

**FINAL RESOLUTION**  
*(Hudson Blue Yonkers, LLC Project)*

A regular meeting of the City of Yonkers Industrial Development Agency was convened on August 29, 2018.

The following resolution was duly offered and seconded, to wit:

**Resolution No. 08/2018 - 12**

RESOLUTION OF THE CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") (i) MAKING A DETERMINATION WITH RESPECT TO THE HUDSON BLUE YONKERS, LLC PROJECT (AS HEREINAFTER DEFINED) PURSUANT TO SEQRA (AS HEREINAFTER DEFINED), (ii) ACKNOWLEDGING THE PUBLIC HEARING HELD BY THE AGENCY WITH RESEPECT TO THE PROJECT, (iii) AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGENT, FINANCIAL ASSISTANCE AND PROJECT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT, TAX AGREEMENT, TAX AGREEMENT MORTGAGE AND RELATED DOCUMENTS; (iv) AUTHORIZING FINANCIAL ASSISTANCE TO HUDSON BLUE YONKERS, LLC (THE "COMPANY") IN THE FORM OF (A) A SALES AND USE TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT, (B) A REAL PROPERTY TAX ABATEMENT STRUCTURED THROUGH A TAX AGREEMENT, AND (C) A MORTGAGE RECORDING TAX EXEMPTION AS PERMITTED BY NEW YORK STATE LAW; AND (v) AUTHORIZING THE EXECUTION AND DELIVERY OF A MORTGAGE AND RELATED DOCUMENTS.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 83 of the Laws of 1982 of the State of New York, as amended (hereinafter collectively called the "Act"), the **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, **HUDSON BLUE YONKERS, LLC**, for itself or on behalf of an entity to be formed (the "Company") has submitted an application (the "Application") to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of: (i) the acquisition of a leasehold interest in certain land located at 70 Ashburton Avenue, Yonkers, New York (the "Land") and the existing improvements located thereon consisting principally of a distressed approximately ninety-unit multi-family high-rise apartment building (the "Existing Improvements"); (ii) the reconstruction, renovation and refurbishment of the Existing

Improvements for use as residential rental building (collectively, the "Improvements"); and (iii) the acquisition and installation in and around the Existing Improvements and Improvements of certain items of equipment and other tangible personal property (the "Equipment"; and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); and

WHEREAS, on July 26, 2018, the Agency adopted a resolution (the "Initial Resolution") with respect to the Project (i) accepting the Application of the Company, (ii) directing that a public hearing be held, and (iii) describing the Financial Assistance (as hereinafter defined) being contemplated by the Agency with respect to the Project; and

WHEREAS, pursuant to General Municipal Law Section 859-a, on Tuesday, August 14, 2018, at 5:30 p.m., at the Agency's offices at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701, 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. A copy of the Notice of Public Hearing - published and forwarded to the affected taxing jurisdictions with Notice Letter at least ten (10) days prior to said Public Hearing - is attached hereto as Exhibit A, along with the Affidavit of Publication of *The Journal News*, and Minutes of the Public Hearing; 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, it is contemplated that the Agency enter into an agent, financial assistance and project agreement, pursuant to which the Agency will designate the Company as its agent for the purpose of acquiring, constructing and equipping the Project (the "Agent Agreement"), (ii) negotiate and enter into a lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement") and tax agreement (the "Tax Agreement") with the Company, and, if required by the Agency, a Tax Agreement mortgage (the "Tax Agreement Mortgage"), (iii) take a leasehold interest in the Land, the Improvements and personal property constituting the Project (once the Lease Agreement, Leaseback Agreement and Tax Agreement (and Tax Agreement Mortgage, if applicable) have been negotiated), and (iv) provide 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) a partial real property tax abatement structured through the Tax Agreement, and (c) a mortgage recording tax exemption as permitted by New York State Law (collectively, the "Financial Assistance"); and

WHEREAS, the Agent Agreement, Lease Agreement, Leaseback Agreement, Tax Agreement, Tax Agreement Mortgage and related documents with respect to the Project are being negotiated and will be presented to the Agency for execution upon approval of this resolution.

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

Section 1. Based upon the review by the Agency of the Application submitted by the Company with respect to the Project, the Agency finds that the proposed action constitutes a "Type II action" pursuant to 6 N.Y.C.R.R. § 617.5 and therefore is exempt from review under SEQRA.

