

Atwater Capital, LLC Authorizing Resolution

A regular meeting of the County of Chautauqua Industrial Development Agency (the “Agency”) was convened in public session, on January 25, 2022, at 10:00 A.M., local time, and held remotely by videoconference and conference call in compliance with the provisions of Part E of Chapter 417 of the 2021 Laws of the State of New York.

The meeting was called to order by the Chairman and, upon roll being called, the following members of the Agency were:

PRESENT:

Michael Metzger	Chairman
Hans Auer	Treasurer
Gary Henry	Secretary
Steven Thorpe	Member
Kelly Farrell-Dubois	Member
Jay Churchill	Member
Tom Harmon	Member

NOT PRESENT:

Dennis J. Rak	Vice Chairman
Brad Walters	Member

THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Mark Geise	Administrative Director/CEO
Richard E. Dixon	Chief Financial Officer
Milan K. Tyler, Esq.	Counsel
Greg Peterson	Counsel
Matt Fitzgerald	Counsel
Paul Wendel	County Executive
Pierre Chagnon	Legislator
Linda Burns	CCIDA Staff
Carol Rasmussen	CCIDA Staff
Kristine Morabito	CCIDA Staff
Jeanette Lo Bello	CCIDA Staff
Rosie Strandburg	CCIDA Staff
Nate Aldrich	CCPEG Staff
Monica Simpson	CCPEG Staff
Rebecca Wurster	CREDC Staff
Jason Toczydlowski	CCIDA Staff
Vince DeJoy	City of Dunkirk
Dick Purol	Town of Dunkirk Supervisor
Rich Morrisroe	Attorney

Atwater Capital, LLC Authorizing Resolution

The attached resolution no. 01-25-22-05 was offered by Kelly Farrell-DuBois, seconded by Steven Thorpe:

Resolution No. 01-25-22-05

RESOLUTION TAKING OFFICIAL ACTION TOWARD AND APPROVING THE STRAIGHT LEASE DOCUMENTS FOR A CERTAIN PROJECT FOR ATWATER CAPITAL, LLC AND/OR ITS AFFILIATES

WHEREAS, the County of Chautauqua Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) and Chapter 71 of the 1972 Laws of New York, as amended, constituting Section 895-h of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more “projects” (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, ATWATER CAPITAL, LLC, a limited liability company duly organized and existing under the laws of the State of Florida and qualified to do business in the State of New York as a foreign limited liability company (the “Applicant”), presented an application for financial assistance (the “Application”) to the Agency, which Application requested that the Agency consider undertaking a project (the “Project”) consisting of the following: (A)(1) the acquisition of an interest in a parcel of land located at 181 Stegelske Avenue, Town of Dunkirk, Chautauqua County, New York (collectively, the “181 Stegelske Parcel”), (2) the renovation of the existing approximately 186,000 square foot warehouse/distribution facility located on the 181 Stegelske Parcel (collectively, the “181 Stegelske Improvements”), and (3) the acquisition and installation of certain furniture, fixtures, machinery and equipment necessary for the completion

thereof (the “181 Stegelske Equipment”), all of the foregoing for use by the Applicant and/or its affiliates as a warehouse and distribution facility (the 181 Stegelske Parcel, the 181 Stegelske Improvements and the 181 Stegelske Equipment being referred to herein collectively as the “181 Stegelske Project Facility”); (B)(1) the acquisition of an interest in a parcel of land located at 6 Stegelske Avenue, City of Dunkirk, Chautauqua County, New York (the “6 Stegelske Parcel” and together with the 181 Stegelske Parcel, the “Land”), (2) the renovation of the existing approximately 500 square foot pump house located on the 6 Stegelske Parcel (collectively, the “6 Stegelske Improvements” and together with the 181 Stegelske Improvements, the “Improvements”), and (3) the acquisition and installation of certain furniture, fixtures, machinery and equipment necessary for the completion thereof (the “6 Stegelske Equipment” and together with the 181 Stegelske Equipment, the “Equipment”), all of the foregoing for use by the Applicants and/or its affiliates as a pump house facility (the 6 Stegelske Parcel, the 6 Stegelske Improvements and the 6 Stegelske Equipment being referred to herein collectively as the “6 Stegelske Project Facility” and together with the 181 Stegelske Project Facility, the “Project Facility”); (C) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes, mortgage recording taxes and sales and use taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity(ies) as may be designated by the Applicant and agreed upon by the Agency; and

