

**Silver Creek Apartments Due Diligence Resolution**

A regular meeting of the County of Chautauqua Industrial Development Agency (the “Agency”) was convened in public session on October 24, 2023, at 10:00 A.M., local time, at the offices of the Agency located at 201 West 3rd Street, Jamestown, County of Chautauqua, New York (the “IDA Office”).

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

PRESENT:

Gary Henry	Chairman
Bradley Walters	Vice Chairman
Sagan Sheffield-Smith	Treasurer
Dan Heitzenrater	Secretary
Steven Thorpe	Member
Kevin Muldowney	Member
Daniel DeMarte	Member

NOT PRESENT:

THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Mark Geise	Administrative Director/CEO
Richard E. Dixon	Chief Financial Officer
Milan K. Tyler, Esq.	Counsel
Greg Peterson	Counsel
Kristine Morabito	IDA Staff
Rosie Strandburg	IDA Staff
Carol Rasmussen	IDA Staff
Kayla Strandburg	IDA Staff
Nate Aldrich	IDA Staff
Jeanette Lo Bello	IDA Staff
Crystal Erhard	IDA Staff
Jason Sample	IDA Staff
Allen Handelman	Park Grove Realty Vice President
Ashley Switzer	STEL Project Manager/ HR Associate
Greg Bacon	Jamestown Post Journal
Julia Ciesla-Hanley	WRFA 107.9

The attached resolution no. 10-24-23-01 was offered by Brad Walters, seconded by Sagan Sheffield-Smith:

Resolution No. 10-24-23-01

RESOLUTION TAKING PRELIMINARY ACTION TOWARD THE ACQUISITION AND STRAIGHT LEASING OF A CERTAIN PROJECT FOR SILVER CREEK APARTMENTS, LLC AND/OR ITS AFFILIATES AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PRELIMINARY AGREEMENT WITH RESPECT TO SUCH TRANSACTION

WHEREAS, the County of Chautauqua Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”), and Chapter 71 of the 1972 Laws of New York, as amended, constituting Section 895-h of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, industrial and commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, SILVER CREEK APARTMENTS, LLC, a limited liability company duly organized and existing under the laws of the State of New York (the “Applicant”), presented an application for financial assistance (the “Application”) to the Agency, which Application requested that the Agency consider undertaking a project (the “Project”) consisting of the following: (A)(1) the acquisition of an interest in an approximately 2.3 acre parcel of land located at 58-62 Main Street (a/k/a 60 Main Street), Village of Silver Creek, Town of Hanover, County of Chautauqua, New York (the “Land”), (2) the demolition of the existing buildings and structures on the Land, (3) the construction of an approximately 50,574 square foot building on the Land, together with related improvements to the Land, including, without limitation, a patio and storage shed (collectively, the “Building”), and (4) the acquisition of certain furniture, fixtures, machinery, equipment and building materials necessary for the completion thereof (collectively, the “Equipment” and together with the Land and the Building, collectively, the “Project Facility”), all of the foregoing for use by the Applicant and/or its affiliates as an affordable multifamily residential rental facility consisting of approximately 51 1-bedroom units and 3 2-bedroom units; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from sales and use taxes, mortgage recording taxes and real property taxes (collectively, the “Financial Assistance”); and (C) the lease (with an

obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity(ies) as may be designated by the Applicant and agreed upon by the Agency; and

WHEREAS, the Agency has given due consideration to the Application and to the representations made by the Applicant therein, in certain supplemental documents and at this meeting, including, without limitation, representations of the Applicant that: (A) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Applicant to undertake the Project in the County of Chautauqua, New York; (B) the completion of the Project and the leasing and operation of the Project Facility by the Applicant and/or its related designee will not result in the removal of a facility or plant of the Applicant, such related designee or any other occupant of the Project Facility from one area of the State of New York (the "State") to another area of the State or in the abandonment of one or more plants or facilities of the Applicant, such related designee or any other occupant of the Project Facility in the State; (C) the Project Facility will not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project; (D) the Project will serve the public purposes of the Act by preserving permanent, private sector jobs and increasing the overall number of permanent, private sector jobs in the State; and (E) the granting of the Financial Assistance by the Agency will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of the County of Chautauqua, New York, and improve their standard of living, and prevent unemployment and economic deterioration, and thereby serve the public purposes of the Act; and

