

## REAL PROPERTY TRANSFER AND INDEMNIFICATION AGREEMENT

**THIS REAL PROPERTY TRANSFER AND INDEMNIFICATION AGREEMENT** (this "Agreement") is made as of the \_\_\_ day of March, 2024, between the **COUNTY OF HERKIMER**, a New York state municipal corporation with an address at 109 Mary Street, Herkimer, New York 13350 (the "County"), the **HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation with an address at 420 East German Street, Suite 101a, Herkimer, New York 13350 (the "IDA"), and the **HERKIMER LOCAL DEVELOPMENT CORPORATION**, a New York local development corporation with an address at 420 East German Street, Suite 101a, Herkimer, New York 13350 (the "LDC") (the County, IDA and LDC individually a "Party" and collectively, the "Parties").

### RECITALS

**WHEREAS**, the County intends to foreclose (the "Foreclosure") on that certain parcel of real property located at 415 N. Main Street, Herkimer, New York 13350 (SBL No. 113.81-6-6), as more particularly described on **Exhibit A** attached hereto; and

**WHEREAS**, upon completion of the Foreclosure, the County is willing to transfer the Property to the LDC in consideration of the indemnitees from the IDA and the LDC, as further set forth herein.

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### 1.0 DEFINITIONS.

1.1 CERCLA shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

1.2 Deed shall mean the statutory form of bargain and sale deed, containing a covenant required by Section 13 of the New York Lien Law, to be executed and delivered by County to LDC pursuant to **Section 5.1** of this Agreement.

1.3 Effective Date shall mean the date first above written.

1.4 Environment shall mean any water or water vapor, land surface or subsurface, air, fish, wildlife, biota and all other natural resources.

1.5 Environmental Law shall mean any applicable, or relevant and appropriate, statutes, ordinances, by-laws, directives laws, rules or regulations, orders, guidance, standards of care, and any licenses, permits, orders, judgments, notices or other requirements issued pursuant thereto, enacted, promulgated or issued by any Governmental Agency relating to

pollution (or the cleanup thereof) or protection of public health and safety or the Environment, or to the identification, reporting, generation, manufacture, processing, distribution, use, handling, treatment, storage, disposal, transporting, presence, Release or threatened Release, of any Hazardous Substances. Without limiting the generality of the foregoing, Environmental Laws shall include CERCLA; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq., including their respective implementing regulations and any state analogs and amendments thereto, as applicable.

1.6 Governmental Agency shall mean any federal, state, local or foreign government, political subdivision, court, agency or other entity, body, organization or groups exercising any executive, legislative, judicial, quasi-judicial, regulatory or administrative function of government.

1.7 Hazardous Materials means any hazardous, toxic or regulated materials, pollutants, chemicals, or contaminants or any other substances regulated because of their effect or potential effect on public health and the environment, including, without limitation, asbestos, asbestos-containing materials, urea formaldehyde, polychlorinated biphenyls (PCBs), lead paint, radioactive materials, putrescible and infectious materials, and petroleum products as defined, determined or identified as such in any Environmental Law.

1.8 Property shall mean that certain parcel of real property situated at 415 N. Main Street, Village of Herkimer, County of Herkimer and State of New York (SBL No. 113.81-6-6), and being more particularly described on **Exhibit A** attached hereto, together with all rights, privileges, interests, easements, hereditaments and appurtenances thereunto in any way incident, appertaining or belonging, including, but not limited to all right, title and interest in and to adjacent streets, alleys, rights of way and any adjacent strips or gores of real estate.

1.9 Release shall have the meaning ascribed to it in CERCLA.

1.10 Transfer shall mean the transfer of title to the Property to be held at the time and place set forth in **Section 2.2** of this Agreement.

1.11 Transfer Price shall mean **TEN AND 00/100 DOLLARS (\$10.00) (U.S.)**.

## 2.0 TRANSFER.

2.1 Subject to the terms and conditions set forth in this Agreement, the County agrees to sell, convey, transfer and assign to the LDC and the LDC agrees to purchase from the County, all of the County's right, title and interest in and to the Property.

2.2 The Transfer shall take place at 10:00 a.m. within three (3) business days of completion of the Foreclosure in the offices of the IDA located at 420 East German Street, Suite 101a, Herkimer, New York 13350.

