

MINUTES
COUNTY OF OSWEGO INDUSTRIAL DEVELOPMENT AGENCY
November 14, 2018
IDA OFFICE BUILDING
44 W. BRIDGE ST.
OSWEGO, NEW YORK

PRESENT: Canale, Kells, Schick, Sorbello and Toth

Absent/Excused: Kunzwiler and Trimble

Also Present: Kevin C. Caraccioli, Kevin LaMontagne, L. Michael Treadwell and David Turner

Chair Toth called the meeting to order at 11:00 a.m. at the offices of the County of Oswego IDA in Oswego, NY.

APPROVAL OF MINUTES

On a motion by Mr. Sorbello, seconded by Mr. Kells, the minutes of the October 30, 2018 meeting were approved.

TREASURER'S REPORT

No report.

NOTICE OF MEETING

Meeting notices were posted at the Oswego County Building, the IDA Office Building and on the IDA website. A notice was published in The Palladium Times on November 2, 2018.

Resignation of Donald H. Kunzwiler

Following a discussion, on a motion by Mr. Schick, seconded by Mr. Toth, the resignation of Mr. Kunzwiler after serving for nearly 24 years, was accepted with regret.

A discussion was held on the process to fill the vacancy and potential individual(s) to be recommended to the Chair of the Legislature to start the process. On a motion by Mr. Canale, seconded by Mr. Kells, it was agreed to recommend Timothy Stahl for the vacancy.

Opportunity Zones

A discussion was held and it was agreed that utilizing the services of Bousquet Holstein PLLC to provide assistance relative to the program's benefits and how they could be utilized was an initiative worth pursuing. There are 4 census tracts in Oswego County that are eligible, one each in the Cities of Fulton and Oswego and in the Town of Richland and Village of Pulaski. Authorization was approved to organize a venue(s) involving representatives from the involved municipalities.

Appraisal – Cushman & Wakefield

Mr. Caraccioli reported that the appraisal work has been completed.

Presentation to County Legislature

Mr. Treadwell reported that the COIDA and OOC would be participating in a special Executive Session with the County Legislature on economic development matters and issues at 4:30 p.m. on November 14, 2018.

Executive Session

Chair Toth and Mr. Caraccioli reported that due to matters involving the financial history of a business/organization and individuals and pending and current contractual matters, on a motion by Mr. Kells, seconded by Mr. Sorbello, it was approved to go into Executive Session at 12:15 p.m.

On a motion by Mr. Canale, seconded by Mr. Schick, the Executive Session ended at 12:35 p.m.

Delinquent Loan Report

Mr. LaMontagne reviewed the report for the period ended October 31, 2018 in Executive Session. Following a discussion relative to collateral associated with the Eco Foam Insulators project, on a motion by Mr. Canale, seconded by Mr. Kells, authorization was approved to pay up to \$1,000 for the outstanding back taxes associated with 8.34 acres in the Town of Oswego that the Agency holds a first security interest and which due to bankruptcy the Agency plans to obtain title.

iFreeze, Inc.

Following a review of the Application for Financial Assistance and the Financing Proposal Summary and Cost/Benefit Analysis of the project, a copy of each are on file at the Agency, on a motion by Mr. Kells, seconded by Mr. Canale, a resolution was approved undertaking the acquisition, renovation, installation, equipping and completion of a certain project, appointing iFreeze, Inc. (The “Operating Company”) and 28 Lakeview Holdings, LLC (The “Real Estate Holding Company”) as Agents of the Agency for the purposes of the acquisition, renovation, installation, equipping and completion of the project; approving certain financial assistance; and authorizing the execution and delivery of an agreement between the Agency, the Operation Company and the Real Estate Holding Company. A copy of the Inducement Resolution is attached and made an official part of the minutes.

On a motion by Mr. Schick, seconded by Mr. Sorbello, a resolution was approved approving a PILOT schedule and authorizing the execution and delivery of certain documents by the Agency in connection with a certain project undertaken at the request of the Companies. A copy of the PILOT Resolution is attached and made an official part of the minutes.

On a motion by Mr. Kells, seconded by Mr. Canale, a resolution was approved authorizing the execution and delivery of certain documents by the Agency in connection with a project undertaken at the request of the Companies. A copy of the Final Approving Resolution is attached and made an official part of the minutes.

On a motion by Mr. Schick, seconded by Mr. Canale, the financial assistance for an equipment lease in the amount of \$250,000 and for a \$100,000 loan were approved.

Confidential Evaluation of Board Performance

The Summary Results of the Annual Board of Directors Evaluation of Board Performance were presented after review by the Governance Committee. On a motion by Mr. Schick, seconded by Mr. Sorbello, authorization was approved to submit the Summary Results to the NYS ABO.

Audit FY Ended 7/31/18

A review of the Grossman St. Amour letter to the COIDA Board and Management dated October 18, 2018, was reviewed. Following a discussion on Schedule A Control Deficiencies, it was agreed that adjustments have been made to address bank reconciliations. A proposed approach to comparing the logs by an independent person will be done on a monthly basis by Jack Alter, CPA who prepares the Agency’s internal financial statements.

Investment Policy

Following a review of collateral requirements of 105% for the FY Ended 7/31/18, the requirement was met or exceeded in all months except one.

Since updating Key Bank with the Agency’s Policy, the 105% threshold has been met.

CONNEXTGEN, LLC

The Offer to Purchase was modified and presented to the Agency to purchase the 120 St. Paul Street property in the city of Oswego, NY. Following a review, on a motion by Mr. Kells, seconded by Mr. Sorbello, the Offer to Purchase was accepted.

Next Meeting

December 19, 2018 at 9:00 a.m. was scheduled.

Adjournment

On a motion by Mr. Schick, seconded by Mr. Canale, the meeting was adjourned at 12:44 p.m.

Respectfully Submitted,

H. Leonard Schick
Secretary

INDUCEMENT RESOLUTION

A regular meeting of the County of Oswego Industrial Development Agency was convened in public session on November 14, 2018, at 9:00 a.m., at 44 West Bridge Street, Oswego, New York.

The meeting was called to order by the Chair and, upon the roll being duly called, the following members were:

PRESENT: Nick Canale, Jr., Tom Kells, H. Leonard Schick, Morris Sorbello and Gary T. Toth

ABSENT: Donald H. Kunzwiler and Barry Trimble

ALSO PRESENT: Kevin C. Caraccioli, Kevin LaMontagne, L. Michael Treadwell and David Turner

The following resolution was duly offered and seconded:

RESOLUTION UNDERTAKING THE ACQUISITION, RENOVATION, INSTALLATION, EQUIPPING AND COMPLETION OF A CERTAIN PROJECT, APPOINTING IFREEZE, INC. (THE “OPERATING COMPANY”) AND 28 LAKEVIEW HOLDINGS, LLC (THE “REAL ESTATE HOLDING COMPANY”) AS AGENTS OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, RENOVATION, INSTALLATION, EQUIPPING AND COMPLETION OF THE PROJECT; APPROVING CERTAIN FINANCIAL ASSISTANCE; AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY, THE OPERATING COMPANY AND THE REAL ESTATE HOLDING COMPANY

