

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of Vicinity Energy)
Kansas City, Inc. for Approval of Deed of Trust) File No. _____
Modification)

**APPLICATION FOR APPROVAL OF DEED OF TRUST MODIFICATION, WAIVER
AND MOTION FOR EXPEDITED TREATMENT**

Comes Now Vicinity Energy Kansas City, Inc., by and through the undersigned counsel, pursuant to Sections 393.190 and 393.290 RSMo, and 20 CSR 4240-2.060, 2.080, and 10.105, and for its Application for Approval of Deed of Trust Modification, Waiver, and Motion for Expedited Treatment states to the Commission:

I. INTRODUCTION

1. Vicinity Energy Kansas City, Inc. (“VEKC” or the “Applicant”) applies to the Missouri Public Service Commission (“Commission”) for approval of a modification to its current Deed of Trust financing (the “Modification”). In 2019, the Commission approved the current Deed of Trust financing in connection with approval of an indirect merger in File No. HM-2020-0039. The Commission approved the change of Applicant’s name in 2020 in File No. HN-2020-0205.

2. VEKC is a public utility that provides steam heating service to the public in downtown Kansas City, Missouri, pursuant to regulation and supervision by the Commission. It is owned by Vicinity Energy, Inc. and has utility and nonutility affiliates

in other states, some of which are subject to the same financing which is partially secured by VEKC's Deed of Trust.

3. The Modification will not be detrimental to the public interest because it will not have a negative impact on the regulated operations of VEKC, its rates, or its ability to continue to serve the public. The Modification will increase VEKC's access to capital and support necessary for its successful operations and provision of public service.

II. DESCRIPTION OF THE APPLICANT

4. VEKC is a Delaware corporation with Missouri offices located at 115 Grand Boulevard, Kansas City, Missouri, and can be contacted through John Gibson, EVP and COO at 617-849-6600 and its undersigned legal counsel. It does business in Missouri as a regulated utility providing steam heat and a certificate of good standing from the Missouri Secretary of State is attached hereto and incorporated herein as **Exhibit A**.

III. DESCRIPTION OF THE MODIFICATION

5. The current limit of VEKC's Future Advance Deed of Trust is \$705,000,000. The proposed Modification would increase that limit to \$772,000,000. No other material changes are involved. A copy of the Modification is attached hereto incorporated herein as **Exhibit B**. VEKC's assets that are the collateral of the Modification are described therein. The purpose of the increase is additional security.

IV. INFORMATION REQUIRED BY COMMISSION RULE

6. The names and addresses of the persons authorized to receive notices and communications are as follows:

Carl J. Lumley
Curtis Heinz Garrett & O'Keefe, PC
130 S. Bemiston, Suite 200
Clayton, Missouri 63105
Tel: (314) 725-8788
Fax: (314) 725-8789
Email: clumley@chgolaw.com

Attorneys for Applicant

7. Applicant is not subject to any pending action or unsatisfied judgment or decision from any state or federal agency or court involving customer service or rates which action, judgment or decision has occurred within the last three years.

8. Applicant has no annual report or assessment fees that are overdue to the Commission.

9. Balance sheets and income statements for Applicant VEKC are attached hereto and incorporated herein as confidential **Exhibit C** under rule 20 CSR 4240-2.135(2)(A) subsections 3 and 5, because these documents contain market specific information concerning services provided in competition with others and work product of consultants.

10. The Transaction will not have any impact on tax revenues of any political subdivisions in Missouri.

11. A certified copy of the Resolution authorizing the Modification is attached hereto and incorporated herein as confidential **Exhibit D** under rule 20 CSR 4240-2.135(2)(A)3 because the document contains market specific information concerning services provided in competition with others.

V. THE PROPOSED TRANSACTION IS NOT DETRIMENTAL TO THE PUBLIC INTEREST

12. The Modification will not have a negative impact on VEKC's operations, service, customers, or employees. VEKC's regulated rates will not be impacted by the Modification. VEKC will not seek to recover any transaction costs in rates. VEKC will remain subject to Commission oversight and regulation and Missouri laws and regulations. VEKC will continue to have sound management and remain in a strong position to finance, maintain and improve its operations.

13. Accordingly, the Commission should find that the Modification is not detrimental to the public interest.

VI. WAIVER

14. Applicant requests that the Commission waive the requirements of rule 4 CSR 240-4.017(1). Good cause exists to waive the requirement of notice of intent to file this case, in that such a delay would be prejudicial and harmful to VEKC. Applicant verifies that there have been no communications with the office of the Commission within the prior 150 days regarding any substantive issue likely to be in this case.

