

Victoria Storrs

Chair

David Kidera

Vice Chair

Assistant Secretary

Richard Kotlow

Secretary

Treasurer

Edward W. De Barbieri

Member

Victor Franco

Member

Georgette Steffens

Member

BETHLEHEM IDA

TOWN OF BETHLEHEM
ALBANY COUNTY, NEW YORK

**Town of Bethlehem
Industrial Development Agency**

445 Delaware Avenue

Delmar, NY 12054

(518) 439-4955

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www.bethlehemida.com

Catherine M. Hedgeman, Esq.

Executive Director

Agency Counsel

(518) 752-3111

Allen F. Maikels

Chief Financial Officer

Contracting Officer

(518) 487-4679

John W. Taylor

Senior Economic Developer

(518) 439-4955 x1189

Board Meeting Agenda

Wednesday, May 24, 2023 | 8:00am | Bethlehem Town Hall Room 101A

Livestream:

<https://us02web.zoom.us/j/81779616188?pwd=cWFIY3ErNFpyR0d2RVBKK1Nac0NsZz09>

- I. Call to Order/Roll Call/Quorum Approval**
- II. Approval of Minutes from the April 26, 2023 Board Meeting**
- III. Approval of the April 2023 Financials**

IV. New Business

A. Items For Action

1. RESOLUTION AUTHORIZING THE EXECUTION OF CERTAIN AMENDMENTS BY THE TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY (THE "ISSUER") TO (A) THE ISSUER'S TAX-EXEMPT CIVIC FACILITY REVENUE REFUNDING BONDS (AMERICAN HOUSING FOUNDATION, INC. PROJECT – LETTER OF CREDIT SECURED), SERIES 2006A ISSUED BY THE ISSUER ON DECEMBER 28, 2006 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$6,740,000 AND (B) THE EXECUTION OF RELATED DOCUMENTS.

III. Adjourn

Victoria Storrs
Chair

David Kidera
Vice Chair
Assistant Secretary

Richard Kotlow
Secretary
Treasurer

Edward W. De Barbieri
Member

Victor Franco
Member

Georgette Steffens
Member



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Regular Meeting- Minutes
Wednesday, April 26, 2023 | 8:00am | Bethlehem Town Hall Room 101A
Livestream:

<https://us02web.zoom.us/j/87070002938?pwd=MjdwQ1pmaHFvTVVLY3hldDFoWFliQT09>

I. Call to Order/Roll Call/ Quorum Determination

The annual meeting of the Town of Bethlehem Industrial Development Agency was held on the above date at the Town Hall, 445 Delaware Avenue, Delmar, New York. The meeting was called to order at 8:02 a.m. The roll was called, and members present were:

Victoria Storrs, Chair

D. Kidera

V. Franco

E. De Barbieri

R. Kotlow

Also present:

Al Maikels, Chief Financial Officer

Catherine M. Hedgeman, Esq. Executive Director and Agency Counsel John Taylor,
Senior Economic Developer

II. Minutes Approval

a. Approve the Minutes from March 2, 2023 Regular Meeting

The minutes of the March 2, 2023, meeting was approved on a motion by Mr. Kidera, seconded by Mr. Kotlow, with all members present in favor.

III. Old Business

a. Report of the Senior Economic Developer

Mr. Taylor provided an update. The Town's zoning update is underway. The first public meeting will be held at the end of May. The Delaware avenue Complete Streets Project is in its design phase. Albany County has designed a plan for ARPA funds, and once applications are released, Mr. Taylor will follow-up with additional detail. Mr. Taylor recently attended an Off-Shore Wind Conference and noted a few important takeaways.

IV. Committee Reports

a. Finance Committee Report from April 20, 2023 Meeting

Mr. Kotlow provided the report. During the Finance Committee Meeting, discussion topics included collateralization deposits, fund balance review policy, and insurance coverage for the IDA.

Ms. Hedgeman provided an update on the Plug Power project.

