

PROJECT SUMMARY

Phoenix Building Supply Inc., d/b/a Forest Building Supply, a New York corporation that fabricates and sells building and construction materials (the “Company”), is seeking financial assistance in connection with the construction, furnishing, and equipping of a new approximately 15,000 square foot facility (the “Facility”) on an approximately 81,000 square foot area of land at one of the Company’s existing locations at 1051 Irving Avenue, Ridgewood, New York. The Facility will be located adjacent to an existing 6,000 square foot building owned by Messing Irving Realty, LLC, a New York limited liability company. The Facility will be owned by Messing Irving Realty, LLC and operated by the Company as a production facility for building materials, a warehouse, a showroom, office space, and a retail counter of approximately 1,000 square feet (the “Project”). The Project cost is approximately \$2,500,000. It is anticipated that the Project will close in May 2020. The Company expects to complete construction, renovation and equipping of the Project within 14 months of closing.

Project Location

1051 Irving Avenue
 Ridgewood, New York 11385

Actions Requested

- Inducement and Authorizing Resolution for an Industrial Program transaction.
- Adopt a negative declaration for the Project. The Project will not have a significant adverse effect on the environment.

Anticipated Closing

May 2020

Impact Summary

Employment	
Jobs at Application:	24
Jobs to be Created at Project Location (Year 3):	8
Total Jobs (full-time equivalents)	32
Projected Average Hourly Wage (excluding principals)	\$18.00
Highest/Lowest Hourly Wage	\$29.00/15.00

Estimated City Tax Revenues	
Impact of Operations (NPV 25 years at 6.25%)	\$4,150,699
One-Time Impact of Renovation	\$155,031
Total impact of operations and renovation	\$4,305,730
Additional benefit from jobs to be created	\$460,318

Estimated Cost of Benefits Requested: New York City	
Building Tax Exemption (NPV, 25 years)	\$682,995
Land Tax Abatement (NPV, 25 years)	\$1,327,111
MRT Benefit	\$28,438
Sales Tax Exemption	\$87,300
Agency Financing Fee	(\$42,000)
Total Cost to NYC Net of Financing Fee	\$2,083,844
Available As-of-Right Benefits (ICAP)	\$870,777
Agency Benefits in Excess of As-of-Right Benefits	\$1,213,067

Phoenix Building Supply Inc.

Costs of Benefits Per Job	
Estimated Total Cost of Net City Benefits per Job	\$37,908
Estimated City Tax Revenue per Job	\$148,939

Estimated Cost of Benefits Requested: New York State	
MRT Benefit	\$15,313
Sales Tax Exemption	\$84,875
Total Cost to NYS	\$100,188

Sources and Uses

Sources	Total Amount	Percent of Total Financing
Commercial Loan	\$1,750,000	70%
Equity	\$750,000	30%
Total	\$2,500,000	100%

Uses	Total Amount	Percent of Total Costs
Hard Costs	\$1,200,000	48%
Soft Costs	\$100,000	4%
Furnishings, Fixtures & Equipment	\$1,100,000	44%
Closing Fees	\$100,000	4%
Total	\$2,500,000	100%

Fees

	Paid At Closing	On-Going Fees (NPV, 25 Years)
Agency Fee	\$42,000	
Project Counsel	\$25,000	
Annual Agency Fee	\$750	\$7,167
Total	\$67,750	\$7,167
Total Fees	\$74,917	

Financing and Benefits Summary

The Company anticipates financing the Project with a line of credit of \$1,750,000 from People's United Bank, extended as part of a refinancing of the mortgage on its property at 1051 Irving Avenue. The line of credit would have an interest only period for 12 months, followed by monthly payments of principal and interest based on a 25-year amortization schedule. It is anticipated to bear interest at a rate equal to approximately One-month LIBOR + 2.15% (indicative rate of 3.92% as of January 10, 2020). The line of credit would be guaranteed by Phoenix Building Supply Inc. and by Bernard Messing individually, and it will be cross-collateralized with the Company's mortgage at 18-46 Decatur Street in Ridgewood, Queens. The Company will also fund the Project with \$750,000 in equity.

