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Executive Director

STACEY J. HOLLERAN
Office Manager

VICTORIA L. ADAMS
Administration & Grant
Coordinator

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COUNSEL

ANTHONY G. HALLAK, Esq.
Felt Evans, LLP

MINUTES

August 31, 2021

Herkimer County Industrial Development Agency Regular Board of Directors Meeting

The Herkimer County Industrial Development Agency held its regular meeting of the Board of Directors, as well as a meeting of the Finance Committee, on Tuesday, August 31, 2021 at 8:00 AM. The meeting was held electronically via zoom conference as well as a public meeting open for the public to attend in person. Members of the public were invited to join the meeting virtually by going to www.zoom.com or by dialing (929) 205-6099 and entering meeting ID: 814 1732 0366 and passcode: 876379. Members of the public were invited to attend the meeting in person in the Herkimer County Chamber of Commerce conference room at 420 E. German Street, Herkimer, NY 13350.

After the Pledge of Allegiance, Chairman Vincent (Jim) Bono called the meeting to order at 8:03 AM.

The following members were present in person and answered the roll call: Vincent (Jim) Bono, John Scarano, Catherine (Cate) Ricci, Michael Werenczak, David Chlus. **Quorum Present.** (Ann Gaworecki entered at 8:32 AM).

Members Absent: Cory Albrecht (Present Virtually)

Staff Present: John Piseck, Stacey Holleran, Victoria Adams

Also Present in Person: Kevin McAuliffe; Herkimer County Legislators: John Stephens, Pete Campione, Pete Manno, Bob Hollum; Anthony Hallak; Bernie Peplinski.

Also Present Virtually: Michele Roberts, William Weakley, Assemblyman Brian Miller, Donna Thompson, Bill McDonald

Mission Statement: Mr. Piseck read the Agency's Mission Statement

Feldmeier Equipment:

Barclay Damon: Kevin McAuliffe Esq, a partner of Barclay Damon, LLC and legal counsel for Feldmeier Equipment, was present. Mr. McAuliffe clarified detail of the project for board members, specifically in regards to the property value and PILOT structure of the company's exiting project and the expansion project. He also spoke about employment numbers and reporting for the company's existing PILOT project. He is to provide additional employment information to the Agency.

420 E. German Street, Box 1 Suite 101A, Herkimer, NY 13350 315-866-3000

"This institution is an equal opportunity provider, employer and lender."

Authorizing Resolution: Mr. Piseck stated that this item will be tabled for now and will be revisited after further discussion with counsel.

Mr. McAuliffe exited the meeting at 8:23 AM.

Mr. Bono called the Finance Committee Meeting to order at 8:24 AM.

Preliminary Budget: Prior to the meeting, a preliminary budget for the 2022 Fiscal Year was provided to board members. Mr. Piseck stated that several items in the budget remained the same from the previous year, and that the Agency will be requesting operating funds from the county. He continued by stating that personnel items were to be discussed in executive session and recommended the board make a decision after further discussions.

Minutes:

July 27, 2021: The minutes of the July 27, 2021 regular meeting were offered for review. **John Scarano moved, seconded by Cate Ricci to approve the meeting minutes as presented. Motion carried with 5 ayes and 0 nays.**

August 17, 2021 Nudadec Public Hearing: The minutes of the August 17, 2021 Public Hearing for Nudadec, LLC were offered for review. **Michael Werenczak moved, seconded by John Scarano to approve the meeting minutes as presented. Motion carried with 5 ayes and 0 nays.**

August 17, 2021 Feldmeier Equipment Public Hearing: The minutes of the August 17, 2021 Public Hearing for Feldmeier Equipment were offered for review. **Michael Werenczak moved, seconded by John Scarano to approve the meeting minutes as presented. Motion carried with 5 ayes and 0 nays.**

Financial Reports: The following financial reports were offered for review and approval: July 2021 Financial Report, Balance Sheet, Check Register, RLF/Lease Balance with payment status. Mr. Piseck stated that any outstanding loans are being paid accordingly and the Agency is in a good financial position. **David Chlus moved, seconded by Cate Ricci, to approve all financial reports as presented. Motion carried with 5 ayes and 0 nays.**

Microenterprise Grant Update: Victoria Adams provided an update on the status of the Microenterprise Grant. She stated that she is continuing to work with businesses to provide the required paperwork for adding new positions, if required. There are still funds to be drawn down, which have been committed to two businesses. She is also working with them to collect necessary documentation to draw down the remainder of funding. The Agency is working with the County and New York State Homes and Community Renewal to seek additional funding through reapplying for the program.

Ann Gaworecki entered at 8:32 AM.

Seward 2/2/2:

Juliano's Farm: The Agency received an application from Juliano's Farm for the Small Business 2-2-2 loan/grant program. The project includes the purchase and installation of an air conditioner unit for the

farm store. The application was approved by the RLF committee prior to the meeting. **David Chlus moved, seconded by John Scarano to approve a loan in the amount of \$2,000, a grant in the amount of \$2,000, with proof of owner injection of at least \$2,000. The funds will come from the Seward account. The loan terms will be 2% for 24 months. The motion carried with 6 ayes and 0 nays.**

Body Siense, Inc.: The Agency received an application from Body Siense, Inc., for the Small Business 2-2-2 loan/grant program. The project is for the purchase of an automated body measurement scanner. **Michael Werenczak moved, seconded by Cate Ricci to approve a loan in the amount of \$1,973, a grant in the amount of \$1,973, with proof of owner injection of at least \$1,973. The funds will come from the Seward account. The terms will be 2% for 24 months. The motion carried with 6 ayes and 0 nays.**

Update: Victoria Adams provided board members with an update on the Seward 2/2/2 loan/grant fund. She stated that once the approved applications are processed, there will not be sufficient funds in the account to support another application; however, as funds are replenished, additional applications will be accepted.

Frankfort 5S South Business Park – Country Mile Surface Treatment: A final layer of protective coating has been applied to the surface of Country Mile. Funds to pay for the services are to be drawn down from the county and paid back through the existing Payment Increment Financing (PIF) agreement for infrastructure improvements of the park. The Town of Frankfort voted to take over the road, and the Agency no longer owns any property at the park. Mr. Piseck stated that the town was excellent to work with. **Cate Ricci moved, seconded by Ann Gaworecki to approve the Agency to request funds from the county to remit payment in the amount of \$17,424.94 for the completion of the surface treatment on Country Mile, to be paid back to the County through the existing PIF agreement. Motion carried with 6 ayes and 0 nays.**

Mr. Piseck stated that discussions are ongoing regarding a possible change to the road name.

Schuyler Business Park:

Delta Engineering Professional Services: Mr. Piseck stated that there are more engineering services to be completed at Schuyler Business Park. He requested board approval to increase the service agreement by \$50,000 as ongoing services are rendered. He stated that he will be requesting additional funding for infrastructure improvements from the county, to be added to the existing PIF agreement. **John Scarano moved, seconded by Cate Ricci to approve the Agency to pay up to an additional \$50,000 to Delta Engineers, Architects, & Surveyors for services rendered at Schuyler Business Park. Motion carried with 6 ayes and 0 nays.**

Wetlands: Board members were provided a map of wetlands at Schuyler Business Park. The wetlands outlined on the map will satisfy the necessary wetland area requirement from the U.S. Army Corp of Engineers.

