

COUNTIES OF WARREN AND WASHINGTON
INDUSTRIAL DEVELOPMENT AGENCY

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

Tel. (518) 792-1312

The November Board Meeting for Warren Washington Industrial Development Agency was held on Monday, December 21, 2020 at the Washington County Municipal Center and via Zoom from 4:00 – 5:28 p.m. The following were:

PRESENT:	Dave O'Brien	Chairman
	Ginny Sullivan	Member
	Dan Bruno	Member
	Lester Losaw	CEO/CFO
	Nick Caimano	Member
	Mike Wild	At-Large Member
	Michael Bittel	Sec/Treasurer
	Brian Campbell	Park Chair
	Craig Leggett	Vice Chairman
	Mike Grasso	Member

ABSENT:	Bruce Ferguson	Member
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The following were also present:

Kara Lais, Esq.	FitzGerald Morris Baker Firth, PC
Lester Losaw	CEO/CFO
George Pensel	Owner Boats by George
Chris Falvey	VP of Rosetti Properties
Sasha Pardy	Adirondack Winery
Mike Pardy	Adirondack Winery
Eugene Sneeringer	Sr. VP of SMPR Title Agency, Inc.
Jack Kelley	Commercial Caldwell Banker
Minutes were taken by:	Alie Weaver, Office Administrator

November Minutes: Mr. Caimano made a motion to accept the November meeting minutes and Mr. Bruno seconded. All voted in favor by voice vote.

Accounts Payable: Mr. Caimano made a motion to accept the November payables and Mr. Leggett seconded. All voted in favor by roll call vote.

Park Business:

Nolan Contract Update – Ms. Lais explained that subsequent of Nolan's last approval by the Board, they've sent further modifications; specifically requesting a variance of the Industrial Park's Covenants and Restrictions. The variance refers to the language defining purpose of land.

Mr. O'Brien stated the Mr. Nolan and his attorney have met with the Town of Kingsbury and their Fire Department, the Town/Planning/Zoning boards, Code Enforcement as well as surrounding neighbors of the property they wish to purchase.

Mr. Caimano made a motion to approve the resolution accepting the variance and Mr. Bruno seconded. All voted in favor by voice vote.

Why-Knot Services, LLC – Mr. Kelley stated that he has not heard from Mr. Robinson and has no updates at this time.

Old Business:

National Grid Grant Approval – Mr. O'Brien stated that the grant has been signed and sent to accept the grant. He reminded the Board that the IDA is looking at a combination of the USDA and National Grid grant to do two things: a feasibility study on the use of the dewatering facility and an evaluation for potentially using a part of the property for composting for Warren and Washington Counties. He stated that the National Grid grant will also cover the pre-engineering report for the bridge. Mr. O'Brien also reminded the board that all the grants that the IDA have been awarded are reimbursable grants.

Mr. O'Brien stated that proposals from GPI and Creighton Manning have been received for the pre-engineering RFP, as discussed at the previous board meeting. Mr. Campbell made a motion to again approve Creighton Manning and Mr. Leggett seconded. All voted in favor by roll call vote.

Mr. O'Brien stated that 4 proposals have been received for the feasibility study. He noted that a meeting is scheduled with Ms. Gilles, Ms. Oswald, Mr. Brilling and Mr. Leggett to review these proposals and make a recommendation to the Board at the next meeting.

Sales and Marketing – Mr. O'Brien stated that a meeting will be set up for January. He also suggested adding a staff member to the WWIDA to work with the EDC, ARCC and Glens Falls IDA to help market this area.

Regulatory Member Training - Mrs. Weaver stated that the member training record was included in the meeting packets again and made note that Mr. Losaw had completed his ABO training since the last Board meeting.

New Business:

Etain Project Approval – Mr. O'Brien stated that the Public Hearing was held and received no feedback.

Mr. Leggett made a motion to approve the resolution that approves the project and Mr. Bittel seconded. All voted in favor by roll call vote.

Adirondack Winery Project Approval – Mr. O'Brien stated that the Public Hearing was held and received no feedback.

Mr. Bittel made a motion to approve the resolution that approves the project and Mr. Caimano seconded. The motion passed by the following:

VOTING:	AYES	NAYS	ABSTAIN	ABSENT
Dave O'Brien	X			
Michael Bittel	X			
Craig Leggett	X			
Bruce Ferguson				X
Ginny Sullivan			X	
Nick Caimano	X			
Mike Wild	X			
Dan Bruno	X			
Mike Grasso				X
Brian Campbell	X			
TOTALS	7		1	2

Boats by George Application – Mr. George Pensel provided a brief background of Boats by George and explained that they have outgrown their current headquarters and is looking to purchase the Forum in Lake George for a boat showroom with administrative/sales/finance & insurance offices. It would provide the ability to display 40-50 boats. He stated that they have become a destination business, citing many customers being from outside of the economic development region.

Mr. Caimano stated that this should help with tourists in Lake George year-round.

Mr. Campbell made a motion to approve the resolution to accept the application and set the Public Hearing and Mr. Bruno seconded. All voted in favor by roll call vote.

Fowler Square Application – Mr. Falvey provided a brief background of Rosetti Properties and explained the Fowler Square is a 142-unit apartment complex with a 55-car indoor parking garage, clubhouse and two 2,500 square foot rental spaces. Seventy of these apartments will be townhouses with direct-access garages. He stated they are looking for IDA financial assistance to help cover the rapidly rising cost of construction and the materials associated with it. He noted potential impacts of not receiving assistance could be down-scaling the project size-and-amenity-wise.

Mr. Bruno asked where the name "Fowler Square" came from and Mr. Falvey explained that it comes from the PUD that the town approved as this was the name of the project originally around 2009.

Mr. Leggett asked if prevailing wage would come into play for the contractor/builder and Ms. Lais stated that there is legislation that has been enacted that will apply to some IDA projects but won't apply to these projects.

Ms. Lais also stated that this project is eligible for assistance if the Board makes a finding that this particular project will benefit the economic development within the community, then a mixed-use project such as this, with a predominant housing component, have been upheld as suitable and appropriate projects for IDAs to consider.

Mr. Wild asked how the anticipated benefits will be measured. Mr. O'Brien stated that their application listed 6 jobs to be created and a recapture could be done if they don't stay in compliance. The entire project would be approved at once but is scheduled to be completed in three phases so other aspects of compliance would be completion and quality of these phases.

Mr. Leggett asked if there would be an impediment of receiving the mortgage tax exemption since they have already closed on the purchase of the land. Mr. Falvey stated that even though they closed on the property, they have not closed with their permanent, post-construction lender.

Mr. Grasso made a motion to approve the resolution to accept the application and set the public hearing and Mr. Caimano seconded. The motion passed by the following:

VOTING:	AYES	NAYS	ABSTAIN	ABSENT
Dave O'Brien	X			
Michael Bittel	X			
Craig Leggett	X			
Bruce Ferguson				X
Ginny Sullivan			X	
Nick Caimano	X			
Mike Wild	X			
Dan Bruno	X			
Mike Grasso				X
Brian Campbell	X			
TOTALS	7		1	2

2021 Meeting Schedules and Holidays – Mr. O'Brien stated that the meeting and holiday schedules for 2021 was included in the meeting packets. Mr. Bittel made a motion to approve these schedules and Mr. Campbell seconded. All voted in favor by voice vote.

Member Surveys – Mrs. Weaver stated that the Board Performance Evaluations for 2020 were also included in the meeting packets and requested that all the members fill them in and send back to her.

Greenwich Preservation Tax Exemption Extension – Mr. O'Brien presented a resolution to extend Greenwich Preservation's sales tax exemption. Mr. Bittel made a motion to approve this resolution and Mr. Grasso seconded. All voted in favor by roll call vote.

ICC4 Late Tax Payments – Mrs. Weaver stated that ICC4 West Main project is 6 months late in paying their village taxes and 3 months late paying their school taxes, as discussed at the last Executive Park meeting. Although at that meeting it was decided to have FMBF send legal correspondence regarding their default, Mrs. Weaver was not able to receive an updated amount due as Washington County had not yet completed the 2021 Town and County tax rates as all the past due taxes will now be rolled over into 2021.

