

**Motion By:** \_\_\_\_\_  
**Seconded By:** \_\_\_\_\_

**RESOLUTION**  
(Buckingham Properties LLC Project)

A regular meeting of the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA (the "Agency"), was held at the Ogden Town Hall, 269 Ogden Center Road, Spencerport, New York 14559, on September 17, 2019.

After the meeting had been duly called to order, the Chair announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to a certain Project more particularly described below.

RESOLUTION OF THE COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY D/B/A IMAGINE MONROE POWERED BY COMIDA TAKING OFFICIAL ACTION TO (i) ACKNOWLEDGE THE PUBLIC HEARING HELD BY THE AGENCY ON SEPTEMBER 10, 2019, WITH RESPECT TO THE PROJECT AS MORE FULLY DESCRIBED BELOW; (ii) MAKE A DETERMINATION WITH RESPECT TO THE PROJECT PURSUANT TO SEQRA (AS DEFINED BELOW); (iii) APPOINT BUCKINGHAM PROPERTIES LLC OR A RELATED ENTITY FORMED OR TO BE FORMED (COLLECTIVELY, THE "COMPANY") AND THE TENANT (DEFINED BELOW) AS ITS AGENTS TO UNDERTAKE THE PROJECT; (iv) AUTHORIZE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES AND USE TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, RENOVATION AND EQUIPPING OF THE PROJECT, (B) A MORTGAGE RECORDING TAX EXEMPTION AND (C) A REAL PROPERTY TAX ABATEMENT STRUCTURED THROUGH A PAYMENT-IN-LIEU-OF-TAX AGREEMENT ("PILOT AGREEMENT"); AND (v) AUTHORIZE THE NEGOTIATION, EXECUTION AND DELIVERY OF A PROJECT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT, PILOT AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE PROJECT.

WHEREAS, by Title I of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 55 of the Laws of 1972 of the State of New York (collectively, the "Act"), the Agency was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, **BUCKINGHAM PROPERTIES LLC**, a New York limited liability company for itself or a related entity formed or to be formed (collectively, the "Company") submitted an application to the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA (the "Agency") requesting the Agency to assist with a certain Project (the "Project"), consisting of: (A) the acquisition of a leasehold interest in an approximately 20-acre parcel of land located at 460 Buffalo Road in the City of Rochester, New York (the "Land") together with the existing approximately 489,000 square-foot building thereon (the "Existing Improvements"); (B) the renovation and modernization of the Existing

Improvements including, but not limited to, a new roof, dock replacement/additions, a new façade and parking lot work (the "Improvements"); and (C) the acquisition and installation therein, thereon or thereabout of certain machinery, equipment and related personal property (the "Equipment" and, together with the Land, the Existing Improvements and the Improvements, the "Facility"), for continued use by American Aerogel Corporation (the "Tenant") in its business as a steel producer; 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, pursuant to Section 859-a of the Act, on Tuesday, September 10, 2019, at 10:15 a.m., local time, at the Ebenezer Watts Conference Center, 49 S. Fitzhugh Street, Rochester, New York 14614, the Agency held a public hearing with respect to the Project and the proposed Financial Assistance being contemplated by the Agency (the "Public Hearing"), whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views; and

WHEREAS, it is contemplated that the Agency will (i) negotiate a project agreement (the "Project Agreement"), pursuant to which the Agency will appoint the Company as its agent for the purpose of acquiring, renovating and equipping the Improvements, (ii) negotiate and enter into a lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement") and payment-in-lieu-of-tax agreement (the "PILOT Agreement") with the Company, (iii) take title to or a leasehold interest in the Land, the Improvements and personal property constituting the Facility (once the Lease Agreement, Leaseback Agreement and PILOT Agreement have been negotiated), and (iv) provide financial assistance (the "Financial Assistance") to the Company in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, renovation and equipping of the Facility, (b) a mortgage recording tax exemption for financing relating to the Project and (c) a partial real property tax abatement structured through the PILOT Agreement; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities which may arise in connection with the transactions contemplated by the lease of the Facility; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at 6 N.Y.C.R.R. Part 617, as amended (collectively referred to as "SEQRA"), the Agency must satisfy the applicable requirements set forth in SEQRA, as necessary, prior to making a final determination whether to undertake the Project.

NOW, THEREFORE, BE IT RESOLVED by the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA as follows:

Section 1. The Company has presented an application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's application and other correspondence submitted by the Company to the Agency, the Agency hereby finds and determines that:

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

(b) The Facility constitutes a "project", as such term is defined in the Act; and

(c) It is desirable and in the public interest for the Agency to appoint the Company as its agent for purposes of acquiring, renovating and equipping the Improvements; and

(d) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in Monroe County and otherwise furthering the purposes of the Agency as set forth in the Act; and

(e) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York (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 Project located within the State; and the Agency hereby finds that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries; and

(f) Pursuant to SEQRA, the Project constitutes a "Type II Action" as said term is defined in SEQRA, and therefore no further action is required to be taken under SEQRA.

Section 2. The Agency hereby determines that the acquisition of a leasehold interest in and the renovation, equipping, repair and maintenance of the Facility by the Agency and the lease or sublease of the Facility to the Company will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the County of Monroe and the people of the State of New York and improve their standard of living, thereby serving the public purposes of the Act and, therefore, the same is approved.

Section 3. The Agency hereby approves the cost/benefit report submitted by the Company listing the proposed cost/benefits of the Project.

Section 4. Subject to the Company executing the Project Agreement and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, renovation and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency to acquire, renovate and equip the Facility, and such appointment includes the following activities as they relate to the construction, erection, completion, use, repair and maintenance of the Improvements and the purchase, use, lease, placement, installation, repair, maintenance and replacement of the Equipment, whether or not any materials or supplies

described below are incorporated into or become an integral part of the Improvements or the Equipment: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with acquiring, renovating, equipping, repairing and maintaining the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description in connection with acquiring, renovating, equipping, repairing and maintaining the Facility, and (iii) all purchases, leases, rentals and uses of equipment, machinery, and other tangible personal property (including installation costs with respect thereto), installed or placed in, upon or under the Improvements, Land or the Equipment, including all repairs, maintenance and replacement of all such property. Said agents are authorized to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agents 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 with the same validity as the Agency could do if acting on its own behalf. As agent of the Agency, the Company is authorized to delegate such agency, in whole or in part, to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses; provided, however, the Project Agreement shall expire on **June 30, 2020** (unless extended for good cause by the Executive Director, Chairman or Vice Chairman of the Agency) if the Lease Agreement, Leaseback Agreement and PILOT Agreement contemplated have not been executed and delivered.

Section 5. Based upon the representation and warranties made by the Company in its application for financial assistance, the Agency hereby authorizes and approves (i) the Company as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to **\$2,923,368**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$233,869**; (ii) a mortgage (or mortgages), in connection with the financing of the Facility or portions thereof and including any refinancing thereof, securing an aggregate principal amount not to exceed **\$4,500,000**, resulting in a mortgage tax exemption not to exceed **\$33,750**; and (iii) a partial real property tax abatement.

Section 6. The Agency also hereby authorizes and approves the Tenant, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to **\$450,000**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$36,000**.

Section 7. Pursuant to Section 875(3) of the New York General Municipal Law, the Agency may recover or recapture from the Company and/or the Tenant, their respective agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company and/or the Tenant, their respective agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company and/or the Tenant, their respective agents, consultants, subcontractors, 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 and/or the Tenant, their respective agents, consultants, subcontractors, 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 and/or the Tenant, their respective agents, consultants, subcontractors, 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 and/or the Tenant, their respective agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, shall (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.

Section 8. The form and substance of the Lease Agreement, the Leaseback Agreement and the PILOT Agreement (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 9. The Executive Director, Chairman or Vice Chairman of the Agency are hereby authorized, on behalf of the Agency, to negotiate and execute (A) the Lease Agreement whereby the Company leases the Project to the Agency, (B) the related Leaseback Agreement conveying the Project back to the Company, and (C) the PILOT Agreement; provided, that, (i) the rental payments under the Leaseback Agreement include payments 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.

