

Resolution No. 19-03
Adopted May 20, 2019

Introduced by Brian Campbell
who moved its adoption.

Seconded by Mike Wild

**RESOLUTION APPROVING A MODIFICATION AND EXTENSION AGREEMENT WITH
KEYBANK NATIONAL ASSOCIATION IN CONNECTION WITH NORTH COUNTRY
PROPERTY HOLDINGS, LLC AND AUTHORIZING EXECUTION AND DELIVERY OF THE
SAME**

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

WHEREAS, the Agency approved a "Project" to be undertaken at 454 County Line Road in the Town of Kingsbury, County of Washington, State of New York by North Country Property Holdings, LLC (the "Company"), as more specifically described in the Closing Documents; and

WHEREAS, on August 12, 2014, the Agency entered into a Lease Agreement and Leaseback Agreement with the Company in connection with the Project; and

WHEREAS, on December 26, 2014 a certain Mortgage, Security Agreement and Assignment of Leases and Rents was entered into by and between KeyBank National Association (the "Mortgagee"), the Agency and the Company and recorded in the Washington County Clerk's office on January 13, 2015 in Book 3487 of Mortgages at Page 263, as Instrument # 2015-96293 in the principal amount of \$2,546,900.00; and

WHEREAS, the Company is seeking to modify and extend said mortgage and accompanying note in an outstanding principal amount of \$2,133,340.57; and, consequently, the Company will be required to execute a modification and extension agreement on the property known at 454 County Line Road in the Town of Kingsbury, County of Washington, State of New York, in which the Agency has a leasehold interest; and

WHEREAS, the Company has requested that the Agency execute a modification and extension agreement by and between the Company, KeyBank National Association and the Agency in connection with 454 County Line Road in the Town of Kingsbury, County of Washington, State of New York; and

WHEREAS, the Company is not in default of any of the terms of the Leaseback Agreement or the PILOT Agreement.

NOW, THEREFORE, BE IT RESOLVED

1. That the Agency does hereby approve of the execution of a Modification and Extension Agreement by and between the Agency, North Country Property Holdings, LLC and Key Bank National Association in an outstanding amount of \$2,133,340.57 and further determines that said Modification and Extension Agreement shall be entitled to a mortgage tax exemption from the Agency upon filing in the Washington County Clerk's Office as it does relate to the Project.
2. That the Company shall be responsible for any expenses relating to this transaction, including legal fees of the Agency and County recording fees.
3. That the delivery of the fully executed Modification and Extension Agreement and mortgage tax exemption affidavit of the Agency shall be conditioned upon the following: (1) confirmation that the Company has established an escrow account with KeyBank National Association for the collection and remittance of PILOT payments; (2) confirmation that there are no outstanding PILOT payments due the Agency; and (3) confirmation that the Company has taken any and all necessary steps to merge the two (2) parcels that make up 454 County Line Road in the Town of Kingsbury, County of Washington, State of New York.
4. That the Agency does hereby authorize the Chairman or the Chief Executive Officer of the Agency, or in the absence of the Chairman or the Chief Executive Officer, the Vice Chairman, upon advice and consent of Agency Counsel, to execute and deliver on behalf of the Agency any documents necessary to consummate the transaction.
5. This Resolution shall take effect immediately.

IN THE MATTER OF TAXATION

OF

COUNTIES OF WARREN AND WASHINGTON
INDUSTRIAL DEVELOPMENT AGENCY

STATE OF NEW YORK)
) ss.:
COUNTY OF WASHINGTON)

MATTHEW J. SIMPSON, being duly sworn deposes and says:

(1) That he is the Chairman of the Counties of Warren and Washington Industrial Development Agency (the "Agency"), a public benefit corporation of the State of New York, established pursuant to Chapter 1030 of the Laws of 1969 of the State of New York, constituting Title II of Article 18-A of the General Municipal Law of the State of New York, and by Chapter 862 of the Laws of 1971 and Chapter 566 of the Laws of 1972 of the State of New York (collectively the "Act").