WHEREAS, any approval of the Project is contingent upon, among other things, a final determination by the members of the Agency to proceed with the Project following determinations by the Agency that: (A) the public hearing and notice requirements and other procedural requirements contained in the Act relating to the Project and the Financial Assistance have been satisfied; and (B) the undertaking of the Project by the Agency and the granting of the Financial Assistance are and will be in compliance with all other applicable requirements of the Act, Article 8 of the Environmental Conservation Law (the "SEQR Act") and the regulations adopted pursuant thereto (the "Regulations" and together with the SEQR Act, collectively, "SEQRA"), and all other statutes, codes, laws, rules and regulations of any governmental authority having jurisdiction over the Project or the Project Facility (collectively, the "Applicable Laws"); and

WHEREAS, the portion of the Financial Assistance consisting of an exemption from real property taxes, if granted, may represent a deviation from the Agency's uniform tax exemption policy and guidelines with respect to the making of payments in lieu of real property taxes; and

WHEREAS, the Agency desires to encourage the Applicant to preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of the County of Chautauqua, New York, and to prevent unemployment and economic deterioration, by undertaking the Project in the County of Chautauqua, New York; and

WHEREAS, although a resolution authorizing the undertaking of the Project has not yet been submitted for approval by the Agency, a preliminary agreement (the "Preliminary

Agreement”) relative to the proposed undertaking of the Project by the Agency has been presented for approval by the Agency;

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

Section 1. The Agency hereby authorizes the Administrative Director/CEO of the Agency, prior to the granting of any Financial Assistance with respect to the Project: (A) to establish a time, date and place (if applicable) for a public hearing (the “Public Hearing”) of the Agency to hear all persons interested in the location and nature of the Project and the proposed Financial Assistance being contemplated by the Agency with respect to the Project, said Public Hearing to be held in the city, town or village within which the Project Facility is or will be located, subject to Applicable Laws; (B) to cause notice of said Public Hearing to be given to the public by publishing a notice of said Public Hearing in a newspaper of general circulation available to residents of the governmental units within which the Project Facility is or will be located, such notice to comply with the requirements of and to be published in accordance with the requirements of the Act; (C) to cause notice of said Public Hearing, pursuant to the Act, to be given to the chief executive officer of the County of Chautauqua, New York, and of each city, town, village, school district and other affected tax jurisdiction in which the Project Facility is or will be located; (D) to conduct the Public Hearing or to authorize a hearing officer to conduct the Public Hearing in accordance with the Act; (E) to cause a report of the Public Hearing fairly summarizing the views presented at said Public Hearing to be promptly prepared and cause copies of said report to be made available to the members of the Agency; (F) to establish a time, date and place (if applicable) for a meeting of the Agency (the “IDA Meeting”) to consider whether to approve a proposed deviation from the Agency’s uniform tax exemption policy in accordance with the Act if the Administrative Director/CEO determines that the portion of the Financial Assistance consisting of an exemption from real property taxes constitutes a deviation from such policy; (G) to cause notice of any such proposed deviation from the Agency’s uniform tax exemption policy and of the IDA Meeting to be given to the affected tax jurisdictions in accordance with the Act; and (H) to otherwise comply with all other procedural and other requirements imposed on the Agency pursuant to Applicable Laws with respect to the Project and/or the Financial Assistance.