Section 2. The public hearing held by the Agency on Tuesday, August 14, 2018, at 5:30 p.m., at the Agency's offices at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701, concerning the Project and the Financial Assistance was duly held in accordance with the Act, including, but not limited to, the giving of at least ten (10) days published notice of the Public Hearing (such notice also provided to the Chief Executive Officer of each affected tax jurisdiction), affording interested parties a reasonable opportunity, both orally and in writing, to present their views with respect to the Project.

Section 3. The Agency is hereby authorized to provide to the Company the Financial Assistance in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction, reconstruction, renovation and equipping of the Project, (b) a real property tax abatement structured through the Tax Agreement, and (c) a mortgage recording tax exemption as permitted by New York State Law.

Section 4. Subject to the Company executing an Agent Agreement (in a form to be approved by Counsel to the Agency and/or Transaction Counsel) 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: (i) to acquire, construct and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the Company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; *provided, however*, the Agent Agreement shall expire on December 31, 2018 (unless extended for good cause by the Executive Director of the Agency) if the Lease Agreement, Leaseback Agreement, Tax Agreement and Tax Agreement Mortgage 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 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 **\$2,500,000**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$221,875**. 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, must (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

Section 7. The Chairman, Vice Chairman, President, Executive Director, Secretary and/or the CFO of the Agency the Agency are hereby authorized, on behalf of the Agency, to negotiate and enter into (A) the Agent Agreement, (B) the Lease Agreement, pursuant to which the Company leases the Project to the Agency, (C) the related Leaseback Agreement, pursuant to which the Agency leases its interest in the Project back to the Company, and (D) the Tax Agreement and Tax Agreement Mortgage; *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 Tax Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

Section 8. The Chairman, Vice Chairman, Executive Director, CFO and/or the Secretary of the Agency are hereby authorized, on behalf of the Agency, to execute, deliver and record any mortgage, 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 refinance existing Company debt and to undertake the Project, acquire the Facility and/or finance or refinance the Facility or equipment and other personal property and related transactional costs (hereinafter, with the Agent Agreement, Lease Agreement, Leaseback Agreement, Tax Agreement and Tax

Agreement Mortgage, collectively called the "Agency Documents"); and, where appropriate, the Secretary or Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Executive Director and/or the Secretary of the Agency shall approve, the execution thereof by the Chairman, Vice Chairman, Executive Director and/or the Secretary 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 9. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required 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 the officer, employee or agent 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. These Resolutions shall take effect immediately upon adoption.

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

	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>
Mayor Mike Spano	[ ✓ ]	[ ]	[ ]	[ ]
Peter Kischak	[ ]	[ ]	[ ]	[ × ]
Wilson Kimball	[ ✓ ]	[ ]	[ ]	[ ]
Melissa Nacerino	[ ]	[ ]	[ ]	[ × ]
Hon. Cecile D. Singer	[ ✓ ]	[ ]	[ ]	[ ]
Henry Djonbalaj	[ ✓ ]	[ ]	[ ]	[ ]

The Resolutions were thereupon duly adopted.

**CERTIFICATION**  
*(Hudson Blue Yonkers, LLC Project)*

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

I, the undersigned, Secretary of the City of Yonkers Industrial Development Agency DO HEREBY CERTIFY:


That I have compared the annexed extract of minutes of the meeting of the City of Yonkers Industrial Development Agency (the "Agency"), including the resolution contained therein, held August 29, 2018, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY, that there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY, that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this 29<sup>th</sup> day of August, 2018.

  
Wilson Kimball, Secretary

[SEAL]

Resolution No. 08/2018-12

Final Resolution: Hudson Blue Yonkers LLC

August 29, 2018

TC: Harris Beach PLLC

**EXHIBIT A**

Notice of Public Hearing

Notice Letter

Evidence of Mailing Notice Letter

Affidavit of Publication of *The Journal News*

Minutes of Public Hearing

[Attached hereto]

**INITIAL RESOLUTION**  
*(Extell Hudson Waterfront, LLC Project)*

A regular meeting of the City of Yonkers Industrial Development Agency was convened on Wednesday, August 29, 2018.

