

COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL DEVELOPMENT AGENCY

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

Tel. (518) 792-1312

The **Executive/Park Committee** meeting of the Counties of Warren and Washington Industrial Development Agency was held on Wednesday, January 8th at the offices of FitzGerald Morris Baker Firth PC, 68 Warren Street, Glens Falls, NY. The following were:

Present:

Dave O'Brien	Chair
Craig Leggett	Vice Chair
Brian Campbell	At-Large Member
Michael Bittel	Sec/Treasurer

Also Present:

Alie White	Office Administrator
Kara Lais, Esq.	FitzGerald Morris Baker Firth PC
Tom Jarrett	Jarrett Engineers
Jack Kelley	Coldwell Banker Commercial
Travis Whitehead	WWIDA/WWCDC Member
Michael Goot	Post Star
Lester Losaw	WWIDA/WWCDC CEO/CFO

The minutes were taken by the Office Administrator.

Call to Order: The Chair called the meeting to order at 9:00 A.M. Roll call was taken to establish a quorum.

Approval of minutes: Mr. Leggett made a motion to approve the November 6th, 2019 minutes and Mr. Bittel seconded and the motion was approved by unanimous voice vote.

Park Committee

Park – Mr. Jarrett stated a meeting with Deb Roberts led to a proposal to perform a general cursory walk east of Ferguson Lane in regard to possible redelineation. Moving forward would depend on Ms. Roberts' initial findings, which would most likely happen in April.

Potential Project Updates – Mr. Kelley stated there were two prospects for Lot 3 on County Line Road and negotiations are ongoing.

Archeological easement removal – Mr. O'Brien noted a finding from 2012 by the State Historic Preservation Office that stated a Lot 7 should no longer have a deed covenant as having a listing on the National Register of Historic Places. Mr. Jarrett stated maps will be filed accordingly.

Executive Committee

Dewatering Land Purchase Update – Mr. O'Brien stated the final contract has been signed, noting the permanent easement is currently holding further proceedings and the process of receiving more support is under way to try to reach the March 1st deadline.

Mr. O'Brien also stated FELPDC is currently working to have their tax-exempt 501C3 status acknowledged by the Fort Edward Assessor or address the possibility of having the IDA lease the property for tax-exempt status.

Marketing & Direction – Mr. Kelley noted the IDA's need for services has changed and the past few months have been devoted to the IDA with more than brokerage services. An agreement to encompass the scope of services will be presented for the Board to review at the next meeting.

Recapture – Mr. O'Brien noted there are three projects with differing sales tax exemption numbers from the spreadsheet included in the meeting packets. He stated three companies might need to be contacted to provide past ST-340's to review compliance and possible recapture.

Firetek Recapture – Mr. O'Brien confirmed Firetek has gone over their sales tax exemption limit and recapture will need to be started once filings are received.

Other Matters – Mr. Campbell questioned if WL Plastics' sales tax-exempt equipment purchases were completed and Ms. Lais stated WL Plastics will be providing an St-340 for 2019 before February.

Ms. Lais reviewed a new law requiring a separate preparation, approval and submission of an annual report for the IDA.

Adjournment – There being no other matters to discuss, Mr. O'Brien adjourned the IDA Executive Meeting at 9:53 a.m. and moved to open the CDC Executive Meeting.

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (the "Agreement") is made and entered into as of the Effective Date (being the date of last execution hereof by the parties), by and between **FT. EDWARD LOCAL PROPERTY DEVELOPMENT CORPORATION**, a New York State not for profit corporation, with an address of 118 Broadway, P.O. Box 127, Fort Edward, NY 12828 (the "Seller"), and **COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL DEVELOPMENT AGENCY**, a New York State public benefit corporation created by New York State General Municipal Law §890-c, with an address of 5 Warren Street, Glens Falls, NY 12801 (the "Buyer").

FOR GOOD AND VALUABLE CONSIDERATION, including without limitation the covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

1. **SALE AGREEMENT; PROPERTY.** Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, on the terms hereinafter stated:

1.1 Parcel 1. An irregularly shaped parcel, containing approximately 16.62± acres of land, located on Towpath Lane, in the Village of Fort Edward, County of Washington, State of New York, and known as a portion of Tax Map # 163.15-1-4; and depicted as a heavy dark blue line on a Sketch Map at Schedule "A", all subject to subdivision approval by the Village of Fort Edward Planning Board (the "Parcel 1"); and

1.2 Parcel 2. An irregularly shaped parcel, containing approximately 36.55± acres of land, located at 1400 Towpath Lane, in the Town of Fort Edward, County of Washington, State of New York, and known as a portion of Tax Map # 163.15-1-20.1; and depicted as a heavy dark green line on a Sketch Map at Schedule "A", all subject to subdivision approval by the Village of Fort Edward Planning Board (the "Parcel 2"); and

The closing on Parcel 1 and Parcel 2 (collectively, the "Property") shall occur contemporaneously.

2. **PURCHASE PRICE.** The purchase price to be paid by Buyer to Seller for the Property shall be TEN and No/100 Dollars (\$10.00) (the "Purchase Price"), to be paid as follows:

2.1 Earnest Money. Upon Seller's execution hereof and delivery of the same, Buyer shall deposit the sum of \$1.00 in current U.S. funds (the "Earnest Money") with the Seller's attorney, until time of closing. Deposit money shall be applied towards purchase price at the time of closing.

2.2 Cash Payment. At Closing, Buyer shall pay to Seller the balance of the Purchase Price, subject to adjustment as hereinafter provided, in immediately available current U.S. funds.