Section 2. The Applicant is hereby authorized to conduct such environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary or convenient to enable the Agency to make its determination whether to proceed with the Project and to grant the Financial Assistance; provided, however, that such authorization shall not entitle or permit the Applicant to commence the acquisition, construction, installation or equipping of the Project Facility unless and until the Agency shall determine that all requirements of Applicable Laws have been fulfilled. The officers, agents and employees of the Agency are hereby directed to proceed to do such things or perform such acts as may allow the Agency to proceed to its final consideration of the Project. This Resolution constitutes an authorization to conduct concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning with respect to the Project within the meaning of Section 617.3(c)(2) of the Regulations and a determination of compliance with technical requirements within the meaning of Section 617.3(c)(2) of the Regulations and does not constitute, and shall

not be deemed to constitute, either an approval by the Agency of the Project for the purposes of the Act or SEQRA or a commitment by the Agency to approve the Project or to grant the Financial Assistance.

Section 3. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Applicant as set forth in the Preliminary Agreement.

Section 4. The findings of the Agency set forth herein are expressly conditioned upon full compliance of the Applicant, the Project and the Project Facility with all Applicable Laws, and the Applicant shall be required to provide evidence of same satisfactory to the Agency prior to the granting of any Financial Assistance.

Section 5. If, following full compliance with all Applicable Laws, the Agency adopts a future resolution (the "Future Resolution") determining to proceed with the Project and to grant the Financial Assistance, or any portion thereof, with respect to the Project and the Applicant complies with all conditions set forth in the Preliminary Agreement and the Future Resolution, then the Agency will (A) acquire an interest in the Project Facility pursuant to a deed, lease agreement, assignment of lease, license, bill of sale and/or other documentation to be negotiated between the Agency and the Applicant (the "Company Lease"); (B) lease (with the obligation to purchase), license or sell the Project Facility to the Applicant or related designee pursuant to an agency lease agreement or an installment sale agreement (the "Agency Lease") to be negotiated between the Agency and the Applicant; and (C) provide the Financial Assistance with respect to the Project, all as contemplated by the Preliminary Agreement and the Future Resolution.

Section 6. The form, terms and substance of the Preliminary Agreement (in substantially the form presented at this meeting) are in all respects approved, and the Chairman, Vice Chairman, Administrative Director/CEO and Chief Financial Officer of the Agency are each hereby authorized, empowered and directed, acting individually or jointly, to execute and deliver said Preliminary Agreement in the name and on behalf of the Agency, with such changes therein as shall be approved by the officer executing same on behalf of the Agency, the execution thereof by such officer to constitute conclusive evidence of such officer's approval of any and all changes or revisions therein from the form now before this meeting, and the Agency hereby ratifies and approves any action heretofore taken by the Agency with respect to the Preliminary Agreement.

Section 7. From and after the execution and delivery of the Preliminary Agreement, the officers, agents and employees of the Agency are hereby authorized, empowered and directed, acting individually or jointly, to proceed with the undertakings provided for therein on the part of the Agency, and are further authorized to do all such acts and things and to execute all such documents as may be necessary or convenient to carry out and comply with the terms and provisions of the Preliminary Agreement as and when executed.

Section 8. The law firm of Phillips Lytle LLP, Jamestown, New York, is hereby appointed Counsel to the Agency with respect to all matters in connection with the Project. Counsel for the Agency is hereby authorized, at the expense of the Applicant, to work with the

Applicant, counsel to the Applicant, and others to prepare, for submission to the Agency, all documents necessary to effect the transactions contemplated by this Resolution.

Section 9. The Chairman, Vice Chairman, Administrative Director/CEO and Chief Financial Officer of the Agency are each hereby authorized and directed to distribute copies of this Resolution to the Applicant and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 10. This Resolution shall take effect immediately.

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

Gary Henry	AYE
Bradley Walters	AYE
Sagan Sheffield-Smith	AYE
Dan Heitzenrater	AYE
Steven Thorpe	AYE
Kevin Muldowney	AYE
Daniel DeMarte	AYE

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF CHAUTAUQUA    )

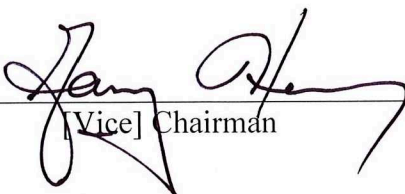
WE, the undersigned officers of the County of Chautauqua Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that we have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on October 24, 2023 with the original thereof on file in our offices, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

WE FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public at both locations at which members of the Agency were present, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; (D) there was a quorum of the members of the Agency present throughout said meeting; and (E) the meeting was recorded and the recording has been or will be posted on the public website of the Agency pursuant to the Open Meetings Law.