Herkimer County Food Processing Study: The Agency has interviews scheduled with two firms that submitted proposals for the completion of the Herkimer County Food Processing Study. The staff has rated the firms on score cards. The Agency will be forming a task force to oversee the project.

Nudadec, LLC (The Fountainhead Group) – Amended Authorizing Resolution: The sales tax exemption amount for the project increased; therefore, it is necessary to amend the Authorizing Resolution for the

project. The proposed Authorizing Resolution was presented to board members. **After discussion, Michael Werenczak made the following motion:**

RESOLUTION AUTHORIZING THE AGENCY TO EXECUTE ALL RELEVANT CLOSING DOCUMENTS WITH RESPECT TO THE CONVEYANCE OF AN INTEREST IN THE REAL PROPERTY SITUATE IN THE TOWN OF SCHUYLER, COUNTY OF HERKIMER AND STATE OF NEW YORK, THE CONSTRUCTION OF CERTAIN IMPROVEMENTS THEREON, AND THE ACQUISITION OF PERSONAL PROPERTY TO BE ACQUIRED AND LOCATED THEREAT (COLLECTIVELY, THE "FACILITY"); TO ASSIST THE COMPANY WITH FINANCIAL ASSISTANCE, LEASING SAID FACILITY TO AGENCY THROUGH A LEASE AGREEMENT AND THROUGH SALES AND MORTGAGE TAX EXEMPTIONS AND REAL PROPERTY TAX ABATEMENTS; TO ADDRESS ENVIRONMENTAL ISSUES AND TO PROVIDE FOR INDEMNIFICATION OF THE AGENCY ON SUCH ISSUES RELATING TO THE FACILITY THROUGH THE EXECUTION OF AN ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT WITH THE COMPANY (THE "ECIA"); TO LEASEBACK SAID FACILITY TO THE COMPANY; TO PROVIDE FOR A RECAPTURE AGREEMENT RELATING TO THE CREATION OF JOBS AND MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE PROJECT.

Seconded by John Scarano, the motion carried with 6 ayes and 0 nays. The official resolution is attached to the original minutes.

SunEast Hills Solar, LLC – Amended Inducement Resolution: The Agency will be extending the appointment of SunEast Hills Solar, LLC. The company has remitted upfront financial support for the continuation of their project. **After discussion, David Chlus made the following motion:**

RESOLUTION OF THE HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the "AGENCY") TAKING OFFICIAL ACTION EXTENDING THE APPOINTMENT OF SUNEAST HILLS SOLAR, LLC (the "COMP ANY), AND THE PRINCIPALS OF THE COMPANY, AS AGENT OF THE AGENCY IN CONNECTION WITH A SUBLEASE-LEASEBACK TRANSACTION, AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDUCEMENT AGREEMENT AND MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE PROJECT.

Seconded by Michael Werenczak, the motion carried with 6 ayes and 0 nays. The official resolution is attached to the original minutes.

SunEast Watkins Road Solar, LLC – Amended Inducement Resolution: The Agency will be extending the appointment of SunEast Watkins Road Solar, LLC. The company has remitted upfront financial support for the continuation of their project. **After discussion, Michael Werenczak made the following motion:**

RESOLUTION OF THE HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the "AGENCY") TAKING OFFICIAL ACTION EXTENDING THE APPOINTMENT OF SUNEAST WATKINS ROAD SOLAR, LLC (the "COMPANY), AND THE PRINCIPALS OF THE COMPANY, AS AGENT OF THE AGENCY IN CONNECTION WITH A SUBLEASE-LEASEBACK TRANSACTION, AUTHORIZING

**THE EXECUTION AND DELIVERY OF AN INDUCEMENT AGREEMENT AND
MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE
PROJECT.**

Seconded by John Scarano, the motion carried with 6 ayes and 0 nays. The official resolution is attached to the original minutes.

Clearpath Energy, LLC:

Application for Financial Assistance: The Agency received an application for financial assistance from Clearpath Energy, LLC. The company plans to develop a solar facility in the Town of Manheim, on approximately 50 acres of land. The project will sell the electricity under the community solar program. **Ann Gaworecki moved, seconded by David Chlus to approve the application for financial assistance for Clearpath Energy, LLC. The motion carried with 6 ayes and 0 nays.**

Inducement Resolution: An application for financial assistance was presented and accepted by the board for Clearpath Energy, LLC.

After further review and discussion, **Michael Werenczak made the following motion:**

**RESOLUTION OF THE HERKIMER COUNTY INDUSTRIAL DEVELOPMENT
AGENCY (the "AGENCY") TAKING OFFICIAL ACTION TOWARD
APPOINTING CLEARPATH ENERGY LLC (the "COMPANY), AND THE
PRINCIPALS OF THE COMPANY, AS AGENT OF THE AGENCY IN
CONNECTION WITH A SUBLEASE-LEASEBACK TRANSACTION,
AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDUCEMENT
AGREEMENT AND MAKING CERTAIN FINDINGS AND DETERMINATIONS
WITH RESPECT TO THE PROJECT.**

Seconded by John Scarano, the motion carried with 6 ayes and 0 nays. The official resolution is attached to the original minutes.

F. E. Hale Manufacturing Company:

PILOT Adjustment: The initial PILOT for Hale Manufacturing Company were the standard PILOT terms. As a result of increased cost, an unsuccessful CDBG application, and limited assistance available through the county, Mr. Piseck recommended a revised PILOT schedule to further assist the company financially. The PILOT will be for a term of 10 years as outlined originally; however, years 1-3 will be 0%; years 4-6 will be 50%; and years 7-10 will be 75%. The savings is front-loaded to assist the company right away. After review and discussion, **David Chlus moved, seconded by Cate Ricci, to approve the adjusted PILOT schedule as presented for F. E. Hale Manufacturing Company.**

Public Hearing: Due to an approved adjustment to the PILOT schedule for F.E. Hale Manufacturing, a Public Hearing is necessary. **David Chlus moved, seconded by John Scarano to approve the Agency set a Public Hearing for the F.E. Hale Manufacturing Company project. Motion carried with 6 ayes and 0 nays.**

Russell Farm – Emrich Land Surveying: Additional due diligence for development is necessary at the Russell Farm property. Mr. Piseck requested approval for professional services to be completed by Emrich Land Surveying. **Michael Werenczak moved, seconded by Cate Ricci to approve the Agency to remit payment to Emrich Land Surveying for professional services rendered at the Russell Farm property, at a cost not to exceed \$5,932. Motion carried with 6 ayes and 0 nays.**

