

TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY

SPECIAL MEETING
BOARD OF DIRECTORS
Meeting Minutes September 6, 2011
5 PM – Lockport Town Hall

1.0 Public Hearing

1.1 Application by Moley Magnetics

Thomas Sy, IDA Board Chairman, called the Public Hearing to order, and requested IDA Attorney Daniel Seaman to read the Notice for the Public Hearing regarding the Application for IDA Assistance submitted by Moley Magnetics. Following the reading of the Notice, there having been no written correspondence received and no comments made by those attending the Hearing, Thomas Sy called the Hearing closed.

1.2 Application by Mulvey Construction

Thomas Sy called the Public Hearing to order, and requested IDA Attorney Daniel Seaman to read the Notice for the Public Hearing regarding the Application for IDA Assistance submitted by Mulvey Construction. Following the reading of the Notice, Thomas Sy invited Tim Mulvey to explain his plans as outlined in his project application. Marc Smith noted that Mulvey Construction qualifies for incentives from the IDA, and that the nature of the business is such that it could relocate and be successful in other communities that may provide incentives if the IDA does not assist Mulvey Construction in the Town of Lockport. There having been no further public comments and no written correspondence received, Thomas Sy called the Hearing closed.

2.1 Roll Call

Present – Chairman – Thomas Sy, Vice Chairman – Paul Haber, Treasurer – Robert Lipp, Secretary – Duncan Carlson, Directors – Thomas Weeks, Eric Connor and Sallie Reed, Administrative Director – David Kinyon, and Legal Counsel – Daniel Seaman. Also present were Lockport Town Supervisor Marc Smith, Tom Prohaska from the Buffalo News and Joe Olenick from the Lockport Union-Sun & Journal, Tim Mulvey from Mulvey Construction and John Moley and Ron Slaby from Moley Magnetics.

3.0 Executive Session

On a motion by Eric Connor seconded by Thomas Weeks, the Board voted to enter Executive Session for the purpose of consultation with attorney regarding legal matters. On a motion by Thomas Weeks seconded by Duncan Carlson, the Board voted to leave Executive Session.

4.0 New Business

4.1 Moley Magnetics Application for Assistance

The following resolution was introduced:

RESOLUTION OF THE TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY (THE AGENCY) AUTHORIZING MOLEY MAGNETICS, INC. AND/OR A RELATED ENTITY TO BE FORMED (THE LESSEE) TO PURCHASE THE FORMER ELECTRUK BATTERY SITE LOCATED AT 4922 I.D.A. PARK DRIVE, LOCKPORT, NEW YORK, CONSISTING OF ONE 14,000 SQUARE FOOT BUILDING AND LOT, TO BE USED AS A REPAIR/SERVICE AND DISTRIBUTION COMPANY AND MANUFACTURING OF CONTROLS AND ELECTRICAL PANELS, AND TO ACQUIRE AND INSTALL MACHINERY AND EQUIPMENT REQUIRED IN CONNECTION THEREWITH, AND FOR THE MODIFICATION OF THE PREMISES AS NEEDED FOR THAT PURPOSE, AND AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND, OR IN THE ALTERNATIVE,

MORTGAGE AND SECURITY AGREEMENT AND THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH.

WHEREAS, Moley Magnetics, Inc. and/or a related entity to be formed (the Lessee) has entered into negotiations with the Town of Lockport Industrial Development Agency (the Agency) for assistance to purchase the former Electruk Battery site at 4922 I.D.A. Park Drive, Lockport, NY consisting of one 14,000 square foot building and lot and for the acquisition and equipment by the Agency with a bond issue or, alternatively, through a Lease only transaction of, with financial assistance from the Agency, and to utilize said premises as a repair/service and distribution company and manufacturing of controls and electrical panels. The acquisition and renovation of the facility is necessary for the applicant to relocate current operations due to a fire, to allow for growth of business in the region and to accommodate demand for product and need for additional manufacturing, warehousing and distribution space; and

WHEREAS, the Lessee has submitted an Eligibility Questionnaire and other materials and information to the Agency (collectively hereinafter the “Eligibility Questionnaire”) to initiate the accomplishment of the above; and