WE FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, we have hereunto set our hand this 24<sup>th</sup> day of October, 2023.

  
\_\_\_\_\_  
[Assistant] Secretary

  
\_\_\_\_\_  
[Vice] Chairman



## PRELIMINARY AGREEMENT

THIS PRELIMINARY AGREEMENT (this "Preliminary Agreement") dated as of the 24th day of October, 2023, between the COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY (the "Agency"), a public benefit corporation organized and existing under the laws of the State of New York, and SILVER CREEK APARTMENTS, LLC, a limited liability company duly organized and existing under the laws of the State of New York (the "Applicant").

### WITNESSETH:

WHEREAS, the Agency is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act"), and Chapter 71 of the 1972 Laws of New York, as amended, constituting Section 895-h of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, industrial and commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, the Applicant presented a draft application for financial assistance (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Proposed Project") consisting of the following: (A)(1) the acquisition of an interest in an approximately 2.3 acre parcel of land located at 58-62 Main Street (a/k/a 60 Main Street), Village of Silver Creek, Town of Hanover, County of Chautauqua, New York (the "Land"), (2) the demolition of the existing buildings and structures on the Land, (3) the construction of an approximately 50,574 square foot building on the Land, together with related improvements to the Land, including, without limitation, a patio and storage shed (collectively, the "Building"), and (4) the acquisition of certain furniture, fixtures, machinery, equipment and building materials necessary for the completion thereof (collectively, the "Equipment" and together with the Land and the Building, collectively, the "Project Facility"), all of the foregoing for use by the Applicant and/or its affiliates as an affordable multifamily residential rental facility consisting of approximately 51 1-bedroom units and 3 2-bedroom units; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from sales and use taxes, mortgage recording taxes and real property taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), license or sale of the

Project Facility to the Applicant or such other entity(ies) as may be designated by the Applicant and agreed upon by the Agency; and

WHEREAS, the members of the Agency held a meeting on October 24, 2023 and approved a resolution (the "Preliminary Resolution") requiring the execution and delivery of this Preliminary Agreement by the Applicant and authorizing its execution and delivery by the Agency, and authorizing the Agency to pursue preliminary action toward the undertaking of the Proposed Project;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Agency and the Applicant agree as follows:

Article 1. Representations; No Commitments.

Section 1.01. The Applicant hereby represents to the Agency that:

(A) Based on the proposed use of the Project Facility, the economic effects of the Proposed Project on the area in which it is situated, the employment reasonably expected to be created by the acquisition, construction, installation, equipping and operation of the Project Facility, and an analysis of how the Proposed Project would contribute to the realization of the public purposes of promoting job opportunities in the County of Chautauqua (the "County"), and the prevention of economic deterioration in the County, the Proposed Project would constitute a commercial facility with a significant impact on the area in which it is situated, and would advance the Agency's purposes by promoting job opportunities and preventing economic deterioration in the County. Therefore, the Proposed Project would constitute a "project" within the meaning of the Act.

(B) The execution, delivery and performance by the Applicant of this Preliminary Agreement have been duly authorized by all necessary company action, and this Preliminary Agreement has been duly executed and delivered by the Applicant and is the legal, valid and binding obligation of the Applicant enforceable against the Applicant in accordance with its terms.

(C) The Project Facility will not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Proposed Project. For purposes of this representation, retail sales shall mean: (A) sales by a registered vendor under Article 28 of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of Section 1101 of the New York Tax Law; or (B) sales of a service to such customers.

(D) The undertaking of the Proposed Project will not result in the removal of a facility or plant of the Applicant, any related designee or any other occupant of the Project Facility from one area of the State of New York to another area of the State of New York or in the abandonment of one or more plants or facilities of the Applicant, any related designee or any other occupant of the Project Facility located in the State of New York. Therefore, the provisions of subdivision (1) of Section 862 of the Act would not be violated as a result of the granting of the Financial Assistance by the Agency to the Applicant.