3. **CLOSING**

3.1 Adjustments and Closing Costs. All taxes due and outstanding for the Property shall be paid in full at the time of the date of the Closing. There shall be no adjustments for real estate taxes made as of the date of Closing. Utility accounts shall be transferred when full possession of the Property is delivered to Buyer. Notwithstanding anything contained herein to the contrary, at Closing the Seller shall provide funds, which shall be held in escrow by the Buyer's attorney in an amount sufficient to cover the the 2020 Village of Fort Edward taxes assessed on the Property. The parties agree that any excess funds remaining in escrow after the Village of Fort Edward taxes are paid shall be returned to Seller.

The following closing costs shall be paid by the Buyer: the cost of any survey certification; all of Seller's and Buyer's recording fees; any and all transfer, gains, or documentary stamp taxes and other taxes due at the time of Closing in connection with conveyance of the

Buyer's Initials: _____

Seller's Initials: _____

Property; the cost of any title update and title insurance premium; and Seller's attorney's fees in an estimated amount of \$3,500.00.

3.2 Closing. Subject to the provisions of Section 6.6, herein, the Closing shall take place on or before the date which is thirty (30) days following the date of written notice from Buyer that Buyer is prepared to and intends to close the acquisition of the Property (the "**Closing Date**"). If Buyer elects to purchase the Property, Buyer shall give written notice to Seller of its intention to close the acquisition of the Property on or before the date of expiration of the Due Diligence Period, as it may be extended by the Extended Due Diligence Periods (as hereinafter defined). Unless the parties otherwise agree in writing, the Closing shall be conducted as a customary arrangement between the Seller's attorney and the Buyer's attorney. On or before the Closing Date, the Seller and the Buyer shall each deliver to the respective attorneys the documents listed in Section 5.4 hereof and perform all other covenants in accordance herewith.

4. TITLE AND SURVEY REVIEW.

4.1 Title Commitment. As soon after the Effective Date, as reasonably possible, Buyer shall obtain a commitment for the issuance of an ALTA Owner's Title Insurance Policy, with extended coverage, insuring title to the Property to be good and marketable fee simple (the "Commitment"), together with legible copies of all recorded documents constituting exceptions under the Commitment (collectively, the "Exception Documents").

4.2 Abstract; Prior Title Policy. Within fourteen (14) days after the Effective Date, Seller shall (i) forward to the Buyer any abstract(s) (if applicable) or copies of any prior issued title insurance policies in Seller's possession or control, which cover any part of the Property, or (ii) advise Buyer, in writing, that no such abstracts or title policies are within Seller's possession or control.

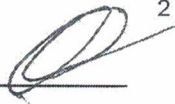

4.3 Survey. Sometime after the Effective Date, Buyer shall obtain a current survey of the Property (the "Survey") prepared by a registered professional land surveyor designated by Buyer (the "Surveyor"), in conformance with the ALTA Standards and Buyer's then current survey requirements and shall cause a copy thereof to be delivered to Seller. The delivery of a survey which does not meet the requirements of this Section 3.3 shall not constitute delivery or receipt of the Survey hereunder.

4.4 Title and Survey Objections; Cure Period. Within 20 (twenty) days of Buyer's receipt of the last of the Commitment, Exception Documents and Survey, Buyer shall give written notice to Seller of any matters contained therein to which Buyer objects. Any matters which the Title Company identifies as conditions to the issuance of the Title Policy (as defined below) shall constitute objections by Buyer. Seller shall have twenty (20) days after receipt of such objections from Buyer (or the Closing Date, if sooner) to use its best efforts to cure such objections to the satisfaction of Buyer. In the event any such objection is not so cured, Buyer shall have the option to either (i) waive the uncured objection, (ii) extend Seller's period for curing objections, or (iii) terminate this Agreement and receive a refund of the Earnest Money in which event both parties shall be relieved of any further liability hereunder (except as otherwise expressly provided herein).

5. TITLE TO BE CONVEYED

5.1 Deed. At the Closing, the Seller, at its expense, shall deliver to the Buyer or its nominee a **Bargain and Sale Deed with Covenant Against Grantor** Deed sufficient to convey to the Buyer good and marketable title to the Property, subject only to: (a) any and all provisions of any ordinance, municipal regulation, or public or private law; (b) any state of facts which an accurate survey or personal inspection of the Property might reveal, (c) current property taxes not yet due and payable, and (d) easements and appurtenances of record (collectively, the

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Buyer's Initials:  Seller's Initials: 

"Permitted Liens"). Seller shall also pay any state, local or county real estate conveyance or transfer taxes due. Buyer shall bear the expense of recording the Deed. At the Closing, Seller shall deliver the Property to Buyer free of all of tenants in possession, except as provided herein.

5.2 **Title.** Upon the execution of this Agreement, the Buyer shall order a title examination at its sole cost and expense and may obtain a survey of the Property. Within thirty (30) days following its receipt of a title commitment and receipt of its survey, Buyer shall furnish to Seller written notice of any objections to title. Any matter not mentioned in the aforesaid notice shall not thereafter be deemed to affect the marketability of title. The Buyer shall afford the Seller a reasonable time (which shall be deemed to be a period of not more than thirty (30) days from the date written notice of any defect is delivered by the Buyer to the Seller) to cure or correct any defects or objections to title. In the event Seller is unable to cure such defects or objections to title, the Buyer shall have the option either of accepting such title as the Seller can convey or of rescinding this Agreement; and if the Buyer shall elect to rescind, then this Agreement shall then be terminated, the Deposit shall be returned to Buyer, and all rights and liabilities of the parties, shall be terminated. Seller shall be obligated to pay off any mortgages, monetary liens or other financial encumbrances, which may be paid from Closing proceeds. Any encumbrance that is not a Permitted Lien arising after the date of the notice shall be the responsibility of the Seller, who shall be given a reasonable time to remove the encumbrance. (Reasonable time shall be deemed a period not to exceed thirty (30) days from the date written notice of the encumbrance is given to Seller).

