

**COUNTIES OF WARREN AND WASHINGTON**  
**INDUSTRIAL DEVELOPMENT AGENCY**

5 Warren Street, Suite 210  
Glens Falls, New York 12801

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At the Board Meeting of the Counties of Warren and Washington Industrial Development Agency held on **February 17, 2016** at the Warren County Municipal Center in Lake George, NY, the following members were:

***PRESENT:***

Bud Taylor	Chairman
Bruce Ferguson	Vice Chairman/Park Chairman
Joseph LaFiura	Secretary/Treasurer
Matt Simpson	At Large Member
Lou Tessier	
Jim Lindsay	
John W. Weber	
Dave O'Brien	
Brian R. Campbell	

***ALSO PRESENT:***

Kara Lais, Esq.	FitzGerald Morris Baker Firth PC
Deborah Mineconzo	Office Administrator

The minutes of the meeting were taken by the Office Administrator. The Chairman called the meeting to order at 4:17 pm. After attendance was confirmed that all Board Members were present, a quorum was confirmed by the Chairman.

**Accounts Payable:**

Mr. O'Brien moved to approve the accounts payables as presented with Mr. Simpson seconding. The motion was approved by roll call vote.

**Old Business:**

**TFC Enterprises (Tree Paad) Update:**

Ms. Lais informed everyone there is nothing new to report on the TFC Enterprises (Tree Paad) project at this time. They are still awaiting final approval of their financing.

**ICC4 West Main Update:**

Ms. Lais explained the refinancing mortgage details the ICC4 West Main project is now seeking. She added some proposed documents are still needed and there are a few points that need to be clarified. Ms. Lais stated at the recent conference in Albany, she spoke with several other people on mortgage tax exemptions on refinanced mortgages and several have handled this with their projects. She said our Agency has the authority to give the requested mortgage tax on the new mortgage. A tax exemption is not being requested on the full amount since some funds are coming from the NYBDC.

Ms. Lais added the needed licensing documentation needed to finalize the new mortgage has been delayed by the Department of Health.

Mr. Ferguson stated the Cambridge House was a very good project for the Town and Village and hoped

our Agency would give their full support. Hoping to close on the mortgage very soon, Ms. Lais said the resolution for consideration is requested for approval. Mr. Ferguson moved to approve the presented resolution with Mr. LaFiura seconding. All voted in favor of the resolution by roll call vote.

**Resolution 16-02**

Adopted February 17, 2016

**RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY BY THE COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL DEVELOPMENT AGENCY OF A MORTGAGE AND CERTAIN RELATED DOCUMENTS IN CONNECTION WITH THE ICC 4 WEST MAIN LLC/ICC MANAGEMENT & CONSULTING, INC. PROJECT**

(Complete resolution may be found at the end of this document)

**354 Broadway/Price Chopper Fort Edward:**

Regarding the Price Chopper Fort Edward project, Ms. Lais advised everyone the developers are waiting for the Grant to be closed out before proceeding or they will lose funds. They are hoping to close soon with our Agency and consequently a draft resolution authorizing the execution of a formal lease agreement with 354 Broadway/Price Chopper (Fort Edward) is requested from the Board. Mr. O'Brien moved to approve the presented resolution with Mr. Weber seconding. All voted in favor of the resolution by roll call vote.

**Resolution No. 16-03**

Adopted February 17, 2016

**RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY BY THE COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL DEVELOPMENT AGENCY OF A LEASE AGREEMENT, AGENT AND EQUIPMENT LEASE AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH PRICE CHOPPER OPERATING CO., INC. AND 354 BROADWAY, LLC-THE MARKET 32 PROJECT**

(Complete resolution may be found at the end of this document)

**New Business:**

**Letter sent to Legislators re Part R of the Article VII:**

Mr. Taylor informed the Board a letter signed by him regarding Part R of the Article VII up for NYS legislation was sent per the copies everyone received in their packets.