The financial assistance proposed to be conferred by the Agency will consist of payments in lieu of City real property taxes, limited exemption from City and State mortgage recording taxes and exemption from City and State sales and use taxes. Based on a review of financial statements, the Company would have an estimated debt service coverage ratio of 2.05x.

Phoenix Building Supply Inc.

Company Performance and Projections

The Project involves the Company constructing a 15,000 square foot storage warehouse located behind the existing 6,000 square foot retail and office space at its 1051 Irving Avenue property. The warehouse will be equipped with vertical racks, which will allow for additional storage space. As part of the project, the Company also anticipates purchasing machinery to fabricate cement blocks, gutters, and leaders (the vertical pipes that transport water to ground level). The Company expects that fabricating cement blocks will reduce its vehicle miles traveled, as the Company currently trucks full cement blocks to its masonry yard, as opposed to sand to make the blocks, the latter of which will consume less volume and necessitate fewer delivery loads.

As part of the Project, the Company will make investments in sustainability measures and participate in workforce development programs. Related to sustainability, the Company will spend no less than \$100,000 on green infrastructure/stormwater management improvements at the Project location above what is required by the applicable New York City regulations. The Department of Environmental Protection will conduct a design review to ensure that the architectural plans meet this threshold. The Company is also planning an investment of approximately \$300,000 to install solar panels on the Facility.

Related to workforce development, the Company will invest in a skills training program for its employees. Based on discussions between the Agency and the Company regarding the needs of the employees, the Company will be required to contract with training providers selected by the Agency, and the selected provider will provide evidence to the Agency that the Company has contracted its services. The Company will also utilize HireNYC for all new positions projected under the terms of the Project, and will participate in additional programming offered by the Department of Youth & Community Development.

Inducement

- I. The Company requires additional space in order to expand operations and meet anticipated future demand.
- II. The Project would not be financially viable without Agency benefits.

UTEP Considerations

The Agency finds that the Project meets one or more considerations from Section I-B of the Agency's Uniform Tax Exemption Policy ("UTEP"), including the following:

- I. The Project will create permanent private-sector jobs.
- II. Financial assistance is required to induce the Project.
- III. The Project is likely to be completed in a timely manner.

Applicant Summary

Founded in 1977, the Company has expanded from its early roots as a hardware store to become a full-service vendor and distributor of construction materials, including building supplies for exterior and interior construction projects, such as rebar steel, drywall, masonry and roofing supplies, lumber and windows. The Company also offers knuckleboom crane services for demolitions, and operates an affiliate trucking company to distribute materials, run by Stephanie Messing, Ben Messing's spouse. In the 1980s, the Company shifted from primarily servicing residential construction towards large-scale commercial projects, and clients now include a range of general contractors, architects, builders, and developers. As part of the Project, the Company anticipates expanding its operations to begin fabricating cement blocks, gutters, and leaders.

Phoenix Building Supply Inc.

Ben Messing, Founder and President

Mr. Messing founded the Company in 1977, after emigrating to the United States from Germany in 1961. Prior to founding the Company, Mr. Messing worked in a lumber yard from 1971 to 1977, rising to the position of foreman. In his role as president of Phoenix Building Supply, Mr. Messing oversees strategic planning, finance, administration, and the purchasing of construction materials.

Employee Benefits

Full-time drivers employed by the Company's affiliate trucking company, Forest Building Supply Inc, are members of Local 282 Union, and receive health care and pension benefits. For non-union employees, the Company currently offers health insurance through the UnitedHealthcare Community Plan at no cost to the employees.

Recapture

Pursuant to UTEP, all benefits are subject to recapture for a 10-year period.

SEQRA Determination

No significant adverse environmental impacts, staff recommends the Board adopt a Negative Declaration for this project. The completed Environmental Assessment Form for this project has been reviewed and signed by Agency staff.

Due Diligence

The Agency conducted a background investigation of the Company and its principals and found no derogatory information.