Section 10. The Executive Director, Chairman or Vice Chairman of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver any mortgage, assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by any lender identified by the Company (the "Lender") up to a maximum principal amount necessary to undertake the Project, acquire the Facility and/or finance or refinance equipment and other personal property and related transactional costs (hereinafter, with the Lease Agreement, Leaseback Agreement and PILOT Agreement are collectively referred to as, the "Agency Documents"); and, where appropriate, the Secretary or Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency (if any) to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Executive Director, Chairman or Vice Chairman of the Agency shall approve, the execution thereof by the Executive Director, Chairman or Vice Chairman of the Agency to constitute conclusive evidence of such approval; provided in all events recourse against the Agency is limited to the Agency's interest in the Project.

Section 11. The Executive Director, Chairman or Vice Chairman 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 and to execute and deliver all such certificates, instruments and documents, to 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 such Executive Director, Chairman or Vice Chairman of the Agency acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 12. This resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to vote on roll call, which resulted as follows:

	<u><i>Yea</i></u>	<u><i>Nay</i></u>	<u><i>Absent</i></u>	<u><i>Abstain</i></u>
Jay Popli				
Anthony Meleo				
Troy Milne				
Jared Lusk				
Lisa Bolzner				
Ann L. Burr				

The Resolutions were thereupon duly adopted.

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

I, the undersigned Executive Director of the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA (the "Agency"), including the resolutions contained therein, held on September 17, 2019, 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 Lease Agreement and the Leaseback Agreement contained in this transcript of proceedings are each in substantially the form presented to the Agency and approved by said meeting.

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with Sections 103 and 104 of the New York Public Officers Law (Open Meetings Law) that all members of the Agency had due notice of the meeting and that the meeting was in all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand on this 17<sup>th</sup> day of September, 2019.

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Jeffrey R. Adair, Executive Director

**Motion By:** \_\_\_\_\_  
**Seconded By:** \_\_\_\_\_

**RESOLUTION**  
(Buckingham Properties LLC Project)

A regular meeting of the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA (the "Agency"), was held at the Ogden Town Hall, 269 Ogden Center Road, Spencerport, New York 14559, on September 17, 2019.

After the meeting had been duly called to order, the Chair announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to a certain Project more particularly described below.

RESOLUTION OF THE COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY D/B/A IMAGINE MONROE POWERED BY COMIDA (i) ACKNOWLEDGING THE PUBLIC HEARING HELD BY THE AGENCY ON JUNE 17, 2019, WITH RESPECT TO THE BUCKINGHAM PROPERTIES LLC (THE "COMPANY") PROJECT (THE "PROJECT"); (ii) MAKING A DETERMINATION WITH RESPECT TO THE PROJECT PURSUANT TO SEQRA (AS DEFINED BELOW); (iii) APPOINTING THE COMPANY AS AGENT OF THE AGENCY; (iv) AUTHORIZING FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES AND USE TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT, (B) IF NECESSARY, A MORTGAGE RECORDING TAX EXEMPTION AND (C) A REAL PROPERTY TAX ABATEMENT STRUCTURED THROUGH A PAYMENT-IN-LIEU-OF-TAX AGREEMENT ("PILOT AGREEMENT"); AND (v) AUTHORIZING THE NEGOTIATION, EXECUTION AND DELIVERY OF AN AGENT, FINANCIAL ASSISTANCE AND PROJECT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT, PILOT AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE PROJECT.

WHEREAS, by Title I of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 55 of the Laws of 1972 of the State of New York (collectively, the "Act"), the Agency was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, **BUCKINGHAM PROPERTIES LLC**, a New York limited liability company, for itself or an entity formed or to be formed (collectively, the "Company"), submitted an application to the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA (the "Agency") requesting the Agency to assist with a certain project (the "Project") consisting of: (A) the acquisition of a leasehold interest in a portion of an approximately 0.79-acre parcel of land located at 260 East Broad Street in the City of Rochester, Monroe County, New York (the "Land"); (B) the construction thereon of a five-story, approximately 106,000 square-foot mixed-use building, the first floor of which will be for retail



use, the second and third floors will be used as office space by Butler/Till Media Services, Inc. (the "Tenant") and the fourth and fifth floors will be a mix of market-rate and affordable residential units (collectively, the "Improvements"); and (C) the acquisition and installation therein, thereon or thereabout of certain machinery, equipment and related personal property (the "Equipment" and, together with the Land and the Improvements, the "Facility"); 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, pursuant to Section 859-a of the Act, on Monday, June 17, 2019, at 10:15 a.m., local time, at the Ebenezer Watts Conference Center, 49 S. Fitzhugh Street, Rochester, New York 14614, the Agency held a public hearing with respect to the Project and the proposed Financial Assistance being contemplated by the Agency (the "Public Hearing"), whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views; and

WHEREAS, it is contemplated that the Agency will (i) negotiate an agent agreement (the "Agent Agreement"), pursuant to which the Agency will appoint the Company as its agent for the purpose of acquiring, renovating and equipping the Project, (ii) negotiate and enter into a lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement") and payment-in-lieu-of-tax agreement (the "PILOT Agreement") with the Company, (iii) take title to or a leasehold interest in the Land, the Improvements and personal property constituting the Facility (once the Lease Agreement, Leaseback Agreement and PILOT Agreement have been negotiated), and (iv) provide financial assistance (the "Financial Assistance") to the Company in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Facility, (b) if necessary, a mortgage recording tax exemption for financing relating to the Project and (c) a partial real property tax abatement structured through the PILOT Agreement; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities which may arise in connection with the transactions contemplated by the lease of the Facility; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at 6 N.Y.C.R.R. Part 617, as amended (collectively referred to as "SEQRA"), the Agency must satisfy the applicable requirements set forth in SEQRA, as necessary, prior to making a final determination whether to undertake the Project; and

WHEREAS, the Rochester City Planning Board (the "Planning Board"), acting as "lead agency" (as such term is defined under SEQRA), undertook an "uncoordinated review" (as such term is defined under SEQRA) of the Project, determined that the Project was an "Unlisted Action" (as such term is defined under SEQRA) and on August 20, 2019 issued a "negative declaration" (as such term is defined under SEQRA) with respect to the Project (the "Negative Declaration").

NOW, THEREFORE, BE IT RESOLVED by the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA as follows:

Section 1. The Company has presented an application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's application and other correspondence submitted by the Company to the Agency, the Agency hereby finds and determines that:

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

(b) The Facility constitutes a "project", as such term is defined in the Act; and

(c) It is desirable and in the public interest for the Agency to appoint the Company as its agent for purposes of acquiring, constructing and equipping the Project; and

(d) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in Monroe County and otherwise furthering the purposes of the Agency as set forth in the Act; and

(e) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York (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 Project located within the State; and the Agency hereby finds that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries; and

(f) The Project involves an Unlisted Action; the review is uncoordinated. The Planning Board, acting as lead agency, issued the Negative Declaration. The Agency, acting as an "involved agency" (as such term is defined under SEQRA), having undertaken a thorough and comprehensive review of the materials presented by the Company, including but not limited to, the Application and related documents delivered by the Company to the Agency, the Short Environmental Assessment Form and the Planning Board's Negative Declaration, as well as other representations made by the Company to the Agency in connection with the Project, hereby determines that the Project does not pose a potential significant adverse impact on the environment and thus adopts the Planning Board's Negative Declaration. The Agency further determines that all of the provisions of SEQRA that are required to be complied with as a condition precedent to the approval of the Financial Assistance contemplated by the Agency with respect to the Project have been satisfied.

Section 2. The Agency hereby determines that the acquisition of a leasehold interest in and the construction, equipping, repair and maintenance of the Facility by the Agency and the

lease or sublease of the Facility to the Company will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the County of Monroe and the people of the State of New York and improve their standard of living, thereby serving the public purposes of the Act and, therefore, the same is approved.

