings Law"), said meeting was open to the general public, and that public notice of the time and place of said meeting was only given in accordance with such Article 7.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 12th day of July, 2023.



Kathleen M. Bauer, Secretary

[SEAL]

EXHIBIT A

EXCERPT FROM EQUIPMENT LEASE AGREEMENT

Section 5.2 Recapture of Agency Benefits (a) It is understood and agreed by the parties hereto that the Agency is entering into this Equipment Lease Agreement in order to provide financial assistance to the Borrower for the Facility and to accomplish the public purposes of the Act. In consideration therefor, the Borrower hereby agrees as follows:

(i) If there shall occur a Recapture Event after the Closing Date, but on or before [December 31, 2024], the Borrower shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, one hundred percent (100%) of the Recaptured Benefits (as defined below).

(b) The term “**Recaptured Benefits**” shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Agency’s participation in the transaction contemplated by the Equipment Lease Agreement including, but not limited to, the amount equal to 100% of:

(i) Sales Tax Exemption savings realized by or for the benefit of the Borrower, including any savings realized by any Agent pursuant to the Equipment Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility (the “**Borrower Sales Tax Savings**”); and

which Recaptured Benefits from time to time shall upon the occurrence of a Recapture Event in accordance with the provisions of subsection (c) below and the declaration of a Recapture Event by notice from the Agency to the Borrower be payable directly to the Agency or the State of New York if so directed by the Agency within ten (10) days after such notice.

(c) The term “**Recapture Event**” shall mean that the Borrower receives Sales Tax Savings in connection with the Project Work in violation of any of the provisions of Section 5.1 hereof or Section 875 of the GML; provided, however, that the foregoing shall constitute a Recapture Event with respect to such unauthorized Sales Tax Savings only. It is further provided that failure to repay such authorized Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recaptured Benefits.

(d) In the event any payment owing by the Borrower under this Section shall not be paid on demand by the Agency, such payment shall bear interest from the date of such demand at a rate equal to one percent (1%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, until the Borrower shall have made such payment in full, together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above).

(e) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred with the recovery of all

amounts due under this Section 5.2, from amounts received by the Agency pursuant to this Section 5.2.