



Meeting Agenda – Audit and Finance Committee
 Genesee County Economic Development Center
 Thursday, March 30, 2023 – 3:00 p.m.
 Location: 99 MedTech Drive, Innovation Zone

| Page # | Topic | Discussion Leader | Desired Outcome |
|------------|---|--|---|
| | 1. Call To Order – Enter Public Session | M. Gray | |
| | 1a. Executive Session Motion to enter executive session under the Public Officers Law, Article 7, Open Meetings Law Section 105 for the following reasons: <ol style="list-style-type: none"> 1. The medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation. 2. The proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof. 1b. Enter Public Session | M. Gray | |
| 2-4 | 2. Chairman’s Report & Activities 2a. Agenda Additions / Other Business 2b. Minutes: February 28, 2023 | M. Gray | Vote |
| 5-19 20 | 3. Discussions / Official Recommendations to the Board: 3a. 12/31/22 Audit 3b. PSA for Apple Tree Acres (Oxbo) 3c. Loewke Brill Contract for Pembroke Project | Mostert, Manzanero & Scott M. Masse M. Masse | Disc / Vote Disc / Vote Disc / Vote |
| | 4. Adjournment | M. Gray | Vote |



GCEDC Audit & Finance Committee Meeting
Tuesday, February 28, 2023
Location: 99 MedTech Drive, Innovation Zone
8:30 a.m.

MINUTES

ATTENDANCE

Committee Members: M. Gray, P. Zeliff, P. Battaglia (Video Conference*)
Staff: L. Farrell (Video Conference), L. Casey, M. Masse, J. Krencik, P. Kennett, S. Hyde
Guests: T. Felton (GGLDC Board Member), D. Cunningham (GGLDC Board Member)
Absent: T. Bender

* Attending from physical location identified in meeting notice as open to the public.

1. CALL TO ORDER / ENTER PUBLIC SESSION

M. Gray called the meeting to order at 8:35 a.m. in the Innovation Zone.

1a. Enter Executive Session

P. Zeliff made a motion to enter executive session under the Public Officers Law, Article 7, Open Meetings Law Section 105, at 8:36 a.m. for the following reasons:

1. The medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation.
2. The proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

The motion was seconded by P. Battaglia and approved by all members present.

1b. Enter Public Session

P. Zeliff made a motion to enter back into public session at 8:49 a.m., seconded by P. Battaglia and approved by all members present.

2. Chairman's Report & Activities

2a. Agenda Additions / Other Business – Nothing at this time.

2b. Minutes: January 31, 2023 –

P. Zeliff made a motion to approve the January 31, 2023 minutes; the motion was seconded by P. Battaglia. Roll call resulted as follows:

P. Battaglia - Yes (Video Conference*)
M. Gray - Yes
T. Bender - Absent
P. Zeliff - Yes

The item was approved as presented.

3. DISCUSSIONS / OFFICIAL RECOMMENDATIONS OF THE COMMITTEE:

3a. Allowance for Doubtful Accounts - M. Masse and L. Farrell reviewed the analysis of allowance for doubtful accounts with the Committee. The allowance for doubtful accounts is about 20% of the total loan balances. There are more funds available in the Gain Loan Fund to loan at any time, which would decrease the allowance percentage against total balances. The collectability of these loans was discussed. There are no foreseen concerns, and the staff does not recommend any changes to the allowance.

P. Battaglia made a motion to approve the Allowance for Doubtful Accounts as presented; the motion was seconded by P. Zeliff. Roll call resulted as follows:

P. Battaglia - Yes (Video Conference*)
M. Gray - Yes
T. Bender - Absent
P. Zeliff - Yes

The item was approved as presented.

3b. Investment Report- The Investment Report summarizes the GCEDC's bank balances, general ledger balances and interest income at 12/31/22. As of 12/31/22, cash balances were fully collateralized. The report will be submitted into PARIS and posted on the website.

P. Zeliff made a motion to recommend to the full Board the approval of the Investment Report as presented; the motion was seconded by P. Battaglia. Roll call resulted as follows:

P. Battaglia - Yes (Video Conference*)
M. Gray - Yes
T. Bender - Absent
P. Zeliff - Yes

The item was approved as presented.

3c. Procurement Report- Public Authorities are required to report all procurement transactions active during the reporting period that have an actual or estimated value of \$5,000 or more. This report will be submitted into the PARIS system and posted on the website.