Section 3. The Agency hereby approves the cost/benefit report submitted by the Company listing the proposed cost/benefits of the Project.

Section 4. Subject to the Company executing the Agent Agreement and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, renovation and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency to acquire, renovate and equip the Facility, and such appointment includes the following activities as they relate to the construction, erection, completion, use, repair and maintenance of the Improvements and the purchase, use, lease, placement, installation, repair, maintenance and replacement of the Equipment, whether or not any materials or supplies described below are incorporated into or become an integral part of the Improvements or the Equipment: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with acquiring, constructing, equipping, repairing and maintaining the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description in connection with acquiring, constructing, equipping, repairing and maintaining the Facility, and (iii) all purchases, leases, rentals and uses of equipment, machinery, and other tangible personal property (including installation costs with respect thereto), installed or placed in, upon or under the Improvements, Land or the Equipment, including all repairs, maintenance and replacement of all such property. Said agents are authorized to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agents 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 with the same validity as the Agency could do if acting on its own behalf. As agent of the Agency, the Company is authorized to delegate such agency, in whole or in part, to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses; provided, however, the Agent Agreement shall expire on **December 31, 2020** (unless extended for good cause by the Executive Director, Chairman or Vice Chairman of the Agency) if the Lease Agreement, Leaseback Agreement and PILOT Agreement contemplated have not been executed and delivered. The Executive Director, Chairman or Vice Chairman of the Agency are authorized and directed to execute and deliver to said agent an appropriate letter on Agency letterhead describing the authority granted under this resolution.

Section 5. Based upon the representation and warranties made by the Company in its application for financial assistance, the Agency hereby authorizes and approves (i) the Company as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to **\$15,080,000**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$1,206,400**; (ii) a mortgage tax exemption in connection with the financing of the Facility or portions thereof and including any refinancing

thereof not to exceed **\$123,750**; and (iii) real property tax abatement pursuant to the Agency's uniform tax exemption policy for a ten (10) year term under its JobsPlus program.

Section 6. The Agency also hereby authorizes and approves the Tenant, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to **\$850,000**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$68,000**.

Section 7. Pursuant to Section 875(3) of the New York General Municipal Law, the Agency may recover or recapture from the Company and/or the Tenant, their respective agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company and/or the Tenant, their respective agents, consultants, subcontractors, 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 and/or the Tenant, their respective agents, consultants, subcontractors, 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 and/or the Tenant, their respective agents, consultants, subcontractors, 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 and/or the Tenant, their respective agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, shall (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.

Section 8. The form and substance of the Lease Agreement, the Leaseback Agreement and the PILOT Agreement (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 9. The Executive Director, Chairman or Vice Chairman of the Agency are hereby authorized, on behalf of the Agency, to negotiate and execute (A) the Lease Agreement whereby the Company leases the Project to the Agency, (B) the related Leaseback Agreement conveying the Project back to the Company, and (C) the PILOT Agreement; provided, that, (i) the rental payments under the Leaseback Agreement include payments 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.

Section 10. The Executive Director, Chairman or Vice Chairman of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver any mortgage, assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents reasonably

contemplated by these resolutions or required by any lender identified by the Company (the "Lender") up to a maximum principal amount necessary to undertake the Project, acquire the Facility and/or finance or refinance equipment and other personal property and related transactional costs (hereinafter, with the Lease Agreement, Leaseback Agreement and PILOT Agreement are collectively referred to as, the "Agency Documents"); and, where appropriate, the Secretary or Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency (if any) to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Executive Director, Chairman or Vice Chairman of the Agency shall approve, the execution thereof by the Executive Director, Chairman or Vice Chairman of the Agency to constitute conclusive evidence of such approval; provided in all events recourse against the Agency is limited to the Agency's interest in the Project.

Section 11. The Executive Director, Chairman or Vice Chairman 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 and to execute and deliver all such certificates, instruments and documents, to 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 such Executive Director, Chairman or Vice Chairman of the Agency acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 12. This resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to vote on roll call, which resulted as follows:

	<u><i>Yea</i></u>	<u><i>Nay</i></u>	<u><i>Absent</i></u>	<u><i>Abstain</i></u>
Jay Popli				
Anthony Meleo				
Troy Milne				
Jared Lusk				
Lisa Bolzner				
Ann L. Burr				

The Resolutions were thereupon duly adopted.

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

I, the undersigned Executive Director of the County of Monroe Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA (the "Agency"), including the resolutions contained therein, held on September 17, 2019, 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 Lease Agreement and the Leaseback Agreement contained in this transcript of proceedings are each in substantially the form presented to the Agency and approved by said meeting.

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with Sections 103 and 104 of the New York Public Officers Law (Open Meetings Law) that all members of the Agency had due notice of the meeting and that the meeting was in all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand on this 17<sup>th</sup> day of September, 2019.

---

Jeffrey R. Adair, Executive Director

**Motion By:** \_\_\_\_\_  
**Seconded By:** \_\_\_\_\_

## **RESOLUTION**

(Mid-Town Athletic Club, LLC Project)

A regular meeting of the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA (the "Agency"), was held at the Ogden Town Hall, 269 Ogden Center Road, Spencerport, New York 14559, on September 17, 2019.

After the meeting had been duly called to order, the Chair announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to a certain Project more particularly described below.

RESOLUTION OF THE COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY D/B/A IMAGINE MONROE POWERED BY COMIDA TAKING OFFICIAL ACTION TO (i) ACKNOWLEDGE THE PUBLIC HEARING HELD BY THE AGENCY ON SEPTEMBER 10, 2019, WITH RESPECT TO THE PROJECT AS MORE FULLY DESCRIBED BELOW; (ii) MAKE A DETERMINATION WITH RESPECT TO THE PROJECT PURSUANT TO SEQRA (AS DEFINED BELOW); (iii) APPOINT MID-TOWN ATHLETIC CLUB, LLC OR A RELATED ENTITY FORMED OR TO BE FORMED (COLLECTIVELY, THE "COMPANY") AS ITS AGENT TO UNDERTAKE THE PROJECT; (iv) AUTHORIZE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES AND USE TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, RENOVATION AND EQUIPPING OF THE PROJECT AND (B) A MORTGAGE RECORDING TAX EXEMPTION; AND (v) AUTHORIZE THE NEGOTIATION, EXECUTION AND DELIVERY OF A PROJECT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE PROJECT.

WHEREAS, by Title I of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 55 of the Laws of 1972 of the State of New York (collectively, the "Act"), the Agency was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, **MID-TOWN ATHLETIC CLUB, LLC**, a New York limited liability company for itself or a related entity formed or to be formed (collectively, the "Company") submitted an application to the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA (the "Agency") requesting the Agency to assist with a certain Project (the "Project"), consisting of: (A) the acquisition or retention of a leasehold interest an approximately 8±-acre parcel of land located at 200-210 E. Highland Drive in the City of Rochester, New York (the "Land") together with the existing approximately 125,000 square-foot health club thereon (the "Existing Improvements"); (B) the renovation of approximately 57,000 square feet of space within the Existing Improvements consisting of a fully renovated front façade/entrance lobby as well as refurbishing the fitness, relaxation and social areas, new

stationary cycling, group fitness, boxing and cross training studios and an expansive indoor turf field and renovation of the existing fitness, weight, yoga, retail, spa and restaurant/café areas and locker rooms (collectively, the "Improvements"); and (C) the acquisition and installation therein, thereon or thereabout of certain machinery, equipment and related personal property (the "Equipment" and, together with the Land and the Improvements, the "Facility"); 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, pursuant to Section 859-a of the Act, on Tuesday, September 10, 2019, at 10:00 a.m., local time, at the Ebenezer Watts Conference Center, 49 S. Fitzhugh Street, Rochester, New York 14614, the Agency held a public hearing with respect to the Project and the proposed Financial Assistance being contemplated by the Agency (the "Public Hearing"), whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views; and

