

## REVOLVING LOAN FUND – AMENDMENT TO LOAN AUTHORIZATIONS

WHEREAS, this Board of Supervisors approved the creation of a Loan Review Committee for the Ontario County Revolving Loan Fund (RLF) by Resolution No. 664-83, the role of which includes making recommendations to this Board of Supervisors regarding the granting of loans, including the terms and conditions of such loans, by the RLF and the terms under which such loans are to be granted; and

WHEREAS, only the Board of Supervisors is empowered by law to authorize the execution or amendment of contracts, agreements and other documents for or relating to loans extended by the RLF, or to waive any terms or conditions created under such contracts, agreements or other documents; and

WHEREAS, by Resolution No. 762-94, the Economic Developer and Assistant Economic Developer “are authorized to execute and deliver all documents as may be necessary and desirable to lend [RLF] funds,” and to “oversee and monitor the RLF from application to closing”; and

WHEREAS, the current RLF loan portfolio contains loan agreements, amendments, new agreements and related documents containing terms different from those recommended by the Loan Review Committee and/or approved by this Board of Supervisors; and

WHEREAS, the Economic Developer and Assistant Economic Developer have stated that: (a) they made independent decisions that were necessary in their judgment to preserve and/or grow companies receiving RLF loans and provide the best business opportunity to ensure repayment of loaned funds, and (b) such decisions were consistent with historical administrative direction regarding operating practices dating back to the inception of the RLF; and

WHEREAS, County staff now clearly understand that to meet applicable legal standards, all decisions regarding changes to RLF loan terms or actions waiving any loan terms or conditions must be formally approved by the RLF Loan Review Committee, the Planning and Research Committee and the Board of Supervisors, and to that end processes and procedures are now in place to accomplish the required objectives and standards; and

WHEREAS, this Board of Supervisors desires to ratify and adopt only those actions as are specified in the attachment appended hereto; now therefore be it

RESOLVED, that with regard to the Ontario County Revolving Loan Fund loans identified in the attachment hereto, the specified actions are hereby ratified and adopted by this Board of Supervisors effective the date upon which they were made; and

RESOLVED, that the resolutions authorizing these loans be amended to reflect the indicated changes; and

RESOLVED, that the Clerk of the Board of Supervisors shall provide a certified copy of this resolution to the Ontario County Finance Department, the Ontario County Attorney's Office, two (2) copies to the Ontario County Office of Economic Development, and to Special Counsel to the Revolving Loan Fund, Thomas J. Bonner, Esq.

## ATTACHMENT TO RESOLUTION \_\_\_\_\_

- (1) Ajay Glass/7 West Ave. LLC (Res. # 450-05): change of lease requirement from seven years to one year;
- (2) Canning Parkway (Res. # 218-99): billing cessations/suspensions beginning in September 2002 and totaling 19 months;
- (3) CAR Enterprises II (Res. # 200-03): (a) beginning of six year loan period at the end of six month interest-only period; (b) omission of mortgage requirement and officer payment moratorium from loan documents; (c) February 2004 extension of interest-only period for 3 additional months; (d) November 2005 execution of intercreditor and subordination agreement subordinating RLF debt to a \$1,826,000 M&T Bank lien;
- (4) Cartonique/Kent (Res. # 577-02): (a) addition of six month interest-only period; (b) October 2004 execution of assumption agreement and new promissory with Kent Acquisition Corp. with new 5 year loan term and granting a new eight month interest-only period; (c) April 2005 execution of subordination agreement with Canandaigua National Bank; (d) July 2005 extension of interest-only period; (e) January 2006 grant of payment deferral;
- (5) Custom Air Design (Res. # 174-02): (a) November 2001 transfer of ZAG loan to CAD and transfer of ZAG assets to Eastern Metal; (b) May 2005 consent to sale of \$250,000 of CAD assets; (c) June 2005 consent to sale of CAD assets to Global Fabrication and execution of agreement to allow Canandaigua National Bank to collect proceeds of the sale;
- (6) Dockside.net (Res. # 192-06): omission of assignment of licenses royalty streams from loan documents;
- (7) Equatek (Res. # 414-06): decrease of lease requirement from five years to one year in loan documents;
- (8) Flex Enterprise (Res. # 545-04): increase of maximum subordination amount from \$450,000 to \$480,000 in loan documents;
- (9) Forster Corp. (Res. # 201-90): (a) April 1993 extension of interest only period for one year; (b) consent to March 1996 asset sale by Canandaigua Nat'l Bank; (c) March 1996 cancellation of original loan agreement and promissory note, with release of security, and execution of agreements with Empire Sign and Awning and Forster family for loan balance; (d) October 1996 execution of loan agreement with Kelly Shea and Michael Vogt for the Forster debt at 3% interest for 10 years; (e) June 1999 release of Ontario County's mortgage on Shea and Vogt property; (f) August 2000 execution of agreement with Vogt and Shea, waiving \$19,175.66 of debt and establishing payment schedule at