V. New Business

a. Approval of Retainer Agreement with Hedgeman Law Firm with regard to Litigation

Ms. Hedgeman explained that the litigation involving The Port is not within the scope of the original retainer agreement with Hedgeman Law Firm. Ms. Hedgeman will be billing The Port directly but requires an engagement letter from the IDA.

Mr. De Barbieri made a motion to authorize the chair to execute an agreement with the Hedgeman Law Firm, seconded by Mr. Kotlow, with all members present in favor. Ms. Hedgeman noted that this is a basic retainer agreement and will not need notarization.

b. Presentation of Financial Statements

Mr. Maikels provided the presentation of financial statements for the month of March 2023. Ms. Storrs noted that the interest income is well above the budgeted amount.,

c. Update on BellesBoard

Ms. Hedgeman stated that she is working with BellesBoard to have all necessary documents uploaded. Each member has their own profile on the site. Each member will be receiving a "welcome" email with login information. BellesBoard offers training for Board members to use the interface properly.

d. Application Revision

i. What should we know about the proposed project itself?

Mr. Kotlow noted that it would be worth knowing who is proposing the project. Mr. Kidera mentioned that it would be helpful to meet with the applicant to have them explain the proposed project. Mr. Kidera also

mentioned that the IDA should have a process to evaluate the project. Ms. Storrs mentioned that it may be helpful to request that applicants provide a narrative explaining the importance of the project.

ii. **How do we confirm that our assistance is necessary?**

Ms. Hedgeman stated that it would be important for applicants to give a narrative of “but-for”. I.e., “but for these benefits, we would be unable to complete the project.” Mr. Taylor stated that it would be beneficial for the applicant to identify why the project should be in Bethlehem as opposed to another location.

Ms. Storrs stated that it is necessary to have a specific rubric which will aid the IDA in the application review process.

VI. Adjournment

Mr. Kidera made a motion to adjourn the meeting, seconded by Mr. Franco, with all members present in favor.

- a. **Next scheduled meetings: Governance Committee, May 19, 2023; Regular Meeting, May 24, 2023**

BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY
STATEMENT OF NET ASSETS
April 30, 2023

| ASSETS | April 30, 2023 |
|---------------------------------------|----------------------------|
| Current Assets | |
| Checking/Savings | |
| 200.04 Cash-M&T Bank Agency Account | 643,082.45 |
| 200.06 Cash-M&T CD | <u>756,140.97</u> |
| Total Checking/Savings | 1,399,223.42 |
| Other Current Assets | |
| 380 Fee Receivable | 28,565.44 |
| 480 Prepaid Expense | <u>2,233.36</u> |
| Total Other Current Assets | 30,798.80 |
| Total Current Assets | <u>1,430,022.22</u> |
| TOTAL ASSETS | <u><u>1,430,022.22</u></u> |
| LIABILITIES & EQUITY | |
| Liabilities | |
| Current Liabilities | |
| 601 Accrued Expenses | <u>16,140.49</u> |
| Total Current Liabilities | <u>16,140.49</u> |
| Total Liabilities | <u>16,140.49</u> |
| Equity | |
| 924 Net Assets | |
| 924.3 Net Assets-Unassigned | <u>1,413,881.73</u> |
| Total 924 Net Assets | 1,413,881.73 |
| Total Equity | <u>1,413,881.73</u> |
| TOTAL LIABILITIES & EQUITY | <u><u>1,430,022.22</u></u> |

BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY
STATEMENT OF REVENUE AND EXPENSES
April 30, 2023