Former Chips Gas Station: Board members were provided a map of the three parcels formally known as Chips Gas Station in the Town of Frankfort. Mr. Piseck is having ongoing discussions with the county and their attorney on the possibility of taking ownership the property. The intended end use of the property would be a parking lot for the bike trail, which would be owned by the The Town of Frankfort once environmental concerns are rectified. Mr. Piseck stated that grant funds could be utilized to cover the cost of environmental studies. **David Chlus moved, seconded by John Scarano to approve the Agency to gather additional information on the site. Motion carried with 6 ayes and 0 nays.**

Union Tool Site: Mr. Piseck has had discussions with HRP Associates regarding the environmental condition of the Union Tool Site. Board members were provided feedback from HRP on the site and potential setbacks. Mr. Piseck requested approval to obtain additional information on the site. **John Scarano moved, seconded by Ann Gaworecki to approve the Agency to obtain additional information on the Union Tool Site. The approval is contingent upon a presentation by HRP Associates. Motion carried with 5 ayes and 1 nay (Chlus).**

Village of Dolgeville BOA – MOU Addendum: The Agency currently has a Memorandum of Understanding with the Village of Dolgeville for the administration of the Village of Dolgeville Brownfield Opportunity Area grant. At the recent kick-off meeting with the village and Department of State, it was recommended to add information to the agreement to include additional details regarding the funding process. The addendum was provided to board members prior to the meeting. **Ann Gaworecki moved, seconded by David Chlus to approve the addendum to the Memorandum of Understanding between the Agency and the Village of Dolgeville, as presented. Motion carried with 6 ayes and 0 nays.**

Housing Policy: The board was provided a draft revised Uniform Tax Exemption and Agency Benefits Policy as it relates to Market Rate Rental Housing Development Initiatives. After discussion, it was decided that the board would further review the policy, to be discussed further at the next meeting of the board.

H.M. Quackenbush: Mr. Piseck expressed concern for the public perception of his actions regarding the transfer of a screw bit he and Mr. Bono used to enter the H.M Quackenbush site. He asked that any board member with concerns regarding his actions to not hesitate to discuss with him.

Mr. Bono welcomed comments from elected officials:

Mohawk Valley Brownfield Summit: Mr. Piseck will be participating in the Mohawk Valley Brownfield Summit on October 6-7, 2021 in Johnstown. The summit will host brownfield developers throughout the northeast.

Marketing & Communications Specialist: The Agency is still seeking a Marketing & Communication Specialist.

NYS Economic Development Council Annual Meeting: The 2021 New York State Economic Development Council Annual Meeting will be held September 28-30 in Cooperstown, NY at the Otesaga Hotel. Board members were invited to attend.

Broadband Study: The Oneida-Herkimer County Broadband Study is being finalized and information should be received on or around September 17th.

Duofold: Progress continues on the Unisys litigation; the potential developer of the site is working through their due diligence process; the Agency is still working with the Village on potential EPA funding.

Herkimer County Properties Sheet: Board members were provided a properties sheet requesting suggestions for additional properties for the Agency to potentially acquire.

NYS Comptroller Audit: The New York State Comptroller Audit of the Agency is underway. Additional details will be provided to board members as they become available.

Executive Session: Ann Gaworecki moved, seconded by Cate Ricci to enter into executive session at 9:45 AM to discuss developments of a potential project and matters of personnel. Motion carried with 6 ayes and 0 nays. All board members, Bob Hollum, Anthony Hallak, John Piseck, Stacey Holleran, and Victoria Adams were invited to stay.

Bob Hollum, Anthony Hallak, Stacey Holleran, and Victoria Adams exited the meeting at 10:25 AM.

David Chlus exited the meeting at 11:15 AM

Cate Ricci moved, seconded by Ann Gaworecki to end executive session at 11:23 AM. Motion carried with 5 ayes and 0 nays.

Being no other business, Cate Ricci moved, seconded by Ann Gaworecki to adjourn at 11:25 AM. Motion carried with 5 ayes and 0 nays.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Victoria Adams", written in a cursive style.

Victoria Adams
Administration & Grant Coordinator

**AMENDED
AUTHORIZING RESOLUTION**

At a meeting of the **HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, Herkimer County, New York (the “Agency”), held at 420 E. German Street, Herkimer, New York on the 31st day of August, 2021 at 8:00 a.m., the following members of the Agency were:

Present: Vincent J. Bono, David Chlus, Catherine Ricci, John Scarano,
Michael Werenczak, Ann Gaworecki

Absent: Cory Albrecht

Also Present: John Piseck, Stacey Holleran, Anthony G. Hallak, Victoria Adams

After the meeting had been duly called to order, the Chairman announced that the purpose of the meeting was to consider and take action on certain matters pertaining to Nudadec, LLC (the “Company”).

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

AYE	NAY	ABSTAINED
*ALL	*NONE	*NONE

RESOLUTION AUTHORIZING THE AGENCY TO EXECUTE ALL RELEVANT CLOSING DOCUMENTS WITH RESPECT TO THE CONVEYANCE OF AN INTEREST IN THE REAL PROPERTY SITUATE IN THE TOWN OF SCHUYLER, COUNTY OF HERKIMER AND STATE OF NEW YORK, THE CONSTRUCTION OF CERTAIN IMPROVEMENTS THEREON, AND THE ACQUISITION OF PERSONAL PROPERTY TO BE ACQUIRED AND LOCATED THEREAT (COLLECTIVELY, THE “FACILITY”); TO ASSIST THE COMPANY WITH FINANCIAL ASSISTANCE, LEASING SAID FACILITY TO AGENCY THROUGH A LEASE AGREEMENT AND THROUGH SALES AND MORTGAGE TAX EXEMPTIONS AND REAL PROPERTY TAX ABATEMENTS; TO ADDRESS ENVIRONMENTAL ISSUES AND TO PROVIDE FOR INDEMNIFICATION OF THE AGENCY ON SUCH ISSUES RELATING TO THE FACILITY THROUGH THE EXECUTION OF AN ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT WITH THE COMPANY (THE “ECIA”); TO LEASEBACK SAID FACILITY TO THE COMPANY; TO PROVIDE FOR A RECAPTURE AGREEMENT RELATING TO THE CREATION OF JOBS AND MAKING

CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT
TO THE PROJECT.