**3.0 CONDITION OF PREMISES.**

3.1 Subject to the terms of this Agreement, the LDC accepts the Property in its existing environmental condition as of the Effective Date.

3.2 LDC shall pay, protect, indemnify, defend, save and hold harmless the County from and against any and all liabilities, losses, damages (including punitive damages), penalties, costs (including reasonable attorneys' fees and costs), causes of action, suits, claims, demands or judgments of any nature whatsoever, howsoever caused, without regard to the form of action and whether based on strict liability, negligence or any other theory of recovery at law or in equity arising from any (i) environmental conditions at the Property prior to the Transfer; (ii) any Hazardous Materials Released, or any on, under, or from the Property prior to the Transfer; (iii) any failure of the County to comply with Environmental Laws or the terms or conditions of any environmental permits or orders applicable to Property, whether occurring prior to or after the Transfer; and (iv) any misconduct or negligence of the County in, at or on the Property prior to the Transfer.

3.3 The terms and conditions of this **Section 3** shall expressly survive the Transfer and shall not merge with the provisions of any closing documents, including, without limitation, the Deed.

**4.0 CONDITION OF SALE.**

4.1 The obligation of the Parties to consummate the transactions contemplated hereunder are conditioned upon the following:

(a) Representations and Warranties. The other Party's representations and warranties contained herein shall be true and correct in all material respects as of the date of this Agreement and the Transfer;

(b) Deliveries. As of the Transfer, each Party shall have tendered all deliveries to be made at the Transfer; and

(c) Actions, Suits, etc. There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings, against a Party that would adversely affect that Party's ability to perform its obligations under this Agreement.

**5.0 COUNTY'S TRANSFER OBLIGATIONS.**

At the Transfer, the County shall deliver to the LDC:

5.1 The Deed, properly executed and in proper form for recording, conveying good, marketable and insurable (at standard rates) title to the Property;

5.2 Such affidavits as the LDC's title company, if any, shall reasonably require, including, without limitation, LDC's title company's standard form of owner's affidavit with respect to commercial property;

5.3 Evidence reasonably satisfactory to the LDC and its title company that the person executing the documents at the Transfer on behalf of the County has the full right, power and authority to do so;

5.4 Possession of the Property in "as-is" condition, free of all persons or parties in possession; and

5.5 Any other documents reasonably required by this Agreement to be delivered by the County.

#### **6.0 LDC'S TRANSFER OBLIGATIONS.**

At the Transfer, the LDC shall:

6.1 Cause the Deed to be recorded, duly complete all required real property transfer tax returns and cause all such returns (and payment of any applicable transfer taxes) to be delivered to the appropriate officers;

6.2 Deliver the Transfer Price to the County by certified or bank check; and

6.3 Deliver any other documents reasonably required by this Agreement to be delivered by the LDC.

#### **7.0 TRANSFER COSTS.**

7.1 The LDC shall pay any and all real estate transfer taxes, if any, and documentary stamp taxes and all recording and filing fees incurred in connection with the recording of the Deed.

#### **8.0 INDEMNIFICATION BY THE IDA.**

8.1 As a material inducement to the County entering into this Agreement, the IDA shall pay, protect, indemnify, defend, save and hold harmless the County from and against any and all liabilities, losses, damages (including punitive damages), penalties, costs (including reasonable attorneys' fees and costs), causes of action, suits, claims, demands or judgments of any nature whatsoever, howsoever caused, without regard to the form of action and whether based on strict liability, negligence or any other theory of recovery at law or in equity arising from any surplus judgment that may be issued as a result of the Foreclosure.

#### **9.0 REIMBURSEMENT UPON SUBSEQUENT TRANSFER BY LDC**

9.1 Upon the subsequent transfer of the Property by the LDC, the LDC agrees to reimburse the County for a portion or all the tax liens cancelled at the time of foreclosure of the Property. In the event the LDC transfers the Property for an amount greater than the costs incurred by the LDC from its general fund sources (not including funds received from grants) to ready such premises for sale, the amount more than such costs shall be utilized to reimburse the County up to the amount of tax liens cancelled at the time of foreclosure of the Property. Such reimbursement shall be made to the County within thirty (30) days of the transfer of the Property. Also within said thirty (30) day period, the LDC shall provide a full accounting of the disposition of the proceeds of the sale, together with payment of any sums as may be due to the County.