ORDINARY INCOME/EXPENSE

Income

2116 FEE INCOME 136,958.35

2116.1 PSEG ENERGY REIMB 66,732.42

Total Income 203,690.77

Expenses

6460.4 Contractual Expenses 46,134.33

6460.5 Business & Economic Development 0.00

Total Expenses 46,134.33

NET ORDINARY INCOME 157,556.44

Other Income/Expense

Other Income

2401 Interest Income 5,957.02

Total Other Income 5,957.02

NET INCOME 163,513.46

BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY
BUDGET VS ACTUAL
4/30/2023

| Ordinary Income/Expense | Apr-23 | YTD Budget | Variance | Annual Budget |
|----------------------------------|------------|------------|------------|---------------|
| Income | | | | |
| 2116 Fee Income | 136,958.35 | 143,017.60 | -6,059.25 | 160,351.00 |
| 2106.1 PSEG Energ Reimb | 66,732.42 | 26,666.67 | 40,065.75 | 80,000.00 |
| Total Income | 203,690.77 | 169,684.27 | 34,006.50 | 240,351.00 |
| Expenses | | | | |
| 6460.4 Contractual Expenses | 46,134.33 | 53,366.66 | -7,232.33 | 160,100.00 |
| 6460.5 Business and Economic Dev | 0.00 | 33,333.33 | -33,333.33 | 100,000.00 |
| Total Expenses | 46,134.33 | 86,699.99 | -40,565.66 | 260,100.00 |
| Net Ordinary Income | 157,556.44 | 82,984.28 | 74,572.16 | -19,749.00 |
| Other Income/Expense | | | | |
| 2401 Interest Income | 5,957.02 | 400.00 | 5,557.02 | 1,200.00 |
| Total Other Income | 5,957.02 | 400.00 | 5,557.02 | 1,200.00 |
| Net Income | 163,513.46 | 83,384.28 | 80,129.18 | -18,549.00 |

**APPROVING RESOLUTION
MODIFICATIONS RELATING TO
AMERICAN HOUSING FOUNDATION, INC. PROJECT**

A regular meeting of the Town of Bethlehem Industrial Development Agency (the “Issuer”) was convened in public session at the offices of the Issuer located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York on May 24, 2023 at 8:00 o’clock, a.m., local time.

The meeting was called to order by the Chairperson of the Issuer and, upon roll being called, the following were:

PRESENT:

| | |
|--------------------|-------------|
| Victoria Storrs | Chairperson |
| Richard Kotlow | Treasurer |
| David Kidera | Member |
| Victor Franco | Member |
| Edward DeBarbieri | Member |
| Georgette Setffens | Member |

ABSENT:

ALSO PRESENT:

| | |
|--------------------------|--|
| Catherine Hedgeman, Esq. | Executive Director, Assistant Secretary and Agency Counsel |
| Allen F. Maikels | Treasurer, Chief Financial Officer and Contracting Officer |
| Chris Canada, Esq. | Agency Special Counsel |

The following resolution was offered by _____, seconded by _____, to wit:

Resolution No. 0523-__

RESOLUTION AUTHORIZING THE EXECUTION OF CERTAIN AMENDMENTS BY THE TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY (THE “ISSUER”) TO (A) THE ISSUER’S TAX-EXEMPT CIVIC FACILITY REVENUE REFUNDING BONDS (AMERICAN HOUSING FOUNDATION, INC. PROJECT – LETTER OF CREDIT SECURED), SERIES 2006A ISSUED BY THE ISSUER ON DECEMBER 28, 2006 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$6,740,000 AND (B) THE EXECUTION OF RELATED DOCUMENTS.

WHEREAS, Town of Bethlehem Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 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 582 of the 1973 Laws of New York, as amended, constituting Section 909-b 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 commercial, manufacturing and industrial 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, on December 28, 2006, the Issuer issued its Tax-Exempt Civic Facility Revenue Refunding Bonds (American Housing Foundation, Inc. Project – Letter of Credit Secured), Series 2006A in the original principal amount of \$6,740,000 (the “Bonds”) pursuant to a resolution adopted by the members of the Issuer on December 19, 2006 and a trust indenture dated as of December 1, 2006 (the “Initial Indenture”) by and between the Issuer and The Bank of New York, as predecessor to The Bank of New York Mellon (the “Trustee”), as trustee to the holders of the Bonds; and