5.3 **Lien Rights.** All work performed and/or material supplied to the Property by or on behalf of Seller within the applicable lien period immediately prior to the date of Closing shall be paid for in full by the Seller, and Seller will furnish Buyer with a mechanics' lien affidavit in customary form attesting to the fact that no persons, firms or corporations have claims against the Property, or shall furnish mechanic's lien waivers from parties having performed work within such time day period.

5.4 **Delivery of Documents.** At the Closing, Seller shall deliver to Buyer the following documents (the **"Documents"**):

- (a) **Bargain and Sale Deed with Covenant Against Grantor Deed** conveying title to the Property in accordance with the provisions of this Agreement.
- (b) Any required corporate documents reasonably required by Title Company confirming Seller's authority to enter into this Agreement and convey the Property;
- (c) Owner's Affidavit in the form required by the Title Company and reasonably acceptable to Seller;
- (d) Bill of Sale and Assignment as to any permits or approvals (to the extent assignable);
- (e) An Affidavit of the Seller swearing that the Seller is not a "foreign person" as defined in Section 1445(B)(2) of the Internal Revenue Code of 1986, as amended;
- (f) IRS 1099 form, if required;
- (g) Any other documents required by the State of New York or Buyer's title insurance company;
- (h) Any keys to the Property in Seller's possession; and

Buyer's Initials: _____

Seller's Initials: _____

(i) Closing Statement.

At the Closing, Buyer shall deliver the following:

The balance of the Purchase Price in accordance with the provisions of Section 2.2 hereof;

Any required corporate or other organizational documents reasonably required by Buyer's title insurance company confirming Buyer's authority to enter into this Agreement and to purchase the Property; and

Closing Statement.

6. CONTINGENCIES

6.1 Due Diligence Materials. Prior to or upon execution of this Agreement, Seller has provided or shall provide Buyer with copies of due diligence information to the extent in its possession or control with respect to the Property, including without limitation, environmental reports, engineering plans and studies, most recent title insurance policy or commitment including legal description, surveys, zoning information, site conditions, wetlands studies, topographic maps, soil conditions, traffic studies and drainage studies (collectively, the "**Due Diligence Materials**"). Buyer acknowledges and agrees that all information or reports prepared by third parties are delivered without representation or warranty, express or implied, as to the completeness or accuracy of the facts, presumptions, conclusions or other matters contained therein. If Buyer terminates this Agreement for any reason, copies of any non-proprietary reports obtained by Buyer during the Due Diligence Period will be provided to Seller.

6.2 Due Diligence Period. During the ninety (90) day period following execution of this Agreement (the "**Due Diligence Period**") and thereafter prior to Closing, Buyer shall have the right, at its sole cost and expense, through its own employees, or through its engineers, environmental consultants, architects or such other parties as Buyer shall designate, to review the Due Diligence Materials, obtain updated or additional reports and studies, and to inspect and examine the Property and the physical components thereof, including without limitation, environmental site assessments ("**Due Diligence**").

During said Due Diligence Period as it may be further extended, the Buyer shall have the right to seek all governmental and other permits and approvals required for its proposed development and operation of the Property. Without limitation, all required subdivision approvals, site plan and land use permits and approvals, wetlands, conservation commission, and/or any other environmental permits and approvals, all required permits and approvals for roadway access from any transportation authorities, utility connection permits and utility approvals, building permits, and any other discretionary governmental, quasi-governmental or other permit(s) or approval necessary, collectively, (the "**Approvals**"). At no cost or expense to Seller, Seller agrees to cooperate with Buyer in seeking such Approvals and agrees to execute and deliver any applications or other documents reasonably required with respect thereto, as prepared by Buyer. Buyer shall have the right to terminate this Agreement by written notice to Seller on or before the expiration of the Due Diligence Period, in which event this Agreement shall terminate and neither party shall have any further rights or obligations under this Agreement.

6.3 During the Due Diligence Period, Buyer, its agents, or representatives shall have the right and privilege, at its sole cost and expense, to enter upon the Property to perform any such testing so long as advance notice of such testing is provided to the Seller at least one (1)

Buyer's Initials: _____

Seller's Initials: _____

business day prior to the Buyer's inspection of the Property. Buyer shall restore any damage or disturbance to the Property that occurs as a result of the inspections.

Prior to any access, Purchaser must deliver a certificate of insurance to Seller evidencing that Purchaser and its contractors, agents and representatives have in place commercial general liability insurance on an "occurrence" basis, covering the activities of Purchaser and its agents, contractors and representatives on or about the Property, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, which insurance shall name Seller as additional insured thereunder and which shall remain in place until the Closing Date or earlier termination of this Agreement.

6.4 If the Buyer determines that the Property are not satisfactory to it in its sole and absolute discretion for any reason or no reason, and so notifies Seller in writing on or before the expiration of the Due Diligence Period, the Deposit shall be immediately returned to Buyer, and then this Agreement shall terminate and neither party shall have any further rights or obligations under this Agreement. If Buyer elects to proceed beyond the expiration of the Due Diligence Period, the Deposit shall be released to Seller and shall become non-refundable (except in the event of Seller default), but shall remain applicable to the Purchase Price.

6.5 Extension of Due Diligence Period. The Due Diligence Period may be extended by written notice from Buyer to Seller or Seller's counsel for up to two (2) additional periods of sixty (60) days each in order for Buyer to continue to seek Approvals (each individually an "**Extended Due Diligence Period**" and collectively, the "**Extended Due Diligence Periods**"). Buyer shall have the right to terminate this Agreement by written notice to Seller in writing on or before the expiration of the applicable Extended Due Diligence Period, in which event this Agreement shall terminate and neither party shall have any further rights or obligations under this Agreement.