VII. EXPEDITIOUS TREATMENT REQUESTED

15. Expeditious consideration is appropriate for transactions of this type. In satisfaction of the requirements of 20 CSR 4240-2.80(14), Applicant sets out with particularity the following:

a) The date by which the Applicant desires the Commission to act is December 11, 2024;

b) Applicant respectfully requests that the Commission approve the Transaction as soon as practicable and if at all possible, no later than said date, so that the Modification may be concluded promptly for the benefit of VEKC's customers and employees, and the public. There will not be any negative effect on customers, employees or the general public if the Commission acts expeditiously.

c) This Application was filed as promptly as possible, following execution of the Modification.

VIII. RELIEF REQUESTED

WHEREFORE, Applicant requests the Commission to approve the Modification on an expedited basis, and if possible no later than December 11, 2024, to waive the requirements of 20 CSR 4240-4.017(1) as described above, and to grant such other and further relief as the Commission deems appropriate and proper.

Respectfully submitted,

CURTIS, HEINZ,
GARRETT & O'KEEFE, P.C.



Carl J. Lumley, MBE #32869
130 S. Bemiston, Suite 200
Clayton, Missouri 63105
Telephone: (314) 725-8788
Facsimile: (314) 725-8789
Email: Clumley@chgolaw.com

Attorneys for Applicant.

VERIFICATION AND REQUEST FOR WAIVER

By signing this form, as Chief Financial Officer of the Applicant I hereby verify the contents of the Application are true and correct to the best of my knowledge and belief and certify that neither I, nor any other members of this filing party, has had communications with a Commissioner, Commissioner Advisor, Regulatory Law Judge, or any member of their support team in the one hundred fifty (150) days prior to the filing date of this Application regarding any substantive issue included in this filing. Accordingly, waiver of 20 CSR 4240-4.017(1)(D) is requested.



Name Kevin P. Walsh

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was either mailed, faxed, or emailed this 13 day of NOV., 2024, to the persons listed on the below service list.

A handwritten signature in black ink, appearing to be 'A. J. ...', is written over a horizontal line.

Missouri Public Service Commission
General Counsel Office
P.O. Box 360
200 Madison Street, Suite 800
Jefferson City, MO 65102
Staffcounsel@psc.mo.gov

Office of the Public Counsel
P.O. Box 2230
200 Madison Street, Suite 650
Jefferson City, MO 65102
opcservice@ded.mo.gov

EXHIBIT A

CERTIFICATE OF GOOD STANDING

STATE OF MISSOURI



John R. Ashcroft
Secretary of State

CORPORATION DIVISION
CERTIFICATE OF GOOD STANDING

I, JOHN R. ASHCROFT, Secretary of State of the STATE OF MISSOURI, do hereby certify that the records in my office and in my care and custody reveal that

Vicinity Energy Kansas City, Inc.

using in Missouri the name

Vicinity Energy Kansas City, Inc.
F00330383

a DELAWARE entity was created under the laws of this State on the 19th day of July, 1989, and is Good Standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the GREAT SEAL of the State of Missouri. Done at the City of Jefferson, this 24th day of October, 2024.


Secretary of State



Certification Number: CERT-10242024-0028

EXHIBIT B
MODIFICATION

[SPACE ABOVE LINE FOR RECORDER'S USE ONLY]

1. Title: Modification of First Advance Deed of Trust, Security Agreement, Assignment of Rents and Leases

2. Date:

3. Grantor(s): VICINITY ENERGY KANSAS CITY, INC

Address: 100 Franklin Street, 2nd Floor, Boston, MA 02110

4. Trustee: MARTIN LEIGH ATTORNEYS PC

Address: 1044 Main Street, Suite 900, Kansas City, Missouri 64105

5. Grantee(s): BNP PARIBAS

Address: 787 Seventh Avenue, New York, New York 10019

6. Legal Description: See Exhibit A hereto

7. Reference: insert original and amendment recording book and page info

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Latham & Watkins LLP
1271 Avenue of the Americas
New York, New York 10020
Attn: Corrie Peach

[SPACE ABOVE LINE FOR RECORDER'S USE ONLY]

MODIFICATION OF FUTURE ADVANCE DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING

This **MODIFICATION OF FUTURE ADVANCE DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING** (this "**Modification Agreement**") is made as of _____, 2024 by and between VICINITY ENERGY KANSAS CITY, INC., a Delaware corporation, with an address at 100 Franklin Street, 2nd Floor, Boston, MA 02110 ("**Grantor**" or "**Mortgagor**"), MARTIN LEIGH ATTORNEYS PC with an address at 1044 Main Street, Suite 900, Kansas City, Missouri 64105 ("**Trustee**") and BNP PARIBAS, with an address at 787 Seventh Avenue, New York, New York 10019, as Collateral Agent for the benefit of the Secured Parties (in such capacities, and together with its permitted successors and assigns, "**Grantee**" or "**Mortgagee**").

THIS DOCUMENT SECURES FUTURE ADVANCES AND OBLIGATIONS PURSUANT TO SECTION 443.055 RSMO. THE TOTAL PRINCIPAL AMOUNT OF THE PRESENT AND FUTURE ADVANCES AND OBLIGATIONS WHICH MAY BE SECURED HEREBY AT ANY GIVEN TIME IS \$_____.

WITNESSETH:

WHEREAS, Vicinity Energy, Inc., a Delaware corporation ("**Borrower**"), certain subsidiaries of Borrower including Grantor, the lenders from time to time party thereto (the "**Lenders**"), and Mortgagee, as administrative agent (in such capacity, and together with its successors in such capacity, the "**Administrative Agent**"), are parties to that certain Credit and Guaranty Agreement, dated as of December 30, 2019 (the "**Original Credit Agreement**"), as amended by that certain First Amendment to Credit and Guaranty Agreement, dated as of December 21, 2021 (the "**First Amendment**"), that certain Lender Joinder Agreement, dated as of December 21, 2021, as amended on May 20, 2022 (the "**Second Amendment**"), that certain

Third Amendment to Credit and Guaranty Agreement, dated as of June 29, 2022 (the “**Third Amendment**”), that certain Lender Joinder Agreement, dated as of July 28, 2022 (the “**Fourth Amendment**”), that certain Lender Joinder Agreement, dated as of July 19, 2023 (the “**Fifth Amendment**”), and that certain Sixth Amendment to Credit and Guaranty Agreement, dated as of [____], 2024 (the “**Sixth Amendment**” and the Original Credit Agreement, as amended by the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, and Sixth Amendment and as further amended, amended and restated, supplemented or otherwise modified from time to time, the “**Amended Credit Agreement**”).

WHEREAS, in order to secure its obligations under the Original Credit Agreement, Mortgagor executed and delivered to Mortgagee, that certain Future Advance Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of June 30, 2020 (the “**Original Deed of Trust**” or “**Original Mortgage**”), as partially released pursuant to that certain Partial Deed of Release, dated as of December 26, 2023 and recorded on January 1, 2024, as Instrument No. 2024E0002067 in the Office of the Recorder in Jackson County, Missouri.

WHEREAS, the Original Mortgage is recorded as Instrument No. 2020E0055584 in the Office of the Recorder in Jackson County, Missouri.

WHEREAS, pursuant to the Amended Credit Agreement, Mortgagor, the Lenders party thereto and Mortgagee are amending the Original Credit Agreement to, *inter alia*, (i) increase the outstanding amount of the Obligations secured by the Mortgage (as defined hereafter), including, without limitation, the 2024 Term Loans (as defined in the Sixth Amendment) in an aggregate principal amount of \$57,000,000 and 2024 Capex Loans (as defined in the Sixth Amendment) in an aggregate amount of \$20,000,000, (ii) extend the Maturity Date (as defined in the Amended Credit Agreement), and (iii) amend certain of the other provisions of the Original Credit Agreement, all as set forth in the Amended Credit Agreement;

WHEREAS, Mortgagor and Mortgagee desire to modify the Original Mortgage pursuant to the terms of this Modification Agreement to give notice that the Original Mortgage, as modified hereby, secures, among other things, all of Mortgagor’s obligations under the Original Credit Agreement, as increased by the Amended Credit Agreement and to confirm that the Original Mortgage remains in full force and effect, as modified by this Modification Agreement.