WHEREAS, Nudadec, LLC (the “Company”) has requested that the Agency undertake a project (the “Project”) consisting of the following: (A) (1) the acquisition of an interest in an approximately 49 acre parcel of land located in the Schuyler Business Park in the Town of Schuyler, New York and more particularly described in Exhibit A attached hereto and made a part hereof (the “Land”), (2) the construction on, under and over the Land of an approximately 195,000± square foot warehouse and distribution center, with potential expansion at the Company’s option up to 400,000 square feet, and related facilities and improvements, including without limitation, offices, a water tank, electric transformers and parking for vehicles and truck trailers (collectively, the “Improvements”) and (3) the acquisition and installation of machinery, equipment and other personal property (the “Equipment”) in, on, around, over and under the Improvements and the Land (the Land, the Improvements and the Equipment being collectively referred to as the “Facility”); (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing, including potential exemptions from sales taxes and mortgage tax, real property transfer taxes and exemptions from real property taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) of the Facility to Agency and leaseback of the Facility to the Company or such other person as may be designated by the Company and agreed upon the Agency; and

WHEREAS, the Company will lease the Facility to the Agency pursuant to Article 18A of the General Municipal Law of the State of New York, and Chapter 410 of the Laws of 1970 of the State of New York, as may be amended from time to time (collectively the “Act”) and the Agency will lease the Facility back to the Company pursuant to a Leaseback Agreement (the “Leaseback Agreement”); and

WHEREAS, the Company will construct and equip the Facility as agent of the Agency; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, representations made by the Company in their Application for Financial Assistance and amendment thereto support the finding that the Project will promote employment opportunities in the area served by the Agency; and

WHEREAS, the Company will further sublease the Facility to the Sublessee for its operation pursuant to a Sublease Agreement (the “Sublease Agreement”) between the Company and the Sublessee; and

WHEREAS, in order to induce the Company to develop the Facility, the Agency is willing to sell the Land to the Company, to take a leasehold interest in the Land, Improvements and Equipment pursuant to the terms and conditions contained in the Lease Agreement and to

lease the Land, Improvements and Equipment back to the Company pursuant to the terms of the Leaseback Agreement; and

WHEREAS, on February 3, 2021 the Agency afforded a 90 Day Notice for the State of New York Authority Budget Office, the Comptroller for the State of New York, the Director of the Budget for the State of New York, the Temporary President of the NYS Senate, the Speaker of the NYS Assembly and Commission of the New York State Office of General services; and

WHEREAS, based upon recommendations made by the Company in its Application, the value of financial assistance is described as follows:

Sales and Use Tax Exemptions estimated at \$618,750.00, but shall not exceed \$618,750.00 in aggregate;

Mortgage Recording Tax not to exceed \$135,000.00; and

Real Property Tax Abatement estimated at \$1,220,000.00.

WHEREAS, prior to the closing of a lease-leaseback transaction, and the granting of any tax benefits, a public hearing (the “Hearing”) was held so that all persons with views in favor of or opposed to either the Financial Assistance contemplated by the Agency, or the location or nature of the Facility, could be heard; and

WHEREAS, notice of the Hearing was given prior to the closing of a lease-leaseback transaction, and the granting of any tax benefits, and such notice (together with proof of publication) was in the form annexed hereto as **Exhibit B**; and

WHEREAS, the minutes of the Hearing are or will be annexed hereto as **Exhibit C**; and

WHEREAS, on March 5, 2021, Notice was given to each of the taxing jurisdictions affected by the project of the intent to deviate from the Agency’s Uniform Tax Exemption Policy in the form attached hereto as **Exhibit D**; and

WHEREAS, on May 7, 2021 notice was given to interested entities of the Sublessee’s abandonment of facilities in the County of Oneida and County of Oswego, copies of which are on file at the office of the Agency; and

WHEREAS, notice of a second Public Hearing (the “Second Hearing”) was given to each of the taxing jurisdictions prior to the closing as to the filing of an amended application with an increase in the financial assistance contemplated by the Agency, which notice is in the form annexed hereto as **Exhibit E**; and

WHEREAS, the minutes of the Second Hearing are annexed hereto as **Exhibit F**; and

WHEREAS, the Agency will provide the Financial Assistance to the Company including, exemptions from sales and use taxes, abatements from real property taxes and assisting in the procurement of grant money; and

WHEREAS, the Agency has given due consideration to the application of the Company and to representations by the Company that the proposed lease-leaseback transaction is an inducement to the Company to locate and construct the Facility in the County and is also necessary to maintain the competitive position of the Company in its industry; and

WHEREAS, to aid the Agency in determining whether the Facility may have a significant effect upon the environment, the Agency has reviewed the negative declaration issued by the Town Board of the Town of Schuyler, New York, as lead agency under the State Environmental Quality Review Act dated May 19, 2021, a copy of which is on file as the office of the Agency;

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

Section 1. The Agency 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 of the Act and to exercise all powers granted to it under the Act; and
- (b) The Facility constitutes a “project,” such as that term is defined in the Act; and
- (c) The sale of the Land to the Company, the acquisition, construction and equipping of the Facility, and the leasing of the Facility to the Company will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Herkimer County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and
- (d) The acquisition, construction and equipping of the Facility are reasonably necessary to induce the Company to locate and construct the Facility in the State of New York; and
- (e) Based upon representations of the Company, the Facility conforms with the local zoning laws and planning regulations of Herkimer County and all regional and local use plans for the area in which the Facility is located; and
- (f) It is desirable and in the public interest for the Agency to sell the Land to the Company, acquire a leasehold interest in the Facility and lease the Facility back to the Company; and
- (g) The Lease is an effective instrument whereby the Company conveys a leasehold interest to the Agency; and

- (h) The Leaseback Agreement is an effective instrument whereby the Company leases the Facility from the Agency; and
- (i) Based upon the materials submitted by the Company and the review of the Negative Declaration by the Town Board of the Town of Frankfort and the Agency's knowledge of the Project, the Facility will result in no adverse environmental impacts.
- (j) The construction by the Company of a state-of-the-art distribution facility will allow the Sublessee and operator of the Facility, The Fountainhead Group, Inc., to consolidate several warehouse locations for finished goods into one location. The consolidation reduces inefficiencies in distribution, allows for modernization and will support anticipated growth.

Section 2. In furtherance of Purchase, Sale and Development Agreement and consistent with the Uniform Tax Exemption Policy, the Agency hereby determines to deviate from its policy with regard to real property tax abatements for the following reasons:

- (a) The lands are currently lying fallow and are exempt from real property taxes assessed for special use and/or district charges;
- (b) The construction and equipping of a 195,000± square foot facility with potential expansion up to 400,000 square feet will be a fundamental component in the buildout of the Schuyler Business Park. The Project has the ability to add up to 150 jobs, exclusive of spin off industry and employment;
- (c) Construction of a state-of-the-art distribution facility will support the Company's modernization of its business and anticipated growth in the industry;
- (d) Notice of Economic Impact was afforded to those jurisdictions (to wit, the City of Utica, County of Oneida, Town of Volney, County of Oswego) of the abandonment and consolidation of the facilities;
- (e) The tax revenue generated on a \$15 million dollar facility in the later years of the PILOT will be a significant cash inflow to the local taxing jurisdictions as well as derivative sales tax in the community;
- (f) Based upon the materials submitted by the Company, the Facility will produce significant and substantial economic and community benefit to Herkimer County within the meaning of the Agency's Uniform Tax Exemption Policy; and
- (g) The incentive is a fundamental component to induce the acquisition, constructing and equipping of the Facility as well as create jobs as heretofore described.

Section 3. In furtherance of Section 2895 et seq. of Title 5-A of the Public Authorities Law (the "PAL"), the Agency has negotiated the terms of the disposition of the Land and such disposition furthers an economic development interest of the State of New York and

County of Herkimer and is within the purpose of the Act. The Agency afforded Notice of Disposal of Public Authority Property under Section 2897 of the PAL (the “PAL Notice”), and the Agency has received no objection thereto. The Agency has considered the information provided in the PAL Notice and the Agency hereby finds that the negotiated disposition at market value and transfer of the Land to the Company that would achieve statutory goals and purposes of the Agency. The Agency further finds that the Agency has complied with the provisions of Section 2897 of the PAL so long as the transfer of the Land to the Company does not occur prior to May 5, 2021.