(E) Each owner, occupant or operator that would receive Financial Assistance with respect to the Proposed Project is in substantial compliance with applicable federal, state and local tax, worker protection and environmental laws, rules and regulations.

(F) As of the date of this Preliminary Agreement, the Applicant is in substantial compliance with all provisions of Article 18-A of the General Municipal Law, including, but not limited to, the provisions of Section 859-a and Section 862(1) thereof.

(G) The granting by the Agency of the Financial Assistance with respect to the Proposed Project would be an inducement to the Applicant to undertake the Proposed Project in the County.

(H) The Applicant would not undertake the Proposed Project in the County without the granting of the Financial Assistance by the Agency.

(I) The Project Facility is located entirely within the boundaries of the Village of Silver Creek and is not located within the boundaries of any other incorporated village or city. The Project Facility is located entirely within the boundaries of the Silver Creek Central School District

(J) The Applicant plans to invest a total of at least \$[20,155,262] in the Project Facility.

Section 1.02. This Preliminary Agreement does not commit the Agency to undertake the Proposed Project or to grant to the Applicant any Financial Assistance with respect to the Proposed Project. The members of the Agency shall decide, in their sole and absolute discretion, whether or not to undertake the Proposed Project and to grant such Financial Assistance, and then only following a determination by the members of the Agency that all requirements of applicable laws, rules and regulations and the policies and procedures of the Agency (collectively, "Legal Requirements") have been fulfilled.

Article 2. Undertakings on the Part of the Agency.

Based upon the statements, representations and undertakings of the Applicant, and subject to the conditions set forth herein, the Agency agrees as follows:

Section 2.01. The Agency agrees to review the Application and to proceed with its consideration of the Proposed Project and the Financial Assistance relating to the Proposed Project, subject to the conditions contained in this Preliminary Agreement, including, but not limited to, the provision of Section 1.02 above and the following conditions:

(A) The Agency shall receive, in form and substance satisfactory to the Agency, such rulings, approvals, resolutions, consents, certificates, opinions of counsel and other instruments and proceedings as shall be specified by the Agency in connection with the Proposed Project and the various documents to be executed in connection with the Proposed Project;

(B) The Applicant shall provide the Agency and all other “involved/interested agencies” with all information and statements that may be required by said respective entities to ensure compliance by said entities with the New York State Environmental Quality Review Act and the regulations promulgated thereunder (collectively, “SEQRA”);

(C) The Applicant shall comply with and shall provide the Agency with all information, documentation and statements required for the Agency to comply with the requirements of all Legal Requirements; and

(D) The Applicant shall pay or reimburse the Agency for all expenses incurred by the Agency in connection with the Proposed Project (including, without limitation, counsel fees and disbursements).

### Article 3. Undertakings on the Part of the Applicant.

Based upon the statements, representations and undertakings of the Agency and subject to the conditions set forth herein, the Applicant agrees as follows:

Section 3.01. The Applicant hereby agrees to indemnify, defend (with counsel selected by the Agency) and hold the Agency (and its members, officers, agents, attorneys and employees) harmless from any and all liability, damages, causes of actions, losses, costs or expenses incurred by the Agency in connection with: (A) review, examination and processing of, and action pursuant to or upon, the Application, regardless of whether or not the Application, the Proposed Project or the Financial Assistance are favorably acted upon by the Agency, and (B) any further action taken by the Agency with respect to the Application or the Proposed Project; including, without limiting the generality of the foregoing, (i) all fees and expenses of the Agency’s general counsel, transaction counsel, economic development consultant, real property tax valuation consultant and other experts and consultants (if deemed necessary or advisable by the Agency) heretofore or hereafter incurred, and (ii) all other expenses incurred by the Agency in defending

any suits, actions or proceedings that may arise as a result of any of the foregoing. If, for any reason whatsoever, the Agency decides not to proceed with consideration of the Application or the proposed Project or the Applicant fails to conclude or consummate necessary negotiations or fails within a reasonable or specified period of time to take reasonable, proper or requested action or withdraws, abandons, cancels, or neglects the Application or if the Applicant is unable to secure third party financing, if required, or otherwise fails to conclude the Proposed Project, then upon presentation of an invoice by the Agency, its agents, attorneys or assigns, the Applicant shall pay to the Agency, its agents, attorneys or assigns, as the case may be, all fees and expenses reflected in any such invoice.