(2) That, on or about August 12, 2014 the Agency acquired a certain parcel or parcels of real property located in the Town of Kingsbury, County of Washington, New York and more particularly described in Exhibit A attached hereto (the "Land"), pursuant to a lease to the Agency (the "Lease") from NORTH COUNTRY PROPERTY HOLDINGS, LLC (the "Company"). Furthermore, that pursuant to Section 874 of the Act and Section 1405(b)(1) of the Tax Law of the State of New York, no real estate transfer tax is due upon the instrument conveying the Land from the Company to the Agency.

(3) That, on July 21, 2014, the Agency adopted a closing resolution (the "Resolution") for the purpose of undertaking the project (the "Project"), which consists of (i) the acquisition of an interest in a certain commercial parcel or parcels of land located at 454 County Line Road in the Town of Kingsbury, County of Washington, State of New York (the "Land"); (ii) the reconstruction, renovation and equipping of an existing 11,990+/- square foot office facility for use as a specialized veterinary care facility and related doctors' offices (the "Facility"); (iii) the acquisition and installation therein of certain furnishings and fixtures (the "Equipment" together with the Land and the Facility, collectively the "Project Facility") to be used in connection with the contemplated uses; and (iv) the lease of the Project Facility to the Company, all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, and Chapter 862 of the Laws of 1971 of the State of New York (collectively, the "Act"), as amended.

(4) That the Project Facility will be leased back to the Company from the Agency pursuant to the terms of a lease agreement dated as of August 12, 2014 (the "Lease Agreement") by and between the Agency and Company. This re-conveyance will take place upon satisfaction of all conditions contained within the Lease Agreement and related closing documents.

(5) That on December 26, 2014 a certain Mortgage, Security Agreement and Assignment of Leases and Rents was entered into by and between KeyBank National Association (the "Mortgagee"), the Agency and the Company and recorded in the Washington County Clerk's office on January 13, 2015 in Book 3487 of Mortgages at Page 263, as Instrument # 2015-96293.

(6) That security for certain loans to undertake the Project were provided in the form of a mortgage, security agreement and an assignment of leases and rents, pursuant to which the Agency assigns certain of its rights in the Lease Agreement to the Mortgagee, including the right to receive payments.

(7) That the Company intends to modify and extend the terms of the aforementioned mortgage and accompanying note.

(8) The Mortgagee shall record a certain Modification and Extension Agreement, and file any related Uniform Commercial Code financing statements in the office of the Clerk of Washington County, New York and such other places as may be provided by law as the proper location for the recondition or filing thereof so as to preserve and protect fully the security for the Modification and Extension Agreement.

(9) Pursuant to Article 18-A of the General Municipal Law of the State of New York, the Agency is regarded as performing a governmental function and is generally not required to pay taxes or assessments upon any property acquired by it or under its jurisdiction, control or supervision or upon its activities, and any bonds or notes issued by the Agency, together with the income therefrom, as well as the property of the Agency, pursuant to such legislation, are exempt from taxation, except for transfer and estate taxes.

(10) Deponent submits that no mortgage recording tax should be imposed upon the Modification and Extension Agreement, or any related documents insomuch as said documents are being executed and delivered under the State authority creating the Agency, insomuch as the use by the Agency of its powers to secure the payment of principal of, premium, if any, and interest on the loans and to assist in the acquisition, construction and installation of the Project Facility is deemed under the Act a public purpose essential to the public interest, and insomuch as both the New York State Department of Taxation and Finance and its counsel have expressed their opinion that the recording of similar documents by similar Agencies organized under Article 18-A of the General Municipal Law are operations of said Agencies entitled to exemption from the mortgage recording tax.

Matthew J. Simpson, Chairman

Sworn to before me this 20th
day of May, 2019.