0% interest through December 2014 and subordinating the RLF loan to Canadaigua National Bank's lien;

(10) Geneva Deficit Financing/Geneva IDA (Res. # 679-94 and 750-2000): amendments to promissory note in August 1995, December 1996, April and August 1998, May and September 1999, February 2001, March 2002, and May 2005;

(11) Gypsum Systems (Res. # 557-01): (a) move of County's asset lien to third position behind Canadaigua National Bank (CNB) (\$1.234MM) and Small Business Association (SBA) (\$395,000) liens; (b) move of County's mortgage to third position behind CNB ("not to exceed" \$384,600) and SBA (\$395,000) mortgages; (c) June 2004 execution of intercreditor agreement placing County third in line on both asset lien and mortgage to CNB (\$425,000) and ESDC (\$436,000) mortgages;

(12) Kirtas Technologies I (Res. # 757-02): grant of two six-month interest only periods beginning at closing and in October 2003;

(13) Kirtas Technologies II (Res. # 297-04): (a) interest rate decreased to .75 of prime; (b) five year payment period and amortization did not begin until end of first six months after closing; (c) job creation requirement decreased to 45 in three years; (d) February 2005 approval of extension of interest only period an additional 6 months;

(14) Kirtas Technologies III (Res. # 417-06): grant of one year of interest only payments;

(15) New Energy Works II (Res. # 198-06): increased subordination amount from \$275,000 to \$377,000;

(16) New Scale Technologies I (Res. # 522-05): omitted requirement that no investor funds be repaid until the RLF loan is paid in full;

(17) Newtex Industries (Res. # 198-06)s: (a) May 2006 grant of six month interest only period; (b) waiver of guaranty requirement;

(18) Phytobials (Res. # 330-03): (a) execution of agreement with the City of Geneva for the City's re-payment of 1/2 the loan; (b) agreement to delay beginning of five year loan period until the end of an 18 month interest-only period; (c) re-amortization of loan for a new five year period after City of Geneva paid \$25,000;

(19) Ramsey Electronics (Res. # 194-06): waiver of requirement of life insurance on M. Leo;

(20) SPG Direct/WAVE Technology (Res. # 601-04 and 445-02): November 2002 waiver of 50% (\$75,000) of the private capital requirement and further subordination of the County's security interest in the company's accounts receivable;

(21) Surmotech II (Res. # 558-01): (a) increase of subordination amount from \$220,000 to \$450,000 at closing; (b) November 2005 further increase of subordination amount to \$748,572;

(22) Tambe Metal Products (Res. # 560-03): (a) increase of subordination amount from \$2.3MM to \$2.5MM at closing; (b) waived requirement of insurance for Margo Tambe;

(23) Triplett Machine (Res. # 449-02): (a) increase of subordination of RLF to bank lien from \$450,000 to \$1,005,500 at closing; (b) July 2005 execution of subordination agreement w/Citizen's Bank increasing RLF subordination by \$650,000;

(24) Vance Metals III (Res. # 120-95): (a) increase in loan amount from \$275,000 to \$300,000; (b) extension of loan term to 12 years; (c) waiver of life insurance requirement for one principal; (d) 1996 approval of redemption of ownership interest of one principal and purchase of his shares by company;

(25) Vance Metals IV (Res. # 687-00): March 2003 decrease in interest rate to 3%;

(26) Victor Insulators (Res. # 560-01): June 2006 release of equipment security for sale;

(27) Xerion Avionix (Res. # 748-05): (a) waiver of requirement of silent partner's guaranty; (b) amortization of second and third separately from first tranche; (c) waived requirement of hiring CFO and formation of advisory board within 90 days of closing.