P. Zeliff made a motion to recommend to the full Board the approval of the Procurement Report as presented; the motion was seconded by P. Battaglia. Roll call resulted as follows:

P. Battaglia - Yes (Video Conference*)
M. Gray - Yes
T. Bender - Absent
P. Zeliff - Yes

The item was approved as presented.

3d. RLF Policy Review – The Revolving Loan Fund #1 Policy was included with the meeting materials. Staff is not recommending any changes; however, it was added to the agenda for discussion. Currently, there are three loans with the GGLDC that have a variable interest rate of prime with a 3% floor, readjusted annually in January.

T. Felton will provide language and suggestions that will make the policy more consistent. Once received, staff will make these changes, which will be brought forward at a subsequent meeting for review and consideration.

No action was taken by the Committee.

3e. County Mowing Contract - The GCEDC Received a proposal for mowing of the stormwater pond at STAMP for 2023. This is included in the 2023 GCEDC budget as presented to the Committee at a previous meeting.

Fund commitment: \$2,800 from operational funds of STAMP. This amount was included in the 2023 GCEDC budget that was reviewed by the Board previously.

Board action request: Approval of mowing contract for \$2,800 with Genesee County Highway Department.

P. Zeliff made a motion to recommend to the full Board the approval of the Genesee County Highway Mowing Contract not to exceed \$2,800 as presented; the motion was seconded by P. Battaglia. Roll call resulted as follows:

P. Battaglia - Yes (Video Conference*)
M. Gray - Yes
T. Bender - Absent
P. Zeliff - Yes

The item was approved as presented.

4. ADJOURNMENT

As there was no further business, P. Zeliff made a motion to adjourn at 9:12 a.m., seconded by P. Battaglia and passed unanimously.

Review of Purchase and Sale Agreement for Apple Tree Acres Property for Oxbo International

Discussion: The GCEDC has a PSA for approximately 50 acres from Oxbo International for AppleTree Acres. The company is looking to acquire this to construct a manufacturing facility.

Fund Commitment: Legal fees to Harris Beach not to exceed \$10,000 for the transaction.

Committee Action Request: Recommend approval of Purchase and Sale Agreement and payment of legal fees in connection with closing.

mm
3/24/20

AUTHORIZING RESOLUTION

(Purchase and Sale of Real Property – OXBO International Corporation)

A regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on _____, _____, 2023.

The following resolution was duly offered and seconded, to wit:

Resolution No. ___/2023 - _____

RESOLUTION OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER (THE "AGENCY") AUTHORIZING (i) THE SALE OF CERTAIN AGENCY OWNED REAL PROPERTY TO OXBO INTERNATIONAL CORPORATION, AND (ii) THE EXECUTION OF A PURCHASE AND SALE AGREEMENT, A DEED, ANY NECESSARY EASEMENT AGREEMENTS, AND RELATED DOCUMENTS IN CONNECTION THEREWITH.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 565 of the Laws of 1970 of the State of New York, as amended (hereinafter collectively called the "Act"), the **GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY d/b/a GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER** (the "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, among other property, the Agency owns approximately 50.38 acres of vacant land located on South Lake Road, in the Town of Bergen, Genesee County, New York known as tax account number 13.-1-63.1 (the "Land");

WHEREAS, **OXBO International Corporation** (the "Company") has offered to purchase the Land in connection with a certain project to be undertaken by the Company thereon pursuant to the terms and conditions of that certain Purchase and Sale Agreement, the form of which is attached hereto as Exhibit A (the "Purchase and Sale Agreement"); and

WHEREAS, the Agency desires to adopt a resolution authorizing (i) the sale of the Land to the Company and (ii) the execution of the Purchase and Sale Agreement, a deed and related documents; and

WHEREAS, the Purchase and Sale Agreement, the deed, and related documents in connection therewith have been negotiated and are presented to this meeting for approval and execution.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER AS FOLLOWS:

Section 1. The Agency is hereby authorized to sell the Land to the Company pursuant to the terms and conditions of the Purchase and Sale Agreement.

Section 2. The Chairman, Vice Chairman, President/CEO and/or Senior Vice President of Operations of the Agency are hereby authorized to execute the Purchase and Sale Agreement, the deed, the easement agreement and related documents in connection therewith, if any.