WHEREAS, the Eligibility Questionnaire sets forth certain information with respect to the Lessee, including the following: the Lessee desires Agency financing for purchase and modification of the Project for manufacturing and related purposes with resultant increase in employment in the Town of Lockport; the Lessee will employ approximately 8 full-time and 3 part-time employees after the Project is fully completed; that but for the availability of financing and/or other assistance by the Agency, the Lessee and any Sub-Lessee would not locate the Project and expand its business within the Town of Lockport, there will be no substantial adverse disruption of existing employment at facilities of a similar nature in the Town of Lockport, and the Project will provide substantial increased employment and substantial capital investment; if Agency financing or other assistance is disapproved, the Lessee and the Sub-Lessee would likely not proceed with the Project; and that, therefore, Agency financing or other assistance is necessary to encourage the Lessee and the Sub-Lessee to proceed with the Project in the Town of Lockport; and

WHEREAS, the Agency has held a Public Hearing on the Project pursuant to Section 859-A of the General Municipal Law; and

WHEREAS, the Agency desires to further encourage the Lessee with respect to the acquisition and construction of the Project, if by so doing it is able to induce the Lessee, to proceed with the Project in the Town of Lockport; and

WHEREAS, the Agency has determined that the Project be limited to the parcel located at 4922 I.D.A. Park Drive, Town of Lockport, New York; and

WHEREAS, to finance the Project the Agency intends to execute and deliver a bond, or in the alternative, a mortgage to allow for the construction as aforesaid,

WHEREAS, the Project should not be delayed by the requirement of determining the details of a bond issue or a lease only transaction if a mortgage is utilized, which cannot be immediately accomplished, and the Lessee has agreed to extend its own funds with respect to the Project, subject to reimbursement from the proceeds of the bonds, or in the alternative, the mortgage, if applicable;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Agency hereby determines that the acquisition, construction and installation of the Project and the financing or other assistance thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act. The Agency further hereby determines, on the basis of the Eligibility Questionnaire and supplemental information furnished by the Lessee as follows: (a) it would not have assisted the Project except to induce the location of the Project in the area to be

served by the Project as there is a demonstrable need for the Project and the services it offers; (b) but for the availability of Agency assistance for the Project in such area, the Project would not be economically feasible; (c) there will be no substantial adverse disruption of existing employment or facilities of a similar nature to the Project in such area; and (d) the Project will provide substantial employment and substantial capital investment. The Agency further determines, on the basis of the Lessee's Eligibility Questionnaire that (e) the Project as represented is reasonably necessary to provide the purposes of the Act, and (f) the Project is an integral part of the Lessee's plan to proceed with the Project in the Town of Lockport.

Section 2. The Agency hereby authorizes the Lessee to proceed with the Project as herein authorized, which Project will be financed through the issuance of the bonds, or in the alternative, mortgage financing, will be special obligations of the Agency payable solely from the revenues and other amounts derived pursuant to a lease of the Project or in the alternative through a lease only transaction, or in the alternative the execution and delivery of the Bond, or in the alternative, mortgage financing in the principal amount not to exceed \$300,000.00 and from the Agency and the Lessees or their successors to a bank to be designated, its agents or assigns, (the "Lender") UCC-1 Financing Statements to the Lender and a Lease Agreement between the Agency and the Lessee each in substantially the same form approved by the Agency for prior transactions or in form approved by the Chairman, Treasurer, Administrative Director, Secretary, Assistant Secretary, and any member or officer of the Agency are hereby authorized to execute, acknowledge and deliver each such Instrument and the Chairman, Treasurer, Administrative Director, Secretary and any member or officer of the Agency are hereby authorized to affix the seal of the Agency on each such instrument, as applicable, and attest the same. All other provisions of the Resolution relating to the Bond, or in the alternative, mortgage financing and the Lease Agreement, shall apply to such Instruments.

All covenants, stipulations, obligations and agreements of the Agency contained in this resolution and contained in the Bond, or in the alternative, mortgage financing, UCC-1 Financing Statements and the Lease Agreement shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this Resolution, the Bond, or in the alternative, mortgage financing, the UCC-1 Financing Statements and the Lease Agreement, as the case maybe, shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

No covenants, stipulation, obligation or agreement herein contained or contained in the Bond, or in the alternative, mortgage financing, the UCC-1 Financing Statements and the Lease Agreement or any other agreement or instrument executed and delivered by the Agency in furtherance of this resolution shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agency or employee of the Agency in his individual capacity and neither the members of the Agency or any officer executing the Bond, or in the alternative, mortgage financing, the UCC-1 Financing Statements and the Lease Agreement shall be liable personally thereon or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

The Chairman, Treasurer, Administrative Director, Secretary, Assistant Secretary, and any member or officer of the Agency are hereby designated the authorized representatives of the Agency and each of them is hereby authorized and directed to execute and deliver any and all agreements, papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution, the execution and delivery of the Bond, or in the alternative, mortgage financing, the UCC-1 Financing Statements and the Lease Agreement.