Mr. O'Brien stated that once the correct amounts are received from the Washington County Treasurer, Mr. Scala will be notified and invited to the next Board meeting to discuss his delinquency.

Easement agreement Lock 8 Way – Mr. O'Brien presented a resolution to approve the easement and maintenance agreement of Lock 8 Way. He explained that this agreement states a permanent easement for use and shared expenses of property maintenance. The first week of January is targeted for transfer of property.

Mr. O'Brien specified that once the transfer takes place, the IDA will own Lock 8 Way from Route 196 into the dewatering facility. The goal is to then transfer the property to the Town of Fort Edward where they will maintain the road.

Mr. Bruno made a motion to approve the resolution and Mr. Grasso seconded. All vote in favor by roll call.

Adjournment:

There being no other business, Mr. Caimano made a motion to adjourn the December WWIDA Board meeting. Mr. Campbell seconded and all voted in favor by voice vote.

2020 Confidential Evaluation of Board Performance

Criteria

Industrial Development Agency				
	Somewhat	Agree	Disagree	Disagree
Agree				

Civic Development Corporation				
	Somewhat	Agree	Disagree	Disagree
Agree				

- Board members have a shared understanding of the mission and purpose of the Authority
- The policies, practices and decisions of the Board are always consistent with the mission.
- Board members comprehend their role and fiduciary responsibilities and hold themselves and each other to these principles.
- The Board has adopted policies, by-laws and practices for the effective governance, management and operations of the Authority and reviews these annually.
- The Board sets clear and measurable performance goals for the Authority that contribute to accomplishing its mission.
- The decisions made by Board members are arrived at through independent judgement and deliberation, free of political influence or self-interest.
- Individual Board members communicate effectively with executive staff so as to be well informed on the status of all-important issues.
- Board members are knowledgeable about the Authority's programs, financial statements, reporting requirements and other transactions.
- The Board meets to review and approve all documents and reports prior to public release and is confident that the information being presented is accurate and complete.
- The Board knows the statutory obligations of the Authority and if the Authority is in compliance with the law.
- Board and committee meetings facilitate open, deliberate and thorough discussion, and the active participation of members.

- 12 Board members have sufficient opportunity to research, discuss, question and prepare before decisions are made and votes taken.

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- 13 Individual Board members feel empowered to delay votes, defer agenda items, or table actions if they feel additional information or discussion is required.

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- 14 The Board exercises appropriate oversight of the CEO and other executive staff, including setting performance expectations and reviewing performance annually.

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- 15 The Board has identified the areas of most risk to the Authority and works with management to implement risk mitigation strategies before problems occur.

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- 16 Board members demonstrate leadership and vision and work respectfully with each other.

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Name of Authority: Counties of Warren and Washington Industrial Development Agency / Civic Development Corporation
 5 Warren Street, Suite 210 Glens Falls, NY 12801

Date Completed: _____

Resolution No. _____
Adopted December _____, 2020

Introduced by _____
who moved its adoption.

Seconded by _____

**RESOLUTION ACCEPTING AN APPLICATION FOR FINANCIAL ASSISTANCE
SUBMITTED BY FOWLER SQUARE LLC (THE "COMPANY") RELATING TO A
CERTAIN PROJECT; AUTHORIZING A PUBLIC HEARING WITH RESPECT TO
THE PROJECT; AND DESCRIBING THE FINANCIAL ASSISTANCE BEING
CONTEMPLATED BY THE AGENCY WITH RESPECT TO THE PROJECT**

WHEREAS, **Fowler Square, LLC**, a limited liability company established pursuant to the laws of the State of New York, having an address of 427 Karner Road, Albany, New York 12205 (the "Company") has requested that the Agency provide financial assistance in the form of a payment in lieu of taxes, a mortgage recording tax exemption and sales tax abatements regarding a project (the "Project") to consist of: (i) the acquisition by the Agency of a leasehold interest in certain real property located at 719 Bay Road in the Town of Queensbury, County of Warren, New York (the "Land"); (ii) the planning, design, expansion, construction, operation and maintenance by the Company of 142 residential apartments, approximately 5,000 +/- square feet of professional office and service space, approximately 7,800 +/- square feet of property management and clubhouse space and approximately 25,700 +/- square feet of indoor parking space for use by the Company (collectively, the "Improvements"); (iii) the acquisition of and installation in and around the Land and Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the "Equipment" and, collectively with, the Land and the Improvements, the "Facility"); and (iv) entering into a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain a leasehold interest in the Facility for a period of time and sublease such interest in the Facility back to the Company (the "Straight Lease Transaction"), 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, Chapters 356 and 357 of the Laws of 1993 require that prior to granting financial assistance of more than \$100,000.00 to any project, an Agency must (i) adopt a resolution describing the project and the financial assistance contemplated by the Agency with respect thereto, and (ii) hold a public hearing in the city, town or village where the project proposes to locate upon at least ten (10) days published notice and, at the same time, provide notice of such hearing to the Chief Executive Officer of each affected taxing jurisdiction within which the project is located; and

WHEREAS, the Agency is in the process of reviewing and considering the Company's Application requesting the Agency to provide financial assistance for the proposed Project (collectively the "Financial Assistance") in the form of (i) an exemption from all State and local

sales and use taxes with respect to qualifying personal property included in and incorporated into the Facility or used in the acquisition, construction or equipping of the Facility, (ii) an exemption from mortgage recording tax and (iii) a partial real property tax abatement through a payment in lieu of tax agreement (the "PILOT Agreement"), pursuant to which the Company would make payments in lieu of real property taxes to each affected tax jurisdiction (the "Affected Tax Jurisdictions"), all of which shall be consistent with the uniform tax exemption policy of the Agency; and

WHEREAS, the Agency desires to (i) accept the Application; (ii) authorize the scheduling and conduct of a public hearing; and (iii) negotiate, but not enter into an Agent Agreement and Project Agreement, pursuant to which the Agency will designate the Company as its agent for the purpose of acquiring, constructing and equipping the Project, and Lease Agreement, a Leaseback Agreement and related Payment in lieu of Tax Agreement with the Company.

NOW, THEREFORE, BE IT RESOLVED:

1. The Company has presented an Application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's Application, the Agency hereby finds and determines that:

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

(b) The Agency has the authority to take the actions contemplated herein under the Act; and

(c) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in Warren and Washington Counties, New York, and otherwise furthering the purposes of the Agency as set forth in the Act; and

(d) The Project will not result in the removal of a commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Company.

2. The proposed financial assistance being contemplated by the Agency includes (i) an exemption from all state and local sales and use taxes with respect to the qualifying personal property included within the Project or used in the acquisition, construction or equipping of the Project in the estimated amount of \$1,614,861.00 based on purchases in the amount of 23,926,584.00, (ii) an exemption from mortgage recording tax for qualifying mortgages in the estimated amount of \$388,274.00 based on mortgages in the approximate amount of \$31,061,951.00 and (ii) a partial real property tax abatement through a PILOT Agreement

pursuant to the following terms (below) and an estimated value of \$2,102,975.00, pursuant to which the Company would make payments in lieu of real property taxes to the Affected Tax Jurisdictions.

Year 1: Base Value plus 30% of increased assessed valuation attributable to improvements made to the Project Facility.

Year 2: Base Value plus 45% of increased assessed valuation attributable to improvements made to the Project Facility.

Year 3: Base Value plus 40% of increased assessed valuation attributable to improvements made to the Project Facility.

Year 4: Base Value plus 35% of increased assessed valuation attributable to improvements made to the Project Facility.

Year 5: Base Value plus 30% of increased assessed valuation attributable to improvements made to the Project Facility.

Year 6: Base Value plus 25% of increased assessed valuation attributable to improvements made to the Project Facility.

Year 7: Base Value plus 20% of increased assessed valuation attributable to improvements made to the Project Facility.

Year 8: Base Value plus 15% of increased assessed valuation attributable to improvements made to the Project Facility.

Year 9: Base Value plus 10% of increased assessed valuation attributable to improvements made to the Project Facility.

Year 10: Base Value plus 5% of increased assessed valuation attributable to improvements made to the Project Facility.

The Base Value for the parcel shall be \$784,000.00 for the term of the PILOT.

3. The Chairman, Vice Chairman and/or the Chief Executive Officer of the Agency are hereby authorized, on behalf of the Agency, to cause the issuance of public hearing notices, hold a public hearing in compliance with the Act and negotiate (but not execute or deliver) the terms of (A) the Agent Agreement and Project Agreement, whereby the Agency appoints the Company as its agent to undertake the Project, (B) a Lease Agreement whereby the Company leases the Project to the Agency, (C) a related Leaseback Agreement conveying the Project back to the Company, (D) a PILOT Agreement, whereby the Company agrees to make certain payments-in-lieu-of real property taxes and (E) related documents; provided (i) the rental payments under the Agent Agreement and Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project.

4. The Agency hereby schedules a public hearing pursuant to Article 18-A of the New York State General Municipal Law to be held by the Agency on January __, 2020, at 10:00 am local time, and in accordance with Governor Cuomo's Executive Order 202.1, as extended, via ZOOM at:

The Agency hereby authorizes the publication of a Notice of Public Hearing for the Project and in accordance with the Act and the Agency's policies and procedures.

5. This resolution shall take effect immediately.

The foregoing resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
) SS:
COUNTY OF WARREN)

This is to certify that I, Alie Weaver, Records Management Officer for the Counties of Warren and Washington Industrial Development Agency, do hereby certify that the foregoing is a true and correct copy and the whole thereof of a Resolution duly adopted by the Counties of Warren and Washington Industrial Development Agency, Glens Falls, New York on the ____ day of December, 2020.

In witness whereof, I have hereto set my hand and affixed the official seal of the Counties of Warren and Washington Industrial Development Agency on this ____ day of _____, 2020.

[SEAL]

Alie Weaver
Counties of Warren and Washington
Industrial Development Agency

Resolution No. ____
Adopted December ____, 2020

Introduced by _____
who moved its adoption.

Seconded by _____

**RESOLUTION ACCEPTING AN APPLICATION FOR FINANCIAL ASSISTANCE
SUBMITTED BY BOATS BY GEORGE INC. (THE "COMPANY") RELATING TO A
CERTAIN PROJECT; AUTHORIZING A PUBLIC HEARING WITH RESPECT TO
THE PROJECT; AND DESCRIBING THE FINANCIAL ASSISTANCE BEING
CONTEMPLATED BY THE AGENCY WITH RESPECT TO THE PROJECT**

WHEREAS, Boats by George, Inc., a business corporation established pursuant to the laws of the State of New York, having an address of 18 State Route 149, Lake George, New York 12845 (the "Company") has requested that the Agency provide financial assistance in the form of a payment in lieu of taxes, a mortgage recording tax exemption and sales tax abatements regarding a tourism destination project (the "Project") to consist of: (i) the acquisition by the Agency of a leasehold interest in certain real property located at 2200 State Route 9 in the Town of Lake George, County of Warren, New York (the "Land"); (ii) the planning, design, renovation, operation and maintenance by the Company of an approximately 50,000+/- square foot facility to be used by the Company as a boat showroom, boat storage space and office space (collectively, the "Improvements"); (iii) the acquisition of and installation in and around the Land and Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the "Equipment" and, collectively with, the Land and the Improvements, the "Facility"); and (iv) entering into a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain a leasehold interest in the Facility for a period of time and sublease such interest in the Facility back to the Company (the "Straight Lease Transaction"), 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, Chapters 356 and 357 of the Laws of 1993 require that prior to granting financial assistance of more than \$100,000.00 to any project, an Agency must (i) adopt a resolution describing the project and the financial assistance contemplated by the Agency with respect thereto, and (ii) hold a public hearing in the city, town or village where the project proposes to locate upon at least ten (10) days published notice and, at the same time, provide notice of such hearing to the Chief Executive Officer of each affected taxing jurisdiction within which the project is located; and

WHEREAS, the Agency is in the process of reviewing and considering the Company's Application requesting the Agency to provide financial assistance for the proposed Project (collectively the "Financial Assistance") in the form of (i) an exemption from all State and local sales and use taxes with respect to qualifying personal property included in and incorporated into the Facility or used in the acquisition, construction or equipping of the Facility, (ii) an exemption

from mortgage recording tax and (iii) a partial real property tax abatement through a payment in lieu of tax agreement (the "PILOT Agreement"), pursuant to which the Company would make payments in lieu of real property taxes to each affected tax jurisdiction (the "Affected Tax Jurisdictions"), all of which shall be consistent with the uniform tax exemption policy of the Agency; and

WHEREAS, the Agency desires to (i) accept the Application; (ii) authorize the scheduling and conduct of a public hearing; and (iii) negotiate, but not enter into an Agent Agreement and Project Agreement, pursuant to which the Agency will designate the Company as its agent for the purpose of acquiring, constructing and equipping the Project, and Lease Agreement, a Leaseback Agreement and related Payment in lieu of Tax Agreement with the Company.

NOW, THEREFORE, BE IT RESOLVED:

1. The Company has presented an Application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's Application, the Agency hereby finds and determines that:

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

(b) The Agency has the authority to take the actions contemplated herein under the Act; and

(c) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in Warren and Washington Counties, New York, and otherwise furthering the purposes of the Agency as set forth in the Act; and

(d) The Project will not result in the removal of a commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Company.

2. The proposed financial assistance being contemplated by the Agency includes (i) an exemption from all state and local sales and use taxes with respect to the qualifying personal property included within the Project or used in the acquisition, construction or equipping of the Project in the estimated amount of \$14,000.00 based on purchases in the amount of 200,000.00, (ii) an exemption from mortgage recording tax for qualifying mortgages in the estimated amount of \$26,250.00 based on mortgages in the approximate amount of \$2,100,000.00 and (ii) a partial real property tax abatement through a PILOT Agreement for a term of 10 years with a 50% exemption of real property taxes on the value of the improvements for years 1 through 5 and a 25% exemption of real property taxes on the value of the improvements for years 6 through 10.

The PILOT has an estimated value of \$28,690.00, pursuant to which the Company would make payments in lieu of real property taxes to the Affected Tax Jurisdictions.

The Base Value for the parcel shall be \$2,300,000.00 for the term of the PILOT.

3. The Chairman, Vice Chairman and/or the Chief Executive Officer of the Agency are hereby authorized, on behalf of the Agency, to cause the issuance of public hearing notices, hold a public hearing in compliance with the Act and negotiate (but not execute or deliver) the terms of (A) the Agent Agreement and Project Agreement, whereby the Agency appoints the Company as its agent to undertake the Project, (B) a Lease Agreement whereby the Company leases the Project to the Agency, (C) a related Leaseback Agreement conveying the Project back to the Company, (D) a PILOT Agreement, whereby the Company agrees to make certain payments-in-lieu-of real property taxes and (E) related documents; provided (i) the rental payments under the Agent Agreement and Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project.

4. The Agency hereby schedules a public hearing pursuant to Article 18-A of the New York State General Municipal Law to be held by the Agency on January __, 2020, at 10:00 am local time, and in accordance with Governor Cuomo's Executive Order 202.1, as extended, via ZOOM at:

The Agency hereby authorizes the publication of a Notice of Public Hearing for the Project and in accordance with the Act and the Agency's policies and procedures.

5. This resolution shall take effect immediately.

The foregoing resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
) SS:
COUNTY OF WARREN)

This is to certify that I, Alie Weaver, Records Management Officer for the Counties of Warren and Washington Industrial Development Agency, do hereby certify that the foregoing is a true and correct copy and the whole thereof of a Resolution duly adopted by the Counties of Warren and Washington Industrial Development Agency, Glens Falls, New York on the ____ day of December, 2020.

In witness whereof, I have hereto set my hand and affixed the official seal of the Counties of Warren and Washington Industrial Development Agency on this ____ day of _____, 2020.

Alie Weaver
Counties of Warren and Washington
Industrial Development Agency

[SEAL]

Resolution No. _____
Adopted December 21, 2020

Introduced by _____
who moved its adoption

Seconded by _____

**RESOLUTION OF THE COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL
DEVELOPMENT AGENCY APPROVING AND AUTHORIZING SALE OF PROPERTY**

WHEREAS, the Counties of Warren and Washington Industrial Development Agency (the "Agency") owns certain property in the Town of Kingsbury as shown on a Subdivision Plat entitled "Phase IIB & Phase II" Development, Warren-Washington Counties Industrial Park" made by Jarrett-Martin Engineers, PLLC, Van Dusen & Steves, Surveyors, dated January, 2006, and last revised on April 20, 2007, a copy of which was filed in the Washington County Clerk's Office on May 1, 2007, Drawer 31C-134 (the "Map"); and

WHEREAS, Nolan Bottle Gas Co. Inc., a New York business corporation, or its permitted assigns, desires to purchase from the Agency the following Lot as shown on said Map (collectively referred to as the "Property"):

Lot #3	137.-2-1.4	2.53 acres	County Line Road
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WHEREAS, pursuant to section 6(c) of the Agency's Disposition of Property Guidelines, the Property may be sold by negotiation if the disposal is intended to further the economic development interests of the Agency; and

WHEREAS, after due deliberation thereon, the Agency has determined that the disposal of the Property intends to further the economic development interests of the Agency, whereby (a) the Property has been on the market for over a decade with no meaningful interested purchasers and (b) the sale of the Property will return the Property to the tax rolls; and

WHEREAS, based on the foregoing, the Agency has determined that the sale of said Property, located in the Agency's Airport Industrial Park is in the economic development interests of the Counties of Warren and Washington and the Town of Kingsbury, is in accord with the public provisions of applicable federal, state and local laws and the Agency's Disposition of Property Guidelines, and will benefit the welfare and the economics of both Warren and Washington Counties and the Town of Kingsbury and the residents of those municipalities; and

WHEREAS, the Company intends to initially use the Property as an outdoor storage space for vehicles and equipment and, therefore, has requested that the Agency grant a variance to Section 2.01 of the Declaration of Uses, Covenants and Restrictions for Phase II of the Agency's Airport Industrial Park, as adopted, April 28, 2003, and recorded in the Washington County Clerk's Office on May 9, 2003 in Book 935 of Deeds at Page 318 (the "Covenants")

based on the use being reasonable and compatible with other uses in the Park.

NOW, THEREFORE, it is hereby

RESOLVED, that the sale of the Property by the Agency constitutes a Type II action under the State Environmental Quality Review Act ("SEQRA") pursuant to the Type II List adopted by the Agency on March 17, 2003; therefore, no further SEQRA review is necessary.

RESOLVED, that:

1. The Agency agrees to sell the Property described above, consisting of approximately 2.53 acres of land on County Line Road in the Town of Kingsbury to Nolan Bottle Gas Co. Inc., or its permitted assigns (the "Developer") for the sum of Fifty One Thousand Dollars (\$51,000.00), for development as a propane bulk storage and distribution center with administrative office space; subject to (a) the Developer submitting a full Site Plan pursuant to Paragraph 6, Page 2 of the Agency's Application to Purchase Property; (b) the Agency's approval of the Site Plan; (c) the Agency's approval of the screening of the outdoor storage per section 3.06 of the Covenants, as may be applicable; (d) Site Plan and SEQRA review and approval by the Kingsbury Planning Board; and (e) the Developer's execution of a purchase and sale contract, and any addendums, for the Property; and it is further
2. Should the Developer fail to complete construction within thirty two (32) months, the Agency shall have the right to terminate title in the Developer and reinvest title in the Agency;
3. The Developer shall reimburse the Agency for its costs and expenses associated with the sale, inclusive of legal fees; and
4. The Developer will have arranged financing and will complete the purchase of the Property within 6 months after the contract is signed, unless otherwise agreed to by the parties; and it is further

RESOLVED, that after due deliberation thereon and based on other similar uses in the Park and the compatibility of such use with other properties in the Park, pursuant to Article VIII of the Covenants the Agency hereby finds the request for the variance to be reasonable and approves of a variance of Section 2.01 of the Covenants to allow the Property to be used for propane bulk storage and distribution center with administrative office space.

RESOLVED, that the Chairman, or Vice Chairman in his absence, is authorized to execute and deliver a contract of sale, license agreement, deed, and other such documents as will incorporate the terms set forth above, subject to the approval of the Agency's legal counsel as to form and content.

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

The foregoing resolution was thereupon declared duly adopted.

Counties of Warren and Washington Industrial Development Agency

Resolution No. 20-_____
Adopted December ____, 2020

AdX Winery

Introduced by _____
who moved its adoption.

Seconded by _____

RESOLUTION TAKING PRELIMINARY ACTION TOWARD UNDERTAKING A CERTAIN PROJECT, AS DEFINED HEREIN, APPOINTING 395 BIG BAY ROAD LLC (THE "COMPANY"), AS AGENT OF THE AGENCY FOR THE PURPOSE OF CONSTRUCTING AND EQUIPPING THE PROJECT FACILITY (AS DEFINED HEREIN) AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGENT AGREEMENT AND CLOSING DOCUMENTS BY AND BETWEEN THE AGENCY AND THE COMPANY

WHEREAS, the Counties of Warren and Washington Industrial Development Agency (the "Agency") is a body corporate and politic duly organized and existing under Sections 856 and 890-c of the General Municipal Law ("GML") of the State of New York (the "State"), with its principal place of business at 5 Warren Street, Glens Falls, New York; and

WHEREAS, 395 Big Bay Road LLC, a limited liability company established pursuant to the laws of the State of New York, having an address of 395 Big Bay Road, Queensbury, New York 12804 (the "Company") has requested that the Agency provide financial assistance in the form of a payment in lieu of taxes, a mortgage recording tax exemption and sales tax abatements regarding a project (the "Project") to consist of: (i) the acquisition by the Agency of a leasehold interest in certain real property located at 395 Big Bay Road in the Town of Queensbury, County of Warren, New York (the "Land"); (ii) the planning, design, construction, operation and maintenance by the Company of an approximately 11,100+/- square foot additional facility, including a 50' x 30' covered pad and a 60' x 30' open pad, which will be used by the Company for the manufacture of wine and tasting room space (collectively, the "Improvements"); (iii) the acquisition of and installation in and around the Land and Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the "Equipment" and, collectively with, the Land and the Improvements, the "Facility"); and (iv) entering into a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain a leasehold interest in the Facility for a period of time and sublease such interest in the Facility back to the Company (the "Straight Lease Transaction"), 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, under Article 18-A of the General Municipal Law (the "Act"), the Legislature of the State of New York has granted the Agency the power and authority to undertake the Project, as the Act authorizes the Agency to promote, develop, encourage and assists projects such as this

Project and to advance job opportunities, health general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, the Project will require the Agency and the Company to enter into an agreement whereby the Company will acquire, by lease, and construct the Project Facility and the Agency will lease the Project Facility to the Company; and

WHEREAS, the Company has 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

WHEREAS, a lease agreement (the "Lease Agreement") with respect to the Project, along with certain financing documents, will be executed by and between the Company and the Agency; and

WHEREAS, the Agency is a state agency under Section 8-0105 of the Environmental Conservation Law of the State of New York and the Project is an action under Article 8 of said law (Article 8 hereinafter being referred to as the "State Environmental Quality Review Act" or "SEQRA") and under 6 NYCRR Part 617, §§ 617.2(b) and 617.3(g); and

WHEREAS, the Company has submitted to the Agency, and the Agency has reviewed information needed to determine whether or not the Project will have a significant impact on the environment; and

WHEREAS, the acquisition, construction and installation of the Project Facility has not been commenced, and the Agency has not yet authorized the Project; and

WHEREAS, the Agency conducted a public hearing on December 4, 2020 pursuant to Article 18-A of the New York State General Municipal Law (the "Law") before taking official action relating to the Project.

NOW, THEREFORE, BE IT RESOLVED:

SECTION 1. Findings. The Agency has reviewed the application to determine compliance with the requirements of the Act and based on the representations of the Company to the Agency in said application and elsewhere, the Agency hereby makes the following findings and determinations with respect to the Project:

(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;

(B) The Project constitutes a "project", as that quoted term is defined in the Act;

(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

Term, as defined in the Agency's Recapture of Benefits Policy, as amended from time to time, in its determination to approve the Project and will require the Company to annually report its job numbers as required by law.

SECTION 2. Determinations. The Agency hereby determines to:

(A) enter into, execute and deliver the a lease agreement from the Company to the Agency and the Lease Agreement with the Company for the Project Facility subject to the approval of said documents by the Chairman and counsel to the Agency; and

(B) execute and deliver all other certificates and documents subject to the review and approval of said documents by the Chairman and counsel to the Agency.

The Company shall complete the Project by August 1, 2021 (the "Completion Date"). Unless an extension is granted by the Agency, the failure of the Company to complete the Project by the Completion Date shall be considered a "significant change in the use of the facility" as set forth in the Agency's Recapture of Benefits Policy, as amended from time to time.

SECTION 3. Company Appointed Agent of Agency.

(A) The Company is hereby appointed the true and lawful agents of the Agency to:

- (1) construct and install the Project Facility;
- (2) make, execute, acknowledge, and deliver all contracts, orders, receipts, instructions, and writings needed to complete the Project; and
- (3) do all other things requisite and proper for the completion of the Project.

(B) The Company is authorized to proceed with the acquisition, construction and installation of the Project Facility, subject to receiving appropriate municipal approvals needed prior to commencement of construction, and to advance such funds as may be necessary to accomplish these goals.

(C) The Company is also authorized 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 Project. This provision is subject to the Company entering into an Agent Agreement with the Agency.

(D) The Agency hereby authorizes exemptions from State and local sales and use taxes for purchases and rentals related to the undertaking of the Project in an amount not to exceed Forty Six Thousand Nine Hundred Dollars (\$46,900.00), based on eligible Project costs of Six Hundred Seventy Thousand Dollars (\$670,000.00); which exemption shall expire August 1, 2021.

(E) The Agency hereby approves of the Agent Agreement, a copy of which is incorporated herein by reference, with the Company which shall be subject to the

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 nor will the completion of the Project result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Facility located within the State of New York;

(D) It is in the public interest for the Agency to undertake the Project on behalf of the Company;

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

(F) 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 Queensbury and all regional and local land use plans for the area in which the Facility shall be located;

(G) The Facility and the operations of 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 Warren or the Town of Queensbury;

(H) The Project is an "Unlisted Action" under SEQRA for which the Town of Queensbury Planning Board (the "Planning Board") has acted as lead agency. On or about July 28, 2020, the Planning Board reviewed the Project Site Plan Application submitted on behalf of the Company and approved said Site Plan, and issued its Negative Declaration finding that the Project will not have a significant impact on the environment; and (ii) the Agency has thoroughly reviewed the environmental assessment form, negative declaration and related supporting information presented to the Agency within the Company's Application for Assistance in order to determine whether the Project might have any potential significant adverse impacts upon the environment. After conducting this review, the Agency has determined that the acquisition, construction and equipping of the Project Facility are consistent with social, economic and other essential considerations and will not result in any significant adverse impacts on the environment. The Agency hereby ratifies the findings and Negative Declaration of the Town of Queensbury Planning Board. In doing so, the Agency satisfies the requirements of Part 617 of Title 6 of the New York Code of Rules and Regulations and no further SEQRA review is required for the Project; and

(I) The Agency further determines that the Project will consist of a private investment of \$1,878,000.00 and the Agency hereby determines this to be a Material Term, as defined in the Agency's Recapture of Benefits Policy, as amended from time to time, for the purposes of monitoring in accordance with the policies and procedures of the Agency; and

(J) Undertaking the Project will lead to the retention of ten (10) full time equivalent jobs and two (2) part time equivalent jobs and the creation of seven (7) full time equivalent job opportunities and six (6) part time equivalent jobs for the inhabitants of the Counties of Warren and Washington and in the State of New York, the Agency hereby determines this to be a Material

termination and recapture of benefits policy of the Agency. The Agency further authorizes the execution and delivery of the Agent Agreement and any additional documents relative thereto.

(F) The Agency hereby acknowledges and approves a mortgage tax exemption relating to the Project in an estimated amount of \$10,175.00, based on an estimated mortgage amount of \$814,000.00.

SECTION 4. Payment in Lieu of Tax (PILOT) Agreement. The Agency's approval is subject to the Company entering into a PILOT Agreement with the Agency whereby the Company agrees to make payments in lieu of taxes in any given year as if the Company were the owner of the Project and not the Agency. The Agency's approval is also subject to the Company agreeing to the terms of the Agency's Recapture of Benefits Policy. The following PILOT schedule is consistent with the Agency's uniform policy is approved as follows: an 100% exemption of real property taxes on the value of the improvements for years 1 through 5 and a 50% exemption of real property taxes on the value of the improvements for years 6 through 10.

At all times, including during the term of the PILOT Agreement, the Company shall be responsible for the full payment of water and sewer assessments, as may be applicable and any other special district assessments.

The base value for the term of the PILOT shall be Four Hundred Nine Thousand Four Hundred Dollars (\$409,400.00). The estimated real property tax benefit during the term of the PILOT Agreement is Two Hundred Thirty Two Thousand Five Hundred Seventeen Dollars (\$232,517.00).

The substance and form of the Agreement for Payments in Lieu of Taxes is hereby approved, subject to approval as to content by the Chairman and the Agency's counsel.

SECTION 5. Administrative and Legal Fees. The Company will pay all costs incurred by the Agency, including but not limited to attorney's fees, which arise out of Company's Application for Financial Assistance, whether or not such assistance is ultimately issued. Agency's attorney's fees will be calculated at a time rate of \$275.00 per hour for attorney's time and \$105.00 per hour for senior legal assistant's time, plus disbursements. Upon closing of all of the Project documents, the Company will pay to the Agency an administrative fee (the "Administrative Fee") of \$14,085.00 based upon an estimated Project cost of \$1,878,000.00 pursuant to the schedule set forth below and contained within the Company's Application for Financial Assistance:

First \$10 Million of Project Costs:	¾ of 1%
Next \$10 Million of Project Costs:	½ of 1%
Next \$10 Million of Project Costs:	¼ of 1 %
Above \$30 Million of Project Costs:	1/8 of 1%.

Following the completion of the Project Facility, the Company shall confirm, in writing, the actual Project cost. In the event that the total Project cost exceeds the estimate provided herein, the

Agency may require the payment of the difference that would otherwise be due pursuant to the above-schedule.

SECTION 6. Insurance. The Company shall deliver to the Agency a certificate of insurance, complying with the requirements as required by the Agency, and indicating that:

(a) The Company maintains insurance with respect to the Facility providing the coverage against the risks and for such amounts as are customarily insured against by businesses of like size and type, paying, as the same become due and payable, all premiums with respect thereto, and mandated by the Agency, including, but not necessarily limited to the following:

(i) Insurance protecting the interests of the Company and the Agency against loss or damage to the Project Facility by fire, lightning and other casualties normally insured against with a uniform standard extended coverage endorsement, such insurance at all times to be in an amount not less than the total cash replacement value of the Project Facility, as determined by a recognized appraiser or insurer selected by the Company; provided, however, that the Company may, insure all or a portion of the Project Facility under a blanket insurance policy or policies covering not only the Project Facility or portions thereof but other property. The parties agree that for purposes of this Project the Company will be responsible for providing builders risk insurance.

(ii) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Project Facility and for all contractors and subcontracts.

(iii) Insurance protecting the Company and the Agency against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the Property of others caused by any accident or occurrence, with a single combined limit of not less than \$2,000,000.00 per accident or occurrence on account of personal injury, including death resulting therefrom, and damage to the Property of others, excluding liability imposed upon the Company by any applicable workers' compensation law; and a blanket excess liability policy in the amount not less than \$5,000,000.00 protecting the Company and the Agency against any loss or liability or damage for personal injury, death or Property damage.

(iv) If applicable and if it is determined that the Project Facility is located within an area identified by the Secretary of Housing and Urban Development as having special flood hazards, insurance against loss by floods in an amount not less than \$1,000,000.00 or to the maximum limit of coverage made available, whichever is less.

(v) Other insurance coverage required by any Governmental Authority in connection with any Requirement.

(b) all policies evidencing such insurance,

(i) name the Company and the Agency as insureds, as their interests may appear, and

(ii) provide for at least thirty (30) days' written notice to the Agency prior to cancellation, lapse, reduction in policy limits or material change in coverage thereof.

SECTION 7. Approval of Closing Documents. The substance and form of the Underlying Lease, the Lease Agreement, Project Agreement, Agent Agreement, Environmental Compliance and Indemnification Agreement and accompanying NYS forms, 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 8. Approval of Company's Financing Documents. The Chairman or the Vice Chairman of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver any mortgage, assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by any lender identified by the Company in an estimated principal amount of \$814,000.00 to undertake the Project, acquire the Facility and/or finance equipment and other personal property and related transactional costs. The Agency hereby approves of a mortgage tax exemption in connection with the mortgage, assignment of leases and rents, and/or security agreement set forth in this Section.

SECTION 9. Approval of Sublease. It is the intention of the Company to sublease the Project Facility to Adirondack Winery, LLC, a limited liability company organized pursuant to the laws of the State of New York. The Agency hereby approves and consents to the sublease from the Company to Adirondack Winery, LLC, subject to Adirondack Winery, LLC agreeing to certain terms of the Closing Documents.

SECTION 10. Authorized Representatives. (A) The Chairman or the Vice Chairman is hereby authorized to execute and deliver any and all documents necessitated by this Resolution. 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 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 11. Public Inspection. A copy of this resolution and a copy of the Company's Application for Assistance, together with all other application materials not protected under applicable Freedom of Information Laws, shall be placed on file in the office of the Agency. Such documents shall be available for public inspection during normal business hours.

SECTION 12. Document Preparation. Counsel to the Agency is hereby authorized and directed to cooperate with counsel to the Company, as well as all other necessary parties in order to prepare the documents need to undertake the Project and to effectuate the provisions of this Resolution.

SECTION 13. Distribution of Resolution. The Chairman of the Agency is hereby authorized to distribute copies of this resolution to the Company and all other persons requesting it.

SECTION 14. Public Hearing. A public hearing for this Project was duly authorized and held on December 4, 2020 in accordance with the provisions of Article 18-A of the General Municipal Law.

SECTION 15. Further Action. The Chairman of the Agency is authorized to take such further action as shall be necessary to give effect to and implement this resolution.

SECTION 16. 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 and was thereupon declared duly adopted.

{ Acknowledgement to Follow }

STATE OF NEW YORK)
) SS:
 COUNTY OF WARREN)

This is to certify that I, Alie Weaver, Records Management Officer for the Counties of Warren and Washington Industrial Development Agency, do hereby certify that the foregoing is a true and correct copy and the whole thereof of a Resolution duly adopted by the Counties of Warren and Washington Industrial Development Agency, Glens Falls, New York on the ____ day of December, 2020.

In witness whereof, I have hereto set my hand and affixed the official seal of the Counties of Warren and Washington Industrial Development Agency on this ____ day of _____, 2020.

[SEAL]

 Alie Weaver
 Counties of Warren and Washington
 Industrial Development Agency

Acknowledged and Agreed to

By: _____
 Title: _____ of 385 Big Bay Road LLC

EASEMENT AGREEMENT

(Lock 8 Way)

EASEMENT AGREEMENT (this "Agreement") made this [] day of [], 2020 by and between the COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York with offices at 5 Warren Street, Glens Falls, New York 12801 ("Agency"); FORT EDWARD LOCAL PROPERTY DEVELOPMENT CORPORATION, a New York not-for-profit corporation with offices at ("FELPDC"); and WCC, LLC, a New York limited liability company with offices at 269 Ballard Road, Wilton, New York 12831 ("WCC").

WITNESSETH:

WHEREAS, FELPDC is the owner of 1400 Towpath Lane located in the Village and Town of Fort Edward, County of Washington, State of New York and commonly referred to as tax map parcel numbers 163.-2-20.1 and 163.15-1-4 (the "FELPDC Site");

WHEREAS, WCC is the owner of certain property located in the Town of Fort Edward, County of Washington, State of New York, as more particularly described on Schedule A annexed hereto and made a part hereof (the "WCC Site"), which WCC Site adjoins a portion of the Easement Area (defined below);

WHEREAS, Agency is also the owner of certain property located in the Towns of Fort Edward and Kingsbury, County of Washington, State of New York, as more particularly described and shown, on that certain Subdivision Plat (the "Map") dated as of August 12, 2020 prepared by Van Dusen & Steves Land Surveyors and filed in the Office the Clerk of the County of Washington (the "Clerk's Office") on [], 2020 as Map No. [], as set forth on Schedule B, annexed hereto and made a part hereof (the "Easement Area"), which Easement Area is improved with a roadway (the "Existing Roadway") providing access to and from Route 196 in the Town of Kingsbury and the FELPDC Site;

WHEREAS, inasmuch as neither the FELPDC Site or the WCC Site has access to a public right of way, Agency is entering into this Agreement, among other things, to grant and/or declare an access easement over the Easement Area for the benefits of the FELPDC Site and the WCC Site; and

WHEREAS, the parties hereto, each, a "Party" and, collectively, the "Parties") wish to provide for the above-mentioned access easement and, also, the maintenance and repair of the Existing Roadway, as well as the public dedication of the Easement Area to one or more of the Town of Fort Edward, the Town of Kingsbury and/or the County of Washington (each, a "Public Authority" and, collectively, "Public Authorities"), all in accordance with and subject to the terms and conditions herein more particularly set forth;

NOW, THEREFORE, in consideration of the premises, and for Ten (\$10.00) Dollars and other valuable consideration the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereto hereby agree as follows:

1. Preamble. The provisions of the preamble are hereby incorporated herein by this reference and made a part of this Agreement.

2. Grant of Easements; Rights and Obligations.

(a) Agency, as owner of the Easement Area, hereby grants to FELPDC, with respect to the FELPDC Site, and to WCC, with respect to the WCC Site, together with their respective Permitted Persons (defined below), a perpetual easement for purposes of pedestrian and vehicular (including, without limitation, commercial vehicles which may consist of, by way of example and not limitation, tractor trailer trucks) ingress, egress, access and circulation over, upon and across all portions of the Easement Area. As used in this Agreement, "Permitted Persons" means, as to each of FELPDC and WCC and their respective successors and/or assigns, their respective employees, agents, contractors, invitees, guests, occupants, tenants and subtenants, as well as the employees, agents, contractors, invitees and guests of all such occupants, tenants and subtenants.

(b) Each of FELPDC, WCC and the Agency shall pay its respective Pro-Rata Share (defined below) of the costs associated with the operation, maintenance, repair and general upkeep of the Existing Roadway and any improvements, equipment and/or facilities appurtenant to the Existing Roadway including, without limitation, the existing bridge (the "Bridge") on the portion of the Existing Roadway located in the Town of Kingsbury ("Roadway Improvements") so as to keep and maintain the Roadway and the Roadway Improvements at all times in a good condition and state of repair.

(c) Not later than August 1st of each calendar year, Agency shall provide to FELPDC and WCC a proposed budget (each, a "Proposed Budget") for the above-described expenses for the succeeding calendar year. Each of FELPDC and WCC shall, acting reasonably, not later than fifteen (15) days following receipt of a Proposed Budget, notify Agency in writing that it either approves the Proposed Budget or that it requires modifications to the Proposed Budget (each, a "Modification Request"). To the extent Agency timely receives any Modification Request, Agency shall, within the fifteen (15) day period following the initial fifteen (15) day period above-mentioned, make reasonable modifications to the Proposed Budget as requested in any Modification Request so timely received and redistribute the revised Proposed Budget to each of FELPDC and WCC who shall, acting reasonably, within fifteen (15) days following receipt of the revised Proposed Budget, notify Agency in writing that it either approves the revised Proposed Budget or that it requires further modifications to the revised Proposed Budget (each, also herein referred to as, a "Modification Request"). Following the initial fifteen (15) day period, the submission, review, approval/request for modifications and resubmission process described in this Section 2(c) shall continue (with Agency and FELPDC, WCC resubmitting or approving/requesting modifications within a fifteen (15) day period). If at any time a majority of the Agency, FELPDC and WCC shall have approved in writing the Proposed Budget, the same, in each instance shall be the "Approved Budget" for the applicable calendar year. If a Proposed Budget has not been approved by a majority of the Agency, FELPDC and WCC by the commencement of the calendar year to which it applies, the Approved Budget for the immediately preceding calendar year, increased by three (3%) percent for all line items other than capital expenses, shall apply to the succeeding calendar year other than with respect to capital expenses which shall only be performed pursuant to an Approved Budget for the applicable calendar year. The parties hereto adopt as the budget for the remainder of calendar year 2020 the budget annexed hereto and made a part hereof as Exhibit 1.

(d) In furtherance of the foregoing, Agency, in its capacity as owner of the Easement Area, shall be responsible for selecting and retaining: (i) an arms-length, third-party contractor for the purposes of causing the Existing Roadway to be plowed, salted and/or sanded, as the case may be, when the Town of Fort Edward deems it appropriate to plow, salt and/or sand public streets in said Town reasonably proximate to the Easement Area; (ii) the same (or a different) arms-length, third-party contractor for the purposes of causing the Existing Roadway to be patched, sealed, striped or repaved when the condition of the Existing Roadway is such that if the Existing Roadway was owned by the Town of Fort Edward, the Town would cause the same to be patched, sealed, striped or repaved, as the case may be; and (iii) the same (or a different) arms-length, third-party contractor to maintain, repair and replace (if and when reasonably necessary) the Existing Roadway and the Roadway Improvements. So long as any contractor selected by Agency in accordance with this Section (d) agrees to perform work at a cost that does not exceed by more than five (5%) percent the cost budgeted for such work as set forth in an Approved Budget, Agency shall be authorized to enter into an agreement with the contractor for the performance of such work. Notwithstanding anything to the contrary set forth in this Section 2(d), Agency is authorized to contract for, and each of the Agency, FELPDC and WCC shall pay its Pro-Rata Share for the cost of, Emergency Work even if Emergency Work is not included in an Approved Budget or, if included, exceeds the above-mentioned five (5%) percent limitation. For purposes of this Agreement, "Emergency Work" means: (x) all work reasonably required to prevent imminent damage to the Existing Roadway or the Roadway Improvements; (y) all work reasonably required to prevent imminent damage to persons and to property surrounding the Existing Roadway; and (z) all work reasonably required to avoid or remedy any violation of any applicable law, rule, regulation or requirement of any governmental authority having jurisdiction over the Existing Roadway or the use thereof. Agency shall notify each of FELPDC and WCC as soon as reasonably practicable following the performance of any Emergency Work.

(e) Agency shall submit invoices to each of FELPDC and WCC as and when Agency receives invoices from each contractor for work performed pursuant to an Approved Budget or which constitutes Emergency Work, which invoices provided by Agency shall include a copy of the contractor's invoice and Agency's calculation of each of the Agency's, FELPDC's and WCC's Pro-Rata Share of the contractor's invoice. Each of FELPDC and WCC shall promptly remit to Agency its Pro-Rata Share and Agency shall make available its Pro-Rata Share as reflected in the Agency's invoice so that Agency can timely remit payment to the contractor. Promptly following the end of each calendar year, Agency shall revise the Approved Budget for such calendar year to reflect the actual expenses incurred for such calendar year and provide a copy of such revised Approved Budget to each of FELPDC and WCC.

(f) For purposes of this Agreement, "Pro-Rata Share" shall mean, as of any date of determination: (x) 41.666% as to FELPDC; (y) 16.666% as to WCC; and (z) 41.666% as to the Agency. In the event that the FELPDC Site is subdivided, said 41.666% shall be allocated to each subdivided lot of the FELPDC Site based on the each subdivided lot's assessed value. In the event that (1) there is a sale of the WCC Site, in whole or in part, that results in increased traffic on the Existing Roadway; (2) the wharf is used for shipping by WCC, LLC and/or (3) there is an increased in volume of materials being handled pursuant to the Rail Line Service Agreement, dated December 5, 2016, as it may be amended from time to time, by and between WCC, LLC and SMS Rail Lines of New York, LLC, then WCC agrees, upon written consent of the parties, for its Pro-Rata Share to be increased to 33.333% and the FELPDC and Agency's Pro-Rata Share to be reduced to 33.333%.

(g) Anything contained in this Section 2 to the contrary notwithstanding, each of the parties hereto acknowledges that it is the intention of Agency, in its capacity as the owner of the Easement Area, to enter into a Road Maintenance Agreement (the "Maintenance Agreement") with the Town of Fort Edward for certain maintenance services with respect to the Existing Roadway. To the extent the Maintenance Agreement is in effect, each Proposed Budget prepared by Agency shall be reflective of the Maintenance Agreement and any costs to be paid by Agency in accordance with the Maintenance Agreement for the applicable calendar year covered by the Proposed Budget.

(1) In addition, the Parties hereto acknowledge that Public Authorities have indicated that the portion of the Existing Roadway located in the Town of Kingsbury will not be accepted in public dedication until such time as the Bridge has been replaced with a new bridge ("Bridge Replacement"). Agency is, as part of Dedication Activities (defined below), but without any representation or commitment as to outcome, seeking public sources of funding (without obligation of FELPDC and WCC and to repay the same) to mitigate the cost of Bridge Replacement to each of FELPDC and WCC ("Public Funding"). Notwithstanding the foregoing, at such time as Agency has obtained public funding for Bridge Replacement, in whole or in part, and notified each of FELPDC and WCC that it has otherwise exhausted all reasonable sources of Public Funding, and provided Agency has obtained a resolution or other commitment from Public Authorities indicating that such Public Authorities will accept the portion of the Existing Roadway located in the Town of Kingsbury in public dedication, subject to conditions that the Agency has determined are reasonably capable of satisfaction and which may include Bridge Replacement, each of FELPDC and WCC shall authorize Agency to contract for and carry out the work for Bridge Replacement with a contractor selected by Agency and each of FELPDC and WCC shall remit to Agency and Agency shall make available, as and when the Agency is required to pay the same to the contractor, its Pro-Rata Share of the net cost of Bridge Replacement, after deducting the amount of any Public Funding made available to Agency for the same. This section shall not apply to FELPDC or WCC in their individual capacities, but shall apply to their respective heirs, legal representatives, successors and/or assigns.

(h) Each Party covenants and agrees to timely pay all charges imposed by this Agreement, and such charges, if not paid following thirty (30) days' written notice from any Party, together with interest thereon at the maximum rate permitted by law and the costs of collection thereof including, without limitation, reasonable attorneys' fees and disbursements, shall be a continuing and binding lien against: (i) if FELPDC is delinquent in paying any sums due hereunder as aforesaid, the FELPDC Site; (ii) if WCC is delinquent in paying any sums due hereunder as aforesaid, the WCC Site; and (iii) the Agency is delinquent in paying any sums due hereunder, and shall be the responsibility of each Party, as applicable, together with their respective heirs, devisees, personal representatives, successors and/or assigns. The obligation of a Party to pay all charges, costs and/or fees due or to become due in connection with this Agreement shall also be and remain the personal obligation of such Party. Each Party is expressly authorized to bring suit against any delinquent Party either at law to recover money damages or in equity to foreclose the lien against the delinquent Party's real property.

(i) To the extent Agency, in its capacity as the owner of the Easement Area, determines to grant another person or entity including, without limitation, the New York State Canal Corporation, rights to use all or any portion of the Easement Area whether by easement, license or other means, the agreement or instrument establishing such rights shall be subject to the reasonable approval of FELPDC and WCC including, without limitation, to insure consistency

with the obligations of the parties under this Agreement including the dedications contemplated by Section 5 below and, also, to mitigate undue use of the Easement Area by the particular user.

(j) Agency, in its capacity as the owner of the Easement Area, shall have the authority to establish reasonable rules and regulations for the use of the Existing Roadway, subject to the approval of each of FELPDC and WCC; provided, however, in no event shall Agency seek to establish: (i) a weight limit for the Existing Roadway that is less than ninety-five thousand pounds; (ii) any limitation on use based on the time of day; or (iii) any rule or regulation that would limit on FELPDC's or WCC's existing or anticipated (as of the date of this Agreement) use of the Existing Roadway in support of its business.

3. Indemnity. Each Party agrees to defend, indemnify and save harmless all other Parties, and their respective agents, employees, members, managers, trustees, officers, directors, shareholders and partners (each an "Indemnified Party" and, collectively, the "Indemnified Parties"), against and from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses including, without limitation, reasonable attorneys' fees and disbursements (each, a "Claim" and, collectively, "Claims"), which may be imposed upon or incurred by or asserted against any Indemnified Party by reason of any of the following: (i) anything done in, on or about the Easement Area, or any part or parts thereof, by or at the instance of a Party and/or its agents, contractors, subcontractors, servants, employees, licensees, tenants, subtenants or invitees, in furtherance of the rights granted under this Agreement; (ii) any accident, injury or damage to any person or property occurring in, on or about the Easement Area, or any part or parts thereof, arising out of, relating to or resulting from the use by a Party or its Permitted Persons of the Easement Area and the other rights granted under this Agreement; and (iii) any breach of this Agreement by a Party; provided that the terms of the foregoing indemnity shall not apply to any Claim arising out of or related to the negligence or misconduct of an Indemnified Party or any of its agents, contractors, subcontractors, servants, employees, licensees, tenants, subtenants or invitees. In case any action, proceeding or investigation is brought against any Party by reason of any Claim for which a Party is required to provide indemnification as aforesaid, the Party, upon written notice from the Indemnified Party, shall, at the expense of the Party, resist or defend such action, proceeding or investigation by counsel approved by the Indemnified Party in writing, which approval shall not be unreasonably withheld.

4. Insurance. Each Party agrees to provide the others with evidence of commercial general liability insurance which shall be maintained under an occurrence basis policy and shall have limits of not less than \$1,000,000.00 per occurrence, combined single limit and shall be issued by carriers having a rating of not less than A-VII by A.M. Best & Company Inc. Such insurance may be provided in any combination of primary and excess coverage and may be carried under a "blanket" policy or policies covering other properties of the Party and/or its affiliates so long as the amount allocable to the liabilities intended to be covered hereunder is equal to or greater than the liability coverage levels required hereunder. Each Party shall name each other Party as an additional insured under the policy or policies of insurance it is to provide in accordance herewith and said policy or policies shall provide for amendment or cancellation only after thirty (30) days' prior written notice to a Party. Each Party shall provide each other Party certificates of insurance evidencing the insurance required hereunder on request. The insurance policies must provide for a waiver of subrogation and the insurance should be primary and noncontributory for claims that arise from negligence. General Liability policy(s) cannot include an Action Over Exclusion or its equivalent. Any contractor engaged to perform work in the

Easement Area shall furnish insurance that meets the requirements of this Section, and shall name each Party as additional insured, and be primary and non-contributory.

5. Public Dedication of Easement Area.

(a) It is the express understanding, intent and agreement of the Parties that the Easement Area shall be conveyed to one or more Public Authorities for use as a public right of way at such time or times as any Public Authority is willing to accept in public dedication all or any portion of the same. In furtherance of the foregoing, it is presently contemplated that the portion of the Easement Area in the Village of Fort Edward and the Town of Fort Edward is to be dedicated to the Town of Fort Edward and the portion of the Easement Area in the Town of Kingsbury is to be dedicated to the Town of Kingsbury and/or the County of Washington. Accordingly, the parties agree that the public dedication of the Easement Area may occur in phases depending on the pace at which the public dedication process proceeds with each applicable Public Authority that will accept a portion of the Easement Area in public dedication; but in any case, shall proceed as promptly as practicable and without the necessity of delaying a dedication of a portion of the Easement Area to one Public Authority until any other Public Authority is ready to accept dedication of a different portion of the Easement Area. The public dedication activities described in this Section 5(a) are sometimes referred to in this Agreement as "Dedication Activities".

(b) Agency, in its capacity as the owner of the Easement Area, agrees that it shall be solely responsible, at its sole cost and expense, for prosecuting all Dedication Activities. Agency shall commence Dedication Activities as soon as reasonably possible following the date of this Agreement and shall thereafter use its best efforts to continue Dedication Activities until completion of all Dedication Activities. Each of FELPDC and WCC agrees to cooperate reasonably with Agency with respect to Dedication Activities. Each Party agrees that at such time as any Public Authority is ready to accept all or any portion of the Easement Area in public dedication: (i) Agency will by appropriate instrument release and/or convey to the applicable Public Authority all of its right, title and interest in such portion of the Easement Area to be dedicated and do all other things reasonably required to effect such dedication; and (ii) each other Party shall automatically and without further action by the Party be deemed to have terminated, released and/or conveyed to the applicable Public Authority all of its right, title and interest in such portion of the Easement Area to be dedicated and shall do all other things reasonably required to effect such dedication. Should Agency fail to comply with its obligations under this Section 5(b) to perform Dedication Activities (the Parties hereto recognizing that Agency shall have the right, acting reasonably, to determine the pace and manner in which Dedication Activities are to be performed) for more than ninety (90) days after written notice of such failure from any other Party, each of the other Parties shall have the right (but not the obligation) to assume responsibility for Dedication Activities and the cost thereof shall be reimbursed by Agency to such Party within fifteen (15) days after written demand therefore. Any amounts not timely reimbursed under this Section 5(b) shall be recoverable together with interest thereon at the maximum rate permitted by law and the costs of collection thereof including, without limitation, reasonable attorneys' fees and disbursements.

(c) Upon dedication of the Easement Area or any portion thereof to a Public Authority, this Agreement shall terminate in its entirety or as to the dedicated portion of the Easement Area, as the case may be.

6. Sale of FELPDC Property. In the event of the sale, conveyance, acquisition or transfer of the FELPDC Site, in whole or in part, to or by any person(s), trust(s), entity(ies), public authority(ies), municipal entity(ies), and the like, any and all expenses of the Agency, as set forth herein shall be borne by and paid for by said person(s), trust(s), entity(ies), public authority(ies), municipal entity(ies), and the like, having taking title to the FELPDC Site. In the event that the FELPDC Site is sold to, conveyed to, acquired by or transferred to more than one party or later subdivided, said Agency expenses shall be pro-rated among said parties accordingly.

7. Miscellaneous.

(a) Each Party agrees at all times to use and exercise the easement rights granted or reserved to it hereunder only in accordance with all present and future federal, state and local laws, orders, rules and regulations.

(b) The provisions of this Agreement shall run with the land and be binding upon, enforceable by and inure to the benefit of the Parties, their respective heirs, legal representatives, successors and/or assigns and the failure of any of them to enforce any provision herein contained shall not be deemed a waiver of the right to do so thereafter.

(c) This Agreement may be executed in counterparts, each of which shall be an original, and all of which shall constitute but one agreement.

(d) This Agreement may not be modified without the written consent of the Parties which shall be recorded in the Clerk's Office.

(e) Whenever the context so requires, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any word may be deemed to mean the corresponding plural, or vice versa.

(f) If any provision of this Agreement is deemed invalid by a court of competent jurisdiction, such determination shall not affect any of the other provisions hereof, which shall remain in full force and effect. Without limitation by reason of the foregoing, the invalidation of any provision of this Agreement shall in no way affect any of the other provisions hereof, which shall remain in full force and effect for such period of time as may be permitted by law.

[Signatures Appear on Following Page]

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

COUNTIES OF WARREN AND WASHINGTON
INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Name:
Title:

FORT EDWARD LOCAL PROPERTY DEVELOPMENT
CORPORATION

By: _____
Name:
Title:

WCC, LLC

By: _____
Name:
Title:

ACKNOWLEDGMENTS

STATE OF NEW YORK)

COUNTY OF) ss.:

On the ____ day of _____, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and he acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)

COUNTY OF) ss.:

On the ____ day of _____, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and he acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)

COUNTY OF) ss.:

On the ____ day of _____, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and he acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public