Section 3.02. The Applicant agrees that each of the Agency's general counsel, transaction counsel, economic development consultant, real property tax valuation consultant and other experts and consultants is an intended third-party beneficiary of this Preliminary Agreement, and that each of them may (but shall not be obligated to) enforce the provisions of Section 3.01 of this Preliminary Agreement, whether by lawsuit or otherwise, to collect the fees and expenses of such party or person incurred by the Agency (whether or not first paid by the Agency) with respect to the Application. The Applicant further agrees that the Agency may (but shall not be obligated to) directly enforce the provisions of Section 3.01 of this Preliminary Agreement against the Applicant, whether by lawsuit or otherwise, to collect such fees and expenses.

Section 3.03. The Applicant will take such further action and adopt such further proceedings as the Agency may deem necessary to implement its aforesaid undertakings or as the Agency may deem appropriate in pursuance thereof.

Section 3.04. This Preliminary Agreement is intended to facilitate discussion regarding the Proposed Project, and neither this Preliminary Agreement nor any discussions or course of conduct between the parties or their representatives shall constitute an agreement, offer or legally binding commitment by the Agency to undertake the Proposed Project or to grant the Financial Assistance. This Preliminary Agreement does not purport to summarize or contain all the conditions, covenants, representations, warranties and other provisions that would be contained in the definitive documentation between the Agency and the Applicant relating to the Proposed Project.

#### Article 4. General Provisions.

Section 4.01. (A) All notices and other communications hereunder shall be in writing and shall be deemed given (i) when mailed by United States registered or certified mail, postage prepaid, return receipt requested, (ii) when delivered by hand delivery to the undersigned, or (iii) one (1) day after deposit with Federal Express or other nationally recognized overnight courier for delivery, addressed as follows:

- (1) To the Agency:

County of Chautauqua Industrial Development Agency  
201 West 3rd Street, Suite 115  
Jamestown, NY 14701  
Attn: Mark Geise

(2) To the Applicant:

Silver Creek Apartments, LLC  
46 Prince Street  
Rochester, NY 14607  
Attn: Allen Handelman

(B) The Agency and the Applicant may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

Section 4.02. All covenants and agreements herein contained by or on behalf of the Agency and the Applicant shall bind and inure to the benefit of the respective permitted successors and assigns of the Agency and the Applicant, as the case may be, whether so expressed or not.

Section 4.03. The obligations and agreements of the Agency contained herein shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent or employee of the Agency in his individual capacity, and the members, officers, agents and employees of the Agency shall not be liable personally hereon or be subject to any personal liability or accountability based upon or in respect hereof or of any transaction contemplated hereby. The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or of the County, and neither the State of New York nor the County, shall be liable thereon; and further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility.

Section 4.04. Notwithstanding any provision of this Preliminary Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (A) the Agency shall have been requested to do so in writing by the Applicant; and (B) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any member, officer, agent or employee of the Agency) of any liability, fees, expenses or other costs, the Agency shall have received from the Applicant security or indemnity satisfactory to the Agency for protection against all such liability and for the reimbursement of all such fees, expenses and other costs.

Section 4.05. This Preliminary Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Signatures by facsimile or in Portable Document Format shall be deemed to constitute originals.

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IN WITNESS WHEREOF, the parties hereto have entered into this Preliminary Agreement as of the date and year first written above.

SILVER CREEK APARTMNETS, LLC

COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

By: \_\_\_\_\_

Name:

Title:

By: Richard E Dixon

Name: Richard E. Dixon

Title: Chief Financial Officer