NOW, THEREFORE, in consideration of the foregoing and the payment of Ten Dollars (\$10.00) and other good and valuable consideration the receipt and legal sufficiency of which is hereby acknowledged, the parties hereto agree and give notice as follows:

1. All of the foregoing recitals are acknowledged by Mortgagor as being true and correct and shall be deemed incorporated by reference herein. Mortgagor hereby acknowledges and agrees that the Original Mortgage, as modified hereby, secures, among other things, Mortgagor’s obligations under the Original Credit Agreement, as amended by the Amended Credit Agreement, as set forth in paragraphs 2 and 3 below.

2. From and after the date hereof, all references in the Original Mortgage to the “Credit Agreement” shall mean the Original Credit Agreement as amended by the Amended

Credit Agreement. From and after the date hereof, all references in the Original Mortgage to the "Loans" shall mean the Loans as described in the Original Credit Agreement.

3. Section 10.1 of the Original Mortgage is hereby amended to modify the total principal amount of future advance and future obligations secured thereby from \$705,000,000 to \$[_____].

4. Exhibit A of the Original Mortgage is hereby deleted in its entirety and replaced by Exhibit A attached hereto, which covers all of Mortgagor's right, title and interest in and to certain land, buildings and improvements, and collateral as more particularly described therein affecting or relating to the real property.

5. The Mortgage cannot be further altered, amended, modified, terminated, waived, released or discharged except in a writing signed by the parties hereto or their respective successors or assigns. To the fullest extent permitted by applicable law, any future amendment or modification of the Loan Documents (as defined in the Mortgage) may or may not be recorded; all holders of any interest or claim that affects all or any portion of the Mortgaged Property (as defined in the Mortgage) or any estate or interest therein, which interest or claim is recorded after the date the Mortgage was originally recorded or that is otherwise or is intended to be junior and subordinate to the lien of the Mortgage (collectively, "**Junior Lien Claimants**"), are hereby placed on notice of the possibility that the Loan Documents or the obligations that the Mortgage secures may be amended but any such amendment may or may not be placed of record; any such amendment shall be fully effective whether or not recorded, without thereby impairing or reducing the priority of the lien of the Mortgage or constituting a novation; Junior Lien Claimants should not assume they will be notified of any amendment of the Loan Documents or of any of Mortgagor's Obligations that occur before or after the recording of their lien; and by accepting their interest in the Mortgaged Property, Junior Lien Claimants shall be deemed to acknowledge and consent to the foregoing.

6. As modified herein, the terms of the Original Mortgage shall continue in full force and effect. Notwithstanding anything to the contrary contained in this Modification Agreement, if at any time it is determined that the lien, validity or security of the Original Mortgage is impaired or subordinated as a result of the modifications contemplated hereby (the "**Modifications**"), then the Original Mortgage shall be construed as if such Modifications had never taken place and the original terms of the Original Mortgage as unmodified hereby shall continue in full force and effect and Mortgagee shall maintain all legal or equitable priorities which were in existence before the date of execution of this Modification Agreement. It is understood by and is the intention of the parties hereto that any legal or equitable priorities of Mortgagee over any party which were in existence before the date of execution of this Modification Agreement shall remain in effect after the execution of this Modification Agreement. Neither this Modification Agreement nor the transactions pursuant to the Amended Credit Agreement shall be deemed to constitute a novation or to extinguish any of the obligations secured by the Original Mortgage.

7. Mortgagor hereby represents and warrants to Mortgagee that the execution, delivery and performance by such Mortgagor of this Modification Agreement: (a) are duly authorized and do not require the consent or approval of any other party or governmental authority

which has not been obtained; and (b) will not violate any law or result in the imposition of any lien, charge or encumbrance upon the assets of any such party, except as contemplated by this Modification Agreement or any of the other Loan Documents. This Modification Agreement constitutes the legal, valid and binding obligations of Mortgagor, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, or similar laws generally affecting the enforcement of creditors' rights.

8. Mortgagor hereby represents and warrant to Mortgagee that, as of the date hereof, no Default or Event of Default has occurred and is continuing or will occur as a result of the execution, delivery and performance by such Mortgagor of this Modification Agreement.