6.6 Contingent Upon Sale to WL Plastics, Inc. This Agreement shall be contingent upon the successful closing of the sale by Seller of the remaining lands located at Towpath Lane, in the Village of Fort Edward, County of Washington, State of New York, and known as a portion of Tax Map # 163.15-1-4; and depicted as a Blue line on a Sketch Map at Schedule "A" and the remaining lands located at 1400 Towpath Lane, in the Town of Fort Edward, County of Washington, State of New York, and known as a portion of Tax Map # 163.15-1-20.1; and depicted as a Greenline on a Sketch Map at Schedule "A" to WL Plastics, Inc. or an entity to be formed. In the event the aforementioned closing does not occur, then this Agreement shall be terminated and neither party shall have any further rights or obligations under this Agreement.

7. REPRESENTATIONS AND WARRANTIES

7.1 By Seller. In order to induce Buyer to purchase the Property, Seller hereby represents and warrants to Buyer the following to be true and correct as of the date of this Agreement and as of the Closing:

(a) Seller is a not for profit corporation, duly organized and validly existing, in the State of New York, and has all requisite power and authority to execute, deliver and perform this Agreement and all instruments and agreements contemplated hereby.

(b) This Agreement has been duly authorized, executed and delivered by Seller and all required consents under Seller's organizational documents have been obtained.

(c) Seller has received no written notice from any governmental agency of any pending or threatened condemnation or transfer in lieu thereof affecting the Property.

Buyer's Initials:



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Seller's Initials:



(d) To Seller's knowledge, Seller has received no written notice from governmental authority regarding violation of any laws, ordinances, regulations, codes, orders or other requirements affecting the Property that have not been cured.

(e) There are no leases in effect with respect to the Property which will survive the Closing.

(f) There are no executory contracts in effect with respect to the Property, which will survive the Closing.

(g) Neither Seller nor any of its subsidiaries or, to the knowledge of Seller, any director, officer, employee, agent, affiliate or representative of the Seller, is an individual or entity currently the subject of any sanctions administered or enforced by the United States Department of Treasury's Office of Foreign Assets Control ("OFAC"), or other relevant sanctions authority.

(h) To the best of Seller's knowledge, neither Seller nor any person providing funds to Seller: (a) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist related activities, any crimes which in the United States would be predicate crimes to money laundering, or any violation of any Anti-Money Laundering Laws; (b) has been assessed civil or criminal penalties under any Anti-Money Laundering Laws; or (c) has had any of its funds seized or forfeited in any action under any Anti-Money Laundering Laws. The term "Anti-Money Laundering Laws" shall mean laws, regulations and sanctions, state and federal, criminal and civil, that: (w) limit the use of and/or seek the forfeiture of proceeds from illegal transactions; (x) limit commercial transactions with designated countries or individuals believed to be terrorists, narcotics dealers or otherwise engaged in activities contrary to the interests of the United States; (y) require identification and documentation of the parties with whom a financial institution conducts business; or (z) are designed to disrupt the flow of funds to terrorist organizations. Such laws, regulations and sanctions shall be deemed to include the USA PATRIOT Act of 2001, Pub. L. No. 107-56 (the "Patriot Act"), the Bank Secrecy Act, 31 U.S.C. Section 5311 et. seq., the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et. seq., the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et. seq., and the sanction regulations promulgated pursuant thereto by the OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957.

(i) Seller has not received notice of violation of any applicable environmental, health or safety law with respect to the Property. Without limiting the generality of the foregoing warranties, and by example only, Seller represents that no release of a hazardous substance has occurred at, beneath or near the Property or any surface waters or groundwaters thereon or thereunder (i) in violation of any environmental law, (ii) in a manner which could be expected to cause the incurrence of corrective action or remediation costs, (iii) in a manner which could be expected to cause personal injury or property damage. There are no underground storage tanks at the Property. No encumbrance has been imposed on the Property pursuant to any environmental law and no investigation, audit or inquiry has been commenced by any governmental body with respect to the Business or the Property pursuant to any environmental law.

(j) Seller (i) has not been notified that it is potentially liable under any environmental law, (ii) has not received any written request for information or other correspondence concerning any site or facility under any environmental law, and (iii) has not been notified that Seller is a "potentially responsible party" under any environmental law.

Buyer's Initials: 

Seller's Initials: 

7.2 By Buyer. In order to induce Seller to sell the Property, Buyer hereby represents and warrants to Seller that the following to be true and correct as of the date of this Agreement and as of the date of Closing:

(a) Buyer is a public benefit corporation duly organized and validly existing and has all requisite power and authority to execute, deliver and perform this Agreement and all instruments and agreements contemplated hereby.

(b) This Agreement has been duly authorized, executed and delivered by and all consents required under Buyer's organizational documents have been obtained.

(c) Neither Buyer nor any of its subsidiaries or, to the knowledge of Buyer, any director, officer, employee, agent, affiliate or representative of the Seller, is an individual or entity currently the subject of any sanctions administered or enforced by the United States Department of Treasury's Office of Foreign Assets Control ("OFAC"), or other relevant sanctions authority.

(d) To the best of Buyer's knowledge, neither Buyer nor any person providing funds to Buyer: (a) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist related activities, any crimes which in the United States would be predicate crimes to money laundering, or any violation of any Anti-Money Laundering Laws; (b) has been assessed civil or criminal penalties under any Anti-Money Laundering Laws; or (c) has had any of its funds seized or forfeited in any action under any Anti-Money Laundering Laws. The term "Anti-Money Laundering Laws" shall mean laws, regulations and sanctions, state and federal, criminal and civil, that: (w) limit the use of and/or seek the forfeiture of proceeds from illegal transactions; (x) limit commercial transactions with designated countries or individuals believed to be terrorists, narcotics dealers or otherwise engaged in activities contrary to the interests of the United States; (y) require identification and documentation of the parties with whom a financial institution conducts business; or (z) are designed to disrupt the flow of funds to terrorist organizations. Such laws, regulations and sanctions shall be deemed to include the USA PATRIOT Act of 2001, Pub. L. No. 107-56 (the "Patriot Act"), the Bank Secrecy Act, 31 U.S.C. Section 5311 et. seq., the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et. seq., the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et. seq., and the sanction regulations promulgated pursuant thereto by the OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957.