**Letter to PILOT Project:**

Mr. Taylor stated all the PILOT payments were timely received by the requested date except for one project. The developer had planned on paying the taxes late along with any imposed penalties. The Executive Committee approved the sending of a letter to the developer, copy of which were given the Board in their meeting packets for their information, advising him in detail of the General Municipal Law for late payments and the resulting penalties so he was fully informed.

There being no further business to discuss, Mr. LaFiura moved to adjourn the meeting with Mr. Simpson seconding. The Chairman adjourned the IDA meeting at 4:32 pm.

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Dated

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Joseph LaFiura, Secretary

**Resolution No. 16 - 02**  
Adopted February 17, 2016

Introduced by Bruce Ferguson  
who moved its adoption.  
Seconded Joseph LaFiura

**RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY BY THE COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL DEVELOPMENT AGENCY OF A MORTGAGE AND CERTAIN RELATED DOCUMENTS IN CONNECTION WITH THE ICC 4 WEST MAIN LLC/ICC MANAGEMENT & CONSULTING, INC. PROJECT**

**(PROJECT NO. 5202-15-02A)**

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Section 890-c of the General Municipal Law of the State of New York (collectively, the “Act”), the Counties of Warren and Washington Industrial Development Agency (the “Agency”) was created and granted the authority to enter into agreements for the purpose of acquiring, constructing and equipping certain industrial facilities; and

WHEREAS, to advance the public purposes for which it was created, the Agency, upon application of ICC 4 WEST MAIN, LLC (the “Company”) and ICC MANAGEMENT & CONSULTING, INC. (the “Operator”) agreed to assist the Company by undertaking a project (the “Project”) consisting of the following: (i) the acquisition of an interest in a certain commercial parcel of land located at 4 West Main Street, Village of Cambridge, Town of White Creek, County of Washington, State of New York (the “Land”); (ii) the re-construction and/or renovation and equipping of an existing 20,000+/- square foot commercial facility and an existing 6,000+/- square foot commercial facility for the operation of a New York State Department of Health licensed Adult Home/Assisted Living Residence (the “Facility”); the acquisition and installation therein of certain furnishings and fixtures (the “Equipment” together with the Land and the Facility, collectively the “Project Facility”) to be used in connection with the contemplated uses; and (iv) the leasing of the Project Facility to the Company, all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 862 of the Laws of 1971 of the State of New York (collectively, the “Act”), as amended; and

WHEREAS, the Agency, by resolution duly adopted on April 20, 2015 (the “Closing Resolution”), took official action under the Act toward undertaking the Project; and

WHEREAS, on May 14, 2015, the Agency executed and entered into the Underlying Lease from the Company to the Agency and the Lease Agreement with the Company; and

WHEREAS, on May 14, 2015, the Agency executed a Mortgage in connection with the property known as 4 West Main Street and Broad Street in the Village of Cambridge, Town of White Creek, County of Washington, State of New York with ICC4 West Main, LLC, as Mortgagor, and BBL Construction Services, LLC, as Mortgagee, in the principal amount of \$2,144,500.00 (the “BBL Mortgage”); said BBL Mortgage was recorded on May 21, 2015 in the Washington County Clerk’s Office in Book 3525 of Mortgages at Page 148; and

WHEREAS, the BBL Mortgage was executed by the Company in connection with a Building Loan Agreement for the construction and equipping the Project Facility; and

WHEREAS, the Company desires to pay off the BBL Mortgage and to permanently finance the Project Facility, in part, with a mortgage through M&T Bank and New York State Business Development Corporation in the form of an SBA 504 loan and to consolidate said mortgage with an existing mortgage with M&T Bank; and

WHEREAS, the new money mortgage from M&T Bank shall not exceed \$1,163,175.00 and shall be used in its entirety to pay off the BBL Mortgage; and

WHEREAS, the Agency as Lessor under the Lease Agreement shall be a party to the permanent financing mortgages and other related financing documents.