9. THE PROVISIONS OF THIS MODIFICATION AGREEMENT REGARDING THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS HEREIN GRANTED SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE IN WHICH THE MORTGAGED PROPERTY IS LOCATED. ALL OTHER PROVISIONS OF THIS MODIFICATION AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF MORTGAGOR AND MORTGAGEE SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW), AND FURTHER, WITH RESPECT TO ANY PERSONAL PROPERTY INCLUDED IN THE MORTGAGED PROPERTY, THE CREATION OF THE SECURITY INTEREST SHALL BE GOVERNED BY THE UNIFORM COMMERCIAL CODE AS IN EFFECT FROM TIME TO TIME IN THE STATE OF NEW YORK (THE "NY UCC") AND THE PERFECTION, THE EFFECT OF PERFECTION OR NON-PERFECTION AND PRIORITY OF THE SECURITY INTEREST WILL BE GOVERNED IN ACCORDANCE WITH THE MANDATORY CHOICE OF LAW RULES SET FORTH IN THE NY UCC.

10. This Modification Agreement may be executed in any number of counterparts, and all such counterparts shall together constitute the same agreement.

11. If any provision of this Modification Agreement shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from this Modification Agreement and the remaining parts shall remain in full force as though the invalid, illegal, or unenforceable portion had never been a part thereof.

12. **No Oral Agreements.** The following is added to this Modification Agreement pursuant to Section 432.045 RSMo (as used below, "Borrower" shall mean "Grantor" and "Creditor" shall mean "Trustee and Grantee"):

ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR REVIEW SUCH DEBT ARE NOT ENFORCEABLE. TO PROTECT BORROWER AND CREDITOR FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS BORROWER

AND CREDITOR REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, THE CREDIT AGREEMENT, THE NOTES AND THE OTHER LOAN DOCUMENTS WHICH ARE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN BORROWER AND CREDITOR, EXCEPT AS BORROWER AND CREDITOR MAY LATER AGREE IN WRITING TO MODIFY IT.

13. **Insurance.** The following notice is given pursuant to Section 427.120 RSMo.:

“Unless you (Grantor) provide evidence of the insurance coverage required by your agreement with us (Trustee and Grantee), we may purchase insurance at your expense to protect our interests in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing evidence that you have obtained insurance as required by our agreement. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.”

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EXHIBIT A

[to be attached]

EXHIBIT C

FINANCIAL INFORMATION

CONFIDENTIAL PER 20 CSR 4240-2.135

EXHIBIT D

RESOLUTION

IN PART CONFIDENTIAL PER 20 CSR 4240-2.135
PUBLIC VERSION

VICINITY ENERGY, INC.

Action by Unanimous Written Consent

of the

Board of Directors

September 11, 2024

The undersigned, being all of the members of the Board of Directors (the “Board”) of Vicinity Energy, Inc., a Delaware corporation (the “Corporation”), acting without a meeting pursuant to Section 141(f) of the General Corporation Law of the State of Delaware (“DGCL”) and Section 3.14 of the Bylaws of the Corporation, do hereby consent to the adoption of and do hereby adopt the resolutions below taking or authorizing the actions specified therein pursuant to this Action by Unanimous Written Consent of the Board, dated as of the date hereof. Capitalized terms used but otherwise not defined herein shall have the meaning assigned to them in the Credit Agreement (as defined below).

WHEREAS, the Corporation is a party to that certain Credit and Guaranty Agreement dated as of December 30, 2019 (as amended by that certain First Amendment to Credit and Guaranty Agreement, dated as of December 21, 2021, by that certain Lender Joinder Agreement, dated as of December 21, 2021, as amended on May 20, 2022, by that certain Third Amendment to Credit and Guaranty Agreement, dated as of June 29, 2022, by that certain Lender Joinder Agreement, dated as of July 28, 2022, and as further amended by that certain Lender Joinder Agreement, dated as of July 19, 2023, the “Credit Agreement”) by and among the Corporation, each of the Guarantors from time to time party thereto, the various financial institutions and other Persons from time to time parties hereto (the “Lenders”), the Revolving L/C Issuer, and BNP PARIBAS, as administrative agent (in such capacity and together with its permitted successors and assigns, the “Administrative Agent”);

WHEREAS, the Corporation proposes to enter into that certain Sixth Amendment to Credit and Guaranty Agreement, dated on or about the date hereof, (the “Sixth Agreement”) by and among the Corporation, each of the Guarantors party thereto, the various financial institutions and other Persons from time to time parties hereto (the “Lenders”), the Revolving L/C Issuer, the Fuel Supply L/C Issuer, and the Administrative Agent, pursuant to which it will incur (i) new Acquisition Term Loan Commitments to provide the 2024 Term Loans (as defined in the Sixth Amendment) in an aggregate principal amount of [REDACTED] and (ii) new Capex Loan Commitments to provide the 2024 Capex Loans (as defined in the Sixth Amendment) in an aggregate amount of [REDACTED], in each case on the terms and conditions set forth in the Sixth Amendment;