**10.0 NOTICES.**

10.1 All notices under this Agreement shall be in writing and shall be delivered personally, sent by certified or registered mail, return receipt requested, or email addressed as follows:

- To the County: County of Herkimer  
109 Mary Street  
Herkimer, New York 13350  
Attention: Chairman of the Legislature  
bviscomi@herkimercounty.org
- To the IDA: Herkimer County Industrial Development Agency  
420 East German Street, Suite 101a  
Herkimer, New York 13350  
Attention: John J. Piseck, Jr.  
jpiseck@herkimercountyida.org
- With a copy to: Hodgson Russ LLP  
140 Pearl Street  
Buffalo, New York 14202  
Attention: Charles W. Malcomb, Esq.  
cmalcomb@hodgsonruss.com
- To the LDC: Herkimer Local Development Corporation  
420 East German Street, Suite 101a  
Herkimer, New York 13350  
Attention: John J. Piseck, Jr.  
jpiseck@herkimercountyida.org

**11.0 DEFAULT.**

11.1 If the County fails to perform its obligations under this Agreement, or if prior to the Transfer any one or more of the County's representations or warranties are breached in any material respect, the LDC may, in its sole and absolute discretion, elect to (i) terminate

this Agreement by giving the County and the IDA timely written notice of such election prior to or at the Transfer, (ii) pursue any of its remedies at law or in equity, including specific performance, or (iii) waive said failure or breach and proceed to the Transfer.

## 12.0 REPRESENTATIONS AND WARRANTIES.

12.1 County's Representations and Warranties. The County represents and warrants to the LDC and the IDA that:

(a) Organization and Authority. The County has been duly organized, is validly existing, and is in good standing in the state in which it was formed. The County has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by the County at the Transfer will be, authorized and executed and constitute, or will constitute, as appropriate, the valid and binding obligation of the County.

(b) Conflicts and Pending Actions. There is no agreement to which the County is a party or that is binding on the County that is in conflict with this Agreement nor are there any outstanding options to purchase or rights of first refusal which affect the Property. There is no action or proceeding pending or threatened against the County or relating to the Property that challenges or impairs the County's ability to execute or perform its obligations under this Agreement or that might detrimentally affect the value or the use or operation of the Property.

12.2 LDC's Representations and Warranties. The LDC represents and warrants to the County and the IDA that:

(a) Authority. The LDC has the full corporate right and authority required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by the LDC at the Transfer will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligation of the LDC.

(b) Conflicts and Pending Action. There is no agreement to which the LDC is a party which is binding on the LDC and which is in conflict with this Agreement. There is no action or proceeding pending or threatened against the LDC which challenges or impairs the LDC's ability to execute or perform its obligations under this Agreement.

The terms and conditions of this **Section 12** shall survive the Transfer and shall not merge with the provisions of any closing documents, including without limitation the Deed.

## 13.0 MISCELLANEOUS PROVISIONS.

13.1 The provisions of Section 5-1311 of the General Obligations Law shall apply to the sale and purchase of the Property provided for in this Agreement. For purposes of said provision, damage or condemnation shall be deemed to affect a "material part" of the

Property when such damage or condemnation renders fifty percent (50%) or more of the Property unusable.

13.2 This Agreement embodies and constitutes the entire understanding between the Parties with respect to the transaction contemplated herein, and all prior agreements, understandings, representations and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument signed by the Party against whom enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

13.3 No waiver by a Party hereto of any failure or refusal by any other Party hereto to comply with its obligations hereunder shall be deemed a waiver of any other or subsequent failure or refusal by such Party to so comply.

13.4 Should any Party employ an attorney or attorneys to enforce any of the provisions hereof, or to protect its interest in any manner arising under this Agreement, or to recover damages for the breach of this Agreement, the prevailing Party shall be entitled to payment by the other Party(ies) of all reasonable costs, charges and expenses, including attorney's fees in the trial and appellate courts, expended or incurred in connection therewith.