Notary Public

EXHIBIT A - DESCRIPTION OF REAL PROPERTY

RECORD AND RETURN TO:
MARTIN, SHUDT, WALLACE,
DiLORENZO & JOHNSON
Kirby W. DiLorenzo, Esq.
258 Hoosick Street, Suite 201
Troy, New York 12180

MODIFICATION AND EXTENSION AGREEMENT

THIS MODIFICATION AND EXTENSION AGREEMENT ("Agreement") is made as of May , 2019, by and between **NORTH COUNTRY PROPERTY HOLDINGS, LLC**, a New York limited liability company whose address 454 County Line Road, Hudson Falls, New York 12839 ("Mortgagor"), **COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business at 5 Warren Street, Suite 210, Glens Falls, New York 12801 ("Agency"), and **KEYBANK NATIONAL ASSOCIATION**, its successors and assigns, a national banking association having a banking office at 66 South Pearl Street, Albany, New York 12207 ("Mortgagee").

WITNESSETH:

WHEREAS, the Mortgagee is now the owner and holder of that certain Mortgage, Security Agreement, And Assignment Of Leases And Rents dated December 26, 2014, made by the Mortgagor and the Agency to the Mortgagee in the original principal amount of \$2,546,900.00 ("Mortgage"), and recorded in the Washington County Clerk's Office January 13, 2015, in Volume 3487, page 263 as Document Number 2015-00096293, and of the note of even date ("Note") secured thereby, which Mortgage covers certain real property and premises situate in the Town of Kingsbury, County of Washington, State of New York, all as more fully set forth and described in attached Schedule "A"; and

WHEREAS, the principal sum of \$2,133,340.57 remains due and owing on the Note and Mortgage as of the date hereof; and

WHEREAS, the Mortgagor is the owner of the real property and premises described in attached Schedule "A"; and

WHEREAS, the Mortgagor and Mortgagee desire to modify and extend the time and terms of payment of the Note and Mortgage.

NOW, THEREFORE, it is hereby mutually agreed that the manner and time of payment of the aforesaid principal indebtedness of \$2,133,340.57 and the interest thereon are hereby modified and extended so that the Mortgagor shall be obligated to pay to the Mortgagee, at its office above stated or such other place as it may designate in writing delivered to or mailed to the Mortgagor, the aforesaid unpaid principal indebtedness with interest thereon all as more fully set forth in the Amended and Restated Promissory Note made by Mortgagor to Mortgagee of even date herewith and secured hereby.

AND IT IS FURTHER AGREED by and between the parties hereto, and the Mortgagor does **FURTHER WARRANT AND REPRESENT** to the Mortgagee as follows:

1) That the Mortgagor is now the owner of the real property and premises set forth and described in attached Schedule AA @ upon which the Mortgage is a valid lien for the amount specified above with interest thereon as above set forth, and that there are no defenses or offsets to the Mortgages or the Note;

2) That the indebtedness and interest hereby agreed to be paid by the Mortgagor shall be a first lien on the mortgaged premises set forth and described in attached Schedule AA@ and shall be secured by the Notes and Mortgage, and that when the terms and provisions contained in the Note and Mortgage in any way conflict with the terms and provisions contained in this Agreement, the terms and provisions contained herein shall prevail, and that as modified by this Agreement the Note and Mortgage are hereby ratified and confirmed.

3) This Agreement may not be changed or terminated orally. The covenants contained in this Agreement shall run with the land and bind the Mortgagor, its successors and assigns, and all subsequent owners, encumbrances, tenants and subtenants of the premises, and shall inure to the benefit of the Mortgagee, its successors and assigns, and all subsequent holders of the aforesaid mortgage. The word "party" shall be construed as if it read "parties" whenever the sense of this Agreement so requires.

4) That all of the terms, covenants and provisions contained in any other documents or instruments evidencing or securing payment of the indebtedness evidenced and secured hereby, or contained in any other documents or instruments otherwise made and executed in connection with such indebtedness, except as herein and hereby modified and extended, are hereby ratified and confirmed and shall remain in full force and effect and shall continue to bind the Mortgagor pursuant to the terms thereof except as may be modified hereby.

5) That the failure at any time of the Mortgagee to require strict performance of any of the terms or covenants hereof shall not constitute a waiver or release of such terms or covenants.