WHEREAS, to secure all of the Corporation's Obligations under the Credit Agreement, the Corporation granted the Collateral Agent for the benefit of the Secured Parties a first priority security interest in and lien upon all or substantially all of its personal property and certain of its real property;

WHEREAS, the Corporation will receive direct and indirect benefits as a result of the incurrence of loans and other extensions of credit and other transactions contemplated by the Sixth Amendment, the terms and conditions which have been reviewed by the Board, and in that regard intends to enter into the Sixth Amendment and the other Additional Loan Documents (as defined below) to which it is a party; and

WHEREAS, the undersigned deems the execution and delivery of the Sixth Amendment and the other Additional Loan Documents to which the Corporation is a party, the performance of the Corporation's obligations thereunder and the consummation of the transactions contemplated thereby to be advisable, fair to and in the best interests of the Corporation.

NOW, THEREFORE, the Board hereby adopts the following resolutions:

Sixth Amendment Documents

RESOLVED, that the form, terms and provisions of the Sixth Amendment and the Additional Loan Documents, copies of which have been furnished to and reviewed by the Board, be, and hereby are, approved; and it is further

RESOLVED, that the execution, delivery and performance of the Sixth Amendment and the consummation of the transactions contemplated thereunder by the Corporation, including the execution, delivery and performance of the Additional Loan Documents, and the incurrence by the Corporation of indebtedness thereunder, are hereby authorized and approved, and any officer of the Corporation (each an "Authorized Officer" and, collectively, the "Authorized Officers"), any one of whom may act without the joinder of any of the other, are hereby authorized, empowered and directed, in the name and on behalf of the Corporation, to execute and deliver the Sixth Amendment and the Additional Loan Documents, with such changes therein and additions thereto as any such Authorized Officer, in his or her sole discretion, may deem necessary, appropriate or advisable, and the execution and delivery of the Sixth Amendment and the Additional Loan Documents by any such Authorized Officer with any changes thereto to be conclusive evidence that such Authorized Officer deemed such changes to meet such standard; and it is further

RESOLVED, that the Sixth Amendment and the Additional Loan Documents, and the transactions contemplated thereby, are necessary and convenient to the conduct of the business of the Corporation; and it is further

RESOLVED, that, as used herein, the term "Additional Loan Documents" shall include, but not be limited to:

- (a) Notes, if any, in connection with the 2024 Commitments and 2024 Loans (each as defined in the Sixth Amendment);

- (b) an amendment to each mortgage provided to secure the Credit Agreement;
- (c) (i) Hedging Documents (as defined below) and (ii) any other swap or derivative agreements, master agreements and other instruments, agreements, certificates or documents in connection with any hedging arrangements (including without limitation, in each case, all regulatory, money-laundering and know-your customer agreements, instruments, protocols, and documentation); and
- (d) such other agreements, security agreements, deposit account control agreements, account control agreements, mortgages, landlord agreements, intellectual property security agreements, instruments, documents or certificates as may be requested by the Administrative Agent or required by the Sixth Amendment and any other Loan Documents from time to time; and it is further

RESOLVED, that the Authorized Officers, any one of whom may act without the joinder of the other, are hereby authorized, in the name and on behalf of the Corporation to negotiate the form, terms and provisions of, and to execute and deliver or cause to be delivered any Hedge Agreement and any other commodity, interest rate, foreign exchange or currency exchange agreement, or other hedging agreement or arrangement, and any and all transactions of any kind, and the related confirmations, which may be documented, reference, form part of, or be governed by any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement or any other master agreement (together, the "Hedging Documents"), in each case, as any of the Authorized Officers may deem necessary or advisable to carry out the terms, intents and purposes of the Credit Agreement, the transactions contemplated thereby or the general corporate purposes of the Corporation; and it is further

RESOLVED, that the Authorized Officers, any one of whom may act without the joinder of the other, are hereby authorized, in the name and on behalf of the Corporation to take all actions (including, without limitation, (i) the negotiation, execution, delivery and filing of any agreements, certificates or other instruments or documents, (ii) the payment of any consideration, (iii) the modification or amendment (whether prior to or subsequent to the date hereof) of any of the terms and conditions of the Sixth Amendment and any Additional Loan Documents and (iv) the payment of indemnities, fees, expenses and taxes) as any such Authorized Officer, in his sole discretion, may deem necessary, appropriate or advisable (such acts to be conclusive evidence that such Authorized Officer deemed the same to meet such standard) in order to effect the transactions contemplated under the Sixth Amendment or any Additional Loan Documents, and all acts of any such Authorized Officer taken pursuant to the authority granted herein, or having occurred prior to the date hereof in order to effect such transactions, are hereby approved, adopted, ratified and confirmed in all respects; and it is further