WHEREAS, proceeds of the Bonds were used to finance a project (the “Project”) for the benefit of American Housing Foundation, Inc., a New York not-for-profit corporation (the “Institution”) consisting of the following: (A) the refinancing of the Issuer’s Senior Housing Revenue Bonds (The Van Allen Project), Series 1999A in the original aggregate principal amount of \$6,530,000 (the “Prior Bonds”), the Prior Bonds being issued pursuant to a trust indenture dated as of June 1, 1999 by and between the Issuer and The Bank of New York, as successor trustee to United States Trust Company of New York, as Prior Trustee (the “Prior Trustee”), to finance the following project (the “Prior Project”): (1)(a) the acquisition by the Issuer of an interest in certain real property, consisting of an approximately eighteen (18) acre parcel of land located at 790 Route 9W in the Town of Bethlehem, Albany County, New York (the “Land”), (b) the construction on the Land of an approximately 110 unit senior housing complex for low and moderate income senior citizens containing approximately 112,466 square feet of space (the “Facility”), and (c) the acquisition and installation of machinery and equipment and other personal property related thereto located thereon and therein (the “Equipment”) (the Land, the Facility and the Equipment hereinafter collectively referred to as the “Project Facility”), all of the foregoing to constitute a senior citizen housing facility for lease to low and moderate income households headed by an individual sixty years of age or older and any other directly or indirectly related activities; (2) the financing of all or a portion of the costs of the foregoing by the issuance of the Prior Bonds; (3) the granting of certain other “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including exemption from certain sales taxes, real estate transfer taxes, mortgage recording taxes and real property taxes (collectively with the Prior Bonds, the “Financial Assistance”); and (4) the sale of the Project Facility to the Institution pursuant to an installment sale agreement dated as of June 1, 1999 (the “Prior Installment Sale Agreement”); (B) the financing of all or a portion of the costs of the foregoing by the issuance of the Bonds; (C) the paying of all or a portion of the costs incidental to the issuance of the Bonds, including issuance costs of the Bonds and any reserve funds as may be necessary to secure the Bonds; and (D) the granting of certain other financial assistance with respect to the foregoing, including potential exemptions from certain real estate transfer taxes and mortgage recording taxes (collectively with the Bonds, the “Financial Assistance”); and

WHEREAS, the Bonds were initially purchased by RBC Dain Rauscher Inc., doing business under the name RBC Capital Markets, as underwriter (the “Underwriter”) pursuant to a bond purchase agreement dated December 28, 2006 (the “Bond Purchase Agreement”) by and among the Issuer, the Initial Underwriter and the Institution and initially bore interest at the Weekly Tax-Exempt Interest as defined in and pursuant to the Initial Indenture; and

WHEREAS, as security for the Bonds, the Institution entered into a reimbursement agreement dated as of December 1, 2006 (the “Reimbursement Agreement”) with RBS Citizens, National Association, a national banking association organized and existing under the laws of the United States of America (the “Bank”), pursuant to which the Bank issued in favor of the Trustee an irrevocable transferable direct-pay letter of credit relating to the Bonds (the “Letter of Credit”); and

WHEREAS, the Issuer received a letter from the Institution dated August 6, 2009, (A) indicating that (1) then-present market conditions and other factors had resulted in the Bond bearing interest at interest rates significantly higher than the Institution had expected and (2) the Institution had made arrangements with the Bank for the Bank to purchase the Bonds at an interest rate attractive to the Institution, and (B) requesting that the Issuer agree to make certain amendments to the Initial Indenture and the Bonds necessary in order to implement said purchase by the Bank of the Bonds; and

WHEREAS, by resolution adopted by the members of the Issuer on October 7, 2009 (the “Issuer Approving Resolution”), the Issuer (A) pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), determined that the execution and delivery of the First Supplemental Indenture and related documents (collectively, the “First Supplemental Documents”) (the “Transaction”) was a “Type II action” (as such term is defined pursuant to SEQRA), and accordingly that no further action pursuant to SEQRA is required with respect to the Transaction, and (B) authorized the execution and delivery by the Issuer of the First Supplemental Documents; and

