

FERRYBOAT OPERATION AND MAINTENANCE AGREEMENT

This Ferryboat Operation and Maintenance Agreement (the "Agreement") is made this 21st day of November, 2023, by and between the Government of the Virgin Islands, by the Virgin Islands Department of Property and Procurement on behalf of the Department of Public Works (the "Government") and Varlack Ventures, Inc., a Virgin Islands Corporation (the "Ferryboat Operator").

WHEREAS, the Government recognizes the necessity for ferryboat service between the Islands of St. Thomas and St. John, specifically Red Hook and Cruz Bay respectively, to provide public transportation for residents and visitors alike and therefore acquired two marine vessels ("Government Ferryboats") to assist in providing ferryboat transportation services between the two islands; and

WHEREAS, the Government is the titled owner of the vessel named M/V Red Hook I ("Designated Government Ferryboat"), which is one of the Government Ferryboats referenced above; and

WHEREAS, the Government grants the right to advertise on Red Hook I ("Designated Government Ferryboat") to Ferryboat Operator, subject to compliance with Federal Transit Administration and Government rules and regulations; and

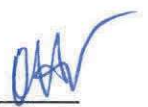
WHEREAS, Ferryboat Operator currently holds a franchise to operate a public marine transportation service ("Ferry Service") between St. Thomas and St. John; and

WHEREAS, Ferryboat Operator has indicated a willingness to continue to provide commercial public marine transportation services to all passengers traveling lawfully between the two islands on the aforesaid marine vessels, and in conjunction with continuation of its present Ferry Service, to provide expanded or enhanced capacity for such service by utilizing the Designated Government Ferryboat to supplement the existing Ferry Service; and

WHEREAS, Ferryboat Operator has assured Government of its ability to operate and maintain said Designated Government Ferryboats in a safe, seaworthy condition, and abide by the laws and rules and regulations of the Virgin Islands, to include those of the Virgin Islands Public Service Commission ("PSC") (subject to the terms of this agreement which shall be controlling), and the laws of the United States as may apply, as well as applicable international maritime laws, rules, regulations and customs that are relevant to the marine operations of the ferryboats on the sea and

WHEREAS, Government has determined that it must subsidize Ferryboat services between the Islands of St. Thomas and St. John, through supply of the Government Owned Ferryboats and/or provision of a financial subsidy, to the extent that the revenues collected from passengers, based on rates set by the PSC for Ferryboat Operator's owned ferryboats, are

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insufficient to fully pay for costs of operation, including a reasonable profit or return to the operators, and to provide continuous, affordable service of the ferryboats for the public, and

WHEREAS, Ferryboat Operator has agreed to operate and maintain the Designated Government Ferryboat under this Agreement as more fully described herein below, subject to the terms of this agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and conditions herein set forth, the parties hereto agree as follows:

1. The Boat M/V Red Hook I

The Government shall provide the Designated Government Ferryboat, the Midship Marine built vessel a twin screw, diesel-powered aluminum catamaran suitable for coastwise-20 miles harbor of safe refuge use approximately 76.4 feet long, 25.5 feet wide and 9.7 feet in depth to Ferryboat Operator for the provision of the services hereunder. This vessel is built to and certified by the United States Coast Guard regulations to carry 200 passengers and 4 crew. The hull is flush deck design with a main cabin and pilot house mounted above. Interior seating is lightweight aluminum seating with fire retardant cushions. Electrical outlets are located in convenient areas around the perimeter of the main cabin. Standards for construction are those set forth by the United States Coast Guard in vessels carrying passengers for hire using the "Rules and Regulations for Small Passenger Vessels" (under 100 gross tons) "Subchapter T and K".

2. Term

This Agreement shall become effective upon the execution of this Agreement by the Governor of the Virgin Islands after the delivery of the designated Government ferryboat to the Ferryboat Operator and expire thirty-six (36) months thereafter, unless extended by mutual agreement of the parties.