WHEREAS, the County of Oswego Industrial Development Agency (the “*Agency*”) is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the “*State*”), as amended, together with Chapter 234 of the Laws of 1973 of the State of New York, as amended from time to time (collectively, 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, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, 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 grant “financial assistance” (as defined in the Act) in connection with the acquisition, construction, reconstruction, renovation, installation and equipping of one or more “projects” (as defined in the Act); and

WHEREAS, iFreeze, Inc., a New York business corporation, (the “Operating Company”) and 28 Lakeview Holdings, LLC (the “Real Estate Holding Company” and together with the Operating Company, the “Companies”), on behalf of themselves and/or entities formed or to be formed on behalf of the foregoing, submitted an application to the Agency on or about September 14, 2018 (the “**Application**”), a copy of which is on file at the office of the Agency, requesting the Agency undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of a leasehold interest (or sub-leasehold interest) in approximately 6 acres of real property located at 28 Lakeview Avenue, (Tax Map # 236.77-01-04), City of Fulton, County of Oswego, State of New York (the “**Land**”) and the existing approximately 123,000 square foot building located on the Land (the “**Facility**”); (ii) the renovation of the Facility; and (3) the acquisition and installation therein and thereon of various furniture, machinery and equipment (the “**Equipment**”) (the Land, the Facility and the Equipment being collectively referred to as the “**Project Facility**”), which Project Facility will be used as warehouse, distribution, storage and freezer facilities; (B) the granting of certain financial assistance in the form of exemptions from real property taxes, mortgage recording tax (except as limited by Section 874 of the Act), State and local sales and use tax, a loan to the Operating Company in an amount not to exceed \$100,000 from the Agency’s Intermediary Relending Program funded by the USDA (the “**IRP Loan**”) to be used for the purchase of Equipment and a lease to the Operating Company of Equipment in an amount not to exceed \$250,000 (the “**Equipment Lease**”) (collectively, the “**Financial Assistance**”); and (C) the lease (or sub-lease) of the Land and the Facility by the Companies to the Agency pursuant to a lease agreement; the acquisition by the Agency of an interest in the Equipment pursuant to one or more bills of sale from the Companies; the sublease of the Project Facility back to the Real Estate Holding Company pursuant to a sublease agreement; and the lease of certain Equipment to the Operating Company; and

WHEREAS, the Agency adopted a resolution on September 27, 2018 describing the Project, the Financial Assistance and authorizing a public hearing (collectively, the “**Initial Resolution**”); and

WHEREAS, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on November 13, 2018 pursuant to Section 859-a of the Act, notice of which was published on November 3, 2018 in The Palladium-Times, a newspaper of general circulation in the County of Oswego, New York and given to the chief executive officers of the affected tax jurisdictions by letter dated November 2, 2018; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “**SEQRA**”), the Agency is required to make a determination whether the “action” (as said quoted term is defined in SEQRA) to be taken by the Agency may have a “significant impact on the environment” (as said quoted term is utilized in SEQRA) and the preliminary agreement of the Agency to undertake of the Project constitutes such an action; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “**SEQRA**”), the Agency has examined the EAF prepared by the Company in order to classify the Project and has determined that the Project constitutes a “Type II” action as that term is defined under SEQRA, and therefore no further review is required; and

WHEREAS, the Agency has considered the policy, purposes and requirements of the Act in making its determinations with respect to taking official action regarding the Project; and

WHEREAS, the Agency has given due consideration to the Application and to representations by the Companies that the provision of Financial Assistance: (i) will induce the Companies to develop the Project Facility in the City of Fulton, County of Oswego; (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of either of the Companies or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of either of the Companies or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) the Project will serve the purposes of the Act by advancing the health, general prosperity and economic welfare of the people of the State;

NOW, THEREFORE, be it resolved by the members of the County of Oswego Industrial Development Agency, as follows:

Section 1. It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, constructing, renovating, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

Section 2. Based upon the representations and projections made by the Companies to the Agency, the Agency hereby makes the following determinations:

- a. The Project constitutes a “Type II” action under SEQRA and therefore, no further review is required; and
- b. The Project constitutes a “project” within the meaning of the Act.
- c. The granting of the Financial Assistance will be an inducement to the Companies to develop the Project in the City of Fulton, County of Oswego.
- d. The Financial Assistance consists solely of exemptions from real estate transfer taxes, real property taxes, mortgage recording tax (except as limited by Section 874 of the Act), State and local sales and use tax, an IRP Loan and the Equipment Lease; and

- e. The Project Facility is located in a Highly Distressed Area as that term is defined in the Act.
- f. The commitment of the Agency to provide the Financial Assistance to the Companies will enable the Companies to acquire, renovate, install, equip and complete the Project Facility.
- g. The renovation, installation, equipping and completion of the Project will promote employment opportunities, help prevent economic deterioration and advance the health, general prosperity and economic welfare of the people of the State.
- h. The acquisition of a controlling interest in the Project Facility by the Agency and the designation of each of the Companies as the Agency's agent for acquisition, renovation, installation, equipping and completion of the Project will be an inducement to the Companies to acquire, renovate, install, equip and complete the Project Facility in the City of Fulton, County of Oswego, and will serve the purposes of the Act by, among other things, promoting job opportunities and the general prosperity and economic welfare of the inhabitants of the County of Oswego; and the granting of the Financial Assistance will assist in the financing the costs of the acquisition, renovation, installation, equipping and completion of the Project.
- i. The Project will not result in the removal of a commercial, industrial or manufacturing plant or facility of either of the Companies or any other proposed occupant of the Project Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of either of the Companies or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act.

Section 3. Subject to the terms of this Resolution, the conditions set forth in Section 4.02 of the Agreement (hereinafter defined), the Agency's approval of the PILOT schedule and the execution and delivery of the Project Agreement (as defined herein), the Agency will: (i) acquire or continue a controlling interest in the Land and Facility pursuant to a lease agreement (the "**Company Lease**") to be entered into between the Real Estate Holding Company and the Agency and accept an interest in the Equipment, if any, pursuant to a bill of sale from each of the Companies (collectively, the "**Bill of Sale**"); (ii) sublease the Project Facility to the Real Estate Holding Company pursuant to a sublease agreement (the "**Agency Lease Agreement**"), (iii) sublease a portion of the Equipment to the Operating Company pursuant to a sublease agreement (the "**Agency Equipment Lease**" and together with the Company Lease, the Bill of Sale, the Agency Lease Agreement, the Project Agreement and any other certificates and documents deemed necessary by the Agency to undertake the Project, collectively, the "**Lease Documents**") to be entered into between the Agency, the Real Estate Holding Company and the Operating Company and enter into the Equipment Lease and documents related to the IRP Loan (the "**IRP Loan Documents**"); (iv) grant the approved Financial Assistance; (v) provided that no default shall have occurred and be continuing under the Agreement, the Lease Documents or any loan documents, and provided the Companies have executed and delivered all documents and certificates required by the Agency in conjunction with the Agency's undertaking the Project, execute and deliver all other certificates and documents necessary or appropriate for the grant of the approved Financial

Assistance requested by the Companies, in form and substance acceptable to the Agency, or its commercial lender(s), in connection with financing for the Project, including but not limited to, one or more mortgages in favor of the Agency and/or the Companies' commercial lender(s).