WHEREAS, by notice dated October 1, 2009 given by the Bank to the Trustee (the “Bank Mandatory Tender Notice”), the Bank notified the Trustee that an event of default had occurred under the Reimbursement Agreement and directed the Trustee to effect a mandatory purchase of the Bonds pursuant to Section 304(A)(3) of the Initial Indenture. By notice given by the Trustee to the Bondholders on the date of receipt by the Trustee of the Bank Tender Notice (the “Trustee Mandatory Tender Notice”), the Trustee notified the holders of the Bonds that the Trustee had received the Bank Mandatory Tender Notice and that all of the Bonds would be subject to mandatory tender by the holders of the Bonds on the business day following the date of receipt by the Trustee of the Bank Tender Notice pursuant to Section 304(A)(3) of the Initial Indenture (the “Mandatory Tender”); and

WHEREAS, with the consent of the Institution and the Bank, the Issuer and the Trustee entered into the First Supplemental Indenture (the Initial Indenture, as amended and supplemented by the First Supplemental Indenture, being referred to hereinafter as the “Indenture”) to amend the Initial Indenture for the following purposes, among others (collectively referred to hereinafter as the “2009 Modifications”): (A) to add to the Bonds an additional interest rate mode (the “Bank Purchase Rate Mode”), (B) to provide that certain interest rate adjustments will apply to the Bonds in the Bank Purchase Rate Mode, (C) to provide terms for the prepayment of the Bonds in the Bank Purchase Rate Mode, (D) to provide terms for the conversion of the Bonds to and from the Bank Purchase Rate Mode, (E) to provide that the Book Entry System will not apply to the Bonds in the Bank Purchase Rate Mode, (F) to provide that the Letter of Credit will not be required while the Bonds is in the Bank Purchase Rate Mode, and (G) to provide for certain events of default to be added to the Initial Indenture and the other Financing Documents (as defined in the Initial Indenture); and

WHEREAS, as a result of the implementation of the 2009 Modifications and the Mandatory Tender, the Bonds were deemed reissued for federal income tax purposes on October 23, 2009 as a single bond (as so reissued, the “Reissued Bond”) and purchased by the Bank, with the Bank being the current holder of the Reissued Bond; and

WHEREAS, the Issuer received a letter dated February 23, 2023 from the Institution (the “Modification Request Letter”) (A) indicating the intention of the Institution to replace the current interest rate index used to calculate interest on the Reissued Bond while bearing interest at the Bank Purchase Rate (as defined in the Supplemented Indenture) from LIBOR (as defined in the Supplemented Indenture) to the Secured Overnight Financing Rate (SOFR) as more specifically described in the Modification Request Letter, with a copy of such Modification Request Letter being attached hereto as Exhibit A, and (B) requesting that the Issuer enter into modifications to the Reissued Bond and the related Financing Documents necessary to implement the Modification Request; and

WHEREAS, in connection therewith, the Issuer, the Institution, the Bank and the Trustee desire to enter into (A) a first omnibus amendment to trust indenture and related financing documents (the “First Omnibus Amendment”) by and among the Issuer, the Institution, the Bank and the Trustee and (B) certain other documents modifying the terms of the Financing Documents (the First Omnibus Amendment and such other documents are hereinafter referred to as the “Modification Documents”); and

WHEREAS, in connection with the Modification Request, the Issuer now desires to authorize the following actions (collectively, the “Action”): (1) to make the amendments to the Financing Documents and the Reissued Bond and (2) to make certain related amendments to the Financing Documents and the Reissued Bond; and