Section 4. In furtherance of Section 862 of the New York General Municipal Law it is recognized that leasing warehouse and/or manufacturing space in various locations causes inefficiencies. The consolidation contemplated by the Project is reasonably necessary to correct the business inefficiencies and maintain a competitive position in the industry.

Section 5. In consequence of the foregoing, the Agency hereby determines to proceed with the Project, to sell the Land to the Company, to acquire a leasehold interest in the Facility from the Company and to lease the Facility back to the Company and to execute and deliver a deed to the Company, the Lease Agreement and a memoranda thereof, the Leaseback Agreement and memoranda thereof, the ECIA, the PILOT Agreement, the Recapture Agreement, the Section 875 General Municipal Law Recapture Agreement and all related documents reasonable and necessary or desirable to fulfill the intent of this resolution and the Financial Assistance proffered by the Agency as well as the County of Herkimer and State of New York (collectively the Closing Documents) and to do all things necessary or desirable to accomplish the foregoing. All acts heretofore taken by the officers and employees of the Agency with respect to the Project are hereby ratified and confirmed.

Section 6. The form and substance of the Closing Documents (each in substantially the forms presented to the Agency and which, prior to the execution and delivery thereof, may be redated) are hereby approved.

Section 7.

- (a) The Chairman, Vice Chairman, Secretary or any member of the Agency and the Executive Director, Stephen Smith, are hereby authorized, on behalf of the Agency, to execute and deliver the closing documents, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Secretary, Executive Director or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution. The execution thereof by the Chairman, Vice Chairman, Executive Director or any member of the Agency shall constitute conclusive evidence of such approval.
- (b) The Chairman, Vice Chairman, Secretary or member of the Agency and the Executive Director, Stephen Smith 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 Lease Agreement).

Section 8. 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 Closing 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 Closing Documents binding upon the Agency.

[illegible]

I, **STACEY HOLLERAN**, the undersigned Assistant Secretary of the Herkimer County Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Herkimer County Industrial Development Agency (the "Agency"), including the resolutions contained therein, held on the 31st day of August, 2021 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 resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Closing Documents contained in this transcript of proceedings are each in substantially the substance presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, (ii) pursuant to Sections 103a and 104 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public and public notice of the time and place of said meeting was duly given in accordance with such Sections, (iii) the meeting in all respects was duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand as of this 31st day of August, 2021.

**HERKIMER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

Stacey Holleran
Stacey Holleran, Assistant Secretary

EXHIBIT A

Legal Description

ALL THAT TRACT, PIECE OR PARCEL OF LAND situate within the Town of Schuyler, County of Herkimer and State of New York, designated as Parcel "B", as shown on the map entitled "Subdivision Map Showing Lands Belonging to Herkimer County Industrial Development Agency Designated as Parcels "A", "B", "C" and Proposed Road", dated February 2, 2021, prepared by Emrich Land Surveying, PLLC and filed with the Herkimer County Clerk's Office on June 9, 2021 as Instrument No. M2021-2463; said parcel more particularly described as follows:

BEGINNING at an iron pin located at its intersection with the division line between the herein described property, designated as Parcel "B" on the south and the property of Alexander Ripka (reputed owner) as described by Deed as Instrument No. RP2016-202553 on the north and the division line between the property of Herkimer County Industrial Development Agency (reputed owner) as described by Deed as Instrument No. RP2020-29 on the west and said property of Alexander Ripka on the east;

Thence North 82° 45' 20" East, along the first mentioned division line, a distance of 1059.32 feet to an iron pin (set); said pin located at the intersection of the last mentioned division line with the division line between the herein described property, designated as Parcel "B" on the southwest and the property, designated as Parcel "C" on the northeast;

Thence South 61° 01' 30" East, along the last mentioned division line, a distance of 744.46 feet to an iron pin (set); said pin located at the intersection of the last mentioned division line with the division line between the herein described property on the west and the property of Alexander Ripka (reputed owner) as described by Deed as Instrument No. RP2016-202553 on the east;

Thence South 15° 36' 30" East, along the last mentioned division line, a distance of 828.96 feet to an iron pin (set);

Thence South 82° 45' 20" West, through the property of Herkimer County Industrial Development Agency (reputed owner) as described by Deed as Instrument No. RP2020-29, a distance of 1897.50 feet to an iron pin (set);

Thence North 06° 42' 00" West, continuing through said property of Herkimer County Industrial Development Agency, a distance of 1173.94 feet to an iron pin (set) located on a curved portion of a cul-de-sac being the easterly road boundary of a proposed town road;

Thence northwesterly, along said boundary of a proposed town road, following a curve to the left having a radius of 116.00 feet with an arc distance of 95.43 feet to an iron pin (set);

Thence North 82° 45' 20" East, continuing through said property of Herkimer County Industrial Development Agency, being the westerly extension of the first mentioned division

line, a distance of 140.27 feet to the point of beginning, containing 2,149,694 \pm square feet or 49.350 acres, more or less;

Together with a temporary right of way for ingress and egress over the Proposed Road set forth on the above identified Emrich Map, which right of way shall terminate upon dedication and acceptance of the road by the Town of Schuyler for public purposes.

BEING: a portion of the premises conveyed by Dale Windecker and Deborah S. Windecker to Herkimer County Industrial Development Agency by Warranty Deed dated January 2, 2020, recorded in the Herkimer County Clerk's Office on January 3, 2020 by Deed as Instrument Number RP2020-29;

RESERVING: a Permanent Easement to be granted for utility purposes; said easement being thirty (30) feet in width, adjacent to and parallel with the northerly, northeasterly and easterly property line as described above and shown on the above referenced map.

RESERVING: a Permanent Easement to be granted to Mohawk Valley Water Authority for utility purposes; said easement being thirty (30) feet in width, parallel with and 30 feet distant, measured from the northerly, northeasterly and easterly property line as described above and shown on the above referenced map.

**AMENDED
INDUCEMENT RESOLUTION**

At a regular meeting of the Herkimer County Industrial Development Agency held at 420 E. German Street, Herkimer, New York, on August 31, 2021 at 8:00 A.M.

The meeting was called to order by the Chairman, and, upon the roll being called, the following were

PRESENT: Vincent J. Bono, David Chlus, Catherine Ricci, John Scarano,
Michael Werenczak, Ann Gaworecki

ABSENT: Cory Albrecht

ALSO PRESENT: John Piseck, Stacey Holleran, Anthony Hallak, Victoria Adams

The following resolution was offered and seconded with the members voting:

AYE

NAY

All

None

RESOLUTION OF THE HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the "AGENCY") TAKING OFFICIAL ACTION EXTENDING THE APPOINTMENT OF SUNEAST HILLS SOLAR, LLC (the "COMPANY), AND THE PRINCIPALS OF THE COMPANY, AS AGENT OF THE AGENCY IN CONNECTION WITH A SUBLEASE-LEASEBACK TRANSACTION, AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDUCEMENT AGREEMENT AND MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE PROJECT.