The following resolution was duly offered and seconded, to wit:

**Resolution No. 08/2018-13**

RESOLUTION OF THE CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY (i) ACCEPTING THE APPLICATION OF EXTELL HUDSON WATERFRONT, LLC WITH RESPECT TO A CERTAIN PROJECT (AS DESCRIBED BELOW) LOCATED AT BABCOCK PLACE, WATER GRANT STREET AND ALEXANDER STREET, CITY OF YONKERS, NEW YORK; (ii) AUTHORIZING A PUBLIC HEARING WITH RESPECT TO THE PROJECT; AND (iii) DESCRIBING THE FORMS OF FINANCIAL ASSISTANCE BEING CONTEMPLATED BY THE AGENCY WITH RESPECT TO THE PROJECT

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 83 of the Laws of 1982 of the State of New York, as amended (hereinafter collectively called the "Act"), **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY** (hereinafter called the "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, **EXTELL HUDSON WATERFRONT, LLC**, for itself or on behalf of an entity to be formed (the "Company") has submitted an application dated December 13, 2017 (the "Application") to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of: (i) the acquisition of a leasehold interest in approximately twenty (20) acres of land located at 35 Babcock Place, 39-A Water Grant Street, 39-B Water Grant Street, 40 Water Grant Street, 41 Water Grant Street, 42 Water Grant Street, 42-A Water Grant Street, 42-B Water Grant Street, 41 Rear Water Grant Street, 159 Alexander Street, 161 Alexander Street and 15 Babcock Place (the "Land"); (ii) the acquisition, construction and equipping of a seven-building approximately 1,395 dwelling-unit residential development (containing both market-rate and affordable units) consisting of approximately 48,280 square feet of commercial space and approximately 1,587 parking spaces and a continuation of the Hudson River promenade (collectively, the "Improvements"); and (iii) the acquisition and installation in and around the Improvements of certain items of equipment and other tangible personal property (the "Equipment"; and, collectively with the Land and the Improvements, the "Facility"); and



WHEREAS, pursuant to Article 18-A of the General Municipal Law the Agency desires to adopt a resolution describing the Project and the Financial Assistance (as defined below) that the Agency is contemplating with respect to the Project; and

WHEREAS, it is contemplated that the Agency will hold a public hearing and (i) negotiate and enter into an agent, financial assistance and project agreement, pursuant to which the Agency will designate the Company as its agent for the purpose of acquiring, constructing and equipping the Project (the "Agent Agreement"), (ii) negotiate and enter into a lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement") and tax agreement (the "Tax Agreement") with the Company, and, if required by the Agency, a Tax Agreement mortgage (the "Tax Agreement Mortgage"), (iii) take a leasehold interest in the Land, the Improvements and personal property constituting the Project (once the Lease Agreement, Leaseback Agreement and Tax Agreement (and Tax Agreement Mortgage, if applicable) have been negotiated), and (iv) provide 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) a partial real property tax abatement structured through the Tax Agreement, and (c) an exemption New York State and local mortgage recording taxes (collectively, the "Financial Assistance"); and

WHEREAS, the City of Yonkers Planning Board, as lead agency, conducted a coordinated review of the Project pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and its implementing regulations at 6 N.Y.C.R.R. Part 617 (collectively referred to as "SEQRA"), which resulted in the issuance of a negative declaration by the City of Yonkers Planning Board dated December 7, 2017 (the "Negative Declaration") attached hereto as Exhibit A, concluding the SEQRA process; and

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

Section 1. The Company has presented the Application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's Application, 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 Agency has the authority to take the actions contemplated herein under the Act; and

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

(D) 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;

(E) The Facility constitutes a "commercial facility" as defined in the Act and will promote employment opportunities and prevent economic deterioration in the City of Yonkers. The Agency has reviewed the opinion of the State Comptroller attached hereto as Exhibit B, and hereby specifically finds that the Project (i) will create approximately 450-500 temporary construction jobs during the construction of the Facility and approximately 200 full-time jobs upon the completion of the Facility, (ii) will be a first-class improvement in a sensitive area of the City of Yonkers, and (iii) will offer housing stock as part of its workforce development and overall economic development plan for the City of Yonkers; and

(F) The City of Yonkers Planning Board has conducted a coordinated review of the Project pursuant to Article 8 of the Environmental Conservation Law and 6 N.Y.C.R.R. Part 617 (collectively referred to as "SEQRA"). In addition to classifying the Project as a "Type I" Action pursuant to SEQRA, the City of Yonkers Planning Board also issued a Negative Declaration on December 7, 2017, determining that the Project will result in no significant adverse impacts on the environment. The Agency, having reviewed the materials presented by the Company, including but not limited to the Negative Declaration, further determines that the Project does not pose a potential significant adverse environmental impact and thus ratifies the Negative Declaration previously issued by the City of Yonkers Planning Board pursuant to 6 N.Y.C.R.R. § 617.7.