WHEREAS, if (and only if) the Action results, in the opinion of Bond Counsel, in a deemed reissuance of the Reissued Bond and a deemed purchase of such Further Reissued Bond by the Bank pursuant to the provisions of the Internal Revenue Code of 1986, as amended (the “Code”) in order to demonstrate compliance with the provisions of the Code relating to the Action, (A) the Institution will (1) execute a tax regulatory agreement dated the date of delivery of such Further Reissued Bond (the “Further Reissued Tax Regulatory Agreement”) concerning the requirements in Section 148 of the Code relating to such Further Reissued Bond, (B) the Issuer will (1) execute an arbitrage certificate dated the date of delivery of such Further Reissued Bond (the “Further Reissued Arbitrage Certificate”) relating to certain requirements set forth in Section 148 of the Code relating to such Further Reissued Bond, (2) execute a completed Internal Revenue Service Form 8038 (Information Return for Tax-Exempt Private Activity Bonds) relating to such Further Reissued Bond (the “Further Reissued Information Return”) pursuant to Section 149(e) of the Code, and (3) file the Further Reissued Information Return with the Internal Revenue Service and (C) the Bank will execute a letter relating to such Further Reissued Bond confirming the issue price of such Further Reissued Bond for purposes of Section 148 of the Code, and further confirming the difference between the interest rate payable on such Further Reissued Bond and the interest rate payable on such Further Reissued Bond immediately preceding the execution and delivery of the Modification Documents (the Reissued Bond, any Further Reissued Bond, the Modification Documents, the Further Reissued Tax Regulatory Agreement, the Further Reissued Arbitrage Certificate and the Further Reissued Information Return are hereinafter referred to as the “Bond Documents”); and

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

Section 1. Pursuant to SEQRA, the Issuer hereby finds and determines that:

(A) Pursuant to Section 617.5(c)(26) of the Regulations, the Action (including but not limited to the execution and delivery of the Bond Documents) is a “Type II action” (as said quoted term is defined in the Regulations).

(B) Accordingly, the Issuer hereby determines that no environmental impact statement or any other determination or procedure is required under SEQRA with respect to the Action.

Section 2. The Issuer hereby finds and determines that:

(A) By virtue of the Enabling Act, the Issuer has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Enabling Act and to exercise all powers granted to it under the Enabling Act.

(B) It is desirable and in the public interest for the Issuer to enter into the Bond Documents.

Section 3. In consequence of the foregoing, the Issuer hereby determines to: (A) authorize the Action; (B) subject to approval of the form and substance of the Bond Documents by Bond Counsel and counsel to the Issuer, approve the form and substance of the Bond Documents; (C) subject to (i) compliance with the terms and conditions contained in the existing documents relating to the Reissued Bond and (ii) compliance with state and federal law applicable to the Action, authorize the execution and delivery of the Bond Documents.

Section 4. Subject to the satisfaction of the conditions described in Section 3 hereof, Chairperson of the Issuer is hereby authorized, on behalf of the Issuer, to (a) determine, on behalf of the Issuer, the Bond Details relating to a Further Reissued Bond (if applicable) and (b) execute and deliver the Bond Documents and the other documents related thereto and, where appropriate, the Assistant Secretary of the Issuer is hereby authorized to affix the seal of the Issuer thereto and to attest the same, all in substantially the forms thereof approved by Bond Counsel and counsel to the Issuer, with such changes, variations, omissions and insertions as the Chairperson of the Issuer shall approve, the execution thereof by the Chairperson of the Issuer to constitute conclusive evidence of such approval.

Section 5. Subject to the execution and delivery of the other Bond Documents, the Issuer determines to execute and deliver the Reissued Bond or any Further Reissued Bond (as the case may be), provided that:

(A) The Reissued Bond or any Further Reissued Bond (as the case may be) authorized to be issued, executed, sold and delivered pursuant to this Section 5 shall (1) be issued, executed and delivered at such time as the Chairperson of the Issuer shall determine, and (2) bear interest at the rate or rates, be issued in such form, be subject to redemption prior to maturity and have such other terms and provisions and be issued in such manner and on such conditions as are set forth in the Reissued Bond or any Further Reissued Bond (as the case may be) and the other Bond Documents or as are hereinafter approved by the Chairperson of the Issuer in accordance with Section 4 hereof, which terms are specifically incorporated herein by reference with the same force and effect as if fully set forth in this resolution.