Section 4. The terms and conditions of subdivision 3 of Section 875 of the Act are incorporated herein by reference and the Companies shall agree to such terms as a condition precedent to receiving or benefiting from an exemption from New York State sales and use tax exemptions benefits. Notwithstanding anything herein to the contrary, the amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved herein shall not exceed **\$52,000**.

Section 5. The Companies may utilize, and is hereby authorized to appoint, a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "***Additional Agents***") to proceed with the renovation, installation, equipping and completion of the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf, provided the Companies execute, deliver and comply with the Lease Documents. The Companies shall provide, or cause its Additional Agents to provide, and the Agency shall maintain, records of the amount of State and local sales and use tax exemption benefits provided to the Project; and the Companies shall, and cause each Additional Agent, to make such records available to the State Commissioner of Taxation and Finance (the "***Commissioner***") and the Agency upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for the Project, identifying the Project, along with any such other information and specificity as the Commissioner may prescribe. As a condition precedent to the Companies or Project's receipt of, or benefit from, any State or local sales and use tax exemptions, the Companies must acknowledge and agree to make, or cause its Additional Agents to make, all records and information regarding State and local sales and use tax exemption benefits realized by the Project available to the Agency or its designee upon request. For purposes of exemption from New York State (the "***State***") sales and use taxation as part of the Financial Assistance requested, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the New York State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

Section 6. As a further condition to the granting of the Financial Assistance, the Companies agree to execute an agreement with the Agency setting forth the preliminary undertakings of the Agency and the Companies with respect to the Project. The form and substance of the proposed agreement (as set forth as on **Exhibit "A"** attached hereto and presented at this meeting) (the "***Agreement***") are hereby approved. The Chief Executive Officer or (Vice) Chairperson of the Agency are each hereby authorized, on behalf of the Agency, to execute and deliver the Agreement, in substantially the same form as presented at this meeting and attached hereto as **Exhibit "A"**, with changes in terms and form as shall be consistent with this Resolution and as the Chief Executive Officer or (Vice) Chairperson shall approve. The execution thereof by the Chief Executive Officer or (Vice) Chairperson shall constitute conclusive evidence of such approval.

Section 7. As an additional condition precedent to the extension of the Financial Assistance, the Companies shall acknowledge and agree, that the Agency shall, and in some cases

may, recapture from the Companies or any Additional Agents the State and local sales and use tax exemption (the “**Recapture Amount**”) taken or purported to be taken by any such person to which the person or Project 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 Companies or Additional Agents failed to comply with a material term or condition to use property or services in the manner required by the Companies or Additional Agents agreement with, or for the benefit of, the Agency. Such Companies or Additional Agent shall cooperate with the Agency 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 Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the commissioner to assess and determine State sales and use taxes due from the Companies and/or Additional Agent under article twenty-eight of the tax law, together with any relevant penalties and interest due on such amounts. In addition, the Agency may recapture all other Financial Assistance in the event any of the foregoing occur or there is a Job Deficit, an Investment Deficit or a Reporting Failure (each as defined in the Agency’s Recapture Policy).

Section 8. As an additional condition precedent to the extension of the Financial Assistance, the Companies shall execute and deliver a project agreement (the “**Project Agreement**”) setting forth certain terms and conditions relative to the approved Financial Assistance.

Section 9. Subject to the due execution and delivery by the Companies of the Agreement and the Project Agreement, the satisfaction of the conditions of this Resolution, the Agreement and the Project Agreement and the payment by the Companies of any attendant fees due to or incurred by the Agency, the Companies are appointed the true and lawful agents of the Agency to proceed with the renovation, installation, equipping and completion of the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf. The appointment made by this Section 9 shall not be effective until the Agreement and the Project Agreement referred to herein are duly executed and delivered by the Companies.

Section 10. The Chief Executive Officer or (Vice) Chairperson of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified herein and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred herein and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution and the Agreement.

Section 11. The obligation of the Agency to consummate any transaction contemplated herein or hereby is subject to and conditioned upon the execution and delivery of, among other things, an environmental compliance and indemnification agreement in favor of the Agency in form and substance acceptable to the Agency and its counsel by the Companies and some or all of its principals, in the discretion of the Chief Executive Officer or (Vice) Chairperson of the Agency.

Section 12. No covenant, stipulation, obligation or agreement contained in this Resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents

referred to herein on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

Section 13. Should the Agency’s participation in the Project, or the appointments made in accordance herewith, be challenged by any party, in the courts or otherwise, the Companies shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursement of the Agency’s counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under the Act to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Companies hereunder or otherwise.

Section 14. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

Section 15. The Chief Executive Officer of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Companies and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 16. Counsel to the Agency and special Agency counsel are hereby authorized to work with the Companies, and others to prepare, for submission to the Agency, all documents necessary to effect the grant of Financial Assistance and consummate the Lease Documents, the Equipment Lease and the IRP Loan Documents.

Section 17. This Resolution shall take effect immediately.

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

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>	<u>Recuse</u>
Nick Canale, Jr.	X				
Tom Kells	X				
Donald H. Kunzwiler				X	
H. Leonard Schick	X				
Morris Sorbello	X				
Gary T. Toth	X				
Barry Trimble				X	

The resolution was thereupon declared duly adopted.

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

I, the undersigned Chief Executive Officer of the County of Oswego Industrial Development Agency, Do Hereby Certify that (i) I have compared the annexed extract of the minutes of the meeting of the County of Oswego Industrial Development Agency (the “**Agency**”) held on November 14, 2018, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

I Further Certify that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Agency on November 14, 2018.

L. Michael Treadwell
Chief Executive Officer

(SEAL)

EXHIBIT "A"

AGENCY/COMPANY AGREEMENT

This Agreement is among the **COUNTY OF OSWEGO INDUSTRIAL DEVELOPMENT AGENCY** (the "**Agency**") and **iFREEZE, INC.**, a New York business corporation, (the "**Operating Company**") and **28 LAKEVIEW HOLDINGS, LLC** (the "**Real Estate Holding Company**") and together with the Operating Company, the "**Companies**").

Article 1. Preliminary Statement. Among the matters of mutual inducement which have resulted in the execution of this Agreement are the following:

1.01. The Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 234 of the Laws of 1973 of the State of New York, as amended from time to time (collectively, the "**Act**") to grant "financial assistance" (as defined in the Act) in connection with "Projects" (as defined in the Act) and to lease or sell the same upon such terms and conditions as the Agency may deem advisable and designate an agent for renovating and equipping "projects" (as defined in the Act).

1.02. The purposes of the Act are to promote, attract, encourage and develop recreation and economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration. The Act vests the Agency with all powers necessary to enable it to accomplish such purposes, including the power to grant financial assistance, acquire and dispose of interests in real property and to appoint agents for the purpose of completion of projects undertaken by the Agency.

1.03. The Companies submitted an application to the Agency on or about September 14, 2018 ("**Application**"), a copy of which is on file at the office of the Agency, requesting the Agency consider undertaking a project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold interest (or sub-leasehold interest) in approximately 6 acres of real property located at 28 Lakeview Avenue, (Tax Map # 236.77-01-04), City of Fulton, County of Oswego, State of New York (the "**Land**") and the existing approximately 123,000 square foot building located on the Land (the "**Facility**"); (ii) the renovation of the Facility; and (3) the acquisition and installation therein and thereon of various furniture, machinery and equipment (the "**Equipment**") (the Land, the Facility and the Equipment being collectively referred to as the "**Project Facility**"), which Project Facility will be used as warehouse, distribution, storage and freezer facilities; (B) the granting of certain financial assistance in the form of exemptions from real property taxes, mortgage recording tax (except as limited by Section 874 of the Act), State and local sales and use tax, a loan to the Company in an amount not to exceed \$100,000 from the Agency's Intermediary Relending Program funded by the USDA (the "**IRP Loan**") to be used for the purchase of Equipment and a lease to the Operating Company of Equipment in an amount not to exceed \$250,000 (the "**Equipment Lease**") (collectively, the "**Financial Assistance**"); and (C) the lease (or sub-lease) of the Land and the Facility by the Companies to the Agency pursuant to a lease agreement; the acquisition by the Agency of an interest in the Equipment pursuant to one

or more bills of sale from the Companies; the sublease of the Project Facility back to the Real Estate Holding Company pursuant to a sublease agreement; and the lease of certain Equipment to the Operating Company.

1.03(a). All documents necessary to effectuate the Agency's undertaking of the Project and the granting of the Financial Assistance between the Agency and each of the Companies, including but not limited to, a company lease, a bill of sale, an agency lease, an agency equipment lease, a project agreement and an environmental compliance and indemnification agreement, shall be collectively referred to herein as the "**Lease Documents**".

1.04. The Companies hereby represent to the Agency that undertaking the Project, the designation of each of the Companies as the Agency's agents for the acquisition, renovation, installation, equipping and completion of the Project Facility, and the appointment by one or more of the Companies of a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "**Additional Agents**"): (i) will be an inducement to them to acquire, renovate, install, equip and complete the Project Facility in the County of Oswego (the "**County**"); (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of either of the Companies or of any other proposed occupant of the Project Facility from one area of the State to another or in the abandonment of one or more plants or facilities of either of the Companies or of any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) undertaking the Project will promote, create and/or preserve private sector jobs in the State and the County.

1.05. The Agency has determined that the acquisition or continuation of a controlling interest in, and the construction, renovation, installation and equipping of the Project Facility and the subleasing of the same to the Companies will promote and further the purposes of the Act.

1.06 On November 14, 2018, the Agency adopted a resolution (the "**Inducement Resolution**") agreeing, subject to the satisfaction of all conditions precedent set forth in such Resolution, to designate each of the Companies as the Agency's agents for the acquisition, renovation, installation, equipping and completion of the Project Facility and determining that the leasing of the same to the Companies will promote further purposes of the Act. For purposes of that designation, the Agency authorized as part of the approved Financial Assistance, State and local sales and use tax exemption benefits in an amount not to exceed **\$22,160**.

1.07 In the Resolution, subject to the execution of, and compliance with, this Agreement by the Companies, and other conditions set forth in the Resolution and herein, the Agency appointed each of the Companies as its agents for the purposes of acquisition, renovation, installation, equipping and completion of the Project Facility, entering into contracts and doing all things requisite and proper for the acquisition, renovation, installation and equipping the Project Facility.

Article 2. Undertakings on the Part of the Agency. Based upon the statements, representations and undertakings of the Companies and subject to the conditions set forth herein, the Agency agrees as follows:

2.01. The Agency confirms that it has authorized and designated each of the Companies as the Agency's agents for acquiring, renovating, installing, equipping and completing the Project Facility.

2.02. The Agency will adopt such proceedings and authorize the execution of such Agency documents as may be necessary or advisable for: (i) acquisition of a controlling interest in the Project Facility; (ii) appointment by the Companies of Additional Agents, all for acquisition, renovation, installation, equipping and completion of the Project Facility subject to the terms of the Resolution and hereof; and (iii) the leasing or subleasing of the Project Facility to the Companies, all as shall be authorized by law and be mutually satisfactory to the Agency and the Companies.

2.03 Nothing contained in this Agreement shall require the Agency to apply its funds to Project costs.

2.04. After satisfying the conditions precedent set forth in the Sections 2.02, 3.06 and 4.02 hereof and in the Inducement Resolution, the Companies may proceed with the acquisition, renovation, installation, equipping and completion of the Project Facility and the utilization of and, as necessary, the appointment of Additional Agents.

2.05 Subject to Section 4.02 hereof, each of the Companies is appointed the true and lawful agents of the Agency for the acquisition, renovation, installation, equipping and completion of the Project Facility, and to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for the acquisition, renovation, installation, equipping and completion of the Project Facility, all with the same powers and the same validity as if the Agency were acting in its own behalf.

2.06. The Agency will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof. The Agency may in accordance with Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as "**SEQRA**"), undertake supplemental review of the Project. Such review to be limited to specific significant adverse environmental impacts not addressed or inadequately addressed in the Agency's review under SEQRA that arise from changes in the proposed Project, newly discovered information or a change in the circumstances related to the Project.

Article 3. Undertakings on the Part of the Companies. Based upon the statements, representations and undertakings of the Agency and subject to the conditions set forth herein, each of the Companies agree as follows:

3.01. (a) The Companies shall indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on labor, services, materials and supplies, including equipment, ordered or used in connection with the acquisition of a controlling interest in, renovation, installation, equipping and completion of the Project Facility (including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing) whether such claims or liabilities arise as a result of the Companies or Additional Agents acting as agent for the Agency pursuant to this Agreement or otherwise.

(b) The Companies shall not permit to stand, and will, at their own expense, take all steps reasonably necessary to remove, any mechanics' or other liens against the Project Facility for labor or material furnished in connection with the acquisition, renovation, installation, equipping and completion of the Project Facility.

(c) The Companies shall indemnify and hold the Agency, its members, officers, employees and agents and anyone for whose acts or omissions the Agency or any one of them may be liable, harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation to the Project, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

(d) The Companies shall defend, indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on the non-disclosure of information, if any, requested by the Companies in accordance with Section 4.05 hereof.

(e) The defense and indemnities provided for in this Article 3 shall survive expiration or termination of this Agreement and shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

(f) The Companies shall provide and carry: (i) worker's compensation and disability insurance as required by law; and (ii) comprehensive liability and property insurance with such coverages (including without limitation, owner's protective coverage for the benefit of the Agency, naming the Agency as an additional insured on all policies of coverage regarding the Project; providing the coverage with respect to the Agency be primary and non-contributory; and contractual coverage covering the indemnities herein provided for), with such limits and which such companies as may be approved by the Agency. The Companies shall provide certificates and/or policies of insurance in form satisfactory to the Agency evidencing such insurance.

(g) The Companies shall include the Agency as a named insured under all public liability insurance policies obtained by the Companies with respect to the Project Facility.

(h) The Companies shall apply and diligently pursue all approvals, permits and consents from the State of New York, the City of Fulton, County of Oswego and any other governmental authority which approvals, permits and consents are required under applicable law for the development, construction of the Project and any related site improvements. The Companies acknowledge and agree that the Agency's findings and determinations under SEQRA do not and shall not in and of themselves (except as specifically set forth in SEQRA) satisfy or be deemed to satisfy applicable laws, regulations, rules and procedural requirements applicable to such approvals, permits and consents.

3.02. Each of the Companies agree that, as agent for the Agency or otherwise, it will comply at the Companies' sole cost and expense with all the requirements of all federal, state and local laws, rules and regulations of whatever kind and howsoever denominated applicable to the Agency and/or Companies with respect to the Project Facility, the acquisition of a controlling interest therein, renovation, installation and equipping thereof, the operation and maintenance of the Project Facility, supplemental review of adverse environmental impacts in accordance with SEQRA and the financing of the Project. Every provision required by law to be inserted herein shall be deemed to be set forth herein as if set forth in full, including, but not limited to, Section 875 of the Act; and upon the request of any party, this Agreement shall be amended to specifically set forth any such provision or provisions.

3.03. Each of the Companies agree that, as agent for the Agency, to the extent that such provisions of law are in fact applicable (without creating an obligation by contract beyond that which is created by statute), it will comply with all the requirements Section 220 of the Labor Law of the State of New York, as amended.

3.03(a) The Companies agree that, whenever practicable, the Companies shall hire employees and Additional Agents from the Agency's Labor Market Area which is defined to include the following counties: Oswego, Jefferson, Onondaga, Madison, Oneida and Cayuga.

3.04. The Companies will take such further action and adopt such further proceedings as may be required to implement the aforesaid undertakings or as they may deem appropriate in pursuance thereof.

3.05. If it should be determined that any State or local sales or compensatory use taxes are payable with respect to the acquisition, purchase or rental of machinery or equipment, materials or supplies in connection with the Project Facility, or are in any manner otherwise payable directly or indirectly in connection with the Project Facility, the Companies shall pay the same and defend and indemnify the Agency from and against any liability, expenses and penalties arising out of, directly or indirectly, the imposition of any such taxes.

3.06. The Companies shall proceed with the acquisition, renovation, installation, equipping and completion of the Project Facility and advance such funds as may be necessary to accomplish such purposes. The Companies may utilize, and are authorized to appoint, Additional Agents as agents of the Agency, in furtherance thereof. Any appointment of an Additional Agent is conditioned upon the Companies first obtaining and providing the Agency the following:

(1) A written, executed agreement, in form and substance acceptable to the Agency, from each appointed Additional Agent which provides for: (i) the assumption by the Additional Agent, for itself, certain of the obligations under this Agreement relative to the appointment, work and purchases done and made by each appointed Additional Agent; (ii) an acknowledgement by the Additional Agent to hire from the Labor Market Area during the construction period of the Project Facility whenever practicable; (iii) an acknowledgement that the Additional Agent is obligated, to timely provide the Companies with the necessary information to permit the Companies, pursuant to General Municipal Law §874(8), to timely file an Annual Statement with the New York State Department of Taxation and Finance on “Annual Report of Sales and Use Tax Exemptions” (Form ST-340) regarding the value of sales and use tax exemptions the Additional Agent claimed pursuant to the agency conferred on it by the Companies with respect to this Project; (iv) an acknowledgment by the Additional Agent that in order to be entitled to the exemption, the Additional Agent shall present to the supplier or other vendor of materials or equipment for the Project Facility a completed “IDA Agent or Project Operator Exempt Purchase Certificate” (Form ST-123); (v) an acknowledgment by the Additional Agent that that the failure to comply with the foregoing will result in the loss and recapture of the exemption; and (vi) such other terms and conditions as the Agency deems necessary; and

(2) A completed “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (Form ST-60) for each Additional Agent appointed within fifteen (15) days of the appointment of each Additional Agent such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment of each such Additional Agent.

Failure of the Companies to comply with the foregoing shall nullify the appointment of any Additional Agent and may result in the loss and recapture of the Companies’ exemption with respect to the Project at the sole discretion of the Agency.

The Companies acknowledge that the assumption by the Additional Agent in accordance with Section 3.06(1) above, does not relieve the Companies of their obligations under those provisions or any other provisions of this Agreement with respect to the Project.

3.07 The Companies hereby ratify and confirm their obligation to pay an administrative fee to the Agency in the amount of .75% of the Project costs. Such amount is due and payable in full at closing.

3.08 The Companies hereby ratify and confirm their obligation to pay an annual administrative reporting fee of \$500.00 to cover administrative and reporting requirements to comply with New York State reporting regulations on Agency assisted projects.

Article 4. General Provisions.

4.01. This Agreement shall take effect on the date of the execution hereof by the Agency and the Companies and, subject to Section 4.04 hereof, shall remain in effect until the Lease Documents become effective. It is the intent of the Agency and the Companies that,

except as to those provisions that survive, this Agreement be superseded in its entirety by the Lease Documents.

4.02. (a) It is understood and agreed by the Agency and the Companies that the grant of Financial Assistance and the execution of the Lease Documents and related documents are subject to: (i) payment by the Companies of the Agency's fee and Agency's counsel fees; (ii) obtaining all necessary governmental approvals, permits and consents of any kind required in connection with the Project Facility; (iii) approval by the members of the Agency; (iv) approval by the Companies; and (v) the condition that there are no changes in New York State Law, including regulations, which prohibit or limit the Agency from fulfilling its obligations hereunder; (b) the Companies, by executing this agreement, acknowledge and agree to make, or cause their Additional Agents, whether appointed as an agent of the Agency in accordance with Section 3.06 hereof or not, to make, all records and information regarding State and local sales and use tax exemption benefits given to the Project as part of the Financial Assistance available to the Agency upon request, including but not limited to the Form ST-340 for each of them and each Additional Agent; (c) the Companies, by executing this Agreement, acknowledge and agree to the terms and conditions of Section 875(3) of the Act as if such section were fully set forth herein and further agree to cause all of its Additional Agents to acknowledge, agree and consent to same. Without limiting the scope of the foregoing the Companies acknowledge that pursuant to Section 875(3) of the Act and in accordance with the Agency's Recapture Policy (which is published on the Agency's website or available at the Agency's office), the Agency shall recover, recapture, receive or otherwise obtain from the Companies the portion of the Financial Assistance (the "**Recapture Amount**") consisting of: (1) (a) that portion of the State and local sales tax exemption to which the Companies/Project was not entitled, which is in excess of the amount of the State and local sales tax exemption authorized by the Agency or which is for property or services not authorized by the Agency; or (b) the full amount of such State and local sales tax exemption, if the Companies fail to comply with a material term or condition regarding the use of the property or services as represented to the Agency in its Application or otherwise; and (2) any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise; and (d) The failure of the Companies to promptly pay such Recapture Amount to the Agency will be grounds for the Commissioner to collect sales and use taxes from the Companies under Article 28 of the State Tax Law, together with interest and penalties. In accordance with the Agency's Recapture Policy, the Agency may recapture all other Financial Assistance in the event of any of the foregoing occur or there is a Job Deficit, an Investment Deficit or a Reporting Failure (each as defined in the Agency's Recapture Policy). In addition to the foregoing, the Companies acknowledge and agree that for purposes of exemption from New York State (the "**State**") sales and use taxation as part of the Financial Assistance requested, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the New York State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

4.03. The Companies agree that they will, within thirty (30) days of a written request for same, regardless of whether or not this matter closes or the Project Facility is completed: (i) reimburse the Agency for all reasonable and necessary expenses, including without limitation the fees and expenses of counsel to the Agency arising from, out of or in connection with the Project, and/or any documents executed in connection therewith, including, but not limited to any claims

or actions taken by the Agency against the Companies, Additional Agents or third parties; and (ii) indemnify the Agency from all losses, claims, damages and liabilities, in each case which the Agency may incur as a consequence of executing this Agreement or performing its obligations hereunder, including but not limited to, any obligations related to Additional Agents.

4.04. If for any reason the Lease Documents are not executed and delivered by the Companies and the Agency on or before eighteen (18) months from the execution hereof, the provisions of this Agreement (other than the provisions of Articles 1.04, 2.02, 2.04, 3.01, 3.02, 3.03, 3.05, 3.06, 4.02, 4.03, 4.04, 4.05 and 4.06, which shall survive) shall unless extended by agreement of the Agency and the Companies, terminate and be of no further force or effect, and following such termination neither party shall have any rights against the other party except:

(a) The Companies shall pay the Agency for all expenses incurred by the Agency in connection with the acquisition, renovation, installation and equipping of the Project Facility;

(b) The Companies shall assume and be responsible for any contracts for construction or purchase of equipment entered into by the Agency at the request of or as agent for the Companies in connection with the Project Facility; and

(c) The Companies will pay the out-of-pocket expenses of members of the Agency, counsel for the Agency and special Agency counsel incurred in connection with the Project and will pay the fees of counsel for the Agency and special Agency counsel for legal services relating to the Project Facility, Additional Agents or the proposed financing thereof.

4.05. The Companies acknowledges that Section 875(7) of the New York General Municipal Law (“GML”) requires the Agency to post on its website all resolutions and agreements relating to the Companies’ appointment as an agent of the Agency or otherwise related to the Project, including this Agreement; and Article 6 of the New York Public Officers Law declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the Companies feels that there are elements of the Project or information about the Companies in the Agency’s possession which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the Companies’ competitive position, the Companies must identify such elements in writing, supply same to the Agency: (i) with respect to this Agreement, prior to or contemporaneously with the execution hereof; and (ii) with respect to all other agreements executed in connection with the Project, on or before the Closing Date, and request that such elements be kept confidential in accordance with Article 6 of the Public Officers Law. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the GML.

4.06 That every controversy, dispute or claim arising out of or relating to this Agreement shall be governed by the laws of the State of New York, without regard to its conflict-of-laws provisions that if applied might require the application of the laws of another jurisdiction; and that the Companies irrevocably and expressly submit to the exclusive personal jurisdiction of the Supreme Court of the State of New York and the United States District Court

for the Northern District of New York, to the exclusion of all other courts, for the purposes of litigating every controversy, dispute or claim arising out of or relating to this Agreement.

IN WITNESS WHEREOF, the parties hereto have entered in this Agreement as of November 14, 2018.

**COUNTY OF OSWEGO INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
L. Michael Treadwell
Chief Executive Officer

IFREEZE, INC.

By: _____
Name:
Title:

28 LAKEVIEW HOLDINGS, LLC

By: _____
Name:
Title:

PILOT RESOLUTION

A regular meeting of the County of Oswego Industrial Development Agency was convened in public session on November 14, 2018, at 9:00 a.m., at 44 West Bridge Street, Oswego, New York.

The meeting was called to order by the Chair and, upon the roll being duly called, the following members were:

PRESENT: Nick Canale, Jr., Tom Kells, H. Leonard Schick, Morris Sorbello and Gary T. Toth

ABSENT: Donald H. Kunzwiler and Barry Trimble

ALSO PRESENT: Kevin C. Caraccioli, Kevin LaMontagne, L. Michael Treadwell and David Turner

The following resolution was duly offered and seconded:

RESOLUTION APPROVING A PAYMENT IN LIEU OF TAX SCHEDULE AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A CERTAIN PROJECT UNDERTAKEN AT THE REQUEST OF THE COMPANIES

WHEREAS, the County of Oswego Industrial Development Agency (the “*Agency*”) is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the “*State*”), as amended, together with Chapter 234 of the Laws of 1973 of the State of New York, as amended from time to time (collectively, 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, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, 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, lease, and sell real property and grant financial assistance in connection with one or more “projects” (as defined in the Act); and

WHEREAS, iFreeze, Inc., a New York business corporation, (the “Operating Company”) and 28 Lakeview Holdings, LLC (the “Real Estate Holding Company”) and together with the Operating Company, the “Companies”), on behalf of themselves and/or entities formed or to be formed on behalf of the foregoing, submitted an application to the Agency on or about September 24, 2018 (the “**Application**”), a copy of which is on file at the office of the Agency, requesting the Agency undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of a leasehold interest (or sub-leasehold interest) in approximately 6 acres of real property located at 28 Lakeview Avenue, (Tax Map # 236.77-01-04), City of Fulton, County of Oswego, State of New York (the “**Land**”) and the existing approximately 123,000 square foot building located on the Land (the “**Facility**”); (ii) the renovation of the Facility; and (3) the acquisition and installation therein and thereon of various furniture, machinery and equipment (the “**Equipment**”) (the Land, the Facility and the Equipment being collectively referred to as the “**Project Facility**”), which Project Facility will be used as warehouse, distribution, storage and freezer facilities; (B) the granting of certain financial assistance in the form of exemptions from real property taxes, mortgage recording tax (except as limited by Section 874 of the Act), State and local sales and use tax, a loan to the Operating Company in an amount not to exceed \$100,000 from the Agency’s Intermediary Relending Program funded by the USDA (the “**IRP Loan**”) to be used for the purchase of Equipment and a lease to the Operating Company of Equipment in an amount not to exceed \$250,000 (the “**Equipment Lease**”) (collectively, the “**Financial Assistance**”); and (C) the lease (or sub-lease) of the Land and the Facility by the Companies to the Agency pursuant to a lease agreement; the acquisition by the Agency of an interest in the Equipment pursuant to one or more bills of sale from the Companies; the sublease of the Project Facility back to the Real Estate Holding Company pursuant to a sublease agreement; and the lease of certain Equipment to the Operating Company; and

WHEREAS, the Company has represented that the Project Facility is located in a Highly Distressed Area as that term is defined in the Act and will be a tourist destination; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “**SEQRA**”), the Agency is required to make a determination whether the “action” (as said quoted term is defined in SEQRA) to be taken by the Agency may have a “significant impact on the environment” (as said quoted term is utilized in SEQRA) and the preliminary agreement of the Agency to undertake of the Project constitutes such an action; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “**SEQRA**”), the Agency has examined the EAF prepared by the Company in order to classify the Project and has determined that the Project constitutes a “Type II” action as that term is defined under SEQRA, and therefore no further review is required; and

WHEREAS, on November 14, 2018 the Agency adopted a Resolution (the “**Inducement Resolution**”) undertaking the Project and appointing the Companies as its agents for purposes of completing the Project Facility; and

WHEREAS, in the Application, the Companies also requested that the Agency consider a payment in lieu of tax (“**PILOT**”) schedule, more fully described on **Exhibit “A”** attached hereto, and such schedule conforms with the Agency’s Uniform Tax Exemption Policy (“**UTEF**”) established pursuant to Section 874(4) of the Act for manufacturing facilities; and

WHEREAS, the Agency has given due consideration to the Application and to the representations by the Companies that the provision of Financial Assistance: (i) will induce the Companies to develop the Project Facility in the City of Fulton, (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of either of the Companies or any other proposed occupant 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 either of the Companies or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; (iii) undertaking the Project will create and/or preserve permanent private sector jobs in the State; and (iv) will advance the health, general prosperity and economic welfare of the people of the State.

NOW, THEREFORE, be it resolved by the members of the County of Oswego Industrial Development Agency, as follows:

Section 1. It is the policy of the State to promote the health, economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

Section 2. The Agency ratifies all prior Resolutions passed in connection with this proposed Project.

Section 3. Based upon the representations made by the Companies to the Agency, and the reasons presented by the Companies in support of their request for the PILOT schedule, as set forth in the **Exhibit “A”** attached hereto, the PILOT schedule is hereby approved subject to the terms and conditions of the Resolutions. The Chief Executive Officer of the Agency is hereby authorized to execute and deliver a PILOT agreement and any related documents reflecting the PILOT schedule in a form substantially similar to PILOT agreements used in similar transactions with the Agency which is acceptable to the Chief Executive Officer upon advice of counsel.

Section 4. No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to herein on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

Section 5. A copy of this Resolution shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

Section 6. The Chief Executive Officer of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Companies and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution as well as all previously approved Resolutions.

Section 7. Counsel to the Agency and special Agency counsel are hereby authorized to work with the Companies, and others to prepare, for submission to the Agency, all documents necessary to effect the grant of Financial Assistance, including, but not limited to, a PILOT agreement.

Section 8. This Resolution shall take effect immediately.

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

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>	<u>Recuse</u>
Nick Canale, Jr.	X				
Tom Kells	X				
Donald H. Kunzwiler				X	
H. Leonard Schick	X				
Morris Sorbello	X				
Gary T. Toth	X				
Barry Trimble				X	

The resolution was thereupon declared duly adopted.

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

I, the undersigned Secretary of the County of Oswego Industrial Development Agency, Do Hereby Certify that (i) I have compared the annexed extract of the minutes of the meeting of the County of Oswego Industrial Development Agency (the “*Agency*”) held on November 14, 2018, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

I Further Certify that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Agency on November 14, 2018.

L. Michael Treadwell
Chief Executive Officer

(SEAL)

EXHIBIT “A”

PILOT SCHEDULE

Mfg. UTEP: 20 Years

The UTEP exemption Schedule on the annual assessment applied to the annual tax rate. The Company will pay 100% of the taxes on the assessed value of the Project Facility until the scheduled payments below take effect.

<u>Year</u>	<u>Amount of Annual Exemption</u>
1	75%
2	75%
3	75%
4	75%
5	75%
6	60%
7	60%
8	60%
9	60%
10	60%
11	50%
12	50%
13	40%
14	40%
15	30%
16	30%
17	20%
18	20%
19	10%
20	10%
21	No Exemption

FINAL APPROVING RESOLUTION

A regular meeting of the County of Oswego Industrial Development Agency was convened in public session on November 14, 2018, at 9:00 a.m., at 44 West Bridge Street, Oswego, New York.

The meeting was called to order by the Chair and, upon the roll being duly called, the following members were:

PRESENT: Nick Canale, Jr., Tom Kells, H. Leonard Schick, Morris Sorbello and Gary T. Toth

ABSENT: Donald H. Kunzwiler and Barry Trimble

ALSO PRESENT: Kevin C. Caraccioli, Kevin LaMontagne, L. Michael Treadwell and David Turner

The following resolution was duly offered and seconded:

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A PROJECT UNDERTAKEN AT THE REQUEST OF THE COMPANIES

WHEREAS, the County of Oswego Industrial Development Agency (the “*Agency*”) is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the “*State*”), as amended, together with Chapter 234 of the Laws of 1973 of the State of New York, as amended from time to time (collectively, 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, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, 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 grant “financial assistance” (as defined in the Act) in connection with the acquisition, construction, reconstruction, renovation, installation and equipping of one or more “projects” (as defined in the Act); and

WHEREAS, iFreeze, Inc., a New York business corporation, (the “Operating

Company”) and 28 Lakeview Holdings, LLC (the “Real Estate Holding Company” and together with the Operating Company, the “Companies”), on behalf of themselves and/or entities formed or to be formed on behalf of the foregoing, submitted an application to the Agency on or about September 14, 2018 (the “**Application**”), a copy of which is on file at the office of the Agency, requesting the Agency undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of a leasehold interest (or sub-leasehold interest) in approximately 6 acres of real property located at 28 Lakeview Avenue, (Tax Map # 236.77-01-04), City of Fulton, County of Oswego, State of New York (the “**Land**”) and the existing approximately 123,000 square foot building located on the Land (the “**Facility**”); (ii) the renovation of the Facility; and (3) the acquisition and installation therein and thereon of various furniture, machinery and equipment (the “**Equipment**”) (the Land, the Facility and the Equipment being collectively referred to as the “**Project Facility**”), which Project Facility will be used as warehouse, distribution, storage and freezer facilities; (B) the granting of certain financial assistance in the form of exemptions from real property taxes, mortgage recording tax (except as limited by Section 874 of the Act), State and local sales and use tax, a loan to the Operating Company in an amount not to exceed \$100,000 from the Agency’s Intermediary Relending Program funded by the USDA (the “**IRP Loan**”) to be used for the purchase of Equipment and a lease to the Operating Company of Equipment in an amount not to exceed \$250,000 (the “**Equipment Lease**”) (collectively, the “**Financial Assistance**”); and (C) the lease (or sub-lease) of the Land and the Facility by the Companies to the Agency pursuant to a lease agreement; the acquisition by the Agency of an interest in the Equipment pursuant to one or more bills of sale from the Companies; the sublease of the Project Facility back to the Real Estate Holding Company pursuant to a sublease agreement; and the lease of certain Equipment to the Operating Company; and

WHEREAS, the Agency adopted a resolution on September 27, 2018 (the “*Initial Resolution*”) entitled:

RESOLUTION DETERMINING THAT THE ACQUISITION, RENOVATION AND EQUIPPING OF A CERTAIN FACILITY AT THE REQUEST OF THE COMPANY CONSTITUTES A PROJECT, DESCRIBING THE FINANCIAL ASSISTANCE REQUESTED IN CONNECTION THEREWITH AND AUTHORIZING A PUBLIC HEARING

which resolution is in full force and effect and has not been amended or modified; and

WHEREAS, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on November 13, 2018 pursuant to Section 859-a of the Act, notice of which was published on November 3, 2018 in The Palladium-Times, a newspaper of general circulation in the County of Oswego, New York and given to the chief executive officers of the affected tax jurisdictions by letter dated November 2, 2018; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “**SEQRA**”), the Agency has examined the EAF prepared by the Company in order to classify the Project and has

determined that the Project constitutes a “Type II” action as that term is defined under SEQRA, and therefore no further review is required; and