WHEREAS, in accordance with Section 859-a of the Act, any approval of the Project is contingent upon, inter alia, a determination by the members of the Agency to proceed with the Project following a determination by the Agency that (A) the public hearing and notice requirements and other procedural requirements contained in the Act relating to the Project have been satisfied; and (B) the undertaking of the Project by the Agency and the granting of the Financial Assistance are and will be in compliance with all other applicable requirements of the Act, SEQRA (as hereinafter defined), and all other statutes, codes, laws, rules and regulations of any governmental authority having jurisdiction over the Project and/or the Project Facility (collectively, the “Applicable Laws”); and

WHEREAS, the Administrative Director/CEO of the Agency (A) caused two (2) notices of public hearings of the Agency pursuant to Section 859-a of the Act (the “Public Hearings”) to hear all persons interested in the Project and the Financial Assistance contemplated by the Agency with respect to the Project, to be mailed on December 27, 2021 to the chief executive officer of the County of Chautauqua (the “County”) and of each other affected tax jurisdiction within which the Project Facility is or is to be located, and posted a copy of the Application on the Agency’s website; (B) caused notices of the Public Hearings to be published on January 1-2, 2021 in *The Observer*, a newspaper of general circulation available to residents of the County; (C) caused the Public Hearings to be conducted on January 12, 2022 at 11:30 a.m., local time, at Town of Dunkirk Town Hall, 4737 Willow Road, Dunkirk, County of Chautauqua, New York, and on January 12, 2022, at 1:30 p.m., local time, at Fredonia Technology Incubator, 214 Central Avenue, 1st Floor Large Conference Room, City of Dunkirk, County of Chautauqua, New York;

(D) caused the Public Hearings to be streamed on the Agency's website in real-time and a recording of the Public Hearings to be posted on the Agency's website, all in accordance with Section 857 of the Act, as amended; and (E) caused a written report of the Public Hearings to be prepared which fairly summarizes the views presented at the Public Hearings and collected written comments from the public (collectively, the "Report") and distributed the Report to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (the "Regulations" and collectively with the SEQR Act, "SEQRA"), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to undertake the Project; and

WHEREAS, pursuant to SEQRA, to aid the Agency in determining whether the Project may have a significant adverse impact upon the environment, the Agency has completed, received and/or reviewed: (1) the Application; and (2) a Short Environmental Assessment Form ("EAF"); collectively, (1)-(2) shall be referred to as the "Environmental Information"); and

WHEREAS, prior to making a recommendation about the potential environmental significance of the Project, the Agency has reviewed the Environmental Information, consulted various information sources, and considered the list of activities which are Type I Actions outlined in Section 617.4 of the Regulations, the list of activities that are Type II Actions outlined in Section 617.5 of the Regulations and the criteria for determining significance outlined in Section 617.7 of the Regulations; and

WHEREAS, 6 NYCRR 617.2(ak) of the Regulations states that a Type II action is an action or class of actions identified under 6 NYCRR 617.5; and

WHEREAS, 6 NYCRR 617.5(a) states that actions identified as Type II actions have been determined not to have a significant impact on the environment or are otherwise precluded from environmental review under the SEQR Act; and