WHEREAS, it is contemplated that the Agency will (i) negotiate a project agreement (the "Project Agreement"), pursuant to which the Agency will appoint the Company as its agent for the purpose of acquiring, renovating and equipping the Improvements, (ii) negotiate and enter into a lease agreement (the "Lease Agreement") and leaseback agreement (the "Leaseback Agreement") with the Company, (iii) take title to or a leasehold interest in the Land, the Improvements and personal property constituting the Facility (once the Lease Agreement and Leaseback Agreement have been negotiated), and (iv) provide financial assistance (the "Financial Assistance") to the Company in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, renovation and equipping of the Facility and (b) a mortgage recording tax exemption for financing relating to the Project; and

WHEREAS, the Project constitutes a "retail" project as defined under Section 862 of the Act and as such requires additional findings; and

WHEREAS, the Company has represented to the Agency that the Project is located in an area which is contiguous to a "highly distressed area" as defined in Section 862(b)(ii) of the Act; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities which may arise in connection with the transactions contemplated by the lease of the Facility; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at 6 N.Y.C.R.R. Part 617, as amended (collectively referred to as "SEQRA"), the Agency must satisfy the applicable requirements set forth in SEQRA, as necessary, prior to making a final determination whether to undertake the Project.

NOW, THEREFORE, BE IT RESOLVED by the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA as follows:



Section 1. The Company has presented an application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's application and other correspondence submitted by the Company to the Agency, the Agency hereby finds and determines that:

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

(b) The Facility constitutes a "project", as such term is defined in the Act; and

(c) It is desirable and in the public interest for the Agency to appoint the Company as its agent for purposes of acquiring, renovating and equipping the Improvements; and

(d) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in Monroe County and otherwise furthering the purposes of the Agency as set forth in the Act; and

(e) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York (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 Project located within the State; and the Agency hereby finds that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries; and

(f) Pursuant to Section 862 of the Act, the Project constitutes a "retail" project. Based on representations made by the Company to the Agency, the Agency hereby finds that the Project is located contiguous to an area designated as a "highly distressed area" as defined in Section 862(b)(ii) of the Act; and

(g) Pursuant to SEQRA, the Project constitutes a "Type II Action" as said term is defined in SEQRA, and therefore no further action is required to be taken under SEQRA.

Section 2. The Agency hereby determines that the acquisition of a leasehold interest in and the renovation, equipping, repair and maintenance of the Facility by the Agency and the lease or sublease of the Facility to the Company will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the County of Monroe and the people of the State of New York and improve their standard of living, thereby serving the public purposes of the Act and, therefore, the same is approved.

Section 3. The Agency hereby approves the cost/benefit report submitted by the Company listing the proposed cost/benefits of the Project.

Section 4. Subject to the Company executing the Project Agreement and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, renovation and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency to acquire, renovate and equip the Facility, and such appointment includes the following activities as they relate to the construction, erection, completion, use, repair and maintenance of the Improvements and the purchase, use, lease, placement, installation, repair, maintenance and replacement of the Equipment, whether or not any materials or supplies described below are incorporated into or become an integral part of the Improvements or the Equipment: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with acquiring, renovating, equipping, repairing and maintaining the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description in connection with acquiring, renovating, equipping, repairing and maintaining the Facility, and (iii) all purchases, leases, rentals and uses of equipment, machinery, and other tangible personal property (including installation costs with respect thereto), installed or placed in, upon or under the Improvements, Land or the Equipment, including all repairs, maintenance and replacement of all such property. Said agents are authorized to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agents 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 with the same validity as the Agency could do if acting on its own behalf. As agent of the Agency, the Company is authorized to delegate such agency, in whole or in part, to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses; provided, however, the Project Agreement shall expire on **December 31, 2020** (unless extended for good cause by the Executive Director, Chairman or Vice Chairman of the Agency) if the Lease Agreement and Leaseback Agreement contemplated have not been executed and delivered.

Section 5. Based upon the representation and warranties made by the Company in its application for financial assistance, the Agency hereby authorizes and approves (i) the Company as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to **\$5,850,000**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$468,000**; and (ii) a mortgage (or mortgages), in connection with the financing of the Facility or portions thereof and including any refinancing thereof, securing an aggregate principal amount not to exceed **\$9,000,000**, resulting in a mortgage tax exemption not to exceed **\$67,500**.

Section 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, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, 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, 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, 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, shall (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.

Section 7. The form and substance of the Lease Agreement and the Leaseback Agreement (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 8. The Executive Director, Chairman or Vice Chairman of the Agency are hereby authorized, on behalf of the Agency, to negotiate and execute (A) the Lease Agreement whereby the Company leases the Project to the Agency and (B) the related Leaseback Agreement conveying the Project back to the Company; provided, that, the rental payments under the Leaseback Agreement include payments 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.

Section 9. The Executive Director, Chairman or Vice Chairman of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver any mortgage, assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by any lender identified by the Company (the "Lender") up to a maximum principal amount necessary to undertake the Project, acquire the Facility and/or finance or refinance equipment and other personal property and related transactional costs (hereinafter, with the Lease Agreement and Leaseback Agreement are collectively referred to as, the "Agency Documents"); and, where appropriate, the Secretary or Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency (if any) to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Executive Director, Chairman or Vice Chairman of the Agency shall approve, the execution thereof by the Executive Director, Chairman or Vice Chairman of the Agency to constitute conclusive evidence of such approval; provided in all events recourse against the Agency is limited to the Agency's interest in the Project.

Section 10. The Executive Director, Chairman or Vice Chairman 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 and to execute and deliver all such certificates, instruments and documents, to 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 such Executive Director, Chairman or Vice Chairman of the Agency acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 11. This resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to vote on roll call, which resulted as follows:

	<u><i>Yea</i></u>	<u><i>Nay</i></u>	<u><i>Absent</i></u>	<u><i>Abstain</i></u>
Jay Popli				
Anthony Meleo				
Troy Milne				
Jared Lusk				
Lisa Bolzner				
Ann L. Burr				

The Resolutions were thereupon duly adopted.

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

I, the undersigned Executive Director of the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA (the "Agency"), including the resolutions contained therein, held on September 17, 2019, 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 Lease Agreement and the Leaseback Agreement contained in this transcript of proceedings are each in substantially the form presented to the Agency and approved by said meeting.

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with Sections 103 and 104 of the New York Public Officers Law (Open Meetings Law) that all members of the Agency had due notice of the meeting and that the meeting was in all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand on this 17<sup>th</sup> day of September, 2019.

---

Jeffrey R. Adair, Executive Director

*Motion By:* \_\_\_\_\_  
*Seconded By:* \_\_\_\_\_

**RESOLUTION**  
(The DiMarco Group, LLC Project)

A regular meeting of the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA (the "Agency"), was held at the Ogden Town Hall, 269 Ogden Center Road, Spencerport, New York 14559, on September 17, 2019.

After the meeting had been duly called to order, the Chair announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to a certain Project more particularly described below.

RESOLUTION OF THE COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY D/B/A IMAGINE MONROE POWERED BY COMIDA TAKING OFFICIAL ACTION TO (i) APPOINT THE DIMARCO GROUP, LLC OR A RELATED ENTITY FORMED OR TO BE FORMED (COLLECTIVELY, THE "COMPANY") AND THE TENANT (DEFINED BELOW) AS ITS AGENTS TO UNDERTAKE A CERTAIN PROJECT AS MORE FULLY DESCRIBED BELOW; (ii) PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF A SALES AND USE TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE RENOVATION AND EQUIPPING OF THE PROJECT; AND (iii) AUTHORIZE THE EXECUTION AND DELIVERY OF A PROJECT AGREEMENT AND RELATED DOCUMENTS AND (iv) MAKE A DETERMINATION WITH RESPECT TO THE PROJECT PURSUANT TO SEQRA (AS DEFINED BELOW).