WHEREAS, the Herkimer County Industrial Development Agency (the “Agency”) is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York Chapter 410 of the Laws of 1970 and Chapter 158 of the Laws of 1981 of the State (collectively, the “Act”) to promote, develop, encourage and assist in the constructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, pollution control, commercial, research and recreation facilities for the purpose of promoting, attracting 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 (the to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to provide assistance in the construction and equipping of one or more “Projects” (as defined in the Act); and

WHEREAS, the Company presented an application (the “Application”) to the Agency on October 24, 2019 and subsequently filed an amended application on July 16, 2021, copies of which were presented at this meeting and copies of which are on file at the office of the Agency, requesting that the Agency consider undertaking; (i) to provide assistance through sales tax and mortgage tax incentives for the constructing, equipping, and financing of the above described project Facility and real property tax relief in the form of a Payment in Lieu of Tax Agreement (the “Assistance”), (ii) to acquire, construct, equip, and finance the Facility or to cause the Facility to be constructed, equipped, and financed; and (iii) to lease and/or sublease (with an obligation to leaseback) or sell the Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Facility will consist of the acquisition, construction, and equipping of a ground-mounted utility scale solar energy generation system on leased property totaling 200 acres located at 449 Burrell Road in the Town of Manheim with an estimated capacity of 20 MVac ± kilowatts. The Project has an estimated cost of Twenty Five Million Three Hundred and Six Thousand and 00/100 Dollars (\$25,306,000.00) (the “Project Costs”); and

WHEREAS, the project proposes to generate electricity that will allow residential and commercial subscribers to benefit from renewable energy that will offset traditional power sources; and

WHEREAS, the Agency has given due consideration to the Application and to representations by the Company; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto the Department of Environmental Conservation of the State Department of Environmental Conservation of the State (collectively “SEQR”), the Agency constitutes a State Agency; and

WHEREAS, the Town of Manheim Planning Board evaluated the project and on January 27, 2020 and issued a Negative Declaration (the "SEQR Determination") under SEQR with respect to the Project. A copy of Negative Declaration is attached hereto as Exhibit A; and

WHEREAS, the Agency has considered its environmental assessment form and related forms (the questionnaire submitted by the Company) the requisite criterion to determine whether the proposed action or the Project will have a significant effect on the environment; and

WHEREAS, if required by the Act, a public hearing will be duly noticed and had with respect to the Facility and the Assistance.

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

1. Based upon the application and other representations made by the Company to the Agency and the Agency's due deliberation, the Agency hereby makes the following findings and determinations:

A. The Facility constitutes a "Project" within the meaning of the Act.

B. The Assistance will induce the Company to locate the Facility in the County, thereby maintaining and increasing employment opportunities within the State of New York and otherwise furthering the proposes of the Agency as set forth in the Act.

C. Except as is permitted by law, the Facility will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Facility 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 Facility located in the State.

2. The form and substance of the proposed agreement in substantially the draft form presented to this meeting between the Agency and the Company setting forth the undertakings of the Agency and the Company with respect to providing of the Assistance (the "Agreement") are hereby approved. The Chairman, Vice Chairman and Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Agreement in substantially the form presented to this meeting, with such changes in terms and form as the Chairman, Vice Chairman or the Executive Director shall approve. The execution thereof by the Chairman, Vice Chairman or Executive Director shall constitute conclusive evidence of such approval.

3. Subject to the conducting of a public hearing, if required, pursuant to Sections 859-a and 862 of the Act and subject to the conditions set forth in the Agreement, the Company is hereby authorized to proceed with the acquisition, construction, equipping, and financing of the Facility and to advance such funds as may be necessary to accomplish such purposes.

4. Subject to the conducting of a public hearing, if required, pursuant to Sections 859-a and 862 of the Act and subject to the conditions set forth in the Agreement, the Company in accordance with the Agreement and where applicable its tenant or tenants, are appointed the true and lawful agents of the Agency (i) to acquire, construct, equip, and finance the Facility, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for completing the Facility, all with the same powers and the same validity as the Agency could do if acting in its own behalf.

5. This Project shall not proceed until it has conformed with all requirements of SEQR, conditions (if any) imposed by the Town of Manheim Planning Board, this Agency has adopted the Negative Declaration of the Town of Manheim or County of Herkimer as Lead Agency in the SEQR process, the Company has provided adequate proof that the Project permits are duly transferable and the leases and/or subleases are approved by the Agency, and the Company has provided sufficient proof of its ability to finance the Project.

6. Pursuant to Section 875(3) of the New York General Municipal Law, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases or otherwise benefit from the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases for the benefit of the Project if determined that: (i) the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases for the benefit of the Project, fails to comply with 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 sales and use tax exemption benefits, 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 sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

7. The Chairperson, Vice Chairperson, and/or Administrative Director of the Agency hereby authorized, on behalf of the Agency, to negotiate and execute (a) the Lease Agreement whereby the Company conveys a leasehold interest in the Project to the Agency, (b) the related Leaseback Agreement leasing the Project back to the Company, (c) the Project Benefits and Recapture Agreement, and (d) the PILOT Agreement; provided (1) the rental payments under the Leaseback Agreement include payment of all costs incurred by the Agency arising out of or related the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the PILOT Agreement are

consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

A copy of this resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours and notices of this negative declaration shall be filed, posted and published as shall be necessary to conform with the requirements of SEQR.

8. This Resolution shall take effect immediately.

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

I, the undersigned Assistant Secretary of the Herkimer County Industrial Development Agency, do hereby certify that I have compared the foregoing extract of the minutes of the Herkimer County Industrial Development Agency (the "Agency") held on August 31, 2021 with the original thereof of file in my office, and that the same is a true and correct copy of the original and of the whole of the original insofar as the same relates to the subject matters therein referred to.

I, FURTHER CERTIFY that (i) all members of the Agency had due notice of the meeting, (ii) the meeting was in all respects duly held, (iii) pursuant to Section 99 of the Public Officers Law (Open Meetings Law), the meeting was open to the general public, and public notice of the time and place of the meeting was duly given to the public and news media in accordance with Section 99 and (iv) there was a quorum of the members of the Agency present throughout the 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 and rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 31st day of August, 2021.

**HERKIMER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: Stacey Holleran
Stacey Holleran, Assistant Secretary

**AMENDED
INDUCEMENT RESOLUTION**

At a regular meeting of the Herkimer County Industrial Development Agency held at 420 E. German Street, Herkimer, New York, on August 31, 2021 at 8:00 A.M.