Section 3. The Agency will undertake, as soon as it is furnished with sufficient information as to the particular amount, interest rate, maturities, redemption and other terms, the purchaser, the security and other conditions to permit the authorization, issuance and sale of the bonds, or in the alternative, mortgage financing, to use its best efforts to proceed, subject to agreement among the Agency, the Lessee and the purchaser of the bonds, or in the alternative, mortgage financing, as to terms in all agreements to be entered in to with respect to the Project, with the issuance of the bonds, or in the alternative, mortgage financing, to finance the Project in an amount not to exceed \$300,000 if bonds, or in the alternative, mortgage financing, are utilized or, in the alternative, undertake as soon as particular terms and conditions of a Lease Agreement are determined to enter into a lease only transaction.

Section 4. The Chairman, Administrative Director, Treasurer, Secretary or Assistant Secretary, of the Agency and other appropriate officials or Board Members of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Lessee to assist in the acquisition and construction of the Project.

Section 5. The Lessee is authorized to purchase 4922 I.D.A. Park Drive, Lockport, New York, and modify the 14,000 square foot building thereon, and to utilize said premises to be used as a repair/service and distribution company and manufacturing of controls and electrical panels; and to advance such funds as may be necessary to accomplish such purposes, subject to reimbursement for all qualifying expenditures out of the proceeds of the bonds, or in the alternative, mortgage financing, to be issued by the Agency, if applicable. The Agency is hereby authorized to enter into such agreements with the Lessee as the Chairman, or Administrative Director or other officer of the agency may deem necessary in order to accomplish the above.

Section 6. Any such action heretofore taken by the Lessee in construction of the Project is hereby ratified, confirmed and approved.

Section 7. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be reimbursed out of the proceeds of the bonds, or in the alternative, the mortgage, or in the event such proceeds are insufficient after payment of other costs of the Project or bonds are not issued or a mortgage is not obtained by the Agency due to inability to consummate the transaction herein contemplated (other than by fault of the Agency), shall be paid by the Lessee. By acceptance hereof, the Lessee agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, officers, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project and the financing thereof.

Section 8. This resolution is subject to Agency approval of payment in lieu of taxes agreement for municipal services. Should the Lessee or any of its subtenants vacate the premises prior to the expiration of the arrangement for payment in lieu of taxes, the Lessee shall use its best efforts to obtain new subtenants, so that no application will be necessary for reduction in assessed value, it being the intent of the Agency that payments in lieu of taxes will be maintained at the level called for by its standard policy at all times while it holds title to the Project.

Section 9. The provisions of this resolution shall continue to be effective until one year from the date hereof whereupon this resolution shall cease to be effective (except with respect to matters contained in Section 7 hereof) unless prior to the expiration of such period (a) the Agency shall by subsequent resolution extend the effective date of this resolution or (b) the Agency shall adopt a resolution authorizing the issuance of the Agency's bonds or notes to finance the costs of the Project as herein authorized or enters into a lease only transaction or (c) the Lessee shall continue to take affirmative steps to secure financing for the Project.

Section 10. This resolution is also subject to (a) the acquisition of the Project site, (b) the construction of space suitable for the purpose authorized herein (c) approval by the Agency of the Sublease including any information that the Agency deems necessary to verify compliance with the New York State Industrial Development Agency Act and (d)

provision in any Sublease for use of the Project only for those purposes specified above or otherwise permitted by the New York State Industrial Development Agency Act and approved by the Agency.

Section 11. The execution and delivery of a Lease or a Lease and Leaseback between the Agency and the Lessee, and a mortgage in an amount not to exceed \$300,000.00, being substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Administrative Director or any member of the Board of Directors or the Agency attorney is hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 12. The Agency hereby determines, based upon information furnished to the Agency by the Lessee and such other information as the Agency has deemed necessary to make this determination, that the Project does not require the preparation of an environmental impact statement under the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation law, as the contemplated actions will not have a significant effect on the environment.

Section 13. The bond or bonds to be issued shall not be exempt from Federal Income Taxation. Therefore, this resolution is not subject to compliance with the provisions of Section 103 of the Internal Revenue Code of 1954 as amended (the "Code") or to an appropriate allocation under the State law pursuant to the Deficit Reduction Act of 1984.