(B) Neither the members nor officers of the Issuer, nor any person executing the Reissued Bond or any Further Reissued Bond (as the case may be) or any of the other Bond Documents on behalf of the Issuer, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution, issuance or delivery thereof. The Reissued Bond or any Further Reissued Bond (as the case may be), and the interest thereon are not and shall never be a debt of the State of New York, the Town of Amherst, New York or any political subdivision thereof (other than the Issuer), and neither the State of New York, the Town of Amherst, New York nor any political subdivision thereof (other than the Issuer) shall be liable thereon.

(C) The Reissued Bond or any Further Reissued Bond (as the case may be), together with interest payable thereon, are and shall be special obligations of the Issuer payable solely from certain of the revenues and receipts derived from the operation, sale or other disposition of the Project Facility or from the enforcement of the security provided by the Bond Documents and the other security pledged to the payment thereof.

(D) Notwithstanding any other provision of this resolution, the Issuer covenants that it will make no use of the proceeds of the Reissued Bond or any Further Reissued Bond (as the case may be) or of any other funds of the Issuer which, if said use had been reasonably expected on the date of issuance of the Reissued Bond or any Further Reissued Bond (as the case may be), would have caused the Reissued Bond or any Further Reissued Bond (as the case may be) to be an “arbitrage bond” within the meaning of Section 148 of the Code.

Section 6. The officers, employees and agents of the Issuer are hereby authorized and directed for and in the name and on behalf of the Issuer to do all acts and things required or provided for by the provisions of the Bond Documents, and to execute and deliver all such additional 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 this resolution and to cause compliance by the Issuer with all of the terms, covenants and provisions of the Bond Documents binding upon the Issuer.

Section 7. 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:

| | | |
|--------------------|--------|-------|
| Victoria Storrs | VOTING | _____ |
| Richard Kotlow | VOTING | _____ |
| David Kidera | VOTING | _____ |
| Victor Franco | VOTING | _____ |
| Edward DeBarbieri | VOTING | _____ |
| Georgette Steffens | VOTING | _____ |

The foregoing resolution was thereupon declared duly adopted.

[Remainder of page left blank intentionally]

EXHIBIT A
MODIFICATION REQUEST LETTER

See attached.



February 23, 2023

BOARD OF DIRECTORS

Garry J. Kearns
Executive Director

John J. Naughter
President

Jerry D. Pucci
Vice President/Treasurer

Judith M. Byrnes
Secretary

Maureen A. Klein

Paul C. Reuss

John P. Smith

Olin P. Callaghan

William J. Riley

In Memoriam

James R. Reilly
John M. Prenderville
Nevin Harkness
Philomena R. Smith
Robert J. Arnold
Bernard Kaplowitz

*"Providing a Foundation
to House America"*

Re: Request for Bond Modifications — Town of Bethlehem Industrial Development Agency Tax-Exempt Civic Facility Revenue Refunding Bonds (American Housing Foundation, Inc. Project – Letter of Credit Secured), Series 2006A, in the principal amount of \$6,740,000 (the "Bonds") – LIBOR-based rate of interest to SOFR-based rate of interest

Dear Sir/Madam:

We are writing to request that Town of Bethlehem Industrial Development Agency (the "Issuer") consider and approve certain modifications relating to the Bonds described above in order to change the variable rate index used to determine the Bank Purchase Rate (as defined in the underlying financing documents) from the one-month London Inter-Bank Offered Rate ("LIBOR"), which is being discontinued, to the Secured Overnight Financing Rate ("SOFR").

We are not requesting any new financial assistance. The maturity date of the Bonds will not be affected (extended or shortened) as a result of the requested modifications, and no new money will be borrowed. The request is limited to modifications to the bond and underlying financing documents necessary to implement the change from LIBOR to SOFR.

We respectfully ask that the Issuer consider this request expeditiously so that we can complete the modification by or close to March 31, 2023.

Please let me know if you have any questions or need further information. I can be reached (518) 279 – 3810 extension 100 or by email at: kmkearns@ahfinc.net

Very truly yours,

Garry J. Kearns
Executive Director

cc: Patrick R. Szalach, Senior Vice President, Citizens Bank, N.A.
Christopher Canada, Esq.