

**BOLTON LOCAL DEVELOPMENT CORPORATION
FUNDING AGREEMENT**

AGREEMENT made effective as of the ^{third} first day of November, 2005 between the **TOWN OF BOLTON** (“**TOWN**”) with offices at 4949 Lakeshore Drive, Bolton Landing, New York 12814, and the **BOLTON LOCAL DEVELOPMENT CORPORATION** (“**BLDC**”), a Not for Profit Corporation created and existing by virtue of the laws of the State of New York, with a mailing address at P.O. Box 7, Bolton Landing, New York 12814,

WHEREAS pursuant to the provisions of New York State General Municipal Law, Town Law, Local Finance Law, Not for Profit Corporation Law, and other statutes, rules and regulations applicable thereto, the “**TOWN**” is authorized to expend, from time to time, surplus funds and the “**BLDC**” is authorized to receive same for the purposes of promoting, developing and inducing commerce, tourism and related activities within the municipality, and

WHEREAS the “**BLDC**” from time to time shall apply for funds to underwrite such activities consistent with the purposes and powers of the “**BLDC**” for the benefit of the “**TOWN**” and its inhabitants, and

WHEREAS the “**TOWN**” may elect to fund the “**BLDC**” to receive surplus tax revenues by grant or by loan from time to time and as specified at the time of the advance of such funds,

NOW and THEREFORE, the parties **AGREE** that the “funds” shall be restricted to the purposes and specifications herein provided, and will be received, administered and expended in accordance with the following terms, conditions and expectations:

1. **CONTENTS OF AGREEMENT:** The following documents are incorporated by reference into this Agreement as if fully set forth herein:

(i) The “**BLDC**’s” Certificate of Incorporation, By-Laws and Conflicts Policy as specified, or any subsequent amendment approved in such documents by the “**TOWN**” and the “**BLDC**”.

(ii) Applicable federal and state laws and regulations as may be amended.

2. **LOANS:** The “**TOWN**” by act and resolution of the Town Board may, from time to time, consistent with the purposes of promoting business, business development, tourism and for expansion or creation of existing business, tourism and related activities, make loans of funds to the “**BLDC**” to be expended in the manner specified to such purpose. A loan shall be repaid by the “**BLDC**” to the “**TOWN**” upon such terms and specifications as agreed upon at the time of the loan. (Specimen Loan Note attached)

3. **GRANT:** The “**TOWN**” by act and resolution of the Town Board may, from time to time, consistent with the purposes of promoting business, business development, tourism and for expansion or creation of existing business, tourism and related activities, may grant funds to the

“BLDC” to be expended in the manner specified to such purpose. A grant shall not be required to be repaid by the “BLDC” to the “TOWN” as specified at the time of such grant. (Specimen Grant Agreement attached)

4. **REPORTS:** The “BLDC”, at such time and in such form as the “TOWN” may require, shall furnish the “TOWN” with such periodic reports as the “TOWN” may request pertaining to the expenditures, costs and obligations incurred in connection with grants or loans as well as any other matters covered by this Agreement. The books, records, materials and minutes of all actions and undertakings of the “BLDC” shall be available to the “TOWN” for inspection and audit upon reasonable notice.

5. **PERFORMANCE REVIEW:** The “TOWN” will conduct periodic reviews in such manner and at such times as it shall determine for the purpose of, among other things, ascertaining the quality and quantity of the “BLDC” activities as well as its conformity with the provisions of this Agreement and compliance with all federal and state requirements imposed upon a local development corporation, including all aspects of financial integrity and the efficiency of the “BLDC” in achieving the purposes and powers of its Certificate of Incorporation and its activities financed or financially underwritten pursuant to this Agreement.

6. **NOTICE OF INVESTIGATION OR DEFAULT:** The “BLDC” shall notify the “TOWN” within five (5) calendar days after obtaining any knowledge of:

(i) The commencement of any investigation or audit of its activities by any governmental agencies, or

(ii) The alleged default by the “BLDC” of any mortgage, deed of trust, security agreement, loan agreement or credit instrument executed in connection with any activities undertaken by the “BLDC” financed in whole or part with “TOWN” loans or grants provided pursuant to this Agreement.