NOW, THEREFORE, BE IT RESOLVED:

SECTION 1. The Agency hereby approves of and shall execute and deliver a mortgage and a mortgage consolidation agreement for the Project Facility to M&T Bank and New York State Business Development Corporation, if applicable, and any related financing documents, subject to the review and approval of counsel to the Agency.

SECTION 2. EFFECTIVE DATE. This resolution shall take effect immediately.

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

<b>VOTING:</b>	<b>AYES</b>	<b>NAYS</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
Harold G. Taylor	1			
Bruce A. Ferguson	1			
Joseph P. LaFiura	1			
Louis Tessier	1			
James T. Lindsay	1			
Dave O'Brien	1			
John W. Weber	1			
Matthew Simpson	1			
Brian R. Campbell	1			
<b>TOTALS</b>	<b>9</b>	<b>0</b>	<b>0</b>	<b>0</b>

The foregoing resolution was thereupon declared duly adopted.

**Resolution No. 16- 03**  
Adopted February 17, 2016

Introduced by Dave O'Brien  
who moved its adoption.  
Seconded John Weber

**RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY BY THE COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL DEVELOPMENT AGENCY OF A LEASE AGREEMENT, AGENT AND EQUIPMENT LEASE AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH PRICE CHOPPER OPERATING CO., INC. AND 354 BROADWAY, LLC-THE MARKET 32 PROJECT**

**(PROJECT NO. 5202-16-01A and 5202-16-02A)**

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Section 890-c of the General Municipal Law of the State of New York (collectively, the "Act") the Counties of Warren and Washington Industrial Development Agency (the "Agency") was created and granted the authority to enter into agreements for the purpose of acquiring, constructing and equipping certain industrial facilities; and

WHEREAS, to advance the public purposes for which it was created, the Agency, upon application of 354 Broadway, LLC (the "Developer"), in conjunction with Price Chopper Operating Co., Inc. (the "Company"), has agreed to undertake a project (the "Project I") consisting of (i) the acquisition of an interest in a certain commercial parcel of land located at 354 Broadway in the Town of Fort Edward, County of Washington, State of New York (the "Land"); (ii) the construction and equipping of a 40,315 +/- square foot supermarket located on the Land (the "Facility"); (iii) the acquisition and installation therein of certain furnishings and fixtures (the "Equipment" together with the Land and the Facility, collectively the "Project Facility") to be used in connection with the contemplated uses; and (iv) the lease of the Project Facility to the Developer, all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 862 of the Laws of 1971 of the State of New York (collectively, the "Act"), as amended; and

WHEREAS, to advance the public purposes for which it was created, the Agency, upon application of the Company, in conjunction with the Developer, has agreed to undertake a project (the "Project II") consisting of (i) the construction and equipping of a 40,315 +/- square foot supermarket located at 354 Broadway in the Town of Fort Edward, County of Washington, State of New York (the "Facility"); (ii) the acquisition and installation therein of certain furnishings and fixtures (the "Equipment" and together with the Facility, collectively the "Project II Facility") to be used in connection with the contemplated uses; and (iii) the entering into of an agency agreement with the Company, all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 862 of the Laws of 1971 of the State of New York (collectively, the "Act"), as amended; and

WHEREAS, Project I and Project II are collectively referred to as the "Market 32 Project"; and

WHEREAS, the Agency, by resolution duly adopted on August 17, 2015 (the "Inducement Resolution"), took official action under the Act toward undertaking the Project; and

WHEREAS, the Agency, the Company and Developer have entered into a Preliminary Agreement having an effective date of February 9, 2016 setting forth the terms and conditions of the Market 32

Project; and

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

WHEREAS, the Agency has determined that all of the requirements of the Act have been complied with and that the contemplated transaction will further the public purposes of the Act; and

WHEREAS, the Market 32 Project constitutes a “Project” within the meaning of the Act; and

WHEREAS, a lease agreement (the “Lease Agreement”) with respect to Project I, along with certain financing documents and applicable closing instruments, will be executed by and between the Developer and the Agency; and