7.3 Notice. Seller and Buyer agree to promptly provide written notice to the other of any circumstances or facts of which Seller or Buyer become aware prior to Closing that would cause the representations and warranties in Section 7.1 or Section 7.2 respectively, or any portions thereof, to be incorrect.

Buyer's Initials: 

Seller's Initials: 

8. BROKERS

8.1 Broker. The parties represent that no person, firm or corporation is entitled to any commission on account of this contract of sale and the Buyer's acquisition of the Property. The parties agree to hold each other harmless from any loss or expense from any commission claimed by any other broker or agent by virtue of alleged dealings had by such claimant with the other party. The indemnity shall include all costs of defending any such claim, including reasonable attorney's fees.

9. CONCLUDING PROVISIONS

9.1 Entire Agreement. This Agreement supersedes all prior or contemporaneous negotiations, commitments, agreements (written or oral) and writings, including, but not limited to, the Letter of Intent between the Buyer and Seller with respect to the subject matter hereof. All such other negotiations, commitments, agreements and writings, including, but not limited to, the Letter of Intent will have no further force or effect, and the parties to any such other negotiation, commitment, agreement or writing will have no further rights or obligations thereunder.

9.2 Amendments. This Agreement may not be amended in any respect whatsoever except by a further agreement, in writing, fully executed by each of the parties.

9.3 Successors. This Agreement shall be binding upon and inure to the benefit of the parties and to their respective heirs, personal representatives, successors and assigns. The representations and warranties of the parties hereunder shall survive Closing.

9.4 Joint Effort. Preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not be construed more severely against one of the parties than the other.

9.5 Captions. The captions of this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained in this Agreement.

9.6 Counterparts. This Agreement may be executed in one or more copies, each of which shall be deemed an original.



9.7 Partial Invalidity. The invalidity of one or more of the phrases, sentences, clauses, Sections or Articles contained in this Agreement shall not affect the validity of the remaining portions so long as the material purposes of this Agreement can be determined and effectuated.

9.8 Applicable Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York.

9.9 Exhibits. All exhibits referred to in this Agreement shall be incorporated into this Agreement by such reference and shall be deemed a part of this Agreement as if fully set forth in this Agreement.

9.10 Notice. Any notice, demands or other communications permitted or required to be given hereunder (the "Notices") shall be in writing and, if mailed postage prepaid by Federal Express or similar overnight delivery and shall be deemed given one (1) day after the date of mailing, or if emailed, upon acknowledgement or other confirmation of receipt. Notices shall be addressed to the parties as follows:

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Buyer's Initials:  Seller's Initials: 

To Seller: Zachary Middleton
2171 State Route 4
Fort Edward, NY 12828
Phone: (518) 410-3710
Email: zmiddleton@easternmillwrights.com

and

Neal Orsini
13 Old Fort Street
Fort Edward, NY 12828
Phone: (518) 744-4784
Email: neal.orsini@gmail.com

With a required copy to:

Hodgson Russ LLP
140 Pearl Street, Suite 100
Buffalo, NY 14202
Attention: Daniel A. Spitzer
Phone: (716) 848-1420
Email: dspitzer@hodgsonruss.com

To Buyer: David O'Brien
Chairman
Counties of Warren-Washington IDA
5 Warren Street
Glens Falls, NY 12801
Phone: (518) 866-1022
Email: dkobrien@att.net

With a required copy to:

FitzGerald Morris Baker Firth PC
68 Warren Street, PO Box 2017
Glens Falls, New York 12801
Attention: Kara Lais
Phone: (518) 745-1400
Email: kil@fmbf-law.com

Any address or name specified above may be changed by a notice given to the addressee by the other party in accordance with this Section. The inability to deliver because of a changed address of which no notice was given or rejection or other refusal to accept any notice shall be deemed to be the receipt of this notice as of the date of such inability to deliver or rejection or refusal to accept. Any notice may be given by counsel for such party.

9.11 Default. In the event of any material default on the part of either party under this Agreement which continues for ten (10) days after receipt of written notice from the other party (except that no notice shall be required for default under any obligation to be performed at the Closing) the following shall apply:

- (a) If Buyer is the defaulting party, Seller shall, as its sole remedy, terminate this Agreement and retain the Deposit and any Extension Payments paid as liquidated

Buyer's Initials: 

Seller's Initials: 

damages. The parties agree that the retention of the Deposit and any Extension Payments paid shall be considered liquidated damages by reason of the uncertainty and impossibility of ascertaining actual damage suffered by the Seller. Both parties agree that the aforesaid amount constitutes a reasonable forecast of damages which would be sustained by the Seller in the event of the Buyer's breach.

(b) If Seller is the defaulting party, Buyer may, as its sole remedies, (i) terminate this Agreement in which event the full amount of Buyer's Deposit and any Extension Payments paid shall be refunded and Seller shall reimburse Buyer for Buyer's out-of-pocket costs incurred in connection with the Project, or (ii) seek specific performance against Seller. Notwithstanding the foregoing, in the event that specific performance is unavailable to Buyer, as a result of a willful default by Seller such as a conveyance to another party in violation of this Agreement, Purchaser shall have the right to receive damages from Seller or seek any other remedy available at law or in equity.

(c) The prevailing party shall be entitled to receive from the unsuccessful party reasonable attorney's fees and costs incurred by it by virtue of any litigation as to the rights of the parties under this Agreement.

9.12 Exclusivity. Seller shall terminate any and all marketing of the Property for sale, shall not negotiate with any other party and shall deal exclusively with Buyer regarding the sale of the Property from the date of execution of the letter of intent between the parties through the date of Closing.