Section 3. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such certificates, instruments 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, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 4. Harris Beach PLLC shall be entitled to attorney fees, exclusive of third party costs (i.e. recording costs, survey, etc.) not to exceed \$10,000.00 subject to no substantive title issues, municipal approval issues and/or environmental issues arising in connection with the purchase and sale of the Land.

Section 5. These Resolutions 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:

| | <i>Yea</i> | <i>Nay</i> | <i>Absent</i> | <i>Abstain</i> |
|----------------------|------------|------------|---------------|----------------|
| Peter Zeliff | [] | [] | [] | [] |
| Matthew Gray | [] | [] | [] | [] |
| Paul Battaglia | [] | [] | [] | [] |
| Craig Yunker | [] | [] | [] | [] |
| Todd Bender | [] | [] | [] | [] |
| Chandy Kemp | [] | [] | [] | [] |
| Marianne Clattenburg | [] | [] | [] | [] |

The Resolutions were thereupon duly adopted.

CERTIFICATION

(Purchase and Sale of Real Property – OXBO International Corporation)

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

I, the undersigned Secretary of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center, DO HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency"), including the resolution contained therein, held on _____, 2023, 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 such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY, that there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY, that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this _____ day of _____, 2023.

Secretary

EXHIBIT A

Form of Purchase and Sale Agreement

(Attached Next Page)

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement"), is made and executed this ____ day of March, 2023 (the "Effective Date"), by and between **GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY d/b/a GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER**, located at 99 MedTech Drive, Batavia, New York 14020 ("Seller") and **OXBO INTERNATIONAL CORPORATION**, a _____, located at 7275 Byron Road, Byron, New York 14422 ("Purchaser").

WITNESSETH:

WHEREAS, Seller is the owner of the real property and improvements located at South Lake Road, in the Town of Bergen, County of Genesee, State of New York; and

WHEREAS, Seller desires to sell approximately 50.38 acres located on South Lake Road in the Town of Bergen, County of Genesee, State of New York and known as tax account no. 13.-1-63.1, to Purchaser, and Purchaser desires to purchase the real property and improvements thereon upon the terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and representations herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Property.** The real property to be conveyed consists of unimproved property identified in red on the diagram attached hereto as **Exhibit A** consisting of approximately 50.38 ± acres ("Land") situated on South Lake Road, Town of Bergen, County of Genesee, State of New York, together with all right, title, and interest of Seller in and to (a) any and all easements and rights-of-way appurtenant to the Land; (b) any and all lands lying in the bed of any streets, roads, highways, alleys or driveways in front of and adjoining the Land; and (c) any and all strips and gores adjacent to or abutting the Land, and also together with the existing parking areas and driveways on the Land ("Property").

2. **Condition of Property.** The Property shall be conveyed free of any and all liens, encumbrances, security agreements or other financing devices except as provided in Paragraph 8 of this Agreement (such exceptions in Paragraph 8 constituting "Permitted Encumbrances").

3. **Purchase Price and Deposit.** The purchase price for the Property (the "Purchase Price") shall be **ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,500,000.00)** payable to Seller in cash or a bank check, or by wire, at Closing (as such term is hereinafter defined). Within two (2) days of the Effective Date, Purchaser shall deposit with Seller's attorney in the attorney's noninterest bearing IOLA trust account the sum of Twenty Thousand and No/100 Dollars (\$20,000.00) (the "Deposit") to be credited towards the Purchase Price at Closing. The Deposit shall be refundable until the expiration of the Initial Due Diligence Period or the 90 Day Extension Period (as such terms are hereinafter defined), as applicable, at which time the Deposit shall become nonrefundable, but applicable to the Purchase Price in the event the transaction closes.