WHEREAS, an agent and equipment lease agreement (the “Agent and Equipment Lease Agreement”) with respect to Project II, along with certain financing documents and applicable closing instruments, will be executed by and between the Company and the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively, the “SEQR Act”), the Agency previously identified the Project as an “Action” under SEQR Act for which the Town of Fort Edward Planning Board (the “Planning Board”) acted as lead agency. The Agency within the Inducement Resolution, ratified the Planning Board’s Negative Declaration, dated February 25, 2015, relating to the Market 32 Project, in which the Planning Board stated that the Market 32 Project will not have a significant effect on the environment; and

WHEREAS, at least one third of the total project costs for the Market 32 Project will be used for the development of a retail facility. Pursuant to Section 862 of the General Municipal Law, financial assistance from the Agency is prohibited for retail projects unless one of the following exceptions applies: (A) a tourism destination project; (B) a project located in a highly distressed area; and/or (C) a project that provides a product or service to the area that otherwise would not be available. In accordance with *Sales Tax Reporting and Recordkeeping Requirements for Industrial Development Agencies and Authorities*, NYS Department of Taxation and Finance, dated February 7, 2017 (TSB-M-14(1)(S)), the Market 32 Project meets (B), herein, since it is considered a highly distressed area since the Project Facility is located in an area that was previously designated as an empire zone under Article 18-B of the General Municipal Law; and

WHEREAS, the Inducement Resolution was adopted contingent upon the approval of the Chief Executive Officers of the Counties of Warren and Washington pursuant to Section 862(2)(c) of the General Municipal Law; and

WHEREAS, the Chairman of the Washington County Board of Supervisors approved the Inducement Resolution on August 24, 2015 in accordance with Resolution No. 172 of the Washington County Board of Supervisors adopted August 21, 2015; and

WHEREAS, the Chairman of the Warren County Board of Supervisors approved the Inducement Resolution on September 18, 2015 in accordance with Resolution No. 431 of the Warren County Board of Supervisors adopted September 18, 2015.

NOW, THEREFORE, BE IT RESOLVED:

SECTION 1. FINDINGS. The Agency hereby finds that:

(A) The Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes of the Act and to exercise all powers granted to it under the Act; and

(B) The Market 32 Project constitutes a “project”, as that quoted term is defined in the Act; and

(C) The acquisition, construction and installation of the Facility and the lease of the Facility to the Company (i) will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the State of New York and the Counties of Warren and Washington and improve their standard of living, and (ii) will not result in the removal of an industrial or manufacturing plant of the Company from one area of the State to another area of the State; and

(D) The location of the site of the Project is acceptable to the Agency; and

(E) The Facility is not known by the Agency to be in material violation of the local zoning laws and planning regulations of the Town of Fort Edward and all regional and local land use plans for the area in which the Facility shall be located; and

(F) The Facility and the operations of the Developer and the Company are not known by the Agency to cause or result in the violation of the health, labor, environmental or other laws of the United States of America, the State of New York, the County of Washington or the Town of Fort Edward; and

(G) The Planning Board of the Town of Fort Edward approved the Site Plan Review for the Project on February 25, 2015 and issued a Negative Declaration and stated that the Market 32 Project will not have a significant effect on the environment; and

(H) The Chairman of the Washington County Board of Supervisors approved the Inducement Resolution on August 24, 2015 in accordance with Resolution No. 172 of the Washington County Board of Supervisors adopted August 21, 2015; and

(I) The Chairman of the Warren County Board of Supervisors approved the Inducement Resolution on September 18, 2015 in accordance with Resolution No. 431 of the Warren County Board of Supervisors adopted September 18, 2015.

SECTION 2. DETERMINATIONS. The Agency hereby determines to:

(A) enter into the Underlying Lease from the Developer to the Agency and the Lease Agreement with the Developer; and

(B) enter into the Agent and Equipment Lease Agreement between the Company and the Agency; and

(C) grant to the Company and the Developer the authority to name third party agent(s) to assist in the construction and completion of the Market 32 Project; and

(D) execute and deliver all other certificates and documents, including but not limited to a mortgage for Project Facility, subject to the review and approval of counsel to the Agency.