RESOLVED, that each Authorized Officer, any one of whom may act without the joinder of any of the others, is hereby authorized, in the name and on behalf of the Corporation, to (a) prepare any amendments, waivers, consents, supplements or other modifications under the Sixth Amendment and the Additional Loan Documents to which the Corporation is a party as may

be necessary, convenient, advisable, desirable or appropriate at any time from time to time, which amendments, waivers, consents or supplements may provide for modifications to or relief under such agreements or documents and may require consent payments, fees or other amounts payable in connection therewith, and (b) execute and deliver such amendments, waivers, consents, supplements or other modifications under such agreements or documents as such Authorized Officer shall deem to be necessary, convenient, advisable, desirable or appropriate, such execution and delivery by such Authorized Officer to be conclusive evidence of his or her determination and approval of the necessity, appropriateness or advisability thereof; and it is further

RESOLVED, that (a) the signature of any Authorized Officer to the Sixth Amendment and the Additional Loan Documents and any amendments, waivers, consents, supplements, or other modifications thereto to which the Corporation is a party shall be conclusive evidence of the authority of such Authorized Officer to execute and deliver such documents and (b) any person dealing with any Authorized Officer of the Corporation in connection with any of the foregoing matters shall be conclusively entitled to rely upon the authority of such Authorized Officer and by his or her execution of any document or agreement, the same shall be valid and binding obligations of the Corporation enforceable in accordance with its terms; and it is further

General Authorizations

RESOLVED, any Authorized Officer be, and hereby is, authorized, empowered and directed, for and on behalf of the Corporation, to take and do all such other and further acts and things, and to negotiate, prepare, execute (whether under the corporate seal of the Corporation or otherwise), deliver and cause the performance of, all such other agreements, amendments, instruments, certificates and documents, and to effect all such further filings and declarations as are necessary, desirable, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by the above resolutions and the execution and delivery by such officer of the Corporation of any such agreement, amendment, instrument, certificate or document or the taking or doing by such officer of the Corporation of any such act or thing in connection with the foregoing matters shall establish conclusively the authority therefor from the Corporation and the approval and ratification by the Corporation of the instruments or documents so executed and the acts so taken or done; and it is further

RESOLVED, that all actions previously taken by the officers of the Corporation in furtherance of the foregoing consents and resolutions, the Sixth Amendment, the other Additional Loan Documents and any other transactions contemplated thereby and hereby, are hereby adopted, ratified, confirmed and approved in all respects as the acts and deeds of the Corporation as fully as if such actions had been presented to the Board for their approval prior to such actions being taken; and it is further

RESOLVED, that the undersigned hereby waives any and all irregularities of notice, with respect to the time and place of meeting, and consents to the transaction of all business represented by this Action by Unanimous Written Consent; and it is further


RESOLVED, that this Action by Unanimous Written Consent be filed with the records of the Board, and the action taken hereby be treated for all purposes as an action taken by the Board at a meeting thereof; and it is further


RESOLVED, that this Action by Unanimous Written Consent may be executed in any number of counterparts, and each counterpart hereof shall be deemed to be an original instrument, and all such counterparts together shall constitute but one consent; and it is further

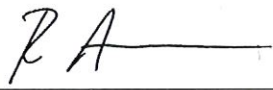
RESOLVED, that a facsimile, telecopy or any other reproduction of this Action by Unanimous Written Consent may be executed by the undersigned, and an executed copy of this Action by Unanimous Written Consent may be delivered by the undersigned by facsimile or similar instantaneous electronic transmission device pursuant to which the signature of or on behalf of the undersigned can be seen, and such execution and delivery shall be considered valid, binding and effective for all purposes.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned, being all of the members of the Board of the Corporation, have executed this Action by Unanimous Written Consent, as of the date first written above.

By: 
Name: Kevin Walsh
Title: Director

By: 
Name: William DiCroce
Title: Director

By: 
Name: Robert Arendell
Title: Director