Compliance Check:	N/A
Living Wage:	Compliant
Paid Sick Leave:	Compliant
Affordable Care Act:	ACA Compliant
Bank Account:	People's United Bank
Bank Check:	Relationships are reported to be satisfactory.
Supplier Checks:	Relationships are reported to be satisfactory.
Customer Checks:	Relationships are reported to be satisfactory.
Unions:	Relationships are reported to be satisfactory.
Vendex Check:	No derogatory information was found.
Attorney:	Ron Mandel, Esq. Belkin Burden Wenig & Goldman, LLP 270 Madison Avenue New York, NY 10016
Accountant:	Jerome Hehir Geschwind & Hehir 200 Motor Parkway, Suite D-24 Hauppauge, NY 11788

Phoenix Building Supply Inc.

Consultant/Advisor: Rob Morel
City One Associates, Inc.
2440 Broadway, Suite 245
New York, New York 10024

Community Board: Queens, CB #5

Phoenix Building Supply Inc.

Income Statement

	<u>FY-18</u>	<u>FY-17</u>	<u>FY-16</u>	<u>% chg 17-18</u>	<u>% chg 16-17</u>
Net sales	23,768,080	24,829,894	22,308,755		
Cost of goods sold	(17,917,194)	(19,045,941)	(16,944,191)		
Rental income	24,000	--	--		
Gross profit	5,874,886	5,783,953	5,364,564	2%	8%
Operating Expenses					
General and administrative expenses	3,796,355	3,724,721	3,734,240		
Depreciation and amortization	743,483	603,343	575,661		
Total Operating Expenses	4,539,838	4,328,064	4,309,901	5%	0%
Income from Operations	1,335,048	1,455,889	1,054,663	-8%	38%
Other Expenses					
Interest expense	1,104,889	454,061	386,954		
Provision for income taxes	28,866	34,425	56,214		
Total Other Expenses	1,133,755	488,486	443,168	132%	10%
Other Income					
Gain on sale of building	--	--	415,866		
Net Income	201,293	967,403	1,027,361	-79%	-6%
Retained earnings, beginning of year	2,371,339	2,095,304	1,575,713		
Member's Equity, beginning of year	2,061,929	906,107	728,715		
Distributions	(108,751)	(55,921)	(330,378)		
Retained earnings, member's equity, end of year	4,525,810	3,912,893	3,001,411	16%	30%

Balance Sheet

	FY-18	FY-17	FY-16	% chg 17-18	% chg 16-17
Assets					
Current Assets					
Cash and cash equivalents	258,353	530,115	217,524		
Accounts receivable, net of allowance for doubtful accounts of \$125,000	4,679,547	4,282,791	3,510,832		
Inventory	4,905,544	4,785,572	4,763,262		
Prepaid expenses	227,779	138,229	85,427		
Total Current Assets	10,071,223	9,736,707	8,577,045	3%	14%
Property and equipment, net	21,130,210 ¹	5,876,464	6,129,568		
Other Assets					
Security deposit	26,510	41,510	26,510		
Closing costs, net	--	--	191,790		
Total Assets	31,227,943	15,654,681	14,924,913	99%	5%
Liabilities and Stockholder's/Member's Equity					
Current Liabilities:					
Line of credit	4,999,074	4,500,000	3,500,000		
Mortgage payable, current portion	302,896	134,421	128,204		
Long-term debt, current portion	278,970	391,077	359,403		
Accounts payable and accrued expenses	1,320,792	1,464,254	1,477,946		
Taxes payable	48,709	54,737	52,694		
Total Current Liabilities	6,950,441	6,544,489	5,518,247	6%	19%
Long-Term Liabilities					
Mortgage payable, net of current portion	17,319,426	3,573,346	3,875,730		
Notes payable, net of current portion	1,031,266	826,296	1,128,524		
Total Long-Term Liabilities	18,350,692	4,399,642	5,004,254		
Total Liabilities	25,301,133	10,944,131	10,522,501	131%	4%
Commitments					
Common stock	1,000	1,000	1,000		
Additional paid in capital	1,400,000	1,400,000	1,400,000		
Retained earnings	2,574,465	2,371,339	2,095,304		
Member's equity	1,951,345	938,211	906,108		
Total Stockholder's/Member's Equity	5,926,810	4,710,550	4,402,411	26%	7%
Total Liabilities and Stockholder's/Member's Equity	31,227,943	15,654,681	14,924,913		

¹ The increase in long-term liabilities and mortgage payable in FY-18 primarily reflects the Company's purchase of the property at 1051 Irving Avenue, which they had previously leased. In addition, the mortgage on a property located at 18-46 Decatur Street that is owned by an affiliate real estate holding company was added to the Company's consolidated balance sheet, since the Company's assets are used as collateral in that mortgage.