Section 2. The Chairman, Vice Chairman, President, Executive Director and/or the CFO are hereby authorized, on behalf of the Agency, to (A) hold a public hearing in compliance with the Act, and (B) negotiate (1) an Agent Agreement, pursuant to which the Agency appoints the Company as its agent to undertake the Project, (2) a Lease Agreement, pursuant to which the Company leases the Project to the Agency, (3) a related Leaseback Agreement, pursuant to which the Agency leases its interest in the Project back to the Company, (4) a Tax Agreement, pursuant to which the Company agrees to make certain payments in lieu of real property taxes for the benefit of affected tax jurisdictions, (5) a Tax Agreement Mortgage, and (6) related documents; provided (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 Tax Agreement is consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation therefrom have been complied with.

Section 3. The Agency is hereby authorized to conduct a public hearing in compliance with the Act.

Section 4. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required 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 the officer, employee or agent 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 5. These Resolutions shall take effect immediately.

Resolution No. 08/2018-13  
Initial Resolution: Extell Hudson Waterfront LLC  
August 29, 2018  
TC: Harris Beach PLLC

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

	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>
Mayor Mike Spano	[ ✓ ]	[ ]	[ ]	[ ]
Peter Kischak	[ ]	[ ]	[ ]	[ x ]
Wilson Kimball	[ ✓ ]	[ ]	[ ]	[ ]
Melissa Nacerino	[ ]	[ ]	[ ]	[ x ]
Hon. Cecile D. Singer	[ ✓ ]	[ ]	[ ]	[ ]
Henry Djonbalaj	[ ✓ ]	[ ]	[ ]	[ ]

The Resolutions were thereupon duly adopted.

Resolution No. 08/2018-13  
Initial Resolution: Extell Hudson Waterfront LLC  
August 29, 2018  
TC: Harris Beach PLLC

**CERTIFICATION**  
*(Extell Hudson Waterfront, LLC Project)*

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

I, WILSON KIMBALL, the undersigned Secretary of the City of Yonkers Industrial Development Agency DO HEREBY CERTIFY:


That I have compared the annexed extract of minutes of the meeting of the City of Yonkers Industrial Development Agency (the "Agency"), including the resolution contained therein, held on August 29, 2018, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY, that there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY, that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this 29<sup>th</sup> day of August, 2018.

  
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Wilson Kimball, Secretary

Resolution No. 08/2018-13  
Initial Resolution: Extell Hudson Waterfront LLC  
August 29, 2018  
TC: Harris Beach PLLC

**Exhibit A**

**Negative Declaration of City of Yonkers Planning Board**

[Attached Next Page]

Resolution No. 08/2018-13  
Initial Resolution: Extell Hudson Waterfront LLC  
August 29, 2018  
TC: Harris Beach PLLC

**Exhibit B**

**Opinion of State Comptroller**

[Attached Next Page]

85-51

OPINIONS OF THE STATE COMPTROLLER

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8-85

district must continue to serve the village. Under these circumstances, the town would continue to levy and collect assessments therein for fire district services.

If the town board proceeds to diminish the area of a fire district in the manner provided for in Town Law, § 182, the fire district, nonetheless, must continue to perform services within the village until the first day of June following the first day of January next succeeding the date of incorporation (Village Law, § 2-252[1](b)). Section 2-252 also provides that a town collector or receiver of taxes shall continue to perform his duties in respect to the property in the village until all taxes and assessments levied against such property have been collected (Village Law, § 2-252[3]). Although section 2-252 sets forth the procedure to be followed where, pursuant to other provisions of law, a fire district will cease to exist within the village, this section does not require either the diminution of the fire district or the cessation of its services within such village (Village Law, § 2-252[6]).

Should the area of a fire district be diminished, pursuant to Town Law, § 182(1), by the territory located within a subsequently incorporated village, the bonded or other indebtedness of the fire district allocable to such territory must be assumed and borne by the village in which the territory is located. The method for allocating, collecting and making payment to the fire district on such indebtedness is also set forth in Town Law, § 182(1).