4. **Purchaser's Contingencies.** This Agreement, and Purchaser's obligations hereunder, shall be expressly contingent upon the following:

(a) Purchaser shall have the right, to conduct at its sole cost and expense within the initial ninety (90) day period after the Effective Date ("Initial Due Diligence and Contingency"), Phase I

environmental assessments on the Property by an environmental engineer acceptable to Purchaser and Purchaser's lender, which reports shall be certified to Purchaser, and the results of which shall be satisfactory to Purchaser in its sole discretion. The Purchaser shall also receive from Seller within five (5) business days after the Effective Date, copies of all written reports for Phase I, Phase II, and Phase III environmental assessments for the Property in the possession of Seller, if any, which results shall be satisfactory to Purchaser in its sole discretion. Nothing herein shall require Purchaser to conduct a Phase I or Phase II environmental site assessment or assume responsibility for any existing environmental contamination which is found to be present on or under the Property. Notwithstanding the foregoing, Purchaser shall, upon completion of its environmental assessments, be responsible for restoring the Property to substantially the same condition as existed on the Property prior to the undertaking of such assessments. Additionally, notwithstanding anything to the contrary stated herein, it is expressly agreed and acknowledged that Purchaser shall not have the right to conduct any invasive testing on the Property, including, but not limited to Phase II environmental assessments, without Seller's prior written consent, which Seller may grant, condition, and/or withhold in its sole and absolute discretion.

(b) On or before the expiration of the Initial Due Diligence and Contingency Period, Purchaser shall have received, at its sole cost and expense, all necessary governmental approvals, including zoning approvals, permits, consents, site plan approvals, subdivision or land separation approval, variances, and certificates of occupancy required from governmental authorities, if any are required, to construct a manufacturing facility and office for its business on the Property on such terms and conditions as may be satisfactory to Purchaser. Seller agrees to timely execute any and all necessary applications and consents required by Purchaser to obtain the governmental approvals required pursuant to this Section 4(b). Seller also agrees to provide Purchaser with any preexisting permits, surveys, and other documents relating to the Property in Seller's possession which may be required by the Purchaser to obtain the governmental approvals required in this Section 4(b).

(c) As part of its Initial Due Diligence and Contingency Period, Purchaser shall, at its sole cost and expense, conduct a feasibility study to determine the adequacy of utilities available at the Property (including, but not limited to, water, sewer, electric and gas) to construct and operate its proposed facility.

(d) This offer is also expressly contingent upon Purchaser receiving authorization from its parent company Ploeger Oxbo Holding B.V., to consummate the acquisition of the Property within the Initial Due Diligence and Contingency Period.

Notwithstanding the foregoing, provided Purchaser is utilizing commercially reasonable efforts to complete the due diligence and contingencies in this Paragraph 4(a) through (d), and if Purchaser is unable to complete such due diligence and/or obtain all necessary approvals and consents within the Initial Due Diligence and Contingency Period, then upon written notice to the Seller, the Purchaser shall have the option to extend the Initial Due Diligence and Contingency Period and also simultaneously extend the date of Closing under Paragraph 5 of this Agreement for one additional 90 day extension period ("90 Day Extension Period") without additional cost, provided such notice is given to Seller prior to the expiration of the Initial Due Diligence and Contingency Period. If the Initial Due Diligence and Contingency Period and/or the 90 Day Extension Period expires, then either Purchaser or Seller may terminate this Agreement by written notice of the other.

If any of the contingencies and due diligence requirements in this Paragraph 4 have not been satisfied or are found to be unsatisfactory to Purchaser in Purchaser's sole discretion on or before the expiration of the Initial Due Diligence and Contingency Period or the 90 Day Extension Period (i.e., 180 days after the Effective Date), as applicable, then this Agreement may be terminated by Purchaser

upon the giving of written notice of such termination to Seller provided such notice is given on or before the expiration of the Initial Due Diligence and Contingency Period. Upon receipt of such termination, Purchaser's Deposit shall be promptly refunded without set off or deduction. If Purchaser does not terminate this Agreement in accordance with this paragraph prior to the expiration of the Initial Due Diligence and Contingency Period, as the same may be extended by the 90 Day Extension Period, then the Deposit shall become entirely non-refundable to Seller.

It is understood that the contingencies set forth herein are for Purchaser's benefit and may be waived by Purchaser in writing at any time.

Purchaser agrees to indemnify, defend and hold Seller harmless from all actual suits, causes of action, losses, payments and expenses (including but not limited to reasonable attorneys' fees) arising from: (i) any personal injury or property damage caused by Purchaser's negligence during the inspection of the Property; (ii) any and all mechanics', laborers', materialmen's or other liens asserted against the Property resulting from the Purchaser's foregoing inspections; and (iii) Purchaser's present (or that of Purchaser's representatives, agents, employees, lenders, contractors, appraisers, architects and engineers) on or at the Property during the term of this Agreement, which indemnity shall survive Closing or the earlier termination of this Agreement.