3. Accounting and Compensation

The Ferryboat Operator shall be responsible for collecting all passenger fees and fares, as authorized by the PSC, and shall maintain a detailed accounting record. The Ferryboat Operator shall pay all costs of operation and maintenance, plus insurance and all other costs associated with the operation of the vessel.

Ferryboat Operator shall submit to the Department of Public Works on or before June 30th of each year an audited financial statement and report for the previous year.

4. Maintenance and Repairs

The Ferryboat Operator is responsible for all maintenance, including preventative maintenance, repair maintenance, emergency repairs, emergency recovery, spare parts supply, cleanliness, appearance and general upkeep of the Designated Government Ferryboat.

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Maintenance Program. Ferryboat Operator will provide for and accomplish all maintenance necessary to permit operation of ferry services in compliance with U.S. Coast Guard safety standards, laws, regulations, policies and guidance. The Ferryboat Operator shall submit its maintenance plan to the Department of Public Works (DPW) for review and approval on an annual basis no later than December 31st.

Maintenance Records. Detailed, complete, digital maintenance records must be kept and must be transmitted to the DPW at the address provided by DPW on a monthly basis by the fifth day of each month for the prior month.

Preventative Maintenance. Ferryboat Operator shall adhere to all manufacturer's recommended preventative maintenance schedules and procedures, provided, however, to the extent this action does not void any existing manufacturer's warranty's for the Designated Government Ferryboat or its parts, that Ferryboat Operator may elect to engage or employee qualified service and repair technicians to provide such preventive and repair maintenance, notwithstanding any purported requirement of the manufacturers to use their staff, technicians or franchisees, for maintenance and repair of the Vessel, and Ferryboat Operator may use fully equivalent parts and materials in such maintenance and repair, whether or not procured from the manufacturer, to avoid unnecessary delay in completing maintenance and repair.


The Ferryboat Operator shall maintain a preventative maintenance plan. The plan must be reviewed and timely approved by the VI Department of Public Works. In the event a preventative maintenance plan is submitted and not rejected or made the subject of proposed revision, within 15 business days of receipt thereof by the VI Department of Public Works, the plan shall be deemed approved. The Ferryboat Operator shall submit the plan within 90 days of execution of this contract, and shall be deemed approved if not rejected within 15 business days of submission. The Ferryboat Operator must submit monthly reports to the Department of Public Works by the fifth day of each month detailing all preventive and other maintenance activity during the prior month.

Repair Maintenance. All necessary repair maintenance shall be performed in a timely manner. All repairs shall be complete, shall be in accordance with manufacturer's recommendations and general good maintenance practices, subject to the terms of this agreement set forth above.

Ferryboat Downtime. In the event that the normal operation of the Designated Government Ferryboat has been suspended or must be interrupted for a period in excess of 48 hours due to operational issues, maintenance, blockages, weather, or uncontrollable events, the Government must be notified in writing within 72 hours of the start of the suspension. Additionally, the Government must be notified in writing within 24 hours of the resumption of service, to include the cause or reason, therefore, at the address stated herein below. Written notice is sufficient if sent by email to the address below.

Cleanliness and appearance. The Ferryboat operator must maintain the vessel in a clean and appealing condition.

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Spare Parts Supplies. Ferryboat Operator shall maintain spare parts supply such that parts are available to keep the vessel in service as required. The Ferryboat Operator shall issue a quarterly Spare Parts report to DPW showing the spare parts inventory as is and the spare parts inventory plan. The Ferryboat Operator's spare part plan shall incorporate the spare parts plans provided by the various equipment manufacturers. The Spare Parts report shall be submitted to DPW within thirty (30) calendar days of the close of each quarter.

Annual Inspection. Upon the anniversary date of this Agreement or such other date as agreed to by the parties, the Ferryboat Operator shall make the vessel available to the Government or its designated agent for the purpose of an annual inspection upon the Government's request. The Annual Inspection shall not be scheduled at any time that would interfere with timely operation of the Ferryboat Operator's schedule.