WHEREAS, the Agency adopted a resolution on November 14, 2018 (the “*Inducement Resolution*”) entitled:

RESOLUTION UNDERTAKING THE ACQUISITION, RENOVATION, INSTALLATION, EQUIPPING AND COMPLETION OF A CERTAIN PROJECT, APPOINTING IFREEZE, INC. (THE “OPERATING COMPANY”) AND 28 LAKEVIEW HOLDINGS, LLC (THE “REAL ESTATE HOLDING COMPANY”) AS AGENTS OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, RENOVATION, INSTALLATION, EQUIPPING AND COMPLETION OF THE PROJECT; APPROVING CERTAIN FINANCIAL ASSISTANCE; AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY, THE OPERATING COMPANY AND THE REAL ESTATE HOLDING COMPANY

which resolution is in full force and effect and has not been amended or modified;

WHEREAS, for purposes of exemption from New York State sales and use taxation as part of the Financial Assistance requested, “sales and use taxation” shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the New York State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight; and

WHEREAS, the Agency has given due consideration to the Application and to representations by the Companies that the provision of Financial Assistance: (i) will induce the Companies to develop the Project Facility in the City of Fulton, County of Oswego; (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of either of the Companies or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of either of the Companies or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) the Project will serve the purposes of the Act by advancing the health, general prosperity and economic welfare of the people of the State; and

WHEREAS, the Agency adopted a resolution on November 14, 2018 (the “*PILOT Resolution*”) entitled:

RESOLUTION APPROVING A PAYMENT IN LIEU OF TAX SCHEDULE AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A CERTAIN PROJECT UNDERTAKEN AT THE REQUEST OF THE COMPANIES

which resolution is in full force and effect and has not been amended or modified;

NOW, THEREFORE, be it resolved by the members of the County of Oswego Industrial Development Agency, as follows:

Section 1. It is the policy of the State to promote the health, economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

Section 2. Based upon the representations and projections made by the Companies to the Agency and after considering those representations, the Agency hereby makes the following determinations:

- a) Ratifies the findings in its Initial, Inducement and PILOT Resolutions.
- b) The granting of the Financial Assistance will be an inducement to the Companies to develop the Project in the City of Fulton and County of Oswego; and will assist the Companies in their expansion.
- c) The Project is located in a “Highly Distressed Area” as defined in Section 854(18) of the Act.
- d) The commitment of the Agency to provide the Financial Assistance to the Companies will enable the Companies to acquire, renovate, install, equip and complete the Project Facility.
- e) The acquisition, renovation, installation, equipping and completion of the Project will promote employment opportunities, help prevent economic deterioration and advance the health, general prosperity and economic welfare of the people of the State.
- f) The acquisition of a controlling interest in the Project Facility by the Agency and the designation of each of the Companies as the Agency’s agent for the acquisition, renovation, installing, equipping and completion of the Project will be an inducement to the Companies to acquire, renovate, install, equip and complete the Project Facility in the City of Fulton, County of Oswego, and will serve the purposes of the Act by, among other things, promoting job opportunities and the general prosperity and economic welfare of the inhabitants of the County of Oswego; and the granting of the Financial Assistance will assist in the financing the costs of the acquisition, renovation, installation, equipping and completion of the Project.

- g) The Project will not result in the removal of any commercial, industrial or manufacturing plant or facility of either of the Companies or of any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of either of the Companies or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act.

Section 3. Subject to the conditions set forth in Section 4.02 of the Agreement, the Project Agreement (as those terms are defined in the Inducement Resolution), this Resolution, the Inducement Resolution and the PILOT Resolution (collectively the “**Resolutions**”), the Agency will: (A) acquire a controlling interest in the Project Facility; (B) lease the Land and Facility from the Real Estate Holding Company pursuant to a lease agreement between the Agency and the Real Estate Holding Company (the “**Company Lease**”) and acquire an interest in the Equipment pursuant to one or more bills of sale from the Companies (collectively, the “**Bill of Sale**”); sublease the Project Facility to the Real Estate Holding Company, pursuant to a sublease agreement which shall be consistent with this Resolution and approved by the Chief Executive Officer or (Vice) Chairperson of the Agency upon the advice of counsel to the Agency (the “**Agency Lease**”) and sublease a portion of the Equipment to the Operating Company which shall be consistent with this Resolution and approved by the Chief Executive Officer or (Vice) Chairperson of the Agency upon the advice of counsel to the Agency (the “**Agency Equipment Lease**” and together with the Company Lease, the Bill of Sale, the Agency Lease and the Project Agreement, the “**Lease Documents**”) and enter into the Equipment Lease and the and documents related to the IRP Loan (the “**IRP Loan Documents**”) which shall be consistent with this Resolution and approved by the Chief Executive Officer or (Vice) Chairperson of the Agency upon the advice of counsel to the Agency; (C) secure the Companies’ borrowings with respect to the Project Facility by joining in one or more construction or permanent mortgages on the Project Facility in favor of the Real Estate Holding Company’s lender(s), in such form and substance as shall be consistent with this Resolution and approved by the Chief Executive Officer or (Vice) Chairperson of the Agency upon the advice of counsel to the Agency and pledging and assigning to such lender(s), if any, certain rights and remedies of the Agency under any lease agreement by the execution and delivery of a pledge and assignment which shall be consistent with this Resolution and approved by the Chief Executive Officer or (Vice) Chairperson of the Agency upon the advice of counsel to the Agency (collectively, the “**Lender Documents**”); and (D) execute and deliver any other documents necessary to effectuate the intent of the Resolutions and the granting of the Financial Assistance as contemplated by and consistent with this Resolution upon the advice of counsel to the Agency.

Section 4. The Chief Executive Officer and/or (Vice) Chairperson are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the Lease Documents, the Equipment Lease, the IRP Loan Documents the Lender Documents and any other document and agreement identified herein and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to herein and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by the Resolutions. The execution thereof by the Chief Executive Officer or (Vice) Chairperson shall constitute conclusive evidence of such approval.

Section 5. No covenant, stipulation, obligation or agreement contained in this Resolution or any document referred to above shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

Section 6. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

Section 7. The Chief Executive Officer of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Companies and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 8. Counsel to the Agency and special Agency counsel are hereby authorized to work with the Companies, and others to prepare, for submission to the Agency, all documents necessary to effect the grant of Financial Assistance and to consummate the transactions contemplated by this Resolution.

Section 9. This Resolution shall take effect immediately.

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

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>	<u>Recuse</u>
Nick Canale, Jr.	X				
Tom Kells	X				
Donald H. Kunzwiler				X	
H. Leonard Schick	X				
Morris Sorbello	X				
Gary T. Toth	X				
Barry Trimble				X	

The Resolution was thereupon declared duly adopted.

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

I, the undersigned Chief Executive Officer of the County of Oswego Industrial Development Agency, Do Hereby Certify that (i) I have compared the annexed extract of the minutes of the meeting of the County of Oswego Industrial Development Agency (the “*Agency*”) held on November 14, 2018, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

I further certify that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Agency on November 14, 2018.

L. Michael Treadwell
Chief Executive Officer

(SEAL)