Additionally, prior to permitting any contractor, agent, person or entity to enter onto the Property for any purposes, Purchaser shall deliver to Seller evidence of commercial general liability insurance and automobile liability insurance coverage maintained by such contractor, agent, person or entity, with each such policy having a combined single limit per occurrence for personal injury and property damage of not less than Five Million Dollars (\$5,000,000); provided, however, no such certificates shall be required of any subcontractor of an environmental engineer and/or contractor which has provided Seller with the requisite certificate. All policies required by this section shall name Seller as an additional insured thereon. Each such insurance policy shall be maintained with an insurer that is reasonably acceptable to Seller, and the form and scope of coverage shall be reasonably acceptable to Seller. Each such contractor shall also maintain workers compensation insurance, if required by applicable law, in no less than the minimum statutory amount.

5. **Closing and Possession.** The closing and transfer of title to the Property ("Closing") shall occur within thirty (30) days following the satisfaction or earlier waiver of all of the contingencies set forth in this Contract, unless Purchaser elects in writing to Seller to close on its purchase of the Property on a sooner date. The date of Closing shall also be extended for an additional 90 day period if Purchaser elects to extend the Initial Due Diligence and Contingency Period in Paragraph 4 of this Agreement. Closing shall take place at Purchaser's attorneys' office or at a location selected by Purchaser's lender. Purchaser shall have possession and occupancy of the Property from and after the date of Closing, free and clear of any leases, tenancies or rights of occupancy.

6. **Deed/Title Search/Survey.** Seller will deliver to Purchaser at closing a properly signed and notarized Bargain and Sale Deed with lien covenant. At least ten (10) business days prior to Closing, Seller will furnish and pay for fully guaranteed tax, title and United States Court searches for the Property, dated or redated subsequent to the date of this Agreement (the "Searches"). Seller shall be responsible for and shall pay the cost of redating and continuation of the Searches to and including the Closing. Seller shall also prepare, at Seller's sole cost and expense, an instrument survey of the Property dated or redated after the date of this Agreement for use by the Purchaser in conjunction with its proposed site approvals and for obtaining good and marketable title to the

Property. The instrument survey shall prepared or re-dated and certified to meet the standards and requirements of the Genesee County Bar Association, Purchaser's lender, and of the responsible agency for subdivision, if applicable. Notwithstanding anything to the contrary stated herein, Purchaser shall be responsible for up to \$2,500.00 for the cost of the instrument survey map required for the Subdivision Approval (as hereinafter defined). Seller shall be responsible for obtaining all requisite approvals from any governing body having jurisdiction for subdivision or separation approval of the Property which shall be effectuated upon the filing of a subdivision plan map (the "Subdivision Approval"). Purchaser and Seller agree to promptly make joint application for Subdivision Approval and diligently pursue the application. The final approval, upon conditions acceptable to Purchaser and Seller, shall be obtained on or before the last day of the Initial Due Diligence and Contingency Period, as the same may be extended.

7. **Closing Costs.** At Closing, Seller shall pay any required transfer tax as well as any recording charges necessary to render good and marketable title as provided herein. Purchaser shall pay for any fees incurred for recording the deed and the mortgage and shall pay any mortgage recording taxes except as otherwise provided in Paragraph 8 below. Except as otherwise provided herein, each party shall bear its own costs, legal fees and expenses incurred hereunder without any claim against the other.