13.5 Time shall be of the essence for purposes of this Agreement.

13.6 This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York, without regard to principles of conflict of laws. The Parties agree that any action or proceeding arising out of or relating to this Agreement may be commenced in the Supreme Court of the State of New York, Herkimer County and that a summons and complaint commencing an action or proceeding in such court shall be properly served and shall confer personal jurisdiction if served personally, by registered or certified mail, or as otherwise provided under the laws of the State of New York. The Parties hereby waive any and all rights to change the venue of any action or proceeding brought to determine any claim or controversy involving this Agreement. The Parties hereby waive any rights each party may have to trial by jury in any dispute arising under this Agreement. This waiver shall survive Transfer and the delivery of the Deed.

13.7 The captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this contract or any of the provisions hereof.

13.8 This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs or successors and permitted assigns. No Party may assign their respective rights or delegate their respective duties arising under this Agreement without the prior written consent of the other Parties.

13.9 This Agreement shall not be binding or effective until properly executed and delivered by all Parties.

13.10 As used in this contract, the masculine shall include the feminine and neuter, the singular shall include the plural and the plural shall include the singular, as the context may require.

13.11 This Agreement may be executed in a number of identical counterparts, and by .pdf or other electronic signature, each of which for all purposes is to be deemed as original, and all of which constitute, collectively, one agreement.


13.12 Neither this Agreement nor any document referring to this Agreement shall be recorded in any public office.

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IN WITNESS WHEREOF, this Parties hereto have executed this Agreement as of the Effective Date.

**COUNTY:**

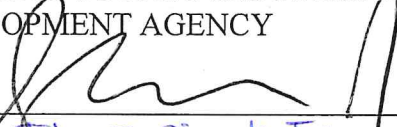
COUNTY OF HERKIMER

BY:   
Robert D. Hollum  
Chairman of the Legislature

Dated: March 13, 2024

**IDA:**

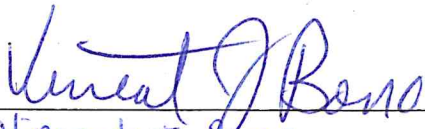
HERKIMER COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY:   
NAME: John J. Piseck, Jr.  
TITLE: Chief Executive officer

Dated: March 18, 2024

**LDC:**

HERKIMER LOCAL DEVELOPMENT CORPORATION

BY:   
NAME: Vincent J. Bono  
TITLE: Chairman

Dated: March 20, 2024

## EXHIBIT A

### DESCRIPTION OF REAL PROPERTY

415 N. Main Street, Herkimer, New York 13350 (SBL No. 113.81-6-6):

**ALL THOSE TWO TRACTS OR PARCELS OF LAND, SITUATE ON THE WEST SIDE OF North Main Street in the Village of Herkimer, County of Herkimer and State of New York, bounded and described as follows:**

#### PARCEL ONE

A lot known and distinguished as Lot Number Twenty-seven (27) on a map of a portion of the Village of Herkimer called the Myers Trust Estate, made March 2, 1864, by Samuel Green Surveyor, which map is recorded in Book 65 of Deeds at page 179, and reference is hereby made to said map or the record thereof for a more particular description of said lot. Said lot is one hundred and ninety-eight feet deep with the north and south lines of said lot parallel with each other, and is fifty feet in width on North Main Street.

The lot above described is the same lot which was conveyed by Abram B. Steele to said Franc I. Steele by deed bearing date March 19, 1892, and recorded in Herkimer County Clerk's Office in Book No. 216 of Deeds at Page 64.

#### PARCEL TWO

All that lot or parcel of land adjoining the lot above described and lying southerly thereof and known and distinguished as Lot Number 26 upon a map of a portion of the Village of Herkimer, called the Myers Trust Estate, which map is recorded in Herkimer County Clerk's Office in Book No. 65 of Deeds at Page 179.

**EXCEPTING**, however, that portion of said Lot No. 26 which was conveyed by William Smith to D.J. Farmer by deed dated May 1, 1883, and recorded in the Herkimer County Clerk's Office in Book No. 124 of Deeds at Page 532. The portion of said Lot No. 26 hereby conveyed is bounded northerly by the first parcel above described, easterly by North Main Street, southerly by lands of the Reformed Protestant Dutch Church and westerly by lands formerly owned by said D.J. Farmer. Said lot hereby conveyed is twenty-eight and one-third feet in width on said North Main Street and is about one hundred and twenty-two feet deep.