Section 14. The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Lessee's purposes or needs or the extent to which proceeds derived from the sale of the bonds will be sufficient to pay the cost of the acquisition, construction, renovation and installation of the Project. The Lessee is satisfied that the Project is suitable and fit for Lessee's purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused and the Lessee hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

Section 15. The Project will result in the abandonment of the Lessee's present facility in the Town of Wilson, New York. It is hereby determined by the Agency that from the Application before it that the Project is reasonably necessary to discourage the Project occupant from removing such facility to a location outside the State and to preserve the competitive position of the Lessee in its respective industry, because the present facility is not suitable for the Lessee's needs due to extensive fire damage to the facility, and the Lessee has found no suitable method to renovate the existing facility, or to relocate in the Town of Wilson.

Section 16. This resolution is subject to compliance with all local building and zoning requirements.

Section 17. This resolution shall take effect immediately.

MOTION BY: PAUL J. HABER
SECONDED BY: DUNCAN N. CARLSON
ROLL CALL VOTE: UNANIMOUS – AYES – 7

THOMAS A. SY, AYE
ERIC W. CONNOR, AYE
THOMAS WEEKS, AYE
SALLIE P. REED, AYE
DUNCAN N. CARLSON, AYE
PAUL J. HABER, AYE
ROBERT A. LIPP, AYE

The Resolution was thereupon declared duly adopted.

4.2 Mulvey Construction Application for Assistance

The following resolution was introduced:

RESOLUTION OF THE TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY (THE AGENCY) AUTHORIZING MULVEY CONSTRUCTION, INC. AND/OR A RELATED ENTITY TO BE FORMED (THE LESSEE) TO CONSTRUCT AT 5583 DAVISON ROAD, LOCKPORT, NEW YORK, A 14,800 SQUARE FOOT OFFICE, ADMINISTRATION AND CONSTRUCTION BUILDING AND TO ACQUIRE AND INSTALL MACHINERY AND EQUIPMENT REQUIRED IN CONNECTION THEREWITH, AND AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND, OR IN THE ALTERNATIVE, MORTGAGE AND SECURITY AGREEMENT AND THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH.

WHEREAS, Mulvey Construction, Inc. and/or a related entity to be formed (the Lessee) has entered into negotiations with the Town of Lockport Industrial Development Agency (the Agency) for assistance in constructing a 14,800 square foot office, administration and construction building on a vacant parcel at 5583 Davison Road, Lockport, New York, and for the acquisition and installation of equipment by the Agency with a bond issue or alternatively through a lease only transaction of, with financial assistance from the Agency, and to utilize said premises for the operation of a construction management business, and allow for growth, efficiency and allow the Lessee to remain competitive in today's market (the "Project") and the lease of the project to the Lessee; and

WHEREAS, the Lessee has submitted a Project Eligibility Questionnaire and other materials and information to the Agency (collectively hereinafter the "Eligibility Questionnaire") to initiate the accomplishment of the above; and

WHEREAS, the Eligibility Questionnaire sets forth certain information with respect to the Lessee, including the following: the Lessee desires Agency financing for construction on vacant land at 5583 Davison Road, Lockport, NY, which is adjacent to its current facility at 5589 Davison Road, Lockport, NY, and the construction of a 14,800 square foot office, administration and construction building and related purposes with resultant increase in employment in the Town of Lockport; the Lessee presently employs twenty-seven full-time employees and six part-time employees and will cause to be employed approximately two full time employees after the Project is fully completed; that but for the availability of financing and/or other assistance by the Agency, the Lessee and any Sublessee would not locate the Project and expand its

business within the Town of Lockport, there will be no substantial adverse disruption of existing employment at facilities of a similar nature in the Town of Lockport, and the Project will provide substantial increased employment and substantial capital investment; if Agency financing or other assistance is disapproved, the Lessee and the Sublessee would likely not proceed with the Project; and that, therefore, Agency financing or other assistance is necessary to encourage the Lessee and the sublessee to proceed with the Project in the Town of Lockport; and

WHEREAS, the Agency has held a public hearing on the Project pursuant to Section 859-A of the General Municipal Law; and

WHEREAS, the Agency desires to further encourage the Lessee with respect to the Project, if by so doing it is able to induce the Lessee, to proceed with the Project in the Town of Lockport; and

WHEREAS, the Agency has determined that the project be limited to the parcel depicted and known as Town of Lockport Real Property Tax Map SBL Number 123.04-2-39; and

WHEREAS, to finance the project the Agency intends to execute and deliver a bond, or in the alternative, a mortgage to allow for the project as aforesaid,

NOW, THEREFORE BE IT RESOLVED BY THE TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Agency hereby determines that the acquisition and installation of the Project and the financing or other assistance thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act. The Agency further hereby determines, on the basis of the Eligibility Questionnaire and supplemental information furnished by the Lessee as follows: (a) it would not have assisted the Project except to induce the location of the Project in the area to be served by the Project as there is a demonstrable need for the Project and the services it offers; (b) but for the availability of Agency assistance for the Project in such area, the Project would not be economically feasible; (c) there will be no substantial adverse disruption of existing employment or facilities of a similar nature to the Project in such area; and (d) the Project will provide substantial employment and substantial capital investment. The Agency further determines, on the basis of the Lessee's Eligibility Questionnaire that (e) the Project as represented is reasonably necessary to provide the purposes of the Act, and (f) the Project is an integral part of the Lessee's plan to proceed with the Project in the Town of Lockport.

Section 2. The Agency hereby authorizes the Lessee to proceed with the Project as herein authorized, which Project will be financed through the issuance of the bonds, or in the alternative, mortgage financing, will be special obligations of the Agency payable solely from the revenues and other amounts derived pursuant to a lease of the Project or, in the alternative, through a lease only transaction, or in the alternative the execution and delivery of the Bond, or in the alternative, mortgage financing in the principal amount not to exceed \$700,000.00 and from the Agency and the Lessee or its successor to a bank to be designated, its agents or assigns, (the "Lender") UCC-1 Financing Statements to the Lender and a Lease Agreement between the Agency and the Lessee each in substantially the same form approved by the Agency for prior transactions or in form approved by the Chairman, Treasurer, Administrative Director, Secretary and any member or officer of the Agency are hereby authorized to execute, acknowledge and deliver each such Instrument and the Chairman, Treasurer, Administrative Director, Secretary and any member or officer of the Agency are hereby authorized to affix the seal of the Agency on each such instrument, as applicable, and attest the same. All other provisions of the Resolution relating to the Bond, or in the alternative, mortgage financing and the Lease Agreement, shall apply to such Instruments.

All covenants, stipulations, obligations and agreements of the Agency contained in this resolution and contained in the Bond, or in the alternative, mortgage financing, UCC-1 Financing Statements and the Lease Agreement shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this Resolution, the Bond, or in the alternative, mortgage financing, the UCC-1 Financing Statements and the Lease Agreement, as the case maybe, shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

No covenants, stipulation, obligation or agreement herein contained or contained in the Bond, or in the alternative, mortgage financing, the UCC-1 Financing Statements and the Lease Agreement or any other agreement or instrument executed and delivered by the Agency in furtherance of this resolution shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agency or employee of the Agency in his individual capacity and neither the members of the Agency or any officer executing the Bond, or in the alternative, mortgage financing, the UCC-1 Financing Statements and the Lease Agreement shall be liable personally thereon or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

The Chairman, Treasurer, Administrative Director, Secretary, Assistant Secretary and any member or officer of the Agency are hereby designated the authorized representatives of the Agency and each of them is hereby authorized and directed to execute and deliver any and all agreements, papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution, the execution and delivery of the Bond, or in the alternative, mortgage financing, the UCC-1 Financing Statements and the Lease Agreement.

Section 3. The Agency will undertake, as soon as it is furnished with sufficient information as to the particular amount, interest rate, maturities, redemption and other terms, the purchaser, the security and other conditions to permit the authorization, issuance and sale of the bonds, or in the alternative, mortgage financing, to use its best efforts to proceed, subject to agreement among the Agency, the Lessee and the purchaser of the bonds, or in the alternative, mortgage financing, as to terms in all agreements to be entered in to with respect to the Project, with the issuance of the bonds, or in the alternative, mortgage financing to finance the Project in an amount not to exceed \$700,000.00, if bonds, or in the alternative, mortgage financing, is utilized or in the alternative undertake as soon as particular terms and conditions of a Lease Agreement are determined enter into a lease only transaction.

Section 4. The Chairman, Administrative Director, Treasurer, Secretary or Assistant Secretary of the Agency and other appropriate officials or Board Members of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Lessee to assist in acquisition of the Project.