Failure to Maintain. Failure on the part of the Ferryboat Operator to maintain the Government Designated Ferryboat in accordance with the provisions of this Paragraph 4, shall be grounds for termination with cause in accordance with Paragraph 17 of this Agreement.


5. Service Assurances and Maintenance

During the term of this Agreement, Ferryboat Operator, shall operate the designated Government Ferryboat exclusively to provide passenger transportation during normal operating hours of the Ferryboat Operator's existing ferryboat operations, to and from Cruz Bay, St. John, and Red Hook, St. Thomas, commonly known as Maritime Route 32M, for 365 days per year, except in the event that the Designated Government Ferryboat is unavailable due to maintenance requirements, U.S. Coast Guard directives, or required repairs, including mechanical failures, at such scheduled times as shall be agreed upon by the parties, or when required for immediate repair, as shall be reasonably implemented by Ferryboat Operator to best accommodate public marine transportation requirements between Red Hook, St. Thomas, and Cruz Bay, St. John, and subject to the approval of the Public Services Commission ("PSC"). To the extent required by law, the Ferryboat Operator's operation of the Government Ferryboat shall be conducted in conformity with the laws and regulations of the VI Port Authority, U.S. Coast Guard, and/or the PSC. Operation of the Designated Government Ferryboat shall be undertaken by Ferryboat Operator's officers, employees, agents, representatives, and affiliates.

6. Indemnification

Ferryboat Operator agrees to indemnify, defend and hold harmless Government from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges and expense (including attorney's fees) and causes of action of whatsoever character which Government may incur, sustain or be subjected to, arising out of or in any way connected to the services to be performed by Ferryboat Operator under this Agreement and arising from any cause, except the sole negligence of Government.

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7. Liability of Others

Nothing in this Agreement shall be construed to impose any liability upon the Government to persons, firms, associations, corporations, autonomous or semi-autonomous government agencies, boards or commissions engaged by Ferryboat Operator, its agents, servants, or independent contractors or to whom Ferryboat Operator is responsible in accordance with the law. Nor shall Government be liable, in law or equity, to any person, firm, association, corporation, autonomous or semi-autonomous agency, board or commission for the acts, omissions, liabilities, obligations, taxes, or fees of Ferryboat Operator, of whatever nature, including but not limited to unemployment insurance or social security taxes for the Ferryboat Operator, its servants, agents, or independent contractors.

8. Insurance

The Government shall deliver the Designated Government Ferryboat to Ferryboat Operator, at which time Ferryboat Operator shall be fully insured for commercial marine insurance hull and machinery coverage, pollution insurance, and comprehensive liability insurance as reasonably required, with hull and equipment coverage in any amount equal to the value of the Government ferryboat, and with liability insurance in an amount no less than \$5,000,000.00 port risk and such other coverage as the Government may reasonably require, naming Government as an additional insured on all liability insurance and other coverage required to reasonably protect Government and Ferryboat Operator. Ferryboat Operator shall provide proof of the required coverages for the execution of this Agreement and thereafter no later than ten (10) days after renewal of each policy, as is applicable.

This Agreement may be terminated for failure of the Ferryboat Operator to maintain current insurance as stated herein.

9. Independent Contractor

Ferryboat Operator, its agents, servants, officers, consultants, and employees shall perform the services contemplated by this Agreement as an independent contractor and nothing herein contained shall be construed to be inconsistent with such status or relationship.

10. Taxes

Ferryboat Operator covenants that it shall be liable for all United States Virgin Islands and federal taxes applicable to Ferryboat Operator and shall timely pay all such taxes, including, but not limited to, gross receipts taxes under 33 V.I.C. 43, unless otherwise exempt therefrom under any valid provision of law or regulatory action.

11. Assignment

Ferryboat Operator shall not subcontract or assign the vessel or any government owned property under this Agreement without the prior written consent of the Government.