The meeting was called to order by the Chairman, and, upon the roll being called, the following were

PRESENT: Vincent J. Bono, David Chlus, Catherine Ricci, John Scarano,
Michael Werenczak, Ann Gaworecki

ABSENT: Cory Albrecht

ALSO PRESENT: John Piseck, Stacey Holleran, Anthony Hallak, Victoria Adams

The following resolution was offered and seconded with the members voting:

AYE

NAY

All

None

RESOLUTION OF THE HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the "AGENCY") TAKING OFFICIAL ACTION EXTENDING THE APPOINTMENT OF SUNEAST WATKINS ROAD SOLAR, LLC (the "COMPANY"), AND THE PRINCIPALS OF THE COMPANY, AS AGENT OF THE AGENCY IN CONNECTION WITH A SUBLEASE-LEASEBACK TRANSACTION, AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDUCEMENT AGREEMENT AND MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE PROJECT.

WHEREAS, the Herkimer County Industrial Development Agency (the “Agency”) is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York Chapter 410 of the Laws of 1970 and Chapter 158 of the Laws of 1981 of the State (collectively, the “Act”) to promote, develop, encourage and assist in the constructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, pollution control, commercial, research and recreation facilities for the purpose of promoting, attracting 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 (the to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to provide assistance in the construction and equipping of one or more “Projects” (as defined in the Act); and

WHEREAS, the Company presented an application (the “Application”) to the Agency October 24, 2019 an subsequently filed an amended Application on July 16, 2021, copies of which were presented at this meeting and copies of which are on file at the office of the Agency, requesting that the Agency consider undertaking; (i) to provide assistance through sales tax and mortgage tax incentives for the constructing, equipping, and financing of the above described project Facility and real property tax relief in the form of a Payment in Lieu of Tax Agreement (the “Assistance”), (ii) to acquire, construct, equip, and finance the Facility or to cause the Facility to be constructed, equipped, and financed; and (iii) to lease and/or sublease (with an obligation to leaseback) or sell the Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Facility will consist of the acquisition, construction, and equipping of a ground-mounted utility scale solar energy generation system on leased property totaling 282 acres located along Watkins and Sokol Roads in the Towns of Schuyler and Herkimer with an estimated capacity of 20 MWac \pm kilowatts. The Project has an estimated cost of Twenty Five Million Three Hundred and Six Thousand and 00/100 Dollars (\$25,306,000.00) (the “Project Costs”); and

WHEREAS, the project proposes to generate electricity that will allow residential and commercial subscribers to benefit from renewable energy that will offset traditional power sources; and

WHEREAS, the Agency has given due consideration to the Application and to representations by the Company; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto the Department of Environmental Conservation of the State Department of Environmental Conservation of the State (collectively “SEQR”), the Agency constitutes a State Agency; and

WHEREAS, the Town of Schuyler and Town of Herkimer Planning Boards evaluated the project and on February 4, 2020 and issued a Negative Declaration (the "SEQR Determination") under SEQR with respect to the Project. A copy of Negative Declaration is attached hereto as Exhibits A-1 and A-2; and

WHEREAS, the Agency has considered its environmental assessment form and related forms (the questionnaire submitted by the Company) the requisite criterion to determine whether the proposed action or the Project will have a significant effect on the environment; and

WHEREAS, if required by the Act, a public hearing will be duly noticed and had with respect to the Facility and the Assistance.

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

1. Based upon the application and other representations made by the Company to the Agency and the Agency's due deliberation, the Agency hereby makes the following findings and determinations:

A. The Facility constitutes a "Project" within the meaning of the Act.

B. The Assistance will induce the Company to locate the Facility in the County, thereby maintaining and increasing employment opportunities within the State of New York and otherwise furthering the purposes of the Agency as set forth in the Act.

C. Except as is permitted by law, the Facility will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Facility 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 Facility located in the State.

2. The form and substance of the proposed agreement in substantially the draft form presented to this meeting between the Agency and the Company setting forth the undertakings of the Agency and the Company with respect to providing of the Assistance (the "Agreement") are hereby approved. The Chairman, Vice Chairman and Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Agreement in substantially the form presented to this meeting, with such changes in terms and form as the Chairman, Vice Chairman or the Executive Director shall approve. The execution thereof by the Chairman, Vice Chairman or Executive Director shall constitute conclusive evidence of such approval.

3. Subject to the conducting of a public hearing, if required, pursuant to Sections 859-a and 862 of the Act and subject to the conditions set forth in the Agreement, the Company is hereby authorized to proceed with the acquisition, construction, equipping, and financing of the Facility and to advance such funds as may be necessary to accomplish such purposes.

4. Subject to the conducting of a public hearing, if required, pursuant to Sections 859-a and 862 of the Act and subject to the conditions set forth in the Agreement, the Company in accordance with the Agreement and where applicable its tenant or tenants, are appointed the true and lawful agents of the Agency (i) to acquire, construct, equip, and finance the Facility, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for completing the Facility, all with the same powers and the same validity as the Agency could do if acting in its own behalf.

5. This Project shall not proceed until it has conformed with all requirements of SEQR, conditions (if any) imposed by the Towns of Schuyler and Herkimer, this Agency has adopted the Negative Declaration of the Towns of Schuyler and Herkimer or County of Herkimer as Lead Agency in the SEQR process, the Company has provided adequate proof that the Project permits are duly transferable and the leases and/or subleases are approved by the Agency, and the Company has provided sufficient proof of its ability to finance the Project.

6. Pursuant to Section 875(3) of the New York General Municipal Law, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases or otherwise benefit from the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases for the benefit of the Project if determined that: (i) the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases for the benefit of the Project, fails to comply with 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 sales and use tax exemption benefits, 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 sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

7. The Chairperson, Vice Chairperson, and/or Administrative Director of the Agency hereby authorized, on behalf of the Agency, to negotiate and execute (a) the Lease Agreement whereby the Company conveys a leasehold interest in the Project to the Agency, (b) the related Leaseback Agreement leasing the Project back to the Company, (c) the Project Benefits and Recapture Agreement, and (d) the PILOT Agreement; provided (1) the rental payments under the Leaseback Agreement include payment of all costs incurred by the Agency arising out of or related the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the PILOT Agreement are

consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

A copy of this resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours and notices of this negative declaration shall be filed, posted and published as shall be necessary to conform with the requirements of SEQR.

8. This Resolution shall take effect immediately.

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

I, the undersigned Assistant Secretary of the Herkimer County Industrial Development Agency, do hereby certify that I have compared the foregoing extract of the minutes of the Herkimer County Industrial Development Agency (the "Agency") held on August 31, 2021 with the original thereof of file in my office, and that the same is a true and correct copy of the original and of the whole of the original insofar as the same relates to the subject matters therein referred to.

I, FURTHER CERTIFY that (i) all members of the Agency had due notice of the meeting, (ii) the meeting was in all respects duly held, (iii) pursuant to Section 99 of the Public Officers Law (Open Meetings Law), the meeting was open to the general public, and public notice of the time and place of the meeting was duly given to the public and news media in accordance with Section 99 and (iv) there was a quorum of the members of the Agency present throughout the 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 and rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 31st day of August, 2021.

**HERKIMER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: Stacey Holleran
Stacey Holleran, Assistant Secretary

INDUCEMENT RESOLUTION

At a regular meeting of the Herkimer County Industrial Development Agency held at 420 E. German Street, Herkimer, New York, on August 31, 2021 at 8:00 A.M.