Finally, we note that if fifty percent or more of the area of a newly incorporated village is situated within a fire district, the town board, upon petition of the village board of trustees and the board of fire commissioners, may adopt a resolution, subject to permissive referendum, extending the fire district to encompass the entire village. The petition for a referendum must be submitted by a specified number of electors residing within the area of the proposed extension (Town Law, § 170(4)).

August 1, 1985  
Daniel Greenberg, Esq.  
Central Islip Fire District

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## Opn No. 85-51

### INDUSTRIAL DEVELOPMENT AGENCIES — Powers and Duties (construction of apartment complex)

**GENERAL MUNICIPAL LAW, §§ 852, 854(4):** Local officials must determine, based upon all the relevant facts, whether construction of an apartment complex will promote employment opportunities and prevent economic deterioration and thereby be a proper project for industrial development bond financing.

We have been asked whether construction of an apartment complex is a commercial purpose within the meaning of section 854(4) of the General Municipal Law and, thereby, a proper project for industrial development bond financing.

Article 18-A of the General Municipal Law (§§ 850-888) contains the provisions of law governing the creation, organization and powers of industrial development agencies in New York State. The legislation (L 1969, ch 1030), at the time of its original enactment in 1969, provided that its general purpose was "to promote the economic welfare of its [the State's] inhabitants and to actively promote, attract, encourage and develop economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic deterioration. . ." This intent was further evidenced by the original provision of § 858 of the General Municipal Law, which provided that:



"The purposes of the agency shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the state of New York and to improve their standard of living:..."

In approving chapter 1030 of the Laws of 1969, Governor Rockefeller noted that "industrial development agencies provide one means for communities to attract new industry, encourage plant modernization and create new job opportunities (McKinney's 1969 Session Laws, Vol. 2, p. 2572). Based upon the foregoing, it is our opinion that, at its inception, the primary thrust of the industrial development legislation was to promote the development of commerce and industry as a means of increasing employment opportunities.

The original legislation has been amended a number of times since 1969 to broaden the scope of permissible industrial development activities. Specifically, the definition of a "project" has been expanded to include construction of industrial pollution control facilities (L 1971, ch 978), winter recreation facilities and then recreation facilities generally (L 1974, ch 954; L 1977, ch 630), horse racing facilities (L 1977, ch 267), railroad facilities (L 1980, ch 803) and, most recently, educational or cultural facilities (L 1982, ch 541). None of these amendments would bring construction of an apartment complex specifically within the ambit of a permissible project for industrial development financing. Therefore, for an apartment complex to qualify as an eligible project under Article 18-A of the General Municipal Law, it must constitute a commercial project as that term was originally used in Article 18-A.

With respect to whether construction of an apartment complex may be viewed generally as a commercial activity within the meaning of Article 18-A, this Office has stated that, while the courts are inclined to construe the grant of powers to industrial development agencies broadly, an essential element of any valid commercial activity appears to be the promotion of employment opportunities and the prevention of economic deterioration in an area for whose benefit the industrial development agency was created (1982 Opns St Comp No. 82-360, p 455) In *Grossman v Herkimer County Industrial Development Agency*, 60 AD2d 172, 400 NYS2d 623, the court held that development of a mercantile building and attendant creation of 100 job opportunities was a proper project for an industrial development agency to finance. Thus, to qualify for industrial development bond financing, a project should be one which promotes employment opportunities and prevents economic deterioration in the area served by the industrial development agency.

This Office is not in a position to render an opinion as to whether a project which consists of the construction of an apartment complex is a commercial activity within the meaning of Article 18-A of the General Municipal Law. Such a determination must be made by local officials based upon all the facts relevant to the proposed project. We do note, however, that any such determination should take into account the stated purposes of the New York State Industrial Development Agency Act, that is, the promotion of employment opportunities and the prevention of economic deterioration. Please note that, in considering the question of State law raised by this inquiry, we have not considered any requirements of the Internal Revenue Code with respect to issuance of industrial development bonds nor the provisions of Executive Order No. 48, adopted October 3, 1984, prescribing industrial development bond allocations pursuant to the federal Deficit Reduction Act of 1984.

August 16, 1985  
George A. O'Hanlon, Esq., Village Attorney  
Village of Port Chester