12. Records and Record-Keeping

Ferryboat Operator shall maintain and keep precise records of operations of the Government Ferryboat named herein for the duration of the Agreement, such records to include, but not be limited to, schedules of operation, passenger receipts, payments from charter operations (if any), financial records, audits, dates of trips, costs for maintenance and repairs, number of passengers, cargo, fuel consumption, accidents. Said records shall be in writing, digitalized and made available to the Government of the Virgin Islands upon demand. The records for the operation of M/V Red Hook I shall be separate from the Ferryboat Operator's other records of its existing ferryboat operations.

Ferryboat Operator shall maintain a credible financial management system that meets generally accepted accounting principles for the purpose of audit and examination of records in connection to this Agreement.

Ferryboat Operator shall maintain and make available at its office at all reasonable times the records, materials, and other evidence described in this paragraph, for examination, audit, or reproduction, for a period of not less than 7 years under this Agreement or for any longer period required by statute. If this Agreement is completely or partially terminated, the Ferryboat Operator shall make available the records relating to the work terminated for a period of not less than 7 years following such termination.

Copies of all documents, books, records, instructional materials, programs, printouts and memoranda of every description derived therefrom and pertaining to this Agreement shall become the property of the Government and shall be turned over to it at the termination of this Agreement. The above-described materials shall not be used by Ferryboat Operator or by any other person or entity except upon the written permission of the Government.


All information for any accident involving the M/V Red Hook I and supporting documentation must be submitted to the Government within forty-eight (48) hours of the accident.

All reports for U.S. Coast Guard inspections of the Government Designated Ferryboat shall be submitted to the Government within 15 calendar days of Ferryboat Operator's receipt of same.

13. False Claims

Ferryboat Operator warrants that it shall not make or present any claim upon or against the Government of the Virgin Islands or any officer, department, board, commission, or other agency thereof, knowing, or having reason to know, that such claim to be false, fictitious, or fraudulent, or knowingly produce any record of operations that are false, fictitious or fraudulent.

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14. Employment Status

Nothing stated in this Agreement, no payment or subsidy received, nor any relationship between Ferryboat Operator and Government shall be construed in such a manner or interpreted in such a way as to suggest or form the conclusion that Ferryboat Operator, its servants, agents, officers, or employees are employees, servants or agents of the Government.

15. Non-Discrimination

No person wishing to lawfully make use of Ferryboat Operator's ferryboat services shall be denied transportation aboard the named vessels on account of race, creed, color, sex, sexual orientation, religion, disability, or national origin. The Ferryboat Operator shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964 (78 Stat. 252), the Regulations of DOT issued thereunder (CFR Title 49, Subtitle A, Part 21), and the assurance by the Ferryboat Operator pursuant thereto, to the end that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Transportation.

In connection with the execution of this Agreement, the Ferryboat Operator shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, or disability. The Ferryboat Operator shall take affirmative action to insure that applicants are employed and that employees are treated during their employment, without regard to race, religion, color, sex, national origin, age, or disability. Such actions shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay, or other forms of compensation; and selection of training, including apprenticeship. The Ferryboat operator will incorporate the foregoing requirements of this paragraph in all subcontracts for services covered by this Agreement.

Further, the Ferryboat Operator agrees to comply with the provisions of the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, P.L. 93112, and other applicable Federal regulations relating thereto, issued by the U.S. Department of Transportation, prohibiting discrimination against otherwise qualified individuals under any program or activity receiving financial assistance covered by this Agreement and by providing access to all facilities.

16. Nature of Subsidy and Legal Authority

Pursuant to the Stipulation Agreement between the parties hereto the Government provides a financial subsidy to the Ferryboat Operator to assist with the operational cost, provided the stated conditions therein are met, including the duty of the Ferryboat Operator to provide the Government with an annual certified financial audited statement. Ferryboat Operator shall have a certified financial audit prepared annually by independent auditors no later than June 30th each year

of its operations, or by the date of required submission to the Public Services Commission of an annual audit.

17. Termination

Government shall have the right to terminate this Agreement with or without cause. With cause on sixty (60) days written notice to the Ferryboat Operator. Termination without cause shall be subject to negotiation and/or Mediation. In the event of a termination, the Government shall have the right to take possession of the Government Ferryboat.

18. Right to Terminate and Take Possession

If service under this Agreement is not performed in accordance with the terms hereof, Government shall provide written notice to the Ferryboat Operator, specifying the alleged breach hereof and the facts or evidence in support of the allegation, and giving Ferryboat Operator a period of 90 days in which to cure any breach or default. In the event that Ferryboat Operator fails to cure within the time stated, Government will then have the right to terminate this agreement and to immediately take possession of the Designated Government Ferryboat, upon 30 days' notice.

No such application shall be made by the Government if and while Ferryboat Operator gives satisfactory assurance to the Government that the breach or default will be cured in a manner acceptable to the Government.

19. Force Majeure

Ferryboat Operator shall be excused from performance under this Agreement for any period that Ferryboat Operator is prevented from performing any services in whole or in part as a result of acts of God, actions or inactions of the Government which actually interrupts ferryboat transportation, floods, epidemics, fire, quarantine restrictions, continuous power outages over 24 hours, strikes, freight embargoes, unusually severe weather, or any weather that causes the U.S. Coast Guard or the Virgin Islands Port Authority to direct that the ferryboats not operate. Such non-performance (collectively, a Force Majeure Event) shall not be deemed breach of the Agreement. This Section shall not relieve the Ferryboat Operator of responsibility for developing and implementing all prudent contingency and disaster recovery measures. Subcontractor interruptions shall not be considered a Force Majeure Event unless agreed upon by both parties.

Ferryboat Operator shall immediately notify the Government by telephone (to be confirmed in writing, via hand delivery return receipt, email, or telefax, within forty-eight (48) hours of the inception of such delay) of the occurrence of a Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event, all preventive and corrective steps taken, how it affects performance, and the anticipated duration of the inability to perform. It is understood, however, that should a Force Majeure Event occur which makes delivery of such notice impossible or impractical; the time for doing so shall be appropriately extended within the discretion of the Commissioner of the Department of Public Works, until notice can reasonably be given.

20. Incidents/Accidents

Ferryboat Operators must immediately report any major incident or accident to the Department of Public Works or its representatives by telephone (to be confirmed in writing, via hand delivery return receipt, email, or telefax, within forty-eight (48) hours of the occurrence). Major incidents may include vessel accidents with measurable damages, personal injuries, fatalities, capsizing, and sinking. It is understood, however, that should a Force Majeure Event occur which makes delivery of such notice impossible or impractical; the time for doing so shall be appropriately extended within the discretion of the Commissioner of the Department of Public Works, until notice can reasonably be given.

Ferryboat Operators must report any major component repairs as a result of damages. If repairs are made to the hull, weld procedures and material specifications are to be submitted to the Department of Public Works or its representatives within a 24-hour period of such activity. It is understood, however, that should a Force Majeure Event occur which makes delivery of such notice impossible or impractical; the time for doing so shall be appropriately extended within the discretion of the Commissioner of the Department of Public Works, until notice can reasonably be given.

21. Dispute Resolution

If a dispute arises between the parties in relation to this Agreement, or out of this Agreement, the parties agree that the following dispute resolution process must be used:

A meeting must be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute. During the attempt to resolve the dispute Ferryboat Operator shall continue to perform the services described herein.

If, within ten (10) days after such meeting, or such further period agreed to by the parties in writing, the parties have not succeeded in negotiating a resolution of the dispute, the parties agree to submit the dispute to mediation. Mediation shall take place in St. Thomas or St. John as the parties may agree before a certified mediator chosen in accordance with procedures followed in the Superior Court of the Virgin Islands. Each party shall bear one-half the cost of the mediator and their own attorney fees and costs. This provision shall not toll the period referenced in Paragraph 18.

If any dispute cannot be resolved by the foregoing means, the parties shall be entitled to pursue their customary legal remedies.

22. Professional Standards

The Ferryboat Operator agrees to maintain the professional standards applicable to its profession and to consultants doing business in the United States Virgin Islands.