Section 5. The Lessee is authorized for construction of an 14,800 square foot office, administration and construction building at 5583 Davison Road, Lockport, New York, and acquisition and installation of machinery and equipment required in connection therewith and to advance such funds as may be necessary to accomplish such purposes, subject to reimbursement for all qualifying expenditures out of the proceeds of the bonds to be issued by the Agency, if applicable. The Agency is hereby authorized to enter into such agreements with the Lessee as the Chairman, or Administrative Director may deem necessary in order to accomplish the above.

Section 6. Any such action heretofore taken by the Lessee in initiating the acquisition and construction of the Project is hereby ratified, confirmed and approved.

Section 7. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be reimbursed out of the proceeds of the bonds, or, in the alternative, mortgage financing, or in the event such proceeds are insufficient after payment of other costs of the Project or bonds are not issued by the Agency due to inability to consummate the transaction herein contemplated (other than by fault of the Agency), shall be paid by the Lessee. By acceptance hereof, the Lessee agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, officers, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project and the financing thereof.

Section 8. This resolution is subject to Agency approval of payment in lieu of taxes agreement for municipal services. Should the Lessee or any of its subtenants vacate the premises prior to the expiration of the arrangement for payment in lieu of taxes, the Lessee shall use its best efforts to obtain new subtenants, so that no application will be necessary for reduction in assessed value, it being the intent of the Agency that payments in lieu of taxes will be maintained at the level called for by its standard policy at all times while it holds title to the Project, as follows: The payment in lieu of taxes shall be twenty percent (20%) of the Town, County and School taxes on the first year and shall increase by five percent (5%) each year thereafter through the tenth year when it shall be sixty-five percent (65%) and thereafter shall terminate whereupon the premises shall be taxed as other properties by taxing entities.

Section 9. The provisions of this resolution shall continue to be effective until one year from the date hereof whereupon this resolution shall cease to be effective (except with respect to matters contained in Section 7 hereof) unless prior to the expiration of such period (a) the Agency shall by subsequent resolution extend the effective date of this resolution or (b) the Agency shall adopt a resolution authorizing the issuance of the Agency's bonds or notes to finance the costs of the Project as herein authorized or enters into a lease only transaction or (c) the Lessee shall continue to take affirmative steps to secure financing for the Project.

Section 10. This resolution is also subject to (a) the acquisition of the Project site (b) the construction of space suitable for the purpose authorized herein (c) approval by the Agency or its attorney of the Lease and Sublease including any information that the Agency deems necessary to verify compliance with the New York State Industrial Development Agency Act and (d) provision in any Sublease for use of the Project only for those purposes specified above or otherwise permitted by the New York State Industrial Development Agency Act and approved by the Agency.

Section 11. The execution and delivery of a Lease or a Lease and Leaseback between the Agency and the Lessee, and a mortgage in an amount not to exceed \$700,000.00, being substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Administrative Director or any member of the Board of Directors is hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 12. The Agency hereby determines, based upon information furnished to the Agency by the Lessee and such other information as the Agency has deemed necessary to make this determination, that the Project does not require the preparation of an environmental impact statement under the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation law, as the contemplated actions will not have a significant adverse effect on the environment.

Section 13. The bond or bonds or, in the alternative, mortgage financing to be issued shall not be exempt from Federal Income Taxation. Therefore, this resolution is not subject to compliance with the provisions of Section 103 of the Internal Revenue Code of 1954 as amended (the "Code") or to an appropriate allocation under the State law pursuant to the Deficit Reduction Act of 1984.

Section 14. The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Lessee's purposes or needs or the extent to which proceeds derived from the sale of the bonds will be sufficient to pay the cost of the construction of the Project. The Lessee is satisfied that the Project is suitable and fit for lessee's purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused and the Lessee hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

Section 15. This resolution is subject to compliance with all local building and zoning requirements.

Section 16. This resolution shall take effect immediately.

MOTION BY: THOMAS WEEKS

SECONDED BY: ERIC CONNOR

ROLL CALL VOTE: AYES – 4, NAYES – 3

THOMAS A. SY, AYE

ERIC W. CONNOR, AYE

R. THOMAS WEEKS, AYE

SALLIE P. REED, AYE

DUNCAN N. CARLSON, NAY

PAUL J. HABER, NAY

ROBERT A. LIPP, NAY

The Resolution was thereupon declared duly adopted.

5.0Adjournment

On a motion by Duncan Carlson seconded by Robert Lipp, the Board voted to adjourn at 5:25 PM.

Respectfully submitted,
Duncan N. Carlson, Secretary