8. **Seller's Title.**

(a) Within ten (10) business days after the Purchaser's receipt of all of the title documents for the Property, including an updated survey and redated abstract, Purchaser's attorneys shall deliver to Seller's attorneys a written notice of any defects, encumbrances or other objections to title other than those to which this sale is subject. If it should appear that the Property is affected by any outstanding interest, or questions of title which render title unmarketable, or the intended use of the improvements illegal (being in violation of any effective law, ordinance, regulation or restriction), and as to which Purchaser is not obliged to take subject to in accordance with the terms of this Agreement, Seller shall have the option of either: (i) removing such outstanding interest or questions of title rendering title unmarketable or discharging such interest, for which purpose Seller shall have a reasonable time from the receipt of Purchaser's written notice, but in no event beyond the date of the Closing as set forth in Paragraph 5 above, or alternatively, (ii) promptly terminating this Agreement. Notwithstanding the foregoing, if the Property shall be affected by any lien or encumbrance which may be discharged by the payment of an ascertainable amount, then it shall be Seller's obligation to discharge such lien or encumbrance. If Seller shall be unable to convey a good and marketable title, subject to and in accordance with the provisions hereof, Purchaser shall have the right to cancel this Agreement by giving written notice of such cancellation to the Seller whereupon all liability by reason of this Agreement shall cease; provided, however, if either party secures a commitment for title insurance containing standard exceptions only and provided that Purchaser agrees to accept title insurance as the solution to Seller's title problems, then Seller shall pay the cost thereof and in such event this Agreement shall remain and continue in full force and effect. Purchaser may, nevertheless, at its option, accept such title as Seller may be able to convey, without reduction of the purchase price or any credit or allowance against the same and without any other liability on the part of the Seller. In the event that Purchaser is required or desires to obtain title insurance, the title insurance company will be Harris Beach PLLC, as an agent on behalf of Stewart Title Insurance Company, c/o John Crane, with an address at 99 Garnsey Road, Pittsford, NY 14534.

(b) Purchaser agrees to accept title to the Property subject to: (i) restrictions and easements of record common to the tract or subdivision in which the Property is located, provided the same have not been violated and do not prohibit the Purchaser's intended use of the Property for its manufacturing facility and office uses; (ii) the lien of current real estate taxes not due and payable;

and (iii) public utility easements along lot lines, provided Purchaser has determined such easements do not interfere with Purchaser's intended use of the Property for its warehouse and office uses.

(c) WITH THE EXCEPTION OF THE REPRESENTATIONS CONTAINED IN PARAGRAPHS 2, 8 AND 9, PURCHASER ACKNOWLEDGES AND AGREES THAT THE PROPERTY IS BEING CONVEYED BY SELLER IN "AS-IS" CONDITION, THAT PURCHASER IS FULLY FAMILIAR WITH THE CONDITION OF THE PROPERTY, AND THAT PURCHASER IS BUYING THE PROPERTY BASED SOLELY ON PURCHASER'S KNOWLEDGE OF THE PROPERTY AND NOT IN RELIANCE ON ANY REPRESENTATION MADE BY SELLER OR ANY EMPLOYEE OR AGENT OF SELLER. SELLER EXPRESSLY DISCLAIMS, AND PURCHASER ACKNOWLEDGES SUCH DISCLAIMER, ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE PROPERTY EXCEPT AS EXPRESSLY SET FORTH HEREIN, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES REGARDING THE PHYSICAL CONDITION OR ENVIRONMENTAL COMPLIANCE OF THE PROPERTY. THE REPRESENTATIONS AND DISCLAIMER CONTAINED IN THIS SECTION SHALL SURVIVE CLOSING.

9. **Representations and Warranties of Seller.** Seller represents and warrants to Purchaser that:

(a) This Agreement constitutes the legal and binding obligation of Seller, enforceable in accordance with its terms.

(b) Except with respect to a year to year agricultural lease on the Property which currently expires December 31, 2023, Seller represents that the Property is not currently subject to any leases. Seller will not enter into any leases, contracts, agreements, or other arrangements affecting the Property or its tenants without the prior written consent of Purchaser. Purchaser's ownership of the Property is not to be subject to any agreements, contracts, or leases.

(c) Seller represents and warrants that Seller has not received any written notice from state or local authorities that the Property will be subject to any other eminent domain proceedings, appropriate, or other construction which would require the loss of any portion of the Property.

(d) Seller has no actual knowledge of: (i) the presence of any underground storage tanks on the Property or (ii) the presence of any actual or threatened environmental contamination or Hazardous Substances on or under the Property. Seller has not received any written notices from federal, state, or local regulatory authorities of any violation of the Property of any federal, New York State, or local laws, rules, regulations or ordinances, including any Environmental Laws and regulations. For purposes of this paragraph 9(d), "Environmental Laws" shall mean all federal, state and local environmental, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance and the rules, regulations, and orders with respect thereto. "Hazardous Substance" means, without limitation, any flammable, explosive or radioactive material, asbestos, polychlorinated biphenyl, petroleum or petroleum product, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Appendix Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, et seq.), Articles 15 and 27

of the New York State Environmental Conservation Law, the New York Navigation Law, or any other Environmental Laws and the regulations promulgated thereunder whether now or hereafter adopted.