23. Conflict of Interest

- (a) Ferryboat Operator covenants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.
- (b) Ferryboat Operator further covenants that it is:
 - (1) not a territorial officer or employee (i. e., the Governor, Lieutenant Governor, member of the legislature, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensated on a salary, fee or Agreement basis); or
 - (2) a territorial officer or employee and, as such, has:
 - (i) familiarized itself with the provisions of Title 3, Chapter 37 of the Virgin Islands Code, pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof;
 - (ii) not made, negotiated, or influenced this Agreement, in its official capacity;
 - (iii) no financial interest in the Agreement as that term is defined in section 1101 (1) of said Code chapter.

24. Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto, and all prior understanding or communications, written or oral, with respect to the Project, which is the subject matter of this Agreement, are merged herein.

25. General Provisions

- (a) No amendment or waiver of any provision of this Agreement, or consent to any departure by either party from any such provision, shall be effective unless the same shall be in writing and signed by the parties to this Agreement, and, in any case, such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.
- (b) Any and all notices hereunder shall, in the absence of receipted hand delivery, be deemed duly given when mailed, if the same shall be sent by registered or certified mail, return receipt requested, with a copy sent via email, and the mailing date shall be deemed the date from which all time periods pertaining to a date of notice shall run. In the alternative, a notice may be sent by email. Notices shall be addressed to the parties at the following addresses:

CONTRACTOR

Delrise Varlack
President
Varlack Ventures, Inc.
P.O. Box 1300
Cruz Bay, St. John, VI 00831
340.693.9933
bossladydv@hotmail.com & wtodmann@gmail.com

GOVERNMENT

Lisa M. Alejandro
Commissioner
Department of Property and Procurement
8201 Sub Base, Suite 4
St. Thomas, Virgin Islands 00802
340.774.0828
lisa.alejandro@dpp.vi.gov

Derek Gabriel
Commissioner
Department of Public Works
8244 Subbase
St. Thomas, Virgin Islands 00802
340.776.4844
derek.gabriel@dpw.vi.gov

(c) This Agreement shall be governed by, and enforced in accordance with, the laws of the U.S. Virgin Islands. The parties to this Agreement hereby agree to submit to the jurisdiction of the federal and territorial courts located in the Territory of the Virgin Islands in any action or proceeding arising out of or relating to this Agreement. This Agreement shall inure to the benefit of, and be binding upon, Ferryboat Operator and the Government (including any present or future directors, equity owners, are not signatories hereto), and their respective successors and assigns.

(d) This Agreement may be executed in three or more counterparts, and by different parties on separate counterparts. Each set of counterparts showing execution by all parties shall be deemed an original and shall constitute one and the same instrument.

(e) The waiver by any party of any breach of this Agreement shall not operate as or be construed to be a waiver by such party of any subsequent breach.

26. Licensure

The Ferryboat Operator covenants that it has obtained all applicable licenses or permits, temporary or otherwise, as required under the Virgin Islands and federal law and regulations to perform under this Agreement and that it shall timely renew and pay all fees and taxes associated with such licenses or permits.

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27. Facsimile, Electronic & Digital Signatures

A facsimile, electronic or digital signature on this Contract shall be deemed an original and binding upon the Parties hereto.


[INTENTIONALLY LEFT BLANK – SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the parties have hereunto set their signatures on the day written above:

GOVERNMENT OF THE VIRGIN ISLANDS


Derek Gabriel, Commissioner
Department of Public Works


Date


Lisa M. Alejandro, Commissioner
Department of Property and Procurement


10/31/2023
Date

CONTRACTOR


Delrise Varlack, President
Varlack Ventures, Inc.


Date

APPROVED:


Kevin McCurdy
Acting Governor of the Virgin Islands

11/21/2023
Date: _____

APPROVED AS TO LEGAL SUFFICIENCY

DEPARTMENT OF JUSTICE BY:  /s/ Jessica McKenney, esq.

Date: Nov. 14, 2023

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