WHEREAS, 6 NYCRR 617.5(c) states that Type II actions not subject to further review under SEQRA include "maintenance or repair involving no substantial changes in an existing structure or facility," "replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes, unless such action meets or exceeds any of the thresholds in section 617.4 of this Part," the "purchase or sale of furnishings, equipment or supplies, including surplus government property" and "reuse of a residential or commercial structure, or of a structure containing mixed residential and commercial uses, where the residential or commercial use is a permitted use under the applicable zoning law or ordinance" in connection with a project; and

WHEREAS, the Project consists of renovation of the existing Project Facility within its existing footprint and improvements to the interior of the Project Facility to accommodate the installation of the Equipment and the reuse of the Project Facility;

WHEREAS, in accordance with Section 874(4) of the Act, (A) the Chief Executive Officer of the Agency caused a letter dated January 6, 2022 (the “Pilot Deviation Notice Letter”) to be mailed to the chief executive officer of each affected tax jurisdiction, informing said individuals that the Agency would, at its meeting on January 25, 2022 (the “IDA Meeting”), consider a proposed deviation from the Agency’s Uniform Tax Exemption Policy and Guidelines (the “Tax Exemption Policy”) with respect to the payment in lieu of taxes agreement to be entered into by the Agency with respect to the Project Facility; and (B) the members of the Agency conducted the IDA Meeting on the date hereof, reviewed any comments and correspondence received with respect to the proposed deviation from the Tax Exemption Policy and approved the proposed deviation from the Tax Exemption Policy; and

WHEREAS, the Agency now desires to make its determination to proceed with the Project and to grant the Financial Assistance, subject to the terms hereof; and

WHEREAS, the Applicant and/or one (1) or more of its affiliates will (A) execute and deliver one (1) or more Company Lease Agreements (collectively, the “Company Lease”), pursuant to which the Applicant and/or such affiliate(s) will grant to the Agency a leasehold interest in the Project Facility; (B) execute and deliver one (1) or more Agency Lease Agreements (Uniform Project Agreements) (collectively, the “Agency Lease”), pursuant to which the Agency will grant to the Applicant and/or such affiliate(s) a subleasehold interest in the Project Facility; (C) execute and deliver one (1) or more Payment in Lieu of Taxes Agreement (collectively, the “PILOT Agreement”), pursuant to which the Agency would grant an exemption from real property taxes with respect to the Project Facility; and (D) execute and deliver certain other certificates, documents, instruments and agreements related to the Project (together with the Company Lease, the Agency Lease and the PILOT Agreement, collectively, the “Transaction Documents”);

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. Based upon the Agency’s review of the Environmental Information, the Agency has made the following findings:

(a) The Project is a Type II action under SEQRA, precluded from further environmental review, because it consists of the “replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes,” the “purchase or sale of furnishings, equipment or supplies, including surplus government property” and “reuse of a residential or commercial structure, or of a structure containing mixed

residential and commercial uses, where the residential or commercial use is a permitted use under the applicable zoning law or ordinance” in connection with a project and does not meet or exceed any threshold for a Type I action.

(b) More specifically, the Project involves the replacement, rehabilitation or reconstruction of a structure or facility, in kind, because it involves interior renovation and rehabilitation of an existing structure with use and occupancy by a type of use permitted within the zoning district occupied by the Land. The Project will not expand the footprint of the Project Facility nor increase or substantially alter environmental impacts associated with the Land. Project Finally, the Project includes the acquisition of the Equipment in connection with the above.