**[BALANCE OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURES ON FOLLOWING PAGE]**

Buyer's Initials: _____

 10

Seller's Initials: _____



IN WITNESS WHEREOF, this Agreement is executed effective as of the Effective Date.

SELLER:

FT. EDWARD LOCAL PROPERTY DEVELOPMENT CORPORATION
A New York State Not for Profit Corporation

By: 

Name: NEAL ORSINI

Title: PRES

DATE OF EXECUTION: December 31, 2019

BUYER:

**COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL
DEVELOPMENT AGENCY**
A New York State Public Benefit Corporation

By: 

Name: David O'Brien, Chairman

DATE OF EXECUTION: December 31, 2019

Buyer's Initials: 

Seller's Initials: OTO



684 COUNTY LINE RD
CHAUNCEY, MAUREEN R
36.64Ac
127.-1-33.3

672 COUNTY LINE RD
KELLY, DENNIS
15Ac
127.-1-33.1

Areas of Interest

CASEY RD
WARREN WASHINGTON CO IDA
11.42Ac
137.-2-1

CASEY RD OFF
WARREN WASHINGTON CO IDA
2.7Ac
137.-2-13

CASEY RD OFF
WARREN WASHINGTON CO IDA
1.9Ac
137.-2-134

CASEY RD OFF
WARREN WASHINGTON CO IDA
2.7Ac
137.-2-13

CASEY RD OFF
EQUUS TOCK LLC
1.73Ac
137.-2-115

22 FERGUSON LN
EQUUS TOCK LLC
1.9Ac
137.-2-114

65 CASEY RD
HAVENS, EDWARD
1.78Ac
137.-2-111

CASEY RD
LIPKA, KIMBERLY A
3.41Ac
137.-1-1

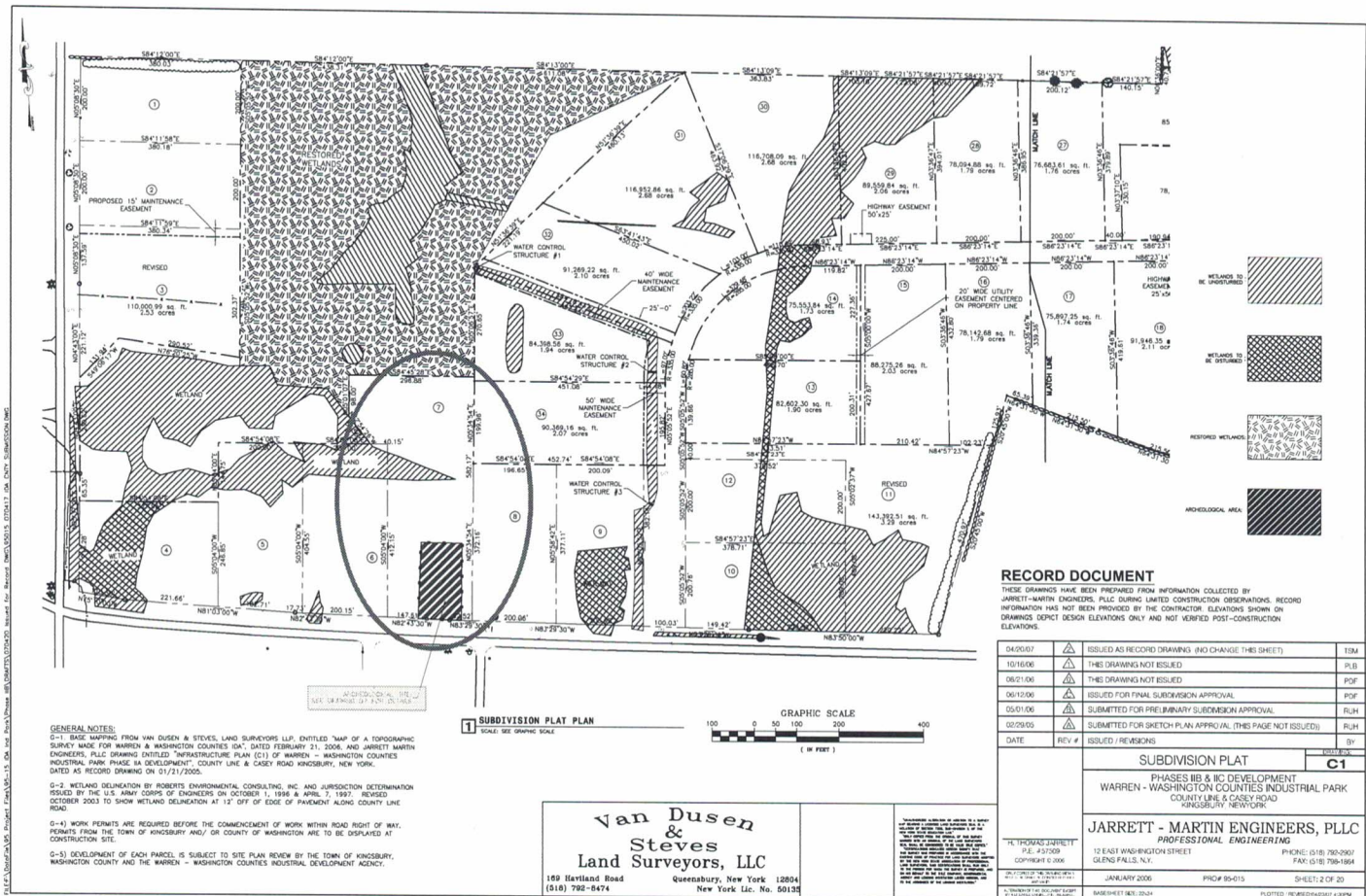
89 CASEY RD
MACERO, DANIEL M
12.05Ac
137.-1-1

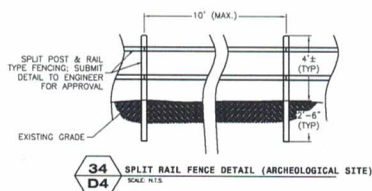
90 CASEY RD
CARUSO, JERRY W
15.96Ac
137.-1-69.10

PARK RD
AUER, DOUGLAS
2.84Ac
137.-2-4

PARK RD
GIRARD, MARGARET D
2.73Ac
137.-1-69.13

CASEY RD
SHAY, VINCENT
3.96Ac
137.-1-69





04/05/07		AS IS RECORD DRAWING. NO CHANGE THIS SHEET	PLM
10/16/06		THIS DRAWING NOT ISSUED	TJB
08/01/06		THIS DRAWING NOT ISSUED	PGF
06/12/06		ISSUED FOR FINAL SUBMISSION APPROVAL	PGF
5/31/06		SUBMITTED FOR PRELIMINARY SUBMISSION APPROVAL	BLH
7/29/05		ISSUED FOR SKETCH PLAN APPROVAL (THIS PAGE NOT ISSUED)	BLH
DATE	REV #	ISSUED / REVISIONS	BY

ARCHAEOLOGICAL PROTECTION PLAN		NO. D7
PHASES IIS & IC DEVELOPMENT WARREN - WASHINGTON COUNTIES INDUSTRIAL PARK COUNTY LINE & CASEY ROAD WINGBORO, NEW JERSEY		
JARRETT - MARTIN ENGINEERS, PLLC PROFESSIONAL ENGINEERING		
T. JOHNSON, JARRETT PLS. AND/OR CONSULTANT'S USE	12 EAST WASHINGTON STREET GLENS FALLS, N.Y.	PHONE: (518) 796-0667 FAX: (518) 796-1564
FEBRUARY 2006 PROJECT NO. 05-015	SHEET: 18 OF 20	



New York State Office of Parks, Recreation and Historic Preservation

Historic Preservation Field Services Bureau • Peebles Island, PO Box 189, Waterford, New York 12188-0189

518-237-8643

www.nysparks.com

Andrew M. Cuomo
Governor

Rose Harvey
Commissioner

20 November 2012

Mr. Bruce Ferguson
Counties of Warren and Washington Industrial Development Agency
5 Warren Street, Suite 210
Glens Falls, NY 12801

Re: CORPS, DEC
Warren & Washington Counties Airport Industrial Park
Town of Kingsbury, Washington County
04PR02569

Dear Mr. Ferguson:

The State Historic Preservation Office (SHPO) has reviewed the information submitted for this project. Our review has been in accordance with Section 106 of the National Historic Preservation Act and relevant implementing regulations.

Based on continued research regarding 19th Century farmstead sites over the last ten years (since the Phase II report was prepared), SHPO has reassessed the data potential of the Casey Farm Historic Site (A11513.000053). SHPO now recommends that this site is not eligible for listing on the National Register of Historic Places. We have no further concerns regarding this site and recommend that the deed covenant on Lot #7 of the industrial park should be removed.

If you have any questions please don't hesitate to contact me.

Sincerely,

Philip A. Perazio, OPRHP

Phone: 518-237-8643 x3276; FAX: 518-233-9049

Email: Philip.Perazio@parks.ny.gov

McKinney's Consolidated Laws of New York Annotated
General Municipal Law (Refs & Annos)
Chapter 24. Of the Consolidated Laws
Article 18-a. Industrial Development
Title 1. Agencies, Organization and Powers (Refs & Annos)

McKinney's General Municipal Law § 875

§ 875. Special provisions applicable to state sales and compensating use taxes and certain types of facilities

Effective: March 28, 2013

Currentness

1. For purposes of this section: "state sales and use taxes" means sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight. "IDA" means an industrial development agency established by this article or an industrial development authority created by the public authorities law. "Commissioner" means the commissioner of taxation and finance.

2. An IDA shall keep records of the amount of state and local sales and use tax exemption benefits provided to each project and each agent or project operator and shall make such records available to the commissioner upon request. Such IDA shall also, within thirty days of providing financial assistance to a project that includes any amount of state sales and use tax exemption benefits, report to the commissioner the amount of such benefits for such project, the project to which they are being provided, together with such other information and such specificity and detail as the commissioner may prescribe. This report may be made in conjunction with the statement required by subdivision nine of section eight hundred seventy-four of this title or it may be made as a separate report, at the discretion of the commissioner. An IDA that fails to make such records available to the commissioner or to file such reports shall be prohibited from providing state sales and use tax exemption benefits for any project unless and until such IDA comes into compliance with all such requirements.

** This is a reference to ST-60.*

3. (a) An IDA shall include within its resolutions and project documents establishing any project or appointing an agent or project operator for any project the terms and conditions in this subdivision, and every agent, project operator or other person or entity that shall enjoy state sales and use tax exemption benefits provided by an IDA shall agree to such terms as a condition precedent to receiving or benefiting from such state sales and use exemptions benefits.

X (b) The IDA shall recover, recapture, receive, or otherwise obtain from an agent, project operator or other person or entity state sales and use exemptions benefits taken or purported to be taken by any such person to which the person is not entitled or which are in excess of the amounts authorized or which are for property or services not authorized or taken in cases where such agent or project operator, or other person or entity failed to comply with a material term or condition to use property or services in the manner required by the person's agreement with the IDA. Such agent or project operator, or other person or entity shall cooperate with the IDA in its efforts to recover, recapture, receive, or otherwise obtain such state sales and use exemptions benefits and shall promptly pay over any such amounts to the IDA that it requests. The failure to pay over such

amounts to the IDA shall be grounds for the commissioner to assess and determine state sales and use taxes due from the person under article twenty-eight of the tax law, together with any relevant penalties and interest due on such amounts.

(c) If an IDA recovers, recaptures, receives, or otherwise obtains, any amount of state sales and use tax exemption benefits from an agent, project operator or other person or entity, the IDA shall, within thirty days of coming into possession of such amount, remit it to the commissioner, together with such information and report that the commissioner deems necessary to administer payment over of such amount. An IDA shall join the commissioner as a party in any action or proceeding that the IDA commences to recover, recapture, obtain, or otherwise seek the return of, state sales and use tax exemption benefits from an agent, project operator or other person or entity.

(d) An IDA shall prepare an annual compliance report detailing its terms and conditions described in paragraph (a) of this subdivision and its activities and efforts to recover, recapture, receive, or otherwise obtain state sales and use exemptions benefits described in paragraph (b) of this subdivision, together with such other information as the commissioner and the commissioner of economic development may require. The report required by this subdivision shall be filed with the commissioner, the director of the division of the budget, the commissioner of economic development, the state comptroller, the governing body of the municipality for whose benefit the agency was created, and may be included with the annual financial statement required by paragraph (b) of subdivision one of section eight hundred fifty-nine of this title. Such report required by this subdivision shall be filed regardless of whether the IDA is required to file such financial statement described by such paragraph (b) of subdivision one of section eight hundred fifty-nine. The failure to file or substantially complete the report required by this subdivision shall be deemed to be the failure to file or substantially complete the statement required by such paragraph (b) of subdivision one of such section eight hundred fifty-nine, and the consequences shall be the same as provided in paragraph (e) of subdivision one of such section eight hundred fifty-nine. * This refers to ST62

(e) This subdivision shall apply to any amounts of state sales and use tax exemption benefits that an IDA recovers, recaptures, receives, or otherwise obtains, regardless of whether the IDA or the agent, project operator or other person or entity characterizes such benefits recovered, recaptured, received, or otherwise obtained, as a penalty or liquidated or contract damages or otherwise. The provisions of this subdivision shall also apply to any interest or penalty that the IDA imposes on any such amounts or that are imposed on such amounts by operation of law or by judicial order or otherwise. Any such amounts or payments that an IDA recovers, recaptures, receives, or otherwise obtains, together with any interest or penalties thereon, shall be deemed to be state sales and use taxes and the IDA shall receive any such amounts or payments, whether as a result of court action or otherwise, as trustee for and on account of the state.

4. The commissioner shall deposit and dispose of any amount of any payments or moneys received from or paid over by an IDA or from or by any person or entity, or received pursuant to an action or proceeding commenced by an IDA, together with any interest or penalties thereon, pursuant to subdivision three of this section, as state sales and use taxes in accord with the provisions of article twenty-eight of the tax law. The amount of any such payments or moneys, together with any interest or penalties thereon, shall be attributed to the taxes imposed by sections eleven hundred five and eleven hundred ten, on the one hand, and section eleven hundred nine of the tax law, on the other hand, or to any like taxes or fees imposed by such article, based on the proportion that the rates of such taxes or fees bear to each other, unless there is evidence to show that only one or the other of such taxes or fees was imposed or received or paid over.

5. The statement that an IDA is required by subdivision nine of section eight hundred seventy-four of this article to file with the commissioner shall not be considered an exemption or other certificate or document under article twenty-eight or twenty-nine of the tax law. The IDA shall not represent to any agent, project operator, or other person or entity that a copy of such statement may serve as a sales or use tax exemption certificate or document. No agent or project operator may tender a

copy of such statement to any person required to collect sales or use taxes as the basis to make any purchase exempt from tax. No such person required to collect sales or use taxes may accept such a statement in lieu of collecting any tax required to be collected. The civil and criminal penalties for misuse of a copy of such statement as an exemption certificate or document or for failure to pay or collect tax shall be as provided in the tax law. In addition, the use by an IDA or agent, project operator, or other person or entity of such statement, or the IDA's recommendation of the use or tendering of such statement, as such an exemption certificate or document shall be deemed to be, under articles twenty-eight and thirty-seven of the tax law, the issuance of a false or fraudulent exemption certificate or document with intent to evade tax.

6. The commissioner is hereby authorized to audit the records, actions, and proceedings of an IDA and of its agents and project operators to ensure that the IDA and its agents and project operators comply with all the requirements of this section. Any information the commissioner finds in the course of such audit may be used by the commissioner to assess and determine state and local taxes of the IDA's agent or project operator.

7. In addition to any other reporting or filing requirements an IDA has under this article or other law, an IDA shall also report and make available on the internet, without charge, copies of its resolutions and agreements appointing an agent or project operator or otherwise related to any project it establishes. It shall also provide, without charge, copies of all such reports and information to a person who asks for it in writing or in person. The IDA may, at the request of its agent or project operator delete from any such copies posted on the internet or provided to a person described in the prior sentence portions of its records that are specifically exempted from disclosure under article six of the public officers law.

8. In consultation with the commissioner of economic development, the commissioner of taxation and finance is hereby authorized to adopt rules and regulations and to issue publications and other guidance implementing the provisions of this section and of the other sections of this article relating to any state or local tax or fee, or exemption or exclusion therefrom, that the commissioner administers and that may be affected by any provision of this article, and any such rules and regulations of the commissioner shall have the same force and effect with respect to such taxes and fees, or amounts measured in respect of them, as if they had been adopted by the commissioner pursuant to the authority of the tax law.

9. To the extent that a provision of this section conflicts with a provision of any other section of this article, the provisions of this section shall control.

Credits

(Added L.2013, c. 59, pt. J, § 2, eff. March 28, 2013.)

McKinney's General Municipal Law § 875, NY GEN MUN § 875

Current through L.2019, chapter 652. Some statute sections may be more current, see credits for details.

End of Document

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