7. **DEFAULTS:**

(i) In the event of a default (as defined below) should one occur, all obligations on the part of the “TOWN” to make any agreed upon future advance or further advance of loan or installment of grant shall, if the “TOWN” so elects, terminate and the “TOWN” may, in its discretion, exercise any of the remedies available in law or equity and as set forth herein:

(ii) The following shall constitute an event of default hereunder:

(a) If the “BLDC” fails, in the opinion of the “TOWN”, to comply with or perform any provision, condition or covenant contained in this Agreement, or any applicable federal or state law or regulation, or exceeds or violates its purposes and powers.

(b) If at any time any representation or warranty made by the “BLDC” shall be incorrect or materially misleading.

(c) If a lien for the performance of work or the furnishing of labor or materials is filed against the "BLDC" or any improvement financed hereunder and which remains unsatisfied, undischarged, or unbonded at the time of any request for disbursement or for a period of twenty (20) days after the date of filing of such lien, and there shall be no obligation on the part of the "TOWN" to continue any advances of promised loan or grant.

(d) If the "BLDC" shall fail to comply with any of the terms of any mortgage, deed of trust, security agreement, loan agreement, credit agreement or other instrument executed by the "BLDC".

(e) If the "BLDC" has failed to pay any tax or payment in lieu of tax in any timely fashion.

(iii) Upon the happening of an event of default, the "TOWN" may, in its discretion, exercise any one of or more of the following remedies, either concurrently or consecutively, and the pursuit of any one such remedies shall not preclude the "TOWN" from pursuing any other remedies contained herein or otherwise provided for by law or equity:

(a) Terminate this agreement providing to the "BLDC" a thirty (30) day prior written notice.

(b) Commence any legal or equitable action to enforce performance of this Agreement.

(c) Withhold or suspend any unexpended payment of funds to be advanced as a loan or grant.

(d) Withhold any promised loan.

(e) Exercise any corrective or remedial action, to include, but not limited to, advising the "BLDC" to suspend, discontinue or refrain from incurring costs for any activities in question, or requiring the "BLDC" to reimburse the "TOWN" for any amount of grant funds improperly expended or used in any unauthorized manner or for any unauthorized purpose.

(iv) In the event that this Agreement is terminated by the "TOWN" for any reason, or upon dissolution of the "BLDC" should the same occur, all unspent funds constituting unexpended grant money or loan money held by the "BLDC" at the time of dissolution shall be immediately returned to the "TOWN", however, nothing herein is intended to relieve the "BLDC" from its obligation to repay loans received from the "TOWN" pursuant to the original terms.

8. **INDEMNIFICATION:** To the fullest extent permitted by law, the "BLDC" shall defend, indemnify and hold harmless the "TOWN" and its agents and employees from and against any and all claims, actions, damages, losses, expenses and costs of every nature and kind, including reasonable attorneys' fees, incurred by or inserted or imposed against the "TOWN" as

a result of or in connection with claims arising out of “BLDC” activities financed by loan or grant from “TOWN” funds. Any money expended by the “TOWN” as a result of such claim, action, damages, losses, expenses or costs together with interest, shall be immediately and without notice due and payable by the “BLDC” to the “TOWN”.

9. **NON-LIABILITY:** Nothing contained in this Agreement or elsewhere shall impose any liability or duty whatsoever upon the “TOWN”, or any agency or subdivision of the “TOWN”, except as otherwise expressly stated in this Agreement. The “BLDC” by accepting the terms hereof, receives no guarantee or assurance of loan or grant in any particular fiscal year or for any particular project except as may be granted from time to time by act or resolution by the Town Board.

10. **STATUTE OF LIMITATIONS:** No action shall lie or be maintained against the “TOWN” upon any claim based upon or arising out of this Agreement or the work performed by the “BLDC” in expending grant or loan money unless such action shall be commenced within one (1) year from the termination or expiration of this Agreement, or six (6) months from the accrual of a cause of action, whichever is earlier.

11. **SERVICE OF PROCESS:** In addition to methods of service permitted by New York State Civil Practice Laws and Rules, the “BLDC” hereby consents to service of process upon it by Registered or Certified Mail, Return Receipt Requested. Service hereunder shall be complete upon the “BLDC’s” actual receipt of process, or upon the “TOWN’s” receipt of its return by the United States Postal Service marked “Refused” or “Undeliverable”. The “BLDC” must promptly notify the “TOWN” in writing of each and every change of address to which service of process can be made, and each and every change of the constituency of its Board of Directors, their names and correct addresses. The “BLDC” shall have twenty (20) calendar days after service is complete within which to respond.

12. **NOTICES:** All notices, requests, approvals and consents of any kind made pursuant to this Agreement shall be in writing and shall be deemed to be effective as of the date it is sent by Certified Mail, Return Receipt Requested. Such written communication shall be mailed to the respective parties’ addresses first set out herein or at such other address as may be provided in writing, except that notice of such change of address shall be deemed to have been given the date it is received.

13. **SEVERABILITY:** Should any part, term or provision of this Agreement be decided by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity, legality and enforceability of the remaining portion shall not be affected or impaired.

14. **NON WAIVER:** The “TOWN’s” failure to insist upon the strict performance of any provision of this Agreement or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach, will not constitute a waiver of “TOWN” rights under this Agreement.

15. **ASSIGNMENT:** No right, benefit or advantage inuring to the “BLDC” and no obligation imposed upon the “BLDC” under this Agreement may be assigned without the prior written approval and consent of the “TOWN”.

16. **SUCCESSORS:** This Agreement shall be binding upon the successors in office of the respective parties.

17. **ASSURANCE OF AUTHORITY:** The “BLDC” hereby assures and certifies that:

(i) The “BLDC” is duly organized and validly existing under the laws of the State of New York and has all of the requisite power and authority to enter into this Agreement and to assume the responsibilities for compliance with all federal and state laws and regulations.

(ii) The resolution, motion or order has been duly adopted, passed or enacted as an official act of the “BLDC’s” governing body authorizing the execution and delivery of this Agreement by the “BLDC”, and authorizing and directing the person executing this Agreement to do so on for and on behalf of the “BLDC”, said acts being done in such manner and form as to comply with all applicable law to make this Agreement the valid and legal binding act of the “BLDC”.

(iii) There is no action, proceeding or investigation now pending, or any basis therefore, known or believed by the “BLDC” to exist, which:

(a) Questions the validity of this Agreement or any action taken or to be taken under it,
or

(b) Is likely to result in any material adverse changes in the authorities, properties, assets, liabilities or conditions (financial or otherwise), of the “BLDC” which would materially or substantially impair the “BLDC’s” ability to perform any of the obligations imposed upon the “BLDC” by this Agreement.

(iv) The representations, statements and other matters presented by the “BLDC” in connection with execution hereof, are true and complete in all material aspects. The “BLDC” is aware of no event that would require any amendment to such representations, statements or other matters believe to be true and complete. The “BLDC” is not aware or other fact that should have been or has not been made known to the “TOWN” prior to entering into this Agreement.

(v) Insofar as the capacity of the “BLDC” to carry out any obligations under this Agreement as concerned

(a) The “BLDC” is not in material violation of its Certificate of Incorporation or any mortgage, indenture, agreement, instrument, judgment, decree, order, statute, rule, regulation or its own By-Laws or policy on conflicts, and

(b) The execution and performance of this Agreement will not result in any such violation.

18. **ENTIRE AGREEMENT:** This Agreement, including any attached schedules, constitutes the entire Agreement between the parties intending to supercede all prior oral agreements or understandings with respect to the grant or loan of funds from the "TOWN" to the "BLDC". This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York. In the event of any controversy related to the terms and provisions hereof, such action shall be properly venued in only the Supreme Court for the County of Warren in the State of New York.

IN WITNESS WHEREOF this Agreement has been executed by a duly authorized representative of the parties with the authority and in the capacity therein noted.

TOWN OF BOLTON
A Municipal Corporation

By: *Alexander G. Gabriels, III*
ALEXANDER G. GABRIELS, III, Supervisor

BOLTON LOCAL DEVELOPMENT
CORPORATION

By: *Ronald Alcan*
RONALD ALCAN, Treasurer

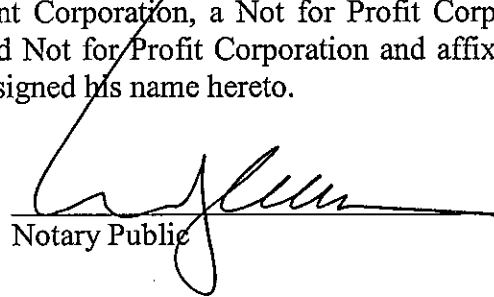
STATE OF NEW YORK)
) ss.:
COUNTY OF WARREN)

On this 3rd day of ^{November} ~~September~~, Two Thousand and Five, before me, the subscriber, personally appeared **ALEXANDER G. GABRIELS, III**, to me personally known, who, being by me duly sworn, did depose and say that he resides at the Town of Bolton, Warren County, New York, and that he is the Supervisor for Town of Bolton, a Municipal Corporation described within, and that knowing the seal of said Municipal Corporation and affixing the seal to this instrument in his capacity as Supervisor, signed his name hereto.

[Signature]
Notary Public

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

On this 3rd day of ^{November}~~September~~, Two Thousand and Five, before me, the subscriber, personally appeared **RONALD ALCAN**, to me personally known, who, being by me duly sworn, did depose and say that he resides at Town of Bolton, Warren County, New York, that he is the Treasurer for the Bolton Local Development Corporation, a Not for Profit Corporation described within, and that knowing the seal of said Not for Profit Corporation and affixing the seal to this instrument in his capacity as Treasurer, signed his name hereto.



Notary Public

SPECIMEN LOAN NOTE

\$ _____

Dated: _____

Interest: _____

The **TOWN OF BOLTON LOCAL DEVELOPMENT CORPORATION** created and existing by the Not for Profit Laws of the State of New York and having a mailing address of P.O. Box 7, Bolton Landing, New York 12814, acknowledging receipt of loan funds advanced as indicated hereinabove from the Town of Bolton to be repaid to the Town of Bolton upon such terms and specifications as hereinafter specified hereby **PROMISES TO PAY** said sum in full.

The funds loaned are restricted pursuant to the terms and conditions of the **BOLTON LOCAL DEVELOPMENT CORPORATION FUNDING AGREEMENT** dated _____, 2005.

Repayment shall be made upon the following terms:

**BOLTON LOCAL DEVELOPMENT
CORPORATION**

By: _____

Officer

SPECIMEN GRANT AGREEMENT

\$ _____

Dated: _____

The **TOWN OF BOLTON LOCAL DEVELOPMENT CORPORATION** created and existing by the Not for Profit Laws of the State of New York and having a mailing address of P.O. Box 7, Bolton Landing, New York 12814, acknowledging receipt of grant funds advanced as indicated hereinabove from the Town of Bolton accepts same without requirement of repayment for the purposes of promoting business, tourism and such activities consistent with its purposes and powers established in its Certificate of Incorporation. Any further specification or restriction and limitation of grant funds is hereinafter specified, and in any case, the grant funds received hereby are restricted pursuant to the terms and conditions of the **BOLTON LOCAL DEVELOPMENT CORPORATION FUNDING AGREEMENT** dated _____, 2005.

Repayment shall not be required so long as grant funds are expended within agreed requirements.

**BOLTON LOCAL DEVELOPMENT
CORPORATION**

By: _____
Officer