Section 2. In accordance with Section 859-a of the Act, the Agency has prepared a written cost-benefit analysis with respect to the Project and the granting of the Financial Assistance (the “Analysis”). The Agency has reviewed the Application, the Report and the Analysis, and, based upon the representations made by the Applicant to the Agency and information obtained by the Agency, the Agency has reviewed and assessed all material information necessary to afford a reasonable basis for the Agency to make a determination to approve the Financial Assistance. In addition, the Agency hereby makes the following findings and determinations with respect to the Project:

(a) based on the proposed use of the Project Facility as set forth in the Application, the economic effects of the Project on the area in which it is situated, and the employment reasonably expected to be created and/or maintained by the Project, and an analysis of how the Project contributes to the realization of the public purposes of promoting employment opportunities in the County and the prevention of economic deterioration in the County, the Project will constitute a commercial facility with a significant impact on the area in which it is situated, and will advance the Agency’s purposes by promoting employment opportunities and preventing economic deterioration in the County. Therefore, the Project constitutes a “project” within the meaning of the Act;

(b) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Applicant to undertake the Project in the County;

(c) there is a likelihood that the Project would not be undertaken but for the granting of the Financial Assistance by the Agency to the Applicant;

(d) the completion of the Project Facility, the sublease thereof by the Agency to the Applicant and the operation thereof by the Applicant will not result in the removal of a facility or plant of the Applicant or any other occupant or user of the Project Facility from one area of the State of New York (the “State”) to another area of the State or in the abandonment of one or more plants or facilities of the Applicant or any other occupant or

user located within the State (but outside of the County). Therefore, the provisions of subdivision (1) of Section 862 of the Act are not and will not be violated as a result of the granting of the Financial Assistance by the Agency to the Applicant;

(e) the Project will serve the public purposes of the Act by preserving permanent, private sector jobs, and increasing the overall number of permanent, private sector jobs in the State;

(f) no funds of the Agency shall be used in connection with the Project for the purpose of preventing the establishment of an industrial or manufacturing plant, nor shall any funds of the Agency be given in connection with the Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State, nor shall any funds of the Agency be used for advertising or promotional materials which depict elected or appointed government officials in either print or electronic media;

(g) the Project Facility does not and will not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project. For purposes of this finding, retail sales shall mean: (i) sales by a registered vendor under Article 28 of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section 1101 of the New York Tax Law; or (ii) sales of a service to such customers;

(h) the granting of the Financial Assistance by the Agency with respect to the Project will encourage and assist the Applicant in undertaking the Project in the County, will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of the County and the State and improve their standard of living, and thereby serve the public purposes of the Act; and

(i) the Project will not result in the removal or abandonment of a plant or facility of the Applicant or any other occupant or user of the Project Facility, currently located within the County.

Section 3. The Agency hereby ratifies, confirms and approves all actions heretofore taken by the Administrative Director/CEO, Chief Financial Officer and the staff of the Agency with respect to the Application, the Analysis and the Public Hearing, including, without limitation, (a) those actions required to ensure full compliance with the requirements of the Act, SEQRA and all other Applicable Laws that relate to the Project, and (b) the appointment of the law firm of Phillips Lytle LLP as Counsel to the Agency with respect to all matters in connection with the Project.

Section 4. The Agency hereby determines that the Agency has fully complied with the requirements of the Act, SEQRA and all other Applicable Laws that relate to the Project.

Section 5. Having considered fully all comments received at or in connection with the Public Hearings and the IDA Meeting, including correspondence received subsequent to the Public Hearing, the Agency hereby further determines to proceed with the Project and the granting of the Financial Assistance, subject to the terms hereof. The Agency hereby approves the granting of (a) an exemption from real property taxes having an estimated value of \$497,650, (b) an exemption from mortgage recording taxes in the maximum amount of \$58,750, and (c) an exemption from sales and use taxes in the maximum amount of \$15,500.

Section 6. The Agency recognizes that due to the complexities of the proposed transaction it may become necessary that certain of the terms approved hereby may require modifications from time to time which will not affect the intent and substance of the authorizations and approvals by the Agency herein. The Agency hereby authorizes the Chairman, Vice Chairman, Administrative Director/CEO and Chief Financial Officer of the Agency, acting individually or jointly, to approve modifications to the terms approved hereby which do not affect the intent and substance of this Resolution, but may include adjustments to the Financial Assistance granted hereunder. The approval of such modifications shall be evidenced by the certificate of determination of an Agency officer or the execution and delivery by some or all such Agency officers of relevant documents containing such modified terms.

Section 7. The Agency is hereby authorized to (a) acquire an interest in the Project Facility pursuant to the Company Lease and the other Transaction Documents, (b) grant a subleasehold interest in the Project Facility pursuant to the Agency Lease and the other Transaction Documents, (c) grant the Financial Assistance, (d) execute one (1) or more fee and leasehold mortgage, assignment of rents and leases, and security agreements in favor of such bank, governmental agency or financial institution as the Applicant may determine (such bank, governmental agency or financial institution, the "Bank"), encumbering the Project Facility, solely to subject the Agency's interest in the Project Facility to the lien thereof, all to secure one (1) or more loans made by the Bank to the Applicant with respect to the Project Facility, and (e) do all things necessary, convenient or appropriate for the accomplishment thereof. All acts heretofore taken by the Agency with respect to the foregoing are hereby approved, ratified and confirmed.

Section 8. The form and substance of the Transaction Documents, in the forms presented to the members of the Agency, together with such changes as the Chairman, the Vice Chairman, the Administrative Director/CEO or the Chief Financial Officer may hereafter deem necessary or appropriate, are hereby approved. The Chairman, the Vice Chairman, the Administrative Director/CEO and the Chief Financial Officer are hereby authorized, on behalf of the Agency, acting together or individually, to execute and deliver the Transaction Documents to which the Agency is a party and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same. The

execution and delivery of each such agreement, approval and consent by such person(s) shall be conclusive evidence of such approval.

Section 9. The Chairman, the Vice Chairman, the Administrative Director/CEO and the Chief Financial Officer of the Agency are hereby further authorized, on behalf of the Agency, acting together or individually, to designate any additional Authorized Representatives (as defined in the Agency Lease) of the Agency.

Section 10. The officers, employees and agents of the Agency are hereby authorized and directed, acting individually or jointly, for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Transaction Documents, to execute and deliver all such additional certificates, instruments, agreements and documents, to pay all such fees, charges and expenses, and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, convenient or appropriate to effect the purposes of this Resolution and to cause compliance with all of the terms, covenants and provisions of the Transaction Documents to which the Agency is a party or which are binding on the Agency.

Section 11. The members of the Agency acknowledge the terms and conditions of Section 875(3) of the Act and the duties and obligations of the Agency thereunder with respect to granting of State Sales and Use Taxes (as such term is defined in Section 875 of the Act) with respect to the Project. The members hereby direct the officers of the Agency to comply with such terms and conditions with respect to the Project and hereby direct Counsel to the Agency to include such terms and conditions in all relevant Transaction Documents.

Section 12. The Chairman, the Vice Chairman, the Administrative Director/CEO and the Chief Financial Officer of the Agency are hereby authorized and directed to distribute copies of this Resolution to the Applicant and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 13. This Resolution shall take effect immediately.

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

Michael Metzger	Yes
Dennis J. Rak	Absent
Hans Auer	Yes
Gary Henry	Yes
Steven Thorpe	Yes
Brad Walters	Absent
Kelly Farrell-DuBois	Yes
Jay Churchill	Yes
Tom Harmon	Yes

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
) SS.:
COUNTY OF CHAUTAUQUA)

WE, the undersigned officers of the County of Chautauqua Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that we have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on January 25, 2022 with the original thereof on file in our offices, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

WE FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held remotely by video conference and conference call in compliance with Part E of Chapter 417 of the 2021 Laws of the State of New York (as amended and supplemented, the "Chapter Law"); (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; (D) the public had the ability to view and/or listen to the proceedings in accordance with the Chapter Law and the proceedings were recorded and transcribed; and (E) there was a quorum of the members of the Agency present throughout said meeting.

WE FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, we have hereunto set our hand this 25th day of January, 2022.



Assistant Secretary



Vice Chairman