PHOENIX
BUILDING SUPPLY INC.

D.B.A Forest Building Supply

Office: 74-02 Forest Avenue ~ Ridgewood, NY 11385

Mr. Noah Schumer
New York City Industrial Development Agency
One Liberty Plaza
New York, NY 10024

December 10, 2019

Dear Mr. Schumer,

Our company, operating on the border of Ridgewood and Bushwick, distributes, warehouses and sells a full array of building supplies and plans to start a small production division fabricating gutters and leaders as well as pre-hung doors. We've been operating as a "mom & Pop" business since 1977 starting with a small neighborhood hardware store and developing and expanding into our large commercially based distribution business serving the local tri-state market.

As I'm sure you have heard from other IDA applicants, this is a difficult business environment and operating in New York certainly has its challenges. In order to continue to grow and to be able to compete with the large publicly owned and financed companies such as Lowe's and others that dominate this industry, we have to diversify, expand (build this 15,000 square-foot facility) and consolidate.

One of our options is to do this IDA project, consolidating, expanding, and setting up a production division. This will create at a minimum 8 new jobs and keep all our employees in Queens. The other option, is to abandon the new construction, sell off 30,000 to 40,000 ft.² of our yard to a neighboring self-storage warehouse operation has already expressed interest in the property. These proceeds (minimum \$6 million) would enable us to easily acquire a large 50,000 to 75,000 square-foot warehouse and yard in New Jersey and relocate 80% of our operations there, leaving a small skeleton crew at the remaining 30,000 square-foot yard in Irving Avenue. All our company's growth in sales and employment would consequently occur in New Jersey. The local depot would just be for deliveries for our remaining local customers.

There are seven similar building supply companies who through the years have vacated Maspeth, Queens and nearby Brooklyn locations and relocated to New Jersey because it was too expensive to expand in the boroughs. These businesses have thrived by either fully relocating to New Jersey or doing the bifurcated operation we are contemplating with a headquarters in New Jersey and the small distribution yard in Queens.

We need the help of the New York City IDA and the land tax abatement as well as the other benefits to help defray the costs of this new construction and plow back the additional savings into the business so we can be more competitive. Pricing is key for us to maintain our customers loyalty. Without the IDA's involvement, we would not do this project. We hope that the New York City IDA will approve our project so we can remain in New York and continue to expand our operations and employment here in Queens. Thank you for your consideration

Sincerely, Ben Messing



**RESOLUTION INDUCING THE FINANCING OF A
MANUFACTURING AND WAREHOUSING FACILITY
WITH RELATED MULTI-USES FOR THE BENEFIT OF
PHOENIX BUILDING SUPPLY, INC. AS A STRAIGHT-
LEASE TRANSACTION AND AUTHORIZING THE
EXECUTION AND DELIVERY OF AGREEMENTS IN
CONNECTION THEREWITH**

WHEREAS, the New York City Industrial Development Agency, New York, New York (the “Agency”) is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Chapter 1082 of the 1974 Laws of New York, as amended (collectively, the “Act”), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, Phoenix Building Supply, Inc., a New York corporation doing business as Forest Building Supply (the “Applicant”), has entered into negotiations with officials of the Agency for the renovation and equipping of a facility (the “Facility”), consisting of the construction, furnishing and equipping of a new approximately 15,000 square foot facility on an approximately 81,000 square foot parcel of land located at 1051 Irving Avenue, Ridgewood, New York, all for the use by the Applicant in the production of building materials, and as warehouse, showroom, office and retail space, for lease to the Agency by the owner of the Facility, Messing Irving Realty, LLC or another real estate holding company affiliated with the Applicant (collectively, the “Company”), and sublease by the Agency to the Company for subsequent sub-sublease in whole to the Applicant, and having an approximate total project cost of approximately \$2,500,000 (the “Project”); and

WHEREAS, the Applicant has submitted an application with respect to the Project (the “Application”) to the Agency to initiate the accomplishment of the above; and