SECTION 3. AUTHORIZATION. The Agency is hereby authorized to acquire, construct and install the Facility. All previous acts taken by the Agency with respect to the acquisition, construction and installation of the Facility are hereby approved, ratified and confirmed.

SECTION 4. APPOINTMENT OF COMPANY AND DEVELOPER AS AGENTS. (A) The appointment of the Company and the Developer as agents of the Agency to acquire, construct and install the Facility is hereby ratified and confirmed. (B) The Agency does hereby consent to provide the Company and the Developer with the authority to appoint third party agents to undertake the Project and thereby make available to such third party agents an exemption from New York State sales and use taxes in connection with undertaking the Market 32 Project. Such authority shall be further defined and verified in an Agent Agreement to be entered into between the Agency and the Company and the Agency and the Developer.

SECTION 5. APPROVAL OF AGREEMENT FOR PAYMENTS IN LIEU OF TAXES. The substance and form of the Agreement for Payments in Lieu of Taxes, as presented to this meeting and attached hereto, is hereby approved, subject to approval as to content by the Chairman and the Agency's counsel. The Agency approved the following enhanced schedule of payments in the Inducement Resolution: 75% tax exemption on improvements for years 1 through 5; 50% tax exemption on improvements for years 6 through 10; and 25% tax exemption of improvements for years 11 through 15. As required, the Town of Fort Edward approved the foregoing schedule by resolution of the Town Board on August 17, 2015.

SECTION 6. APPROVAL OF COMPANY'S/DEVELOPER'S FINANCING DOCUMENTS. The substance and form of the Underlying Lease, the Lease Agreement, the Agreement for Payments in Lieu of Taxes, the Agent and Equipment Lease Agreement, the Agent Agreement and all other certificates or documents to be delivered or executed and delivered by the Agency (hereinafter collectively referred to as the "Closing Documents") are hereby approved, subject to approval as to content by the Chairman and the Agency's counsel.

SECTION 7. AUTHORIZED REPRESENTATIVES. (A) The Chairman or the Vice Chairman is hereby authorized to execute and deliver the Closing Documents. If required, the signature of the Chairman or Vice Chairman shall be attested by the Secretary or Treasurer of the Agency (or Agency Counsel, in the absence of a Secretary/Treasurer) who, if required, shall affix a facsimile of the Agency's seal to documents required to be under seal. (B) On the advice of counsel to the Agency, the Chairman or Vice Chairman shall make such reasonable changes to the Closing Documents as shall be required to promote and protect the Agency's interests with respect to the Project. All such changes shall be made prior to the closing.

SECTION 8. FURTHER ASSURANCE. The officers, employees and agents of the Agency are hereby authorized and directed to do all acts required by the provisions of the Closing Documents, and to execute and deliver all additional certificates, instruments and documents and to pay all fees, charges and expenses and do all other acts that may be necessary or proper to effectuate the purposes of this resolution. None of the members, officers, directors, employees or agents (except the Company or the Developer) of the Agency, shall be personally liable under the other Closing Documents.

SECTION 9. FILING OF DOCUMENTS. Originals of all Closing Documents for the Project shall be filed and maintained in the office of the Agency.

SECTION 10. PUBLIC INSPECTION. A copy of this resolution and the Closing Documents



shall be placed on file in the office of the Agency, where they shall be available for public inspection during business hours.

SECTION 11. EFFECTIVE DATE. This resolution shall take effect immediately.

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

<b>VOTING:</b>	<b>AYES</b>	<b>NAYS</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
Harold G. Taylor	1			
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Brian R. Campbell	1			
<b>TOTALS</b>	<b>9</b>	<b>0</b>	<b>0</b>	<b>0</b>

The foregoing resolution was thereupon declared duly adopted.