WHEREAS, by Title I of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 55 of the Laws of 1972 of the State of New York (collectively, the "Act"), the Agency was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, **THE DIMARCO GROUP, LLC**, a Nevada limited liability company for itself or a related entity formed or to be formed (collectively, the "Company") has requested that the Agency assist with a certain Project (the "Project"), consisting of: (A) the build-out/renovation of the first floor (approximately 10,000 square feet of space) (the "Improvements") of the existing building located at 4050 West Ridge Road in the Town of Greece, New York including, but not limited to, creating a mixture of private offices, open work areas, meeting rooms and common spaces designated to accommodate freelancers, small businesses, remote workers and other professionals; and (B) the acquisition and installation therein, thereon or thereabout of certain machinery, equipment and related personal property including, but not limited to, furniture, fixtures, office equipment and signage (collectively, the "Equipment" and, together with the Improvements, the "Facility"), to be subleased to DRO Greece LLC (the "Tenant"), a franchisee for Venture X, a co-working franchise; 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, it is contemplated that the Agency will (i) negotiate a project agreement (the "Project Agreement"), pursuant to which the Agency will appoint the Company as its agent for the purpose of renovating and equipping the Facility and (ii) provide financial assistance (the "Financial Assistance") to the Company in the form of a sales and use tax exemption for purchases and rentals related to the build-out/renovation and equipping of the Improvements; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at 6 N.Y.C.R.R. Part 617, as amended (collectively referred to as "SEQRA"), the Agency must satisfy the applicable requirements set forth in SEQRA, as necessary, prior to making a final determination whether to undertake the Project.

NOW, THEREFORE, BE IT RESOLVED by the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA as follows:

Section 1. The Company has presented an application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's application and other correspondence submitted by the Company to the Agency, the Agency hereby finds and determines that:

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

(b) The Facility constitutes a "project", as such term is defined in the Act; and

(c) It is desirable and in the public interest for the Agency to appoint the Company as its agent for purposes of renovating and equipping the Improvements; and

(d) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in Monroe County and otherwise furthering the purposes of the Agency as set forth in the Act; and

(e) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York (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 Project located within the State; and the Agency hereby finds that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries; and

(f) Pursuant to SEQRA, the Project constitutes a "Type II Action" as said term is defined in SEQRA, and therefore no further action is required to be taken under SEQRA.

Section 2. The Agency hereby determines that the Project will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the County of Monroe and the people of the State of New York and improve their standard of living, thereby serving the public purposes of the Act and, therefore, the same is approved.

Section 3. The Agency hereby approves the cost/benefit report submitted by the Company listing the proposed cost/benefits of the Project.

Section 4. Subject to the Company and the Tenant executing respective Project Agreements and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company and the Tenant to proceed with the build-out/renovation and equipping of the Project and hereby appoints the Company and the Tenant as the true and lawful agents of the Agency to renovate and equip the Improvements, and such appointment includes the following activities as they relate to the construction, erection, completion, use, repair and maintenance of the Improvements and the purchase, use, lease, placement, installation, repair, maintenance and replacement of the Equipment, whether or not any materials or supplies described below are incorporated into or become an integral part of the Improvements or the Equipment: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with renovating, equipping, repairing and maintaining the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description in connection with renovating, equipping, repairing and maintaining the Facility, and (iii) all purchases, leases, rentals and uses of equipment, machinery, and other tangible personal property (including installation costs with respect thereto), installed or placed in, upon or under the Improvements or the Equipment, including all repairs, maintenance and replacement of all such property. Said agents are authorized to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agents 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 with the same validity as the Agency could do if acting on its own behalf. As agent of the Agency, the Company and the Tenant are authorized to delegate such agency, in whole or in part, to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses; provided, however, the Project Agreement shall expire on **June 30, 2020** (unless extended for good cause by the Executive Director, Chairman or Vice Chairman of the Agency).

Section 5. Based upon the representation and warranties made by the Company in its application for financial assistance, the Agency hereby authorizes and approves (i) the Company as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to **\$400,000**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$32,000**. The Agency agrees to consider any requests by the Company for increase to the amount of sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services.



Section 6. The Agency also hereby authorizes and approves the Tenant, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to **\$395,000**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$31,600**.

Section 7. Pursuant to Section 875(3) of the New York General Municipal Law, the Agency may recover or recapture from the Company and/or the Tenant, their respective agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company and/or the Tenant, their respective agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company and/or the Tenant, their respective agents, consultants, subcontractors, 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 and/or the Tenant, their respective agents, consultants, subcontractors, 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 and/or the Tenant, their respective agents, consultants, subcontractors, 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 and/or the Tenant, their respective agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, shall (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.

Section 8. The Executive Director, Chairman or Vice Chairman of the Agency are hereby authorized, on behalf of the Agency, to negotiate the Project Agreement, pursuant to which the Agency will appoint the Company as its agent for the purpose of renovating and equipping the Improvements.

Section 9. The Executive Director, Chairman or Vice Chairman 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 and to execute and deliver all such certificates, instruments and documents, to 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 such Executive Director, Chairman or Vice Chairman of the Agency acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 10. This resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to vote on roll call, which resulted as follows:

	<u><i>Yea</i></u>	<u><i>Nay</i></u>	<u><i>Absent</i></u>	<u><i>Abstain</i></u>
Jay Popli				
Anthony Meleo				
Troy Milne				
Jared Lusk				
Lisa Bolzner				
Ann L. Burr				

The Resolutions were thereupon duly adopted.

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

I, the undersigned Executive Director of the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA (the "Agency"), including the resolutions contained therein, held on September 17, 2019, 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.

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with Sections 103 and 104 of the New York Public Officers Law (Open Meetings Law) that all members of the Agency had due notice of the meeting and that the meeting was in all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand on this 17<sup>th</sup> day of September, 2019.

---

Jeffrey R. Adair, Executive Director

*Motion By:* \_\_\_\_\_  
*Seconded By:* \_\_\_\_\_

**RESOLUTION**  
(CloudCheckr Inc. Project)

A regular meeting of the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA (the "Agency"), was held at the Ogden Town Hall, 269 Ogden Center Road, Spencerport, New York 14559, on September 17, 2019.

After the meeting had been duly called to order, the Chair announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to a certain Project more particularly described below.

RESOLUTION OF THE COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY D/B/A IMAGINE MONROE POWERED BY COMIDA TAKING OFFICIAL ACTION TO (i) APPOINT CLOUDCHECKR INC. OR A RELATED ENTITY FORMED OR TO BE FORMED (COLLECTIVELY, THE "COMPANY") AS ITS AGENT TO UNDERTAKE A CERTAIN PROJECT AS MORE FULLY DESCRIBED BELOW; (ii) PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF A SALES AND USE TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE RENOVATION AND EQUIPPING OF THE PROJECT; (iii) AUTHORIZE THE EXECUTION AND DELIVERY OF A PROJECT AGREEMENT AND RELATED DOCUMENTS AND (iv) MAKE A DETERMINATION WITH RESPECT TO THE PROJECT PURSUANT TO SEQRA (AS DEFINED BELOW).

WHEREAS, by Title I of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 55 of the Laws of 1972 of the State of New York (collectively, the "Act"), the Agency was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, **CLOUDCHECKR INC.**, a Delaware corporation for itself or a related entity formed or to be formed (collectively, the "Company") has requested that the Agency assist with a certain Project (the "Project"), consisting of: (A) the renovation of approximately 5,000 square feet of space (the "Improvements") of the existing building located at 277 North Goodman Street in the City of Rochester, New York; and (B) the acquisition and installation therein, thereon or thereabout of certain machinery, equipment and related personal property including, but not limited to, furniture, fixtures and office equipment (collectively, the "Equipment" and, together with the Improvements, the "Facility"), to be used by the Company in its business as a software provider focused on helping enterprises manage their cloud infrastructure; 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, it is contemplated that the Agency will (i) negotiate a project agreement (the "Project Agreement"), pursuant to which the Agency will appoint the Company as its agent for the purpose of renovating and equipping the Facility and (ii) provide financial assistance (the "Financial Assistance") to the Company in the form of a sales and use tax exemption for purchases and rentals related to the renovation and equipping of the Improvements; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at 6 N.Y.C.R.R. Part 617, as amended (collectively referred to as "SEQRA"), the Agency must satisfy the applicable requirements set forth in SEQRA, as necessary, prior to making a final determination whether to undertake the Project.

NOW, THEREFORE, BE IT RESOLVED by the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA as follows:

Section 1. The Company has presented an application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's application and other correspondence submitted by the Company to the Agency, the Agency hereby finds and determines that:

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

(b) The Facility constitutes a "project", as such term is defined in the Act; and

(c) It is desirable and in the public interest for the Agency to appoint the Company as its agent for purposes of renovating and equipping the Improvements; and

(d) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in Monroe County and otherwise furthering the purposes of the Agency as set forth in the Act; and

(e) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York (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 Project located within the State; and the Agency hereby finds that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries; and

(f) Pursuant to SEQRA, the Project constitutes a "Type II Action" as said term is defined in SEQRA, and therefore no further action is required to be taken under SEQRA.

Section 2. The Agency hereby determines that the Project will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the County of Monroe and the people of the State of New York and improve their standard of living, thereby serving the public purposes of the Act and, therefore, the same is approved.

Section 3. The Agency hereby approves the cost/benefit report submitted by the Company listing the proposed cost/benefits of the Project.

Section 4. Subject to the Company executing the Project Agreement and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, renovation and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency to acquire, renovate and equip the Facility, and such appointment includes the following activities as they relate to the construction, erection, completion, use, repair and maintenance of the Improvements and the purchase, use, lease, placement, installation, repair, maintenance and replacement of the Equipment, whether or not any materials or supplies described below are incorporated into or become an integral part of the Improvements or the Equipment: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with acquiring, renovating, equipping, repairing and maintaining the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description in connection with acquiring, renovating, equipping, repairing and maintaining the Facility, and (iii) all purchases, leases, rentals and uses of equipment, machinery, and other tangible personal property (including installation costs with respect thereto), installed or placed in, upon or under the Improvements or the Equipment, including all repairs, maintenance and replacement of all such property. Said agents are authorized to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agents 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 with the same validity as the Agency could do if acting on its own behalf. As agent of the Agency, the Company is authorized to delegate such agency, in whole or in part, to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses; provided, however, the Project Agreement shall expire on **June 30, 2020** (unless extended for good cause by the Executive Director, Chairman or Vice Chairman of the Agency).

Section 5. Based upon the representation and warranties made by the Company in its application for financial assistance, the Agency hereby authorizes and approves (i) the Company as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to **\$345,000**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$27,600**. The Agency agrees to consider any requests by the Company for increase to the amount of sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services.

Section 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, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, 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, 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, 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, shall (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.

Section 7. The Executive Director, Chairman or Vice Chairman of the Agency are hereby authorized, on behalf of the Agency, to negotiate the Project Agreement, pursuant to which the Agency will appoint the Company as its agent for the purpose of renovating and equipping the Improvements.

Section 8. The Executive Director, Chairman or Vice Chairman 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 and to execute and deliver all such certificates, instruments and documents, to 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 such Executive Director, Chairman or Vice Chairman of the Agency acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 9. This resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to vote on roll call, which resulted as follows:

	<u><i>Yea</i></u>	<u><i>Nay</i></u>	<u><i>Absent</i></u>	<u><i>Abstain</i></u>
Jay Popli				
Anthony Meleo				
Troy Milne				
Jared Lusk				
Lisa Bolzner				
Ann L. Burr				

The Resolutions were thereupon duly adopted.



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

I, the undersigned Executive Director of the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA (the "Agency"), including the resolutions contained therein, held on September 17, 2019, 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.

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with Sections 103 and 104 of the New York Public Officers Law (Open Meetings Law) that all members of the Agency had due notice of the meeting and that the meeting was in all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand on this 17<sup>th</sup> day of September, 2019.

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Jeffrey R. Adair, Executive Director

**Motion By:** \_\_\_\_\_  
**Seconded By:** \_\_\_\_\_

**RESOLUTION**  
(Zweigle's, Inc. Project)

A regular meeting of the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA (the "Agency"), was held at the Ogden Town Hall, 269 Ogden Center Road, Spencerport, New York 14559, on September 17, 2019.

After the meeting had been duly called to order, the Chair announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to a certain Project more particularly described below.

RESOLUTION OF THE COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY D/B/A IMAGINE MONROE POWERED BY COMIDA (i) ACKNOWLEDGING THE PUBLIC HEARING HELD BY THE AGENCY ON SEPTEMBER 10, 2019, WITH RESPECT TO THE ZWEIGLE'S, INC. (THE "COMPANY") PROJECT (THE "PROJECT"); (ii) MAKING A DETERMINATION WITH RESPECT TO THE PROJECT PURSUANT TO SEQRA (AS DEFINED BELOW) PRIOR TO MAKING ANY DETERMINATION REGARDING AUTHORIZING OR PROVIDING ANY FINANCIAL ASSISTANCE OR OTHER BENEFIT TO THE PROJECT; (iii) APPOINTING THE COMPANY AS AGENT OF THE AGENCY; (iv) AUTHORIZING FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES AND USE TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT, (B) IF NECESSARY, A MORTGAGE RECORDING TAX EXEMPTION AND (C) A REAL PROPERTY TAX ABATEMENT STRUCTURED THROUGH A PAYMENT-IN-LIEU-OF-TAX AGREEMENT ("PILOT AGREEMENT"); AND (v) AUTHORIZING THE NEGOTIATION, EXECUTION AND DELIVERY OF A PROJECT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT, PILOT AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE PROJECT.

WHEREAS, by Title I of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 55 of the Laws of 1972 of the State of New York (collectively, the "Act"), the Agency was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, **ZWEIGLE'S, INC.**, a New York corporation for itself or a related entity formed or to be formed (collectively, the "Company") submitted an application to the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA (the "Agency") requesting the Agency to assist with a certain Project (the "Project"), consisting of: (A) the acquisition of a leasehold interest in an aggregate approximately 0.69± acres of land located on North Plymouth Avenue, Smith Street and Verona Street in the City of Rochester, New York (collectively, the "Land") together with the existing building located thereon (the

"Existing Improvements"); (B)(i) the demolition of the Existing Improvements and the laying of stone for use as a parking area; (ii) the construction on part of the Land of an approximately 13,000±-square-foot addition to the Company's existing building located at 651 North Plymouth Avenue (the "Improvements"); and (C) the acquisition and installation therein, thereon or thereabout of certain machinery, equipment and related personal property (the "Equipment" and, together with the Land and the Improvements, the "Facility"), used by the Company in its business of manufacturing hot dogs, sausage and deli products; 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, pursuant to Section 859-a of the Act, on Tuesday, September 10, 2019, at 10:30 a.m., local time, at the Ebenezer Watts Conference Center, 49 S. Fitzhugh Street, Rochester, New York 14614, the Agency held a public hearing with respect to the Project and the proposed Financial Assistance being contemplated by the Agency (the "Public Hearing"), whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views; and

WHEREAS, it is contemplated that the Agency will (i) negotiate a project agreement (the "Project Agreement"), pursuant to which the Agency will appoint the Company as its agent for the purpose of acquiring, constructing and equipping the Improvements, (ii) negotiate and enter into a lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement") and payment-in-lieu-of-tax agreement (the "PILOT Agreement") with the Company, (iii) take title to or a leasehold interest in the Land, the Improvements and personal property constituting the Facility (once the Lease Agreement, Leaseback Agreement and PILOT Agreement have been negotiated), and (iv) provide financial assistance (the "Financial Assistance") to the Company in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Facility, (b) if necessary, a mortgage recording tax exemption for financing relating to the Project and (c) a partial real property tax abatement structured through the PILOT Agreement; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities which may arise in connection with the transactions contemplated by the lease of the Facility; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at 6 N.Y.C.R.R. Part 617, as amended (collectively referred to as "SEQRA"), the Agency must satisfy the applicable requirements set forth in SEQRA, as necessary, prior to making a final determination whether to undertake provide any benefit to or authorize the Project in any fashion; and

WHEREAS, pursuant to SEQRA, the Agency has thoroughly examined and analyzed various Project documents including those documents submitted by the Company and/or its counsel with respect to the Project as more fully identified and referenced below; and

WHEREAS the Agency has conducted pursuant to SEQRA an uncoordinated review of

the Project by reviewing a completed related short environmental assessment form (the "EAF") and supplemental documentation associated therewith, and including the reviewing and adopting of the EAF, including part 1 as well as parts 2 and 3 of it, as well as reviewing EAF mapper results for the Project site, as well as reviewing other documentation provided by the Company including referenced application materials and plans and the Agency has determined that the Project will not result in any potentially significant adverse environmental impact.

NOW, THEREFORE, BE IT RESOLVED by the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered by COMIDA as follows:

Section 1. The Company has presented an application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's application and other correspondence submitted by the Company to the Agency, the Agency hereby finds and determines that prior to taking any action whatsoever on authorizing, funding or providing any benefits whatsoever for the Project that:

(a) Pursuant to SEQRA, the Project constitutes an Unlisted Action under SEQRA as defined by 6 N.Y.C.R.R. § 617.2(ak) and as a result, the Agency has conducted an uncoordinated review of the Project pursuant to 6 N.Y.C.R.R. §617.6. Based upon a comprehensive review of application materials submitted by the Company associated with the Project, including reviewing the completed short EAF, including parts 1, 2 and 3 of the EAF, as well as reviewing the EAF mapper program results for the Project site, as well as reviewing the other materials provided by the Company and its counsel including correspondence and documentation concerning various impacts and potential impacts ranging from cumulative impacts, transportation impacts, impacts and potential impacts to air, groundwater, surface water and/or to wetlands, as well as potential impacts to land archeological and historic resources, as well as impacts or potential impacts to community character other recognized and/or protected resources, as well as impacts to threatened or endangered species, and impacts or potential impacts from areas impacted by contamination in proximity to the Project, and other potential impacts as required in accord with applicable SEQRA regulation; and

(b) The Agency has considered the significance of the potential environmental impacts of the Project by: (i) carefully reviewing and examining the responses to the short EAF, including the information in Part 1 thereof, and the EAF mapper results for the Project site, and completing the analyses for Parts 2 and 3 of the EAF (which EAF and each of its subparts are incorporated herein by reference) together with examining other available supporting information and documents concerning the Project, including the application and other documents referenced previously concerning the Project, to identify the relevant areas of environmental concern and impacts or potential impacts including with respect to cumulative impacts, transportation impacts, impacts to air, groundwater, surface water and/or to wetland impacts, as well as potential impacts to land, archeological and historic resources, as well as impacts to community character other recognized and/or protected resources, as well as to threatened or endangered species, if any, and other potential impacts as required by applicable regulation; (ii) considering the criteria set forth in 6 NYCRR § 617.7(c); and (iii) thoroughly analyzing the identified areas of relevant environmental concern, the Agency hereby finds that the Project will not result in a potentially significant adverse environmental impact and therefore no environmental impact statement shall be prepared; and

(c) In making this determination, the Agency considered responses indicating a threatened or endangered species could potentially be impacted, the Peregrine Falcon, but in light of information provided by the Company and its consultants and reviewed by the Agency, it was determined that there were no nesting or roosting areas in proximity to the Project site or where the work associated with it was to take place; as a result, no significant impact is anticipated from construction of the Project or the operation of it. Moreover, no such significant negative impact is anticipated to that species in light of the fact that the Project site and associated area has been developed for industrial and commercial uses for many years with no apparent significant impacts on such species. Similarly, to the extent an archeologically sensitive area and/or critical environmental areas as well as an historic building (John Williams School No. 5) have been identified in any proximity to the Project site, in light of the significant and ongoing history of industrial and commercial uses in the area that includes any critical environmental area or archeologically sensitive area or historic resources, operation of the Project and work at the Project site is not anticipated to have any significant adverse environmental impact. Further, as the Project site and operation of the Project is more than 100 feet from the water body at issue, no such significant adverse environmental impact is anticipated to any protected or sensitive habitat or land forms. Moreover, approximately 9 sites were identified on the NYSDEC database as areas that are or were impacted by contamination and which are located in some proximity to the Project site and where the Project will operate; in light of the highly industrialized nature of the area of the Project site, it is not particularly unusual to see contamination identified in such an area. The NYSDEC reports available on the NYSDEC database for each of those referenced sites was reviewed and many of such sites have been investigated and the subject of clean up or remedial measures. It does not appear that any of the sites will have a significant negative impact on the Project, including from an environmental, health or safety perspective as contaminants associated with same have not been identified as being known to affect the Project site; and

(d) This component of the resolution shall take effect immediately and SEQRA is completed for the Project and the Agency shall file and serve this negative declaration in accordance with its own procedure and applicable law; and

(e) This component of the resolution referencing SEQRA matters shall constitute the negative declaration set forth herein.

## Section 2.

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

(b) The Facility constitutes a "project", as such term is defined in the Act; and

(c) It is desirable and in the public interest for the Agency to appoint the Company as its agent for purposes of acquiring, constructing and equipping the Improvements; and

(d) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in Monroe County and otherwise furthering the purposes of the Agency as set forth in the Act; and

(e) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York (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 Project located within the State; and the Agency hereby finds that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries; and

Section 3. The Agency hereby determines that the acquisition of a leasehold interest in and the construction, equipping, repair and maintenance of the Facility by the Agency and the lease or sublease of the Facility to the Company will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the County of Monroe and the people of the State of New York and improve their standard of living, thereby serving the public purposes of the Act and, therefore, the same is approved.

Section 4. The Agency hereby approves the cost/benefit report submitted by the Company listing the proposed cost/benefits of the Project.

Section 5. Subject to the Company executing the Project Agreement and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency to acquire, construct and equip the Facility, and such appointment includes the following activities as they relate to the construction, erection, completion, use, repair and maintenance of the Improvements and the purchase, use, lease, placement, installation, repair, maintenance and replacement of the Equipment, whether or not any materials or supplies described below are incorporated into or become an integral part of the Improvements or the Equipment: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with acquiring, constructing, equipping, repairing and maintaining the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description in connection with acquiring, constructing, equipping, repairing and maintaining the Facility, and (iii) all purchases, leases, rentals and uses of equipment, machinery, and other tangible personal property (including installation costs with respect thereto), installed or placed in, upon or under the Improvements, Land or the Equipment, including all repairs, maintenance and replacement of all such property. Said agents are authorized to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agents 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 with the same validity as the Agency could do if acting on its own behalf. As agent of the Agency, the Company is authorized to delegate such agency, in whole or in part, to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to

such other parties as the Company chooses; provided, however, the Project Agreement shall expire on **December 31, 2020** (unless extended for good cause by the Executive Director, Chairman or Vice Chairman of the Agency) if the Lease Agreement, Leaseback Agreement and PILOT Agreement contemplated have not been executed and delivered.

Section 6. Based upon the representation and warranties made by the Company in its application for financial assistance, the Agency hereby authorizes and approves (i) the Company as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to **\$1,218,220**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$97,458**; (ii) a mortgage (or mortgages), in connection with the financing of the Facility or portions thereof and including any refinancing thereof, securing an aggregate principal amount not to exceed **\$4,204,968**, resulting in a mortgage tax exemption not to exceed **\$31,538**; and (iii) a partial real property tax abatement.