WHEREAS, the Application sets forth certain information with respect to the Applicant and the Project, including the following: that the Applicant plan to expand its operations at its current facility in Queens; that it currently employs approximately 24 full time equivalent employees and expects to employ an additional 8 employees in The City of New York (the “City”) within the three years following the completion of the Project; that the Applicant must obtain Agency financial assistance in the form of a straight-lease transaction to enable the Applicant to proceed with the Project and thereby establish and expand its operations in the City; and that, based upon the financial assistance provided through the Agency, the Applicant desire to proceed with the Project and establish and expand its operations in the City; and

WHEREAS, the Agency held a public hearing with respect to the Project on February 13, 2020; and

WHEREAS, based upon the Application, the Agency hereby determines that Agency financial assistance and related benefits in the form of a straight-lease transaction between the Agency and the Applicant and the Company are necessary to induce the Applicant to expand its operations and proceed with the Project; and

WHEREAS, the Applicant and/or the Company have entered into or may enter into loan commitments with one or more commercial banks, institutional lenders or governmental entities lenders acceptable to the Applicant and the Agency (collectively, the “Lender”), which may provide funds to the Applicant and/or the Company in the form of a loan to finance a portion of the costs of the Project, and the Agency and the Applicant and/or the Company will grant one or more mortgages on the Facility to the Lender (collectively, the “Mortgage”); and

WHEREAS, in order to provide financial assistance to the Applicant and the Company for the Project, the Agency intends to grant the Applicant and the Company financial assistance through a straight-lease transaction in the form of real property tax abatements, sales tax exemptions and mortgage recording tax exemptions all pursuant to the Act;

NOW, THEREFORE, NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby determines that the Project and the provision by the Agency of financial assistance to the Applicant and the Company pursuant to the Act in the form of a straight-lease transaction will promote and is authorized by and will be in furtherance of the policy of the State of New York as set forth in the Act and hereby authorizes the Applicant and the Company to proceed with the Project. The Agency further determines that:

(a) the Project shall not result in the removal of any facility or plant of the Applicant or the Company or any other occupant or user of the Facility from outside of the City (but within the State of New York) to within the City or in the abandonment of one or more facilities or plants of the Applicant or the Company or any other occupant or user of the Facility located within the State of New York (but outside of the City);

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

(c) not more than one-third of the total Project cost is in respect of facilities or property primarily used in making retail sales of goods or services to customers who personally visit such facilities within the meaning of Section 862 of the New York General Municipal Law.

Section 2. To accomplish the purposes of the Act and to provide financial assistance to the Applicant and the Company for the Project, a straight-lease transaction is hereby authorized subject to the provisions of this Resolution.

Section 3. The Agency authorizes the Applicant and the Company to proceed with the Project as herein authorized. The Applicant and the Company are authorized to proceed with the Project on behalf of the Agency in accordance with this Resolution, the Company Lease Agreement and the Agency Lease Agreement; provided, however, that it is acknowledged and agreed by the Applicant and the Company that (i) nominal leasehold title to or other interest of the Agency in the Facility shall be for purposes of granting financial assistance, and (ii) the Applicant and the Company are hereby constituted the agents for the Agency solely for the purpose of effecting the Project and neither the Agency nor any of its members, directors, officers, employees or agents (other than the Applicant, as aforesaid) shall have personal

liability for any such action taken by the Applicant or the Company or any director, officer, employee, agent or affiliate of either, for such purpose.

Section 4. The execution and delivery of a Company Lease Agreement, an Agency Lease Agreement and the Mortgage (each document referenced in this Section 4 being, collectively, the “Agency Documents”), each being substantively the same as approved by the Agency for prior transactions, is hereby authorized. The Chairman, Vice Chairman, Executive Director, Deputy Executive Director and General Counsel of the Agency are each hereby authorized to execute, acknowledge and deliver each such Agency Document. The execution and delivery of each such agreement by one of said officers shall be conclusive evidence of due authorization and approval.