(e) To the best of Seller's knowledge, the Property meets all applicable federal, state, and local governmental laws and regulations.

10. Deliveries and Closing Condition

(a) At Closing, Seller shall deliver to Purchaser the following:

(i) Duly executed and acknowledged Bargain and Sale Deed with full covenants conveying title to the Property free and clear of all liens and encumbrances;

(ii) Affidavits or other certificates or documents reasonably required by the Purchaser or the title insurance company, if any, in order to insure title in the condition required by this Agreement;

(iii) All other certificates, affidavits, warranty assignments, bills of sale, and other documents or instruments reasonably requested and as required by this Agreement to effectuate the terms and conditions hereof, if any.

(b) At Closing, Purchaser shall deliver to Seller the following:

(i) Payment of the balance of the Purchase Price;

(ii) such other certificates, documents and instruments reasonably requested and as required by this Agreement to effectuate the terms and conditions hereof.

11. **Condemnation.** If during the pendency of this Agreement Seller receives written notice pursuant to the Eminent Domain Procedure Law of the State of New York that any portion of the Property is to be taken by condemnation or purchased in lieu thereof, Seller shall give Purchaser written notice thereof and, if such portion to be condemned is material (*i.e.*, remaining property cannot be used for the purposes contemplated under this Agreement), Purchaser shall have the right to terminate this Agreement or confirm that this Agreement shall continue in full force and effect within ten (10) days of Seller's notice of the condemnation. In the absence of such timely notice, Purchaser will not be deemed to have waived any such right of termination. If Purchaser does not exercise its right to terminate, Seller shall assign to Purchaser any claim for compensation to such condemned portion of the Property. If an immaterial portion of the Property is taken (*i.e.* the Property can still be used for Purchaser's intended use), Purchaser shall be required to proceed under this Agreement and accept an assignment of the compensation for such portion of the Property condemned.

12. **Adjustments.** Real property taxes shall be adjusted and prorated between the parties at Closing. Any past due real estate taxes, assessments, and related interest and penalties shall be paid by Seller.

13. Notices.

(a) Any notice, communication, approval, disapproval, request or reply (hereinafter called "Notice") provided for in this Agreement or permitted to be given, made or accepted by either party to the other, must be in writing, and shall be given or served by delivery in person, by Federal

Express or similar overnight courier service or by postpaid certified or registered mail addressed to the party notified. For purposes of Notice, the addresses for the parties, unless changed as hereinafter provided, shall be:

Purchaser: OXBO International Corporation
7275 Byron Road
Byron, New York 14422

with a copy to: Mark S. Boylan, Esq.
Boylan Law Office, LLP
45 West Main Street
P.O. Box 307
LeRoy, New York 14482

Seller: Genesee County Industrial Development Agency
d/b/a Genesee County Economic Development Center
c/o Mark A. Masse
99 MedTech Drive
Batavia, New York 14020

with a copy to: Harris Beach PLLC
Michael E. Condon, Esq.
99 Garnsey Road
Pittsford, New York 14534
Tel: 585.419.8603
E-mail: mcondon@harrisbeach.com

(b) Each party hereto shall have the right from time to time to change its address, by giving Notice in writing of no less than five (5) business days to the other party as herein provided. Any Notice delivered hereunder shall be deemed delivered upon personal delivery or, if by mail, on the third day after mailing or, if by nationally recognized overnight courier service, on the next business day.

14. **Broker's Commission.** Seller and Purchaser agree that no broker brought about the sale of the Property. Any party making a misrepresentation or misstatement of fact hereunder shall indemnify and hold the other party harmless from any claim, liability and expense including attorney's fees, resulting from such misrepresentation or misstatement of fact.

15. **Miscellaneous.**

(a) This Agreement, and the terms, covenants and conditions herein contained, shall inure to the benefit of and be binding upon the respective heirs, beneficiaries, successors and assigns of the parties hereto. Neither party may assign its rights hereunder to any other person or entity without the prior written consent of the other party, provided, however, Purchaser shall be permitted to assign this Agreement to an affiliate, parent or subsidiary without obtaining Seller's consent so long as Purchaser remains fully responsible for Purchaser's obligations hereunder and Purchaser provides Seller with a notice of assignment, together with a copy of the applicable assignment and assumption agreement. **NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, PURCHASER MAY ASSIGN ITS RIGHTS HEREUNDER TO A NEW YORK LIMITED LIABILITY COMPANY OR OTHER ENTITY, PROVIDED THAT**

PURCHASER PROVIDES SELLER NOTICE OF SUCH ASSIGNMENT AT LEAST 5 DAYS PRIOR TO CLOSING.

(b) All personal pronouns used in this Agreement shall include the other genders, and the singular shall include the plural, whenever and as often as may be appropriate.

(c) This Agreement shall be governed by and construed and enforced under the laws of the State of New York without regard to principles of conflicts of laws. The parties hereto agree to the jurisdiction of the New York State Supreme Court and to venue in Genesee County.

(d) No variation, modification or alteration of this Agreement shall be binding on either party hereto unless set forth in a document executed by such party or a duly authorized agent, officer or representative thereof.

(e) The captions contained in this Agreement are for the convenience of the parties only and shall not be deemed a part of the context of this Agreement.

(f) The parties hereto agree to execute and deliver all other documents required, provide all necessary information, and take or forebear from all actions as may be necessary or appropriate to achieve the purposes of this Agreement.

(g) This Agreement contains the entire agreement between Seller and Purchaser, and except as otherwise set forth in the Agreement, no oral statements or prior written matter not specifically incorporated herein shall be of force or effect.

(h) The provisions of Paragraphs 9 and 14, and this Paragraph 15 of this Agreement shall survive the Closing and transfer of title to the Property.

(i) This Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, and all of which together shall constitute one and the same agreement. This Agreement shall be binding on the parties as soon as each party whose signature is required to make it effective has signed at least one copy of it, even if no copy has been signed by all parties. Delivery by a party of a copy of this Agreement containing that party's signature which is conveyed by facsimile, photostatic, or similar method to the party or its counsel shall be sufficient for purposes of execution and delivery of this Agreement by that party.

16. **Risk of Loss.** Risk of loss or damage to the Property by fire or other casualty until transfer of title shall be assumed by the Seller. If damage to the Property by fire or such other casualty occurs prior to transfer, Purchaser may cancel this Agreement without any further liability to Seller and Purchaser's deposit will be returned. If Purchaser does not cancel but elects to close, then Seller shall transfer to Purchaser any insurance proceeds, or Seller's claim to insurance proceeds payable for such damage.

17. **Common Area Charges/Community Fees.** Purchaser shall pay subsequent to closing, common area fees in connection with the AppleTree Acres Corporate Park of Two Thousand Dollars (\$2,000) annually for the first two years following Closing, and annual increases thereafter at the lesser of (i) five percent (5%) or (ii) increases in the Consumer Price Index for Urban Consumers from the preceding year. The deed of conveyance shall provide for the payment of such fee.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

PURCHASER:

Dated: March __, 2023

OXBO International Corporation, a Delaware corporation

By: Joe Perzia
Name: JOE PERZIA
Title: Chief Operating Officer

SELLER:

Dated: March __, 2023

Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center

By: _____
Name: _____
Title: _____

EXHIBIT A
Tax Map of Property



GCEDC
Audit & Finance Committee Meeting Report
March 30, 2023

Consulting assistance on local labor policy reporting and conformity for projects

At the October 1, 2019 meeting, the GCEDC staff presented a sample proposal from Loewke Brill Consulting Group, Inc. on how they could assist companies that will have to report to the GCEDC under the local labor reporting requirements, including assistance with waiver requests and finding local contractors to bid their projects.

The GCEDC Staff had requested a quote for the costs related to a project in Pembroke. A copy of the application for incentives were sent to Loewke Brill for them to calculate the fee. They submitted the following:

\$20,210 - 18 Inspections (\$325 per visit), 18 Monthly Reports (\$690 per month), 1 time set up fee (\$1,250), assume 3 waiver requests (\$230 per waiver)

The time period was determined by what the projects listed for the duration of construction in their applications. GCEDC staff has the following recommendation which is consistent with prior approvals:

Fund Commitment: \$20,210 to be paid out of deposit from company.

Committee Action Request: Recommend to the full Board to move forward with a proposal from Loewke Brill Consulting for a project in Pembroke. This project will be making a deposit to cover all of the costs associated with the local labor inspection process.