Section 7. 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, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, 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, 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, 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, shall (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.

Section 8. The form and substance of the Lease Agreement, the Leaseback Agreement and the PILOT Agreement (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 9. The Executive Director, Chairman or Vice Chairman of the Agency are hereby authorized, on behalf of the Agency, to negotiate and execute (A) the Lease Agreement whereby the Company leases the Project to the Agency, (B) the related Leaseback Agreement conveying the Project back to the Company, and (C) the PILOT Agreement; provided, that, (i) the rental payments under the Leaseback Agreement include payments 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.

Section 10. The Executive Director, Chairman or Vice Chairman of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver any mortgage, assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by any lender identified by the Company (the "Lender") up to a maximum principal amount necessary to undertake the Project, acquire the Facility and/or finance or refinance equipment and other personal property and related transactional costs (hereinafter, with the Lease Agreement, Leaseback Agreement and PILOT Agreement are collectively referred to as, the "Agency Documents"); and, where appropriate, the Secretary or Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency (if any) to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Executive Director, Chairman or Vice Chairman of the Agency shall approve, the execution thereof by the Executive Director, Chairman or Vice Chairman of the Agency to constitute conclusive evidence of such approval; provided in all events recourse against the Agency is limited to the Agency's interest in the Project.

Section 11. The Executive Director, Chairman or Vice Chairman 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 and to execute and deliver all such certificates, instruments and documents, to 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 such Executive Director, Chairman or Vice Chairman of the Agency acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 12. This resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to vote on roll call, which resulted as follows:

	<u><i>Yea</i></u>	<u><i>Nay</i></u>	<u><i>Absent</i></u>	<u><i>Abstain</i></u>
Jay Popli				
Anthony Meleo				
Troy Milne				
Jared Lusk				
Lisa Bolzner				
Ann L. Burr				

The Resolutions were thereupon duly adopted.

For further information contact the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered by COMIDA; Phone: (585) 753-2000.



A copy of this negative declaration as well as the documents on which it is based will be kept on file with the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered by COMIDA at 50 West Main Street, Suite 8100, Rochester, New York 14614.

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

I, the undersigned Executive Director of the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA (the "Agency"), including the resolutions contained therein, held on September 17, 2019, 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 Lease Agreement and the Leaseback Agreement contained in this transcript of proceedings are each in substantially the form presented to the Agency and approved by said meeting.

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with Sections 103 and 104 of the New York Public Officers Law (Open Meetings Law) that all members of the Agency had due notice of the meeting and that the meeting was in all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand on this 17<sup>th</sup> day of September, 2019.

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Jeffrey R. Adair, Executive Director

**Motion By:** \_\_\_\_\_  
**Seconded By:** \_\_\_\_\_

**RESOLUTION**  
(Assignment of 4000 River Road LLC Project)

A regular meeting of the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA (the "Agency"), was held at the Ogden Town Hall, 269 Ogden Center Road, Spencerport, New York 14559, on September 17, 2019.

After the meeting had been duly called to order, the Chair announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to a certain Project more particularly described below.

RESOLUTION OF THE COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY D/B/A IMAGINE MONROE POWERED BY COMIDA (THE "AGENCY") AUTHORIZING THE SALE BY 4000 RIVER ROAD LLC ("SELLER") OF ITS ASSETS RELATED TO, AND THE ASSIGNMENT OF ITS INTERESTS IN AND TO, THE PROPERTY KNOWN AS 4000 EAST RIVER ROAD IN THE TOWN OF HENRIETTA, NEW YORK TO 20 FAIRWOOD ROAD ASSOCIATES, LLC ("PURCHASER"); AND THE EXECUTION OF RELATED DOCUMENTS.

WHEREAS, by Title I of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 55 of the Laws of 1972 of the State of New York (collectively, the "Act"), the Agency was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, 4000 River Road LLC (herein, the "Seller") owns a fee interest in property located at 4000 East River Road in the Town of Henrietta, New York and entered into a certain Lease Agreement, dated as of August 1, 2018 (the "Lease Agreement") with the Agency in connection with a certain project (the "Project") consisting of: (A) the acquisition of a leasehold interest in an approximately 12.42-acre parcel of land located at 4000 East River Road in the Town of Henrietta, New York [Tax Map No.: 174.01-2-58.1] (the "Land") together with the existing 102-unit student housing apartment complex thereon known as Racquet Club Apartments (the "Existing Improvements"); (B)(i) the renovation and modernization of the Existing Improvements including, but not limited to, new kitchens/baths and full furnishings and (ii) the construction of an additional 3-story approximately 125,000 square-foot building with 81-units of additional student housing (the "Improvements"); and (C) the acquisition and installation therein, thereon or thereabout of certain machinery, equipment and related personal property (the "Equipment" and, together with the Land and the Improvements, the "Facility"); to serve the students of Rochester Institute of Technology; and

WHEREAS, the Agency and the Seller then entered into a certain Leaseback Agreement, dated as of August 1, 2018 (the "Leaseback Agreement"), whereby the Agency transferred its interest in the Facility back to the Seller; and

WHEREAS, in connection with the Facility, the Agency and the Seller entered into a certain Payment In Lieu Of Tax Agreement, dated as of August 1, 2018 (the "PILOT Agreement"), pursuant to which the Seller receives a partial abatement of real property taxes in connection with the Facility (collectively, the Lease Agreement, Leaseback Agreement and PILOT Agreement are hereinafter referred to as the "Documents"); and

WHEREAS, the Seller requests Agency approval of the sale of its assets with respect to the Facility and the assignment of its rights, interests and obligations in and to the Facility and the Documents to 20 Fairwood Road Associates, LLC (hereinafter, the "Assignee"); and

WHEREAS, the Seller also requests that the benefits it receives through the PILOT Agreement be continued for the Assignee with respect to the Facility; and

WHEREAS, the Seller represents that the sale of its assets to the Assignee will not in any way change the use of the Facility and that the Facility will continue to constitute a "project" as such quoted term is defined in the Act; and

WHEREAS, the Agency now desires to adopt a resolution: (i) approving the sale of the Seller's assets in the Facility to the Assignee, (ii) approving the assignment of the Seller's rights, interests and obligations in and under the Documents to the Assignee, (iii) approving the continuation of PILOT benefits for the Assignee in connection with the Facility, and (iv) approving the execution of any and all documents necessary to effectuate sale, assignment and continuation of PILOT benefits.

NOW, THEREFORE, BE IT RESOLVED by the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Agency hereby consents to the sale of the Seller's assets in the Facility to the Assignee.

Section 2. The Agency hereby consents to the assignment of the Seller's rights, interests and obligations in and to the Facility and under the Documents to the Assignee and consents to the continuation of the benefits afforded the Facility under the PILOT Agreement, for the Assignee.

Section 3. The Executive Director, Chairman or Vice Chairman of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver any and all documents necessary to effectuate the above-described assignments and continuation of the PILOT benefits with respect to the Facility.

Section 4. This resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to vote on roll call, which resulted as follows:

	<u><i>Yea</i></u>	<u><i>Nay</i></u>	<u><i>Absent</i></u>	<u><i>Abstain</i></u>
Jay Popli				
Anthony Meleo				
Troy Milne				
Jared Lusk				
Lisa Bolzner				
Ann L. Burr				

The Resolutions were thereupon duly adopted.

*[Remainder of Page Intentionally Left Blank]*

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

I, the undersigned Executive Director of the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the County of Monroe Industrial Development Agency d/b/a Imagine Monroe Powered By COMIDA (the "Agency"), including the resolutions contained therein, held on September 17, 2019, 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.

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with Sections 103 and 104 of the New York Public Officers Law (Open Meetings Law) that all members of the Agency had due notice of the meeting and that the meeting was in all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand on this 17<sup>th</sup> day of September, 2019.

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Jeffrey R. Adair, Executive Director