Section 5. The officers of the Agency are hereby designated the authorized representatives of the Agency, and each of them is hereby authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution. The Agency recognizes that due to the unusual complexities of the transaction it may become necessary that certain of the terms approved hereby may require modifications which will not affect the intent and substance of the authorizations and approvals by the Agency herein. The Agency hereby authorizes the Chairman, Vice Chairman, Executive Director, Deputy Executive Director or General Counsel to approve modifications to the terms approved hereby which do not affect the intent and substance of this Resolution.

Section 6. The officers of the Agency and other appropriate officials of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Applicant and the Company to assist in the Project.

Section 7. Any costs and expenses incurred by the Agency with respect to the Project and the financial assistance contemplated by this Resolution shall be paid by the Applicant, whether or not the Applicant proceeds with the financing of the Project as contemplated herein or financial assistance by the Agency to the Applicant, through the straight lease transaction between the Agency and the Applicant, is provided as herein authorized (other than by the sole fault of the Agency). By acceptance hereof, the Applicant agrees to pay such costs and expenses and further agrees to indemnify the Agency, its members, directors, officers, employees and agents and hold the Agency and such persons harmless against claims for any loss, liability, damage or injury or cost or expense incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project and the financing thereof.

Section 8. This Resolution is subject to the approval of a private investigative report with respect to the Applicant and the Company. The provisions of this Resolution shall continue to be effective until one year from the date hereof whereupon the Agency may, at its option, terminate the effectiveness of this Resolution (except with respect to the matters contained in Section 7 hereof) unless prior to the expiration of such year the Agency shall by subsequent resolution extend the effective period of this Resolution.

Section 9. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution and contained in the Agency Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this Resolution or any of the Agency Documents shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in any Agency Document shall be deemed to be a covenant, stipulation, obligation or agreement of any member, director, officer, agent or employee of the Agency in his or her individual capacity thereof and neither the members nor the directors of the Agency nor any officer executing any Agency Document shall be liable personally for any amounts payable thereunder or arising from claims thereon or be subject to any personal liability or accountability by reason of the execution and delivery or acceptance thereof.

Section 10. The Agency, as lead agency, is issuing this determination pursuant to the State Environmental Quality Review Act (“SEQRA”) (Article 8 of the Environmental Conservation Law) and implementing regulations contained in 6 N.Y.C.R.R. Part 617. This determination is based upon the Agency’s review of information provided by the Applicant and such other information as the Agency has deemed necessary and appropriate to make this determination.

The Agency hereby determines that the Project, an Unlisted action, pursuant to SEQRA and the implementing regulations, will not have a significant effect on the environment and that a Draft Environmental Impact Statement will not be prepared for the Project. The reasons supporting this determination with respect to the Project are as follows:

(a) The proposed project would not result in a substantial adverse change in existing traffic, air quality, or noise levels. The proposed building addition would provide warehouse and production space and would not result in significant additional traffic.

(b) The proposed project would not result in significant adverse impacts on cultural, archeological, architectural, or aesthetic resources of the existing neighborhood.

(c) The proposed project would not result in significant adverse impacts to natural resources, critical habitats, or water quality.

(d) The proposed project would not result in a change in existing zoning or land use. The proposed use would be as-of-right under zoning.

(e) A Phase I Environmental Site Assessment conducted on the site noted no Recognized Environmental Conditions (RECs), controlled RECs or historical RECs. As part of the Phase I ESA, one (1) 275-gallon aboveground waste oil tank was observed on the parcel. There were no olfactory nor visual indications of the presence of a leak observed. The ESA recommended that the tank be properly registered with the NYSDEC. The Applicant provided documentation that the tank has since been registered with NYSDEC. Therefore, no adverse impacts related to hazardous materials are expected from the proposed project.

(f) No other significant effects upon the environment that would require the preparation of an Environmental Impact Statement are foreseeable.

Section 11. The Chairperson, the Vice Chairperson, the Secretary, the Assistant Secretary, the Executive Director and the Deputy Executive Director and the General Counsel of the Agency, and any member of the Agency, are hereby designated the authorized representatives of the Agency and each of them is hereby authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits, agreements and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution and the Agency Documents.

Section 12. In connection with the Project, the Applicant and Company covenant and agree to comply, and to cause each of their respective contractors, subcontractors, agents, persons or entities to

comply, with the requirements of General Municipal Law Sections 875(1) and (3), as such provisions may be amended from time to time.