The meeting was called to order by the Chairman, and, upon the roll being called, the following were

Present: Vincent J. Bono, David Chlus, Catherine Ricci, John Scarano,
Michael Werenczak, Ann Gaworecki

Absent: Cory Albrecht

Also Present: John Piseck, Stacey Holleran, Anthony Hallak, Victoria Adams

The following resolution was offered and seconded with the members voting:

AYE

NAY

All

None

RESOLUTION OF THE HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the “AGENCY”) TAKING OFFICIAL ACTION TOWARD APPOINTING CLEARPATH ENERGY LLC (the “COMPANY), AND THE PRINCIPALS OF THE COMPANY, AS AGENT OF THE AGENCY IN CONNECTION WITH A SUBLEASE-LEASEBACK TRANSACTION, AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDUCEMENT AGREEMENT AND MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE PROJECT.

WHEREAS, the Herkimer County Industrial Development Agency (the "Agency") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York Chapter 410 of the Laws of 1970 and Chapter 158 of the Laws of 1981 of the State (collectively, the "Act") to promote, develop, encourage and assist in the constructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, pollution control, commercial, research and recreation facilities for the purpose of promoting, attracting 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 (the to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to provide assistance in the construction and equipping of one or more "Projects" (as defined in the Act); and

WHEREAS, the Company has presented an application (the "Application") to the Agency, a copy of which was presented at this meeting and copies of which are on file at the office of the Agency, requesting that the Agency consider undertaking; (i) to provide assistance through sales tax and mortgage tax incentives for the constructing, equipping, and financing of the above described project Facility and real property tax relief in the form of a Payment in Lieu of Tax Agreement (the "Assistance"), (ii) to acquire, construct, equip, and finance the Facility or to cause the Facility to be constructed, equipped, and financed; and (iii) to lease and/or sublease (with an obligation to leaseback) or sell the Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Facility will consist of the acquisition, construction, and equipping of a ground-mounted utility scale solar energy generation system on leased property totaling 50 acres located at 526 State Route 170A, in the Town of Manheim with an estimated capacity of 7.5 MWac/5.0 MWac \pm kilowatts. The Project has an estimated cost of Nine Million Four Hundred Seventy Six Thousand Seven Hundred Twenty and 00/100 Dollars (\$9,476,720.00) (the "Project Costs"); and

WHEREAS, the project proposes to generate electricity that will allow residential and commercial subscribers to benefit from renewable energy that will offset traditional power sources; and

WHEREAS, the Agency has given due consideration to the Application and to representations by the Company; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto the Department of Environmental Conservation of the State Department of Environmental Conservation of the State (collectively "SEQR"), the Agency constitutes a State Agency; and

WHEREAS, the Town of Manheim Planning Board evaluated the project and on March 23, 2021 and issued a Negative Declaration (the "SEQR Determination") under SEQR with respect to the Project. A copy of Negative Declaration is attached hereto as Exhibit A; and

WHEREAS, the Agency has considered its environmental assessment form and related forms (the questionnaire submitted by the Company) the requisite criterion to determine whether the proposed action or the Project will have a significant effect on the environment; and

WHEREAS, if required by the Act, a public hearing will be duly noticed and had with respect to the Facility and the Assistance.

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

1. Based upon the application and other representations made by the Company to the Agency and the Agency's due deliberation, the Agency hereby makes the following findings and determinations:

A. The Facility constitutes a "Project" within the meaning of the Act.

B. The Assistance will induce the Company to locate the Facility in the County, thereby maintaining and increasing employment opportunities within the State of New York and otherwise furthering the purposes of the Agency as set forth in the Act.

C. Except as is permitted by law, the Facility will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Facility 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 Facility located in the State.

2. The form and substance of the proposed agreement in substantially the draft form presented to this meeting between the Agency and the Company setting forth the undertakings of the Agency and the Company with respect to providing of the Assistance (the "Agreement") are hereby approved. The Chairman, Vice Chairman and Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Agreement in substantially the form presented to this meeting, with such changes in terms and form as the Chairman, Vice Chairman or the Executive Director shall approve. The execution thereof by the Chairman, Vice Chairman or Executive Director shall constitute conclusive evidence of such approval.

3. Subject to the conducting of a public hearing, if required, pursuant to Sections 859-a and 862 of the Act and subject to the conditions set forth in the Agreement, the Company is hereby authorized to proceed with the acquisition, construction, equipping, and financing of the Facility and to advance such funds as may be necessary to accomplish such purposes.

4. Subject to the conducting of a public hearing, if required, pursuant to Sections 859-a and 862 of the Act and subject to the conditions set forth in the Agreement, the Company in accordance with the Agreement and where applicable its tenant or tenants, are appointed the true lawful agents of the Agency (i) to acquire, construct, equip, and finance the Facility, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for

completing the Facility, all with the same powers and the same validity as the Agency could do if acting in its own behalf.

5. This Project shall not proceed until it has conformed with all requirements of SEQR, conditions (if any) imposed by the Town of Manheim, this Agency has adopted the Negative Declaration of the Town of Manheim or County of Herkimer as Lead Agency in the SEQR process, the Company has provided adequate proof that the Project permits are duly transferable and the leases and/or subleases are approved by the Agency, and the Company has provided sufficient proof of its ability to finance the Project.

6. Pursuant to Section 875(3) of the New York General Municipal Law, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases or otherwise benefit from the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases for the benefit of the Project if determined that: (i) the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases for the benefit of the Project, fails to comply with 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 sales and use tax exemption benefits, 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 sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

7. The Chairperson, Vice Chairperson, and/or Administrative Director of the Agency are hereby authorized, on behalf of the Agency, to negotiate and execute (a) the Lease Agreement whereby the Company conveys a leasehold interest in the Project to the Agency, (b) the related Leaseback Agreement leasing the Project back to the Company, (c) the Project Benefits and Recapture Agreement, and (d) the PILOT Agreement; provided (i) the rental payments under the Leaseback Agreement include payment of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the PILOT Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

A copy of this resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours and notices of this negative declaration shall be filed, posted and published as shall be necessary to conform with the requirements of SEQR.

8. This Resolution shall take effect immediately.

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

I, the undersigned Assistant Secretary of the Herkimer County Industrial Development Agency, do hereby certify that I have compared the foregoing extract of the minutes of the Herkimer County Industrial Development Agency (the "Agency") held on August 31, 2021 with the original thereof of file in my office, and that the same is a true and correct copy of the original and of the whole of the original insofar as the same relates to the subject matters therein referred to.

I, FURTHER CERTIFY that (i) all members of the Agency had due notice of the meeting, (ii) the meeting was in all respects duly held, (iii) pursuant to Section 99 of the Public Officers Law (Open Meetings Law), the meeting was open to the general public, and public notice of the time and place of the meeting was duly given to the public and news media in accordance with Section 99 and (iv) there was a quorum of the members of the Agency present throughout the 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 and rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 31st day of August, 2021.

**HERKIMER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: Stacey Holleran
Stacey Holleran, Assistant Secretary