6) That the Mortgagor will execute and procure for the Mortgagee, and cause to be done any further conveyances, instruments, or acts of further assurance as the Mortgagee may reasonably require to perfect the security of the Mortgagee in the property intended now or hereafter to be covered hereby or otherwise for carrying out the intention of facilitating the performance of the terms hereof.

7) That the terms of this Agreement may not be changed or terminated orally.

8) Limitation as to Agency:

(a) This Agreement is executed by the Agency solely for the purpose of subjecting its interest in the real property and premises described in attached Schedule "A" ("the Property") to the lien of the Mortgage and for no other purpose. All representations, covenants, and warranties of the Mortgagor herein are hereby deemed to have been made by the Mortgagor, and not by the Agency.

(b) The obligations and agreements of the Agency contained herein and any other instrument or documents executed in connection herewith or therewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent or employee of the Agency in his individual capacity, and the members, officers, agents and employees of the Agency, shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(c) The obligations and agreements of the Agency contained herein and therein shall not constitute or give rise to an obligation of the State of New York or the Counties of Warren and Washington, New York, and neither the State of New York nor the Counties of Warren and Washington, New York, shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility, as such term is defined in the Lease Agreement by and between the Agency and the Mortgagor (except for revenues derived by the Agency with respect to the Unassigned Rights, as such term is defined in the Lease Agreement).

(d) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (i) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten day period) or failed to respond within such notice period, (ii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount of undertaking sufficient to cover such reasonable fees and expenses and (iii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend and hold harmless the Agency and its members, officers, agents and the employees against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request.

(e) Notwithstanding anything to the contrary stated in this document, the Agency specifically intends to except, and hereby excepts, from any and all property which the Agency agrees to mortgage, pledge, assign, grant a lien on, or otherwise convey pursuant to this document the "Unassigned Rights" as such term is defined in the Lease Agreement.

9) That this Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Mortgagor has duly executed this Agreement as of the date first set forth herein.

NORTH COUNTRY PROPERTY HOLDINGS, LLC

By: _____

James V. Keller
Sole Member

STATE OF NEW YORK)
) SS:
COUNTY OF)

On the day of May, 2019, before me, the undersigned, personally appeared James V. Keller known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

IN WITNESS WHEREOF, the Agency has duly executed this Agreement as of the date first set forth herein.

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

By: _____

Name: _____

Title: _____

STATE OF NEW YORK)
) SS:
COUNTY OF)

On the day of May, 2019, before me, the undersigned, personally appeared
 known to me or proved to me on the basis of satisfactory evidence to be the
individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me
that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their
signature(s) on the instrument, the individual(s) or the person upon behalf of which the
individual(s) acted, executed the instrument.

Notary Public

IN WITNESS WHEREOF, the Mortgagee has duly executed this Agreement as of the date first appearing above.

KEYBANK NATIONAL ASSOCIATION

By: _____
Peter Keigley
Vice President/Relationship Manager

STATE OF NEW YORK)
COUNTY OF) ss.:

On the day of May, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared Peter Keigley 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 acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual(s), or the person or entity upon behalf of which the individual acted, executed the instrument.

Notary Public

VOTING:	AYES	NAYS	ABSTAIN	ABSENT
Matt Simpson	X			
Dave O'Brien	X			
Joe LaFiura				X
Craig Leggett		X		
Bruce Ferguson	X			
Ginny Sullivan	X			
Nick Caimano	X			
Mike Wild	X			
Travis Whitehead	X			
Brian Campbell	X			
TOTALS	8	1	0	1

The foregoing resolution was thereupon declared duly adopted.

STATE OF NEW YORK)

) SS:

COUNTY OF WARREN)

This is to certify that I, Alie White, Office Administrator 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 20th day of May, 2019.

In witness whereof, I have hereunto set my hand and affixed the official seal of the Counties of Warren and Washington Industrial Development Agency on this 20th day of May, 2019.



Alie White, Office Administrator
Counties of Warren and Washington Industrial
Development Agency

[SEAL]