(a) The Applicant and Company covenant and agree that pursuant to General Municipal Law Section 875(3) the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Company New York State sales or use tax savings taken or purported to be taken by the Applicant and the Company, and any agent or any other person or entity acting on behalf of the Applicant and the Company, to which the Company is not entitled or which are in excess of the maximum sales or use tax exemption amount authorized in Section 13 of this Resolution or which are for property or services not authorized or taken in cases where the Applicant and the Company, or any agent or any other person or entity acting on behalf of the Applicant and the Company, failed to comply with a material term or condition to use property or services in the manner required by this Resolution or any agreements entered into among the Agency, the Applicant and the Company and/or any agent or any other person or entity acting on behalf of the Applicant and the Company. The Applicant and the Company shall, and shall require each agent and any other person or entity acting on behalf of the Applicant and the Company, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such New York State sales or use tax savings 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 of the New York State Department of Taxation and Finance (the "Commissioner") to assess and determine New York State sales or use taxes due from the Company under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

(b) The Applicant and the Company are hereby notified (provided that such notification is not a covenant or obligation and does not create a duty on the part of the Agency to the Company or any other party) that the Agency is subject to certain requirements under the General Municipal Law, including the following:

(i) In accordance with General Municipal Law Section 875(3)(c), if the Agency recovers, recaptures, receives, or otherwise obtains, any amount of New York State sales or use tax savings from the Applicant and the Company, any agent or other person or entity, the Agency shall, within thirty days of coming into possession of such amount, remit it to the Commissioner, together with such information and report that the Commissioner deems necessary to administer payment over of such amount. The Agency shall join the Commissioner as a party in any action or proceeding that the Agency commences to recover, recapture, obtain, or otherwise seek the return of, New York State sales or use tax savings from the Company or any other agent, person or entity.

(ii) In accordance with General Municipal Law Section 875(3)(d), the Agency shall prepare an annual compliance report detailing its terms and conditions described in General Municipal Law Section 875(3)(a) and its activities and efforts to recover, recapture, receive, or otherwise obtain State sales or user tax savings described in General Municipal Law Section 875(3)(b), together with such other information as the Commissioner and the New York State Commissioner of Economic Development may require. Such report shall be filed with the Commissioner, the Director of the Division of the Budget of The State of New York, the New York State Commissioner of Economic Development, the New York State Comptroller, the Council of the City of New York, and may be included with the annual financial statement required by General Municipal Law Section 859(1)(b). Such report shall be filed regardless of whether the Agency is

required to file such financial statement described by General Municipal Law Section 859(1)(b). The failure to file or substantially complete such report shall be deemed to be the failure to file or substantially complete the statement required by such General Municipal Law Section 859(1)(b), and the consequences shall be the same as provided in General Municipal Law Section 859(1)(e).

(iii) The foregoing requirements of this Section 12 shall apply to any amounts of New York State sales or use tax savings that the Agency recovers, recaptures, receives, or otherwise obtains, regardless of whether the Agency, the Applicant or the Company or any agent or other person or entity acting on behalf of the Applicant or the Company characterizes such benefits recovered, recaptured, received, or otherwise obtained, as a penalty or liquidated or contract damages or otherwise. The foregoing requirements shall also apply to any interest or penalty that the Agency imposes on any such amounts or that are imposed on such amounts by operation of law or by judicial order or otherwise. Any such amounts or payments that the Agency recovers, recaptures, receives, or otherwise obtains, together with any interest or penalties thereon, shall be deemed to be New York State sales or use taxes and the Agency shall receive any such amounts or payments, whether as a result of court action or otherwise, as trustee for and on account of New York State.

Section 13. In connection with the Project, the Agency intends to grant the Applicant and the Company sales tax exemptions in an amount not to exceed \$172,175, real property tax exemptions and a mortgage recording tax exemption.

Section 14. This Resolution shall take effect immediately.

ADOPTED: February 18, 2020

ACCEPTED: _____, 2020

PHOENIX BUILDING SUPPLY, INC.

By: _____
Name:
Title:

MESSING IRVING REALTY, LLC

By: _____
Name:
Title: