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NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY  
New York, New York

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INDUSTRIAL INCENTIVE PROGRAM  
(STRAIGHT-LEASE TRANSACTION)

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(2006 J & J Farms Creamery, Inc. and Fisher Foods of Queens Corp. Project)

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**RECORD OF PROCEEDINGS**

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Delivered November 20, 2006

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(STRAIGHT-LEASE TRANSACTION)

(2006 J & J Farms Creamery, Inc. and Fisher Foods of Queens Corp. Project)

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TABLE OF CONTENTS

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**Document  
Number**

**Basic Documents**

1. Lease Agreement, dated as of November 1, 2006, between the New York City Industrial Development Agency (the "Agency") and J & J Farms Realty Joint Venture, as lessee (the "Lessee").
2. Company Lease Agreement, dated as of November 1, 2006, between the Lessee, as landlord, and the Agency, as tenant.
3. Sublease Agreement, dated as of November 1, 2006, between the Lessee and J & J Farms Creamery, Inc. ("J & J") and Fisher Foods of Queens Corp. ("Fisher Foods", together with J & J, the "Sublessees"), as sublessees.
4. Guaranty Agreement, dated as of November 1, 2006, from the Lessee; the Sublessees; and Michael Oberlander, Pearl Oberlander, Simon Friedman and Morris Schlager, as individual guarantors (collectively, the "Individual Guarantors"), to the Agency.

**Closing Documents Delivered by the Agency**

5. Copies of Chapter 1030 of the 1969 Laws of New York, as amended, and Chapter 1082 of the 1974 Laws of New York, as amended.
6. Certificate as to establishment of the Agency and as to appointment of the members thereof.
7. Agency General Certificate.
8. Approving Opinion of Hawkins Delafield & Wood LLP.
9. Directive to the Tax Assessor regarding payments in lieu of taxes.

10. Tax Continuation Letter.
11. Affidavit as to taxation.
12. Opinion of the Vice President for Legal Affairs of the Agency.

**Documents Delivered by the Lessee, the Sublessees and the Individual Guarantors**

13. Letter of Representation, dated November 20, 2006, from the Lessee, the Sublessees and the Individual Guarantors to the Agency.
14. Certificate of the Lessee as to Compliance with Insurance Requirements.
15. Member's Certificate of J & J Farms Redevelopment Company, LLC ("Redevelopment Company").

Exhibit A - Joint Venture Agreement of Lessee  
Exhibit B - Articles of Organization of Redevelopment Company  
Exhibit C - Operating Agreement of Redevelopment Company  
Exhibit D - Authorizing Resolutions of Redevelopment Company

16. Certificate of Good Standing of Redevelopment Company.
17. Member's Certificate of J & J Farms Creamery Company Real Estate, LLC ("Real Estate").

Exhibit A - Business Certificate of Partners of Lessee  
Exhibit B - Articles of Organization of Real Estate  
Exhibit C - Operating Agreement of Real Estate  
Exhibit D - Authorizing Resolutions of Real Estate

18. Certificate of Good Standing of Real Estate.
19. Secretary's Certificate of J & J.  
Exhibit A - Certificate of Incorporation of J & J  
Exhibit B - Bylaws of J & J  
Exhibit C - Authorizing Resolutions of J & J

20. Certificate of Good Standing of J & J.
21. Tax Status Certificate of J & J



22. Secretary's Certificate of Fisher Foods.
  - Exhibit A - Certificate of Incorporation of Fisher Foods
  - Exhibit B - Bylaws of Fisher Foods
  - Exhibit C - Authorizing Resolutions of Fisher Foods
23. Certificate of Good Standing of Fisher Foods.
24. Tax Status Certificate of Fisher Foods.
25. Copies of leasehold title insurance policy with respect to the Facility Realty.
26. Copy of survey.
27. Opinion of Roy P. Kozupsky & Associates LLP, Counsel to the Lessee, the Sublessees and the Individual Guarantors.

**Miscellaneous**

28. Copy of Sales Tax Letter.
29. Endorsement Undertaking from the Lessee.
30. Memorandum of Closing.

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**LEASE AGREEMENT**

Dated as of November 1, 2006

by and between

**NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**

and

**J & J FARMS REALTY JOINT VENTURE**

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(2006 J & J Farms Creamery, Inc. and Fisher Foods of Queens Corp. Project)

Affecting the Land generally known by the street address  
57-48 49th Street, Maspeth, New York 11378  
Section 14, Block 2602 and Lot 220

in the County of Queens,  
City and State of New York  
as more particularly described in  
Exhibit A to this Lease Agreement  
on the Official Tax Map of Queens County

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Record and Return to:  
Hawkins Delafield & Wood LLP  
One Chase Manhattan Plaza  
New York, New York 10005  
Attention: Arthur M. Cohen, Esq.

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TABLE OF CONTENTS

Page

ARTICLE I

DEFINITIONS AND REPRESENTATIONS

Section 1.1. Definitions ..... 4  
Section 1.2. Construction ..... 10  
Section 1.3. Representations and Warranties by Agency ..... 10  
Section 1.4. Findings by Agency ..... 10  
Section 1.5. Representations and Warranties by the Lessee ..... 11

ARTICLE II

CONVEYANCE TO THE AGENCY; THE PROJECT; AND TITLE INSURANCE

Section 2.1. The Company Lease ..... 14  
Section 2.2. The Project ..... 14  
Section 2.3. Leasehold Title Insurance ..... 16  
Section 2.4. Limitation on Sales Tax Exemption ..... 16

ARTICLE III

LEASE OF FACILITY AND RENTAL PROVISIONS

Section 3.1. Lease of the Facility ..... 20  
Section 3.2. Duration of Term ..... 20  
Section 3.3. Rental Provisions ..... 20  
Section 3.4. Rental Payments Payable Absolutely Net ..... 21  
Section 3.5. Nature of Lessee's Obligation Unconditional ..... 21  
Section 3.6. Assignment of Sublease Agreement ..... 21

ARTICLE IV

MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES AND INSURANCE

Section 4.1. Maintenance, Alterations and Improvements ..... 22  
Section 4.2. Removal of Property of the Facility ..... 23  
Section 4.3. Payment in Lieu of Real Estate Taxes ..... 25  
Section 4.4. Taxes, Assessments and Charges ..... 31  
Section 4.5. Insurance ..... 32  
Section 4.6. Advances by Agency ..... 34  
Section 4.7. Compliance with Legal Requirements ..... 35

ARTICLE V

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 5.1. Damage, Destruction and Condemnation ..... 36

**TABLE OF CONTENTS**

**Page**

**ARTICLE VI**

**PARTICULAR COVENANTS**

Section 6.1.	Dissolution of Lessee; Restrictions on Lessee .....	39
Section 6.2.	Indemnity .....	39
Section 6.3.	Compensation and Expenses of the Agency .....	43
Section 6.4.	Retention of Title to or of Interest in Facility; Grant of Easements; Release of Facility .....	43
Section 6.5.	Discharge of Liens .....	44
Section 6.6.	Agency's Authority; Covenant of Quiet Enjoyment .....	45
Section 6.7.	No Warranty of Condition or Suitability .....	45
Section 6.8.	Financial Statements; No-Default Certificates .....	46
Section 6.9.	Employment Information, Opportunities and Guidelines .....	47
Section 6.10.	Further Assurances .....	48
Section 6.11.	Recording and Filing .....	48
Section 6.12.	Further Encumbrances .....	48
Section 6.13.	Subtenant Survey .....	48
Section 6.14.	Joint Venture Partners .....	48

**ARTICLE VII**

**EVENTS OF DEFAULT; REMEDIES**

Section 7.1.	Events of Default .....	50
Section 7.2.	Remedies on Default .....	51
Section 7.3.	Remedies Cumulative .....	52
Section 7.4.	No Additional Waiver Implied by One Waiver .....	52
Section 7.5.	Effect on Discontinuance of Proceedings .....	53
Section 7.6.	Agreement to Pay Attorneys' Fees and Expenses .....	53

**ARTICLE VIII**

**OPTIONS TO TERMINATE; RECAPTURE OF BENEFITS**

Section 8.1.	Option to Terminate Agreement .....	54
Section 8.2.	Release of Interest in Facility upon Exercise of Option to Terminate .....	54
Section 8.3.	[Reserved] .....	55
Section 8.4.	Termination of Agreement .....	55
Section 8.5.	Recapture of Public Benefits .....	55

**ARTICLE IX**

**MISCELLANEOUS**

Section 9.1.	Force Majeure .....	60
Section 9.2.	[RESERVED] .....	60

## TABLE OF CONTENTS

	<u>Page</u>
Section 9.3. Assignment or Sublease .....	60
Section 9.4. Amendments .....	62
Section 9.5. Notices .....	62
Section 9.6. Prior Agreements Superseded .....	63
Section 9.7. Severability .....	63
Section 9.8. Inspection of Facility .....	63
Section 9.9. Effective Date; Counterparts .....	64
Section 9.10. Binding Effect .....	64
Section 9.11. Third Party Beneficiaries .....	64
Section 9.12. Law Governing .....	64
Section 9.13. Waiver of Trial by Jury .....	64
Section 9.14. Non-Discrimination .....	64
Section 9.15. Recourse Under This Agreement .....	65
Section 9.16. Date of Agreement for Reference Purposes Only .....	65

### Appendices

Exhibit A - Description of the Land
Exhibit B - Project Cost Budget
Exhibit C - Form of Sales Tax Letter
Exhibit D - ST-340 Annual Report of Sales and Use Tax Exemptions
Schedule A - Form of Project Completion Certificate
Schedule B - Annual Benefits Report
Schedule C - Annual Employment Report
Schedule D - Annual Subtenant Survey
Schedule E - Location and Contact Information

## LEASE AGREEMENT

This **LEASE AGREEMENT**, made and entered into as of November 1, 2006 (this "**Agreement**"), by and between **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the "**Agency**"), having its principal office at 110 William Street, New York, New York 10038, party of the first part, and **J & J FARMS REALTY JOINT VENTURE**, a joint venture partnership of businesses formed and existing under the laws of the State of New York (the "**Lessee**"), having its principal office at 57-48 49th Street, Maspeth, New York 11378, party of the second part;

### WITNESSETH:

**WHEREAS**, 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 (the "**Enabling Act**"), authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York (the "**State**") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including but not limited to machinery and equipment, deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their prosperity and standard of living; and

**WHEREAS**, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by Chapter 1082 of the 1974 Laws of New York, as amended (together with the Enabling Act, the "**Act**"), for the benefit of The City of New York (the "**City**") and the inhabitants thereof; and

**WHEREAS**, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Lessee and J & J Farms Creamery, Inc., a New York corporation, and Fisher Foods of Queens Corp., a New York corporation (collectively, the "**Sublessees**"), for a "project" within the meaning of the Act within the territorial boundaries of the City and located on those certain lot, pieces or parcels of land in Section 14, Block 2602 and Lot 220, generally known as and by the street address 57-48 49th Street, Maspeth, New York 11378 (the "**Land**") and otherwise described in Exhibit A — "Description of Land" — attached hereto and made a part hereof; and

**WHEREAS**, the project will consist of the improvement of a commercial facility (the "Facility"), consisting of the renovation of an approximately 77,420 square foot parcel of land and an approximately 57,430 square foot building thereon (including but not limited to the improvement of the staging area, loading dock, new offices, refrigeration and security systems), located at 57-48 49th Street, Maspeth, New York 11378, all for use in the distribution of assorted food products (the "Project"); and

**WHEREAS**, to facilitate the Project, the Agency, the Lessee and the Sublessees have entered into negotiations to enter into a "straight-lease transaction" within the meaning of the Act pursuant to the Agency's Industrial Incentive Program in which (i) the Lessee will lease the Facility Realty to the Agency pursuant to a certain Company Lease Agreement, dated as of even date herewith, between the Lessee and the Agency (the "Company Lease"), (ii) the Agency will sublease its interest in the Facility Realty to the Lessee pursuant to this Agreement, and (iii) the Lessee will sub-sublease its interest in the Facility Realty to the Sublessees pursuant to a certain Sublease Agreement, dated as of even date herewith, between the Lessee and the Sublessees (the "Sublease Agreement"), and, in furtherance of such purposes, the Agency adopted resolutions on August 9, 2005 and April 11, 2006 (collectively, the "Authorizing Resolution"), authorizing the undertaking of the Project, the renovation of the Facility, the lease of the Facility Realty by the Lessee to the Agency, the sublease of the Facility Realty by the Agency to the Lessee, and the sub-sublease of the Facility Realty by the Lessee to the Sublessees; and

**WHEREAS**, the provision by the Agency of financial assistance to the Lessee and the Sublessees through a straight-lease transaction has been determined to be necessary to induce the Sublessees to remain and expand their operations within the City and not otherwise relocate the same outside of the City; and if the Agency does not provide such financial assistance, the Sublessees could not feasibly proceed with the Project; and

**WHEREAS**, the cost of the Project is being financed in part through equity furnished by the Lessee and/or the Sublessees and/or the proceeds of additional lending; and

**WHEREAS**, simultaneously with the execution and delivery of this Agreement, the Lessee will lease the Facility Realty to the Agency pursuant to the Company Lease, subject to Permitted Encumbrances, and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures and other improvements existing thereon or therein; and

**WHEREAS**, pursuant to this Agreement, the Agency will sublease the Facility Realty to the Lessee; and

**WHEREAS**, pursuant to Section 4.3 of this Agreement, the Lessee has agreed to make certain payments in lieu of real estate taxes with respect to the Land and the Improvements;



**NOW, THEREFORE**, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows (provided that in the performance of the agreements of the Agency herein contained, any obligation it may incur for the payment of money shall not subject the Agency to any pecuniary or other liability or create a debt of the State or of the City, and neither the State nor the City shall be liable on any obligation so incurred, but any such obligation shall be payable solely out of the lease rentals, revenues and receipts derived from or in connection with the Facility, including moneys received under this Agreement):

## ARTICLE I

### DEFINITIONS AND REPRESENTATIONS

**Section 1.1. Definitions.** The following terms shall have the following meanings in this Agreement:

**Act** shall mean, collectively, 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.

**Additional Rent** shall mean any additional rental payments described in Section 3.3(b) of this Agreement.

An **Affiliate** of a Person shall mean a Person that directly or indirectly through one or more intermediaries controls, or is under common control with, or is controlled by, such Person. The term "control" (including the related terms "controlled by" and "under common control with") means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and (ii) the ownership, either directly or indirectly, of at least 51% of the voting stock or other equity interest of such Person.

**Agency** shall mean the New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State, duly organized and existing under the laws of the State, and any body, board, authority, agency or other governmental agency or instrumentality which shall hereafter succeed to the powers, duties, obligations and functions thereof.

**Agreement** shall mean this Lease Agreement, dated as of November 1, 2006, between the Agency and the Lessee, and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith.

**Approved Facility** shall mean the commercial facility located at 57-48 49<sup>th</sup> Street, Maspeth, New York 11378, for use in the distribution of assorted food products.

**Authorized Representative** shall mean, (i) in the case of the Agency, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs of the Agency, or any other officer or employee of the Agency who is authorized to perform specific acts or to discharge specific duties, (ii) in the case of the Lessee, a Joint Venture Partner of the Lessee or any other employee who is authorized to perform specific duties hereunder and of whom another Authorized Representative of the Lessee has given written notice to the Agency, (iii) in the case of the Sublessees, the Chairperson, Vice Chairperson,

President, Treasurer and any Vice President or any other employee of either Sublessee who is authorized to perform specific duties hereunder and of whom another Authorized Representative of a Sublessee has given written notice to the Agency and (iv) in the case of the Individual Guarantors, the Individual Guarantors; provided, however, that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of this Agreement or any other Project Document, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

**Base Rent** shall mean the rental payment described in Section 3.3(a) of this Agreement.

**Business Day** shall mean any day that shall not be a Saturday, Sunday, legal holiday or a day on which banking institutions in the City are authorized by law or executive order to close.

**City** shall mean The City of New York, New York.

**Commencement Date** shall mean November 20, 2006, on which date this Agreement was delivered.

**Company Lease** shall mean that certain Company Lease Agreement, dated as of even date herewith, between the Lessee, as landlord, and the Agency, as tenant, as the same may be amended and supplemented in accordance with its terms and as permitted by the terms thereof.

**Completion Date** shall mean March 31, 2007.

**Event of Default** shall have the meaning specified in Section 7.1 hereof.

**Exempt Property** shall mean only the materials to be used with respect to the acquisition of a leasehold interest in the Facility and the improvement and renovation of the Facility in connection with the Project, on or before the date of completion of the Project (as evidenced in accordance with Section 2.2 hereof) for incorporation in the Facility or for use in connection with the Facility.

**Expiration Date** shall mean June 30, 2032.

**Facility** shall mean the Facility Realty.

**Facility Realty** shall mean, collectively, the Land and the Improvements.

**Final Project Cost Budget** shall mean that certain budget of costs paid or incurred for the Project to be submitted by the Lessee pursuant to Section 2.2 hereof upon completion of the Project, which budget will include a comparison with the Project Cost Budget, and indicate the source of funds (i.e., borrowed funds, equity, etc.) for each cost item.

**Fiscal Year of the Lessee** shall mean a year of 365 or 366 days, as the case may be, commencing on January 1 and ending on December 31 of each calendar year, or such other fiscal year of similar length used by the Lessee for accounting purposes as to which the Lessee shall have given prior written notice thereof to the Agency at least ninety (90) days prior to the commencement thereof.

**Guarantors** shall mean, collectively, the Lessee, the Sublessees and the Individual Guarantors, and their respective permitted estates, successors and assigns.

**Guaranty Agreement** shall mean the Guaranty Agreement, dated as of even date herewith, from the Guarantors to the Agency, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

**Improvements** shall mean all buildings, structures, foundations, related facilities, fixtures and other improvements existing on the Commencement Date or at any time made, erected or situated on the Land (including any improvements made as part of the Project pursuant to Section 2.2 hereof) and all replacements, improvements, extensions, substitutions, restorations, repairs or additions thereto.

**Individual Guarantors** shall mean, collectively, Michael Oberlander, Pearl Oberlander, Simon Friedman and Morris Schlager, and their respective estates, administrators, successors and assigns.

**Independent Accountant** shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Lessee and approved by the Agency (such approval not to be unreasonably withheld or delayed).

**Joint Venture Partners of the Lessee** shall mean, collectively, J & J Farms Redevelopment Company, LLC a limited liability company organized and existing under the laws of the State of New York, and J & J Farms Creamery Company Real Estate, LLC, a limited liability company organized and existing under the laws of the State of New York

**Land** shall mean those certain Lot, pieces or parcels of land in Section 14, Block 2602 and Lot 220, generally known by the street address 57-48 49<sup>th</sup> Street, Maspeth, New York 11378, all as more particularly described in Exhibit A - "Description of the Land" hereto, which is made a part hereof, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 6.4 hereof.

**Legal Requirements** shall mean the Constitutions of the United States and the State of New York and all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, certificates of occupancy, directions and requirements (including but not limited to zoning, land use, planning, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, that are applicable now or may be applicable at any time hereafter to (i) the Lessee or the Sublessees, (ii) the Facility or any part thereof, or (iii) any use or condition of the Facility or any part thereof.

**Lessee** shall mean J & J Farms Realty Joint Venture, a New York joint venture partnership of businesses, and its permitted successors and assigns pursuant to Section 6.1 or 9.3 hereof. J & J Farms Realty Joint Venture is comprised of J & J Farms Redevelopment Company, LLC and J & J Farms Creamery Company Real Estate, LLC, each a Joint Venture Partner of the Lessee and each jointly and severally liable for the obligations of the Lessee.

**Lessee's Property** shall have the meaning specified in Section 4.1(c) hereof.

**Liens** shall have the meaning specified in Section 6.5(a) hereof.

**Loss Event** shall have the meaning specified in Section 5.1(a) hereof.

**Net Proceeds** shall mean, when used with respect to any insurance proceeds or condemnation award, compensation or damages, the gross amount of any such proceeds, award, compensation or damages less all expenses (including reasonable attorneys' fees and any extraordinary expenses of the Agency) incurred in the collection thereof.

**Opinion of Counsel** shall mean a written opinion of counsel for the Lessee who shall be reasonably acceptable to the Agency.

**Permitted Encumbrances** shall mean:

- (i) this Agreement, the Company Lease and the Sublease Agreement;
- (ii) liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not yet due and payable;
- (iii) any mechanic's, workmen's, repairmen's, materialmen's, contractors', carriers', suppliers' or vendors' Lien or right in respect thereof if payment is not yet due and payable, all if and to the extent permitted by Section 6.5 hereof;
- (iv) any lien, security interest, encumbrance or charge, or any conditional sale or other title retention agreement, that any vendor of Facility property or

any contractor hired to perform Project work may place on or with respect to the Facility or any part thereof;

(v) utility, access and other easements and rights-of-way, restrictions and exceptions that an Authorized Representative of the Lessee certifies to the Agency will not materially interfere with or impair the Sublessees' use and enjoyment of the Facility as herein provided;

(vi) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to property similar in character to the Facility as do not, as set forth in a certificate of an Authorized Representative of the Lessee delivered to the Agency, either singly or in the aggregate, render title to the Facility unmarketable or materially impair the property affected thereby for the purpose for which it was acquired and held by the Agency hereunder or purport to impose liabilities or obligations on the Agency; and

(vii) those exceptions to title to the Facility Realty enumerated in the title insurance policy delivered pursuant to Section 2.3 hereof insuring the leasehold interest of the Agency in the Facility Realty, a copy of which is on file at the offices of the Agency.

**Person** shall mean any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, general partnership, limited liability company or government or any agency or political subdivision thereof or other entity.

**PILOT Commencement Date** shall mean July 1, 2007.

**PILOT Depository** shall mean The Bank of New York, a banking corporation organized and existing under the laws of the State of New York, or its successors.

**Prohibited Person** shall mean (i) any Person (A) that is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the City, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the City, unless such default or breach has been waived in writing by the Agency or the City, as the case may be, and (ii) any Person (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure.

**Project** shall have the meaning ascribed thereto in the recitals hereto.

**Project Cost Budget** shall mean that certain budget for costs of the Project as set forth by the Lessee in Exhibit B — “Project Cost Budget” — attached to this Agreement.

**Project Counsel** shall mean Hawkins Delafield & Wood LLP or such other attorneys that are recognized for their expertise in municipal finance law and are selected by the Agency to render legal advice to the Agency in connection with the transactions contemplated by this Agreement.

**Project Documents** shall mean the Company Lease, this Agreement, the Sales Tax Letter, the Sublease Agreement and the Guaranty Agreement.

**Rental Payments** shall mean, collectively, Base Rent and Additional Rent.

**Sales Taxes** shall mean City and State sales and/or compensating use taxes imposed pursuant to Sections 1105, 1107, 1109, and 1110 of the New York State Tax Law, as each of the same may be from time to time (including any successor provisions to such statutory sections).

**Sales Tax Letter** shall mean the Letter of Authorization for Sales Tax Exemption, substantially in the form set forth in the appendices to this Agreement and to be delivered pursuant to Section 2.4(c) of this Agreement on the Commencement Date.

**State** shall mean the State of New York.

**Sublease Agreement** shall mean that certain Sublease Agreement, dated as of even date herewith, between the Lessee, as sublessor, and the Sublessees, as sublessees, as the same may be amended and supplemented in accordance with its terms and as permitted by the terms thereof.

**Sublessees** shall mean, collectively, J & J Farms Creamery, Inc. and Fisher Foods of Queens Corp., each a “Sublessee” and each a corporation organized and existing under the laws of the State of New York, and its respective permitted successors and assigns under the Sublease Agreement.

**Termination Date** shall mean such date on which this Agreement may terminate pursuant to its terms and conditions prior to the Expiration Date.

**Section 1.2. Construction.** In this Agreement, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the Commencement Date.

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships and limited liability partnerships), trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

**Section 1.3. Representations and Warranties by Agency.** The Agency represents and warrants that the Agency (i) is a corporate governmental agency constituting a body corporate and politic and a public benefit corporation duly organized and existing under the laws of the State, (ii) assuming the accuracy of the representations made by the Lessee and by the Sublessees, is authorized and empowered to enter into the transactions contemplated by this Agreement and any other Project Documents to which the Agency is a party and to carry out its obligations hereunder and thereunder and (iii) by proper action of its board of directors, has duly authorized the execution and delivery of this Agreement and such other Project Documents to which the Agency is a party.

**Section 1.4. Findings by Agency.** The Agency, based upon the representations and warranties of the Lessee contained in this Agreement and the information contained in the application and other materials heretofore submitted by or on behalf of the Lessee or by or on behalf of the Sublessees to the Agency, hereby affirms its findings and determinations set forth in the Authorizing Resolution, and further finds and determines, that:

(i) the providing of financial assistance (within the meaning of the Act) through the straight-lease transaction (within the meaning of the Act) contemplated by this Agreement is necessary to induce the Lessee and the Sublessees to proceed with the Project;

(ii) the Project is reasonably necessary to induce the Sublessees to remain and expand their operations within the City;



(iii) the transactions contemplated by this Agreement shall not result in the removal of any facility or plant of the Lessee or of either Sublessee or any other occupant or user of the Facility from one area of the State (but outside of the City) to within the City or in the abandonment of one or more facilities or plants of the Lessee or of either Sublessee or of any other occupant or user of the Facility located within the State (but outside of the City); and

(iv) the transactions contemplated by this Agreement shall not provide financial assistance in respect of any project where facilities or property that are primarily used in making retail sales (within the meaning of the Act) of goods or services to customers who personally visit such facilities constitute more than one-third of the total project costs.

**Section 1.5. Representations and Warranties by the Lessee.** The Lessee makes the following representations and warranties:

(a) The Lessee is a partnership of business duly formed, validly existing and in good standing under the laws of the State, is not in violation of any provision of its business certificate or partnership agreement, has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement and each other Project Document to which it is or shall be a party

(b) The execution, delivery and performance of this Agreement and each other Project Document to which the Lessee is or shall be a party and the consummation of the transactions herein and therein contemplated will not violate any provision of law, any order of any court or agency of government, or the business certificate or partnership agreement of the Lessee, or any indenture, agreement or other instrument to which the Lessee is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances

(c) There is no action or proceeding pending or, to the best of the Lessee's knowledge, after diligent inquiry, threatened by or against the Lessee by or before any court or administrative agency that would adversely affect the ability of the Lessee to perform its obligations under this Agreement and each other Project Document to which it is or shall be a party, and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Lessee as of the date hereof in connection with the execution and delivery of this Agreement and each other Project Document to which the Lessee shall be a party or in connection with the performance of the obligations of the Lessee hereunder and under each of the Project Documents have been obtained.

(d) The Facility will constitute a "project" under the Act, and the Lessee intends to operate the Facility, or cause the Facility to be operated, in accordance with this Agreement and as an Approved Facility and a qualified "project" in accordance with and as defined under the Act.

(e) The financial assistance (within the meaning of the Act) provided by the Agency to the Lessee and the Sublessees through the straight-lease transaction (within the meaning of the Act) as contemplated by this Agreement is necessary to induce the Lessee to proceed with the Project.

(f) Subject to Sections 4.2 and 5.1 hereof, no property constituting part of the Facility shall be located at any site other than at the Facility Realty.

(g) The transactions contemplated by this Agreement shall not result in the removal of any facility or plant of the Lessee or of either Sublessee or any other occupant or user of the Facility from one area of the State (but outside of the City) to within the City or in the abandonment of one or more facilities or plants of the Lessee or either Sublessee or any other occupant or user of the Facility located within the State (but outside of the City).

(h) The transactions contemplated by this Agreement shall not provide financial assistance in respect of any project where facilities or property that are primarily used in making retail sales (within the meaning of the Act) of goods or services to customers who personally visit such facilities constitute more than one-third of the total project costs.

(i) Undertaking the Project is anticipated to serve the public purposes of the Act by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State.

(j) No funds of the Agency shall be used in connection with the transactions contemplated by this Agreement for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promoting materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given hereunder to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.

(k) This Agreement and the other Project Documents constitute the legal, valid and binding joint and several obligations of the Lessee and each Joint Venture Partner of the Lessee and are enforceable against the Lessee and each Joint Venture Partner of the Lessee in accordance with their respective terms.

(l) The Lessee and the Sublessees are in compliance, and will continue to comply, with all Federal, State and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality applicable to the Project and the operation of the Facility.

(m) The Project Cost Budget attached as Exhibit B to this Agreement represents a true, correct and complete budget as of the Commencement Date of the proposed costs of the Project, and the Lessee represents and warrants that the total estimated cost of the Project is \$450,000, which shall be provided from equity on the part of the Lessee and/or the Sublessees. The Lessee has no reason to believe that funds or financing sufficient to complete the Project will not be obtainable.

(n) The moneys available to the Lessee and/or the Sublessees are sufficient to pay all costs in connection with the completion of the Project.

(o) Except as permitted by Section 9.3 hereof, no Person other than the Lessee and/or the Sublessees is or will be in use, occupancy or possession of any portion of the Facility.

(p) The Project will be designed, and the operation of the Facility will be, in compliance with all applicable Federal, State and local laws or ordinances (including rules and regulations) relating to safety and environmental quality.

(q) Neither the Lessee nor any Affiliate thereof is a Prohibited Person.

(r) The aggregate rentable square footage of the Improvements constituting part of the Facility is approximately 57,430 rentable square feet.

(s) The aggregate square footage of the Land is approximately 77,420 square feet.

(t) The fiscal year of the Lessee is the 365 or 366 day period, as the case may be, commencing on January 1, and ending on December 31 of each calendar year.

(u) Pursuant to the Company Lease, the Lessee has vested the Agency with a valid leasehold estate in the Facility Realty.

(v) All of the Land comprises one or more whole tax Lot and no portion of any single tax lot.

## ARTICLE II

### CONVEYANCE TO THE AGENCY; THE PROJECT; AND TITLE INSURANCE

**Section 2.1. The Company Lease.** Pursuant to the Company Lease, the Lessee has leased to the Agency the Land, and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures and other improvements existing thereon or therein as of the date thereof, free and clear of all liens, claims, charges, encumbrances, security interests and servitudes other than Permitted Encumbrances. It is understood that (i) a valid leasehold interest in all Improvements intended to be incorporated or installed in the Facility Realty as part of the Project shall vest in the Agency immediately upon delivery to or installation or incorporation into the Facility Realty or payment therefor, whichever shall occur first, and (ii) the Lessee shall take all action necessary to so vest a valid leasehold interest in such Improvements in the Agency and to protect such leasehold interest and title claims against claims of any third parties.

**Section 2.2. The Project.** (a) The Agency hereby appoints the Lessee its true and lawful agent, and the Lessee hereby accepts such agency for purposes of undertaking the Project, including, without limitation, (i) constructing and installing the Improvements on the Land, (ii) making, executing, acknowledging and delivering any contracts, orders, receipts, writings and instructions with any other Persons (subject in each case to Section 2.4 hereof), and in general doing all things which may be requisite or proper, all for the purposes of undertaking the Project with the same powers and with the same validity and effect as the Agency could do if acting in its own behalf, (iii) paying all fees, costs and expenses incurred in the improvement of the Facility from funds made available therefor in accordance with or as contemplated by this Agreement and (iv) asking, demanding, suing for, levying, recovering and receiving all such sums of money, debts due and other demands whatsoever that may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the Project and to enforce the provisions of any contract, agreement, obligation, bond or other performance security entered into or obtained in connection with the Project. The Lessee unconditionally represents, warrants, covenants and agrees that it will complete the Project, or cause the Project to be completed, by the Completion Date, in a first class workmanlike manner, free of defects in materials and workmanship (including latent defects), except such completion Date may be changed with approval by the Agency; **provided, however,** the Lessee may revise the scope of the Project, subject to the prior written consent of the Agency (which consent shall not be unreasonably withheld, delayed or conditioned). In undertaking the Project, the Lessee, as agent of the Agency, shall take such action and institute such proceedings as shall be necessary to cause and require all contractors, manufacturers and suppliers to complete their agreements relating to the Project in accordance with the terms of the contracts therefor including, without limitation, the correction of any defective work. The cost of the Project shall be financed from equity furnished by the Lessee and/or the Sublessees to the extent such funds shall be necessary

to cover costs of the Project that exceed such other sources of funds. In the event moneys derived from such other sources are not sufficient to pay the costs necessary to complete the Project in full, the Lessee shall pay or cause to be paid that portion of such costs of the Project as may be in excess of the moneys derived from such sources and shall not be entitled to any reimbursement therefor from the Agency, nor shall the Lessee be entitled to any diminution of the Rental Payments to be made under this Agreement.

(b) The Lessee shall pay (i) all of the costs and expenses in connection with the preparation of any instruments of conveyance, the delivery thereof and of any instruments and documents relating thereto and the filing and recording of any such instruments of conveyance or other instruments or documents, if required, (ii) all taxes and charges payable in connection with the vesting with the Agency of a leasehold estate in the Facility Realty, or attributable to periods prior to such vesting, as set forth in Section 2.1 hereof, and (iii) all shipping and delivery charges and other expenses or claims incurred in connection with the Project.

(c) The Lessee unconditionally represents, warrants, covenants and agrees that it will obtain or cause to be obtained all necessary approvals from any and all governmental agencies requisite to the Project and operation of the Facility, all of which will be done in compliance with all Federal, State and local laws, ordinances and regulations applicable thereto, and with the conditions and requirements of all policies of insurance with respect to the Facility and this Agreement. Promptly upon completion of the Project, the Lessee will obtain or cause to be obtained all required occupancy permits, authorizations and licenses from appropriate authorities, if any be required, authorizing the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement and shall furnish copies of same to the Agency immediately upon receipt thereof.

(d) Upon completion of the Project, the Lessee shall evidence completion of the Project by delivering to the Agency a certificate of an Authorized Representative of the Lessee in substantially the form set forth in Schedule A attached hereto, together with all attachments required thereunder.

Upon request by the Agency, the Lessee shall make available to the Agency copies of any bills, invoices or other evidences of costs as shall have been incurred in the effectuation of the Project.

In the event that the aggregate costs of the Project upon the completion thereof shall be significantly different from the estimated costs thereof set forth in the Project Cost Budget (i.e., more than a ten percent (10%) difference in either total Project costs or in major categories of Project cost), on request of the Agency, the Lessee shall provide evidence to the reasonable satisfaction of the Agency as to the reason for such discrepancy, and that the scope of the Project as originally approved by the Agency has not been modified in a material manner without the prior written consent of the Agency.

**Section 2.3. Leasehold Title Insurance.** On or prior to the Commencement Date, the Lessee will obtain and deliver to the Agency (a) a leasehold title insurance policy in an amount not less than \$500,000 insuring the Agency's leasehold interest under the Company Lease in each of the Land and the Improvements against loss as a result of defects in title, subject only to Permitted Encumbrances, and (b) a current survey of each of the Land and the Improvements certified to the Lessee, the title company issuing such title insurance policy and the Agency. Any proceeds of such leasehold title insurance shall be paid to the Lessee and applied by the Lessee to remedy the applicable defect in title in respect of which such proceeds shall be derived. If not so capable of being applied or if a balance remains after such application, the proceeds or the remaining balance of proceeds, as the case may be, derived from any such title insurance policy insuring the Agency's leasehold interest shall be applied to the payment of any Rental Payments due hereunder; and any balance thereafter may be used by the Lessee for its authorized purpose.

**Section 2.4. Limitation on Sales Tax Exemption.** (a) Any exemption from Sales Taxes resulting from or occasioned by the Agency's involvement with the Project shall be limited to purchases of Exempt Property effected by the Lessee as agent for the Agency, it being the intent of the parties hereto that no operating expenses of the Lessee and no purchases of other personal property (other than Exempt Property) shall be subject to an exemption from Sales Taxes because of the Agency's involvement with the Project.

(b) The Lessee covenants and agrees that it shall include language which is substantially in the form of the following language (through an attached rider or otherwise) in and as part of each contract, agreement, invoice, bill or purchase order entered into by the Lessee as agent for the Agency in connection with the Project:

"This [contract, agreement, invoice, bill or purchase order] is being entered into by J & J Farms Realty Joint Venture, a New York joint venture partnership of businesses (the "Agent"), as agent for and on behalf of the New York City Industrial Development Agency (the "Agency") in connection with a certain project of the Agency for the Agent being the improvement of a commercial facility (the "Facility"), consisting of the renovation of an approximately 77,420 square foot parcel of land and an approximately 57,430 square foot building thereon (including but not limited to the improvement of the staging area, loading dock, new offices, refrigeration and security systems), located at 57-48 49th Street, Maspeth, New York 11378, all for use in the distribution of assorted food products (the "Project"). The building materials and fixtures (excluding trade fixtures) and capital improvements to be used for the Project which are the subject of this [contract, agreement, invoice, bill or purchase order] shall be exempt from the sales and use tax levied by the State of New York

and The City of New York if purchased and used in accordance with the terms and conditions set forth in the attached Sales Tax Letter of the Agency, and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase order] is in compliance with the terms of the Sales Tax Letter. This [contract, agreement, invoice, bill or purchase order] is nonrecourse to the Agency, and the Agency shall not be directly or indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever, and the Agent shall be the sole party liable hereunder. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the [vendor or contractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.”

If the Lessee shall fail to include, incorporate by reference or otherwise cause the contract, agreement, invoice, bill or purchase order to be, together with the vendor or contractor, subject to the above applicable language in substantially the above form, such contract, agreement, invoice, bill or purchase order shall not be an undertaking on behalf of the Agency and shall not be entitled to any of the Benefits (as defined in Section 8.5 hereof) that the Agency can confer, and the Lessee shall not claim any sales or use tax benefits or exemptions with respect to any such contract, agreement, invoice, bill or purchase order and the Lessee shall return to the Agency any such benefits or exemptions so taken, together with interest on such amount at the rate of eighteen percent (18%) per annum, from the date of such taking.

(c) On the Commencement Date, the Agency shall make the Sales Tax Letter available to the Lessee. The Agency, at the sole cost and expense of the Lessee, shall also execute such other authorizations, letters and documents (and such amendments to the Sales Tax Letter) as may be reasonably necessary to permit the Lessee to obtain the intended benefits hereunder. Subject to the terms of this Agreement, it is intended that the aggregate scope of the sales and use tax benefits received by the Lessee pursuant to this Agreement and the Sales Tax Letter shall be limited in both duration and amount as follows:

(i) The Sales Tax Letter shall be dated the Commencement Date and shall be effective for a term commencing on its date and expiring upon the earliest of (1) the termination of this Agreement, (2) the Completion Date, (3) the completion of the Project as provided in Section 2.2 hereof, or (4) the termination of the Sales Tax Letter pursuant to Section 7.2 hereof.

(ii) The authorizations set forth in the Sales Tax Letter shall automatically be suspended twenty (20) days after notice to the Lessee that the Lessee shall be in default under this Agreement until the Lessee shall pay any amounts due, and perform all of its obligations, with respect to any such default.

(iii) The sales and use tax exemption to be provided pursuant to the Sales Tax Letter

- A. shall not be available for any items of personalty or payment of any costs other than the costs of the Exempt Property,
- B. shall only be utilized for items of Exempt Property which shall be purchased, completed or installed for use only by the Lessee and the Sublessees at the Facility Realty (and not with any intention to sell, transfer or otherwise dispose of any such items of Exempt Property to a Person as shall not constitute the Lessee or the Sublessees), it being the intention of the Agency and the Lessee that the sales and use tax exemption shall not be made available with respect to any item of Exempt Property unless such item is used solely by the Lessee and by the Sublessees at the Facility Realty,
- C. shall not be available for any date after the Sales Tax Letter shall have been suspended as provided in Section 2.4(c)(ii) hereof; provided, however, that in the event the Lessee shall thereafter cure any defaults under this Agreement, or the Agency shall thereafter waive such suspension, as applicable, the sales and use tax exemption shall again continue from the date of such cure or such waiver,
- D. shall not be available for or with respect to any item of rolling stock or water craft, or tangible personal property having a useful life of less than one year, and shall be available only if purchased by the Lessee as agent for the Agency for use by the Lessee or the Sublessees at the Facility,
- E. shall not be available for any item the acquisition or leasing of which would otherwise be exempt from Sales Taxes absent the involvement by the Agency,
- F. shall not be available for any cost of utilities, cleaning service or supplies,
- G. shall not be available subsequent to the termination of this Agreement or of the Agency's interest in the Facility, and
- H. shall only be available for those costs set forth in the Sales Tax Letter.

(iv) In the event that the Lessee shall utilize the sales or use tax exemption authorization provided pursuant to the Sales Tax Letter in violation of the provisions of Section 2.4(c)(iii) hereof, the Lessee shall promptly deliver notice of same to the Agency, and the Lessee shall, upon demand by the Agency, pay to the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or



use tax exemptions together with interest at the rate of eighteen percent (18%) per annum from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Lessee.

(v) Upon request by the Agency with reasonable notice to the Lessee, the Lessee shall make available at reasonable times to the Agency and the Independent Accountant all such books and records of the Lessee and require all appropriate officers and employees of the Lessee to respond to reasonable inquiries by the Agency and the Independent Accountant, as shall be necessary to indicate in reasonable detail those costs for which the Lessee shall have utilized the Sales Tax Letter and the dates and amounts so utilized.

(d) The Lessee shall observe and comply with the terms and conditions of the Sales Tax Letter, and upon the termination, expiration or cancellation of the Sales Tax Letter, the Lessee shall promptly surrender the same to the Agency.

(e) If and for so long as the same shall be required by law, the Lessee shall annually (currently, by each February 28 with respect to the prior calendar year) file a statement (Form ST-340 attached hereto as Exhibit D or any successor or additional mandated form) with the New York State Department of Taxation and Finance, on a form and in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of the New York State Department of Taxation and Finance, of the value of all sales and use tax exemptions claimed by the Lessee or agents of the Lessee in connection with the Project and the Facility as required by Section 874(8) of the New York State General Municipal Law (as the same may be amended from time to time), including, but not limited to, consultants or subcontractors of such agents, under the authority granted pursuant to this Agreement. The Lessee shall furnish a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. Should the Lessee fail to comply with the foregoing requirement, the Lessee shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Lessee shall be deemed to have automatically lost its authority as agent of the Agency to purchase and/or lease Exempt Property in the Agency's behalf, and shall desist immediately from all such activity, and shall immediately and without demand return to the Agency the Sales Tax Letter issued to the Lessee by the Agency that is in the Lessee's possession or in the possession of any agent of the Lessee. Nothing herein shall be construed as a representation by the Agency that any property acquired as part of the Project is or shall be exempt from sales taxes or use taxes under the laws of the State.

(f) The Lessee agrees to submit to the Agency on August 1 of each year, commencing August 1, 2007, a completed Employment and Benefits Report in the form of Schedule B attached hereto to the extent that the Lessee shall have received Sales Tax Savings during the twelve-month period ending on the June 30 immediately preceding such August 1.

## ARTICLE III

### LEASE OF FACILITY AND RENTAL PROVISIONS

**Section 3.1. Lease of the Facility.** (a) The Agency hereby subleases the Facility Realty to the Lessee, and the Lessee hereby subleases the Facility Realty from the Agency, for and during the term herein and subject to the terms and conditions herein set forth. The Agency hereby delivers to the Lessee, and the Lessee hereby accepts sole and exclusive possession of the Facility (it being understood by the parties hereto that delivery of possession to the Lessee of the Facility as the same is improved shall take no further act or deed by the parties hereto).

(b) The Lessee hereby unconditionally represents, warrants, covenants and agrees that throughout the term of this Agreement (i) the Facility will be an Approved Facility and a "project" within the meaning of the Act; (ii) the Lessee will not take any action, or suffer or permit any action, if such action would cause the Facility not to be an Approved Facility or a "project" within the meaning of the Act; and (iii) the Lessee will not fail to take any action, or suffer or permit the failure to take any action, if such failure would cause the Facility not to be an Approved Facility or a "project" within the meaning of the Act. The Lessee shall not occupy, use or operate the Facility, or allow the Facility or any part thereof to be occupied, used or operated, for any unlawful purpose or in violation of any certificate of occupancy affecting the Facility or for any use which may constitute a nuisance, public or private, or make void or voidable any insurance then in force with respect thereto.

**Section 3.2. Duration of Term.** The term of this Agreement shall commence on the Commencement Date and shall expire at 11:58 p.m. (New York City time) on the Expiration Date, or upon such earlier date as this Agreement may be terminated by the Agency or the Lessee as hereinafter provided.

**Section 3.3. Rental Provisions.** (a) *Base Rent.* The Lessee shall pay Base Rent to the Agency, without demand or notice, on the Commencement Date in the amount of \$1.00, which shall constitute the entire amount of Base Rent payable hereunder.

(b) *Additional Rent.* Throughout the term of this Agreement, the Lessee shall pay to the Agency (except as otherwise provided in Section 4.3 hereof) any additional amounts required to be paid by the Lessee to or for the account of the Agency hereunder, and any such additional amounts shall be paid as, and shall represent payment of, Additional Rent.

(c) *Missed Payments.* In the event the Lessee should fail to make or cause to be made any of the Rental Payments required under the foregoing provisions of this Section, the item or installment not so paid shall continue as an obligation of the Lessee until the amount not so paid has been paid in full, together with interest thereon from the date due at the applicable

interest rate stated in this Agreement where so provided, or if not so provided, at eighteen percent (18%) per annum.

**Section 3.4. Rental Payments Payable Absolutely Net.** The obligation of the Lessee to pay Rental Payments provided for in this Agreement shall be absolutely net to the Agency without any abatement, recoupment, diminution, reduction, deduction, counterclaim, set-off or offset whatsoever, so that this Agreement shall yield, net, to the Agency, the Rental Payments provided for herein, and all costs, expenses and charges of any kind and nature relating to the Facility, arising or becoming due and payable during or after the term of this Agreement, shall be paid by the Lessee and the Agency shall be indemnified by the Lessee for, and the Lessee shall hold the Agency harmless from, any such costs, expenses and charges.

**Section 3.5. Nature of Lessee's Obligation Unconditional.** The Lessee's obligations under this Agreement to pay Rental Payments shall be absolute, unconditional and general obligations, and irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Agency or any other Person and the obligation of the Lessee shall arise whether or not the Project has been completed as provided in this Agreement. The Lessee will not suspend or discontinue payment of any Rental Payment due and payable hereunder or performance or observance of any covenant or agreement required on the part of the Lessee hereunder for any cause whatsoever, and the Lessee waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction in the Rental Payments hereunder.

**Section 3.6. Assignment of Sublease Agreement.** In order to secure the payment and performance of obligations of the Lessee under this Agreement, the Lessee does hereby assign, transfer and set over to the Agency all of the Lessee's right, title and interest in and to the Sublease Agreement, including all sublease rentals, revenues and receipts therefrom (except for those rentals payable under Section 5(d) of the Sublease Agreement), and the right to enforce all of the Lessee's rights and remedies thereunder.

The Lessee agrees not to terminate, modify or amend the Sublease Agreement or any of the terms thereof, or grant any concessions in connection therewith, either orally or in writing, or to accept a surrender thereof, without the prior written consent of the Agency and any attempted termination, modification or amendment of the Sublease Agreement without such written consent shall be null and void.

In the exercise of the powers herein granted, no liability shall be asserted or enforced against the Agency, all such liability being hereby expressly waived and released by the Lessee. The Agency shall not be obligated to perform or discharge any obligation, duty or liability under the Sublease Agreement, or under or by reason of this assignment.

## ARTICLE IV

### MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES AND INSURANCE

**Section 4.1. Maintenance, Alterations and Improvements.** (a) During the term of this Agreement, the Lessee will keep the Facility in good and safe operating order and condition, ordinary wear and tear excepted, will occupy, use and operate the Facility in the manner for which it was intended and contemplated by this Agreement, and will make all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) necessary to ensure that the operations of the Lessee and the Sublessees at the Facility shall not be materially impaired or diminished in any way. All replacements, renewals and repairs shall be similar in quality, class and value to the original work and be made and installed in compliance with the requirements of all governmental bodies. The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Facility, to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Facility, or to furnish any utilities or services for the Facility, and the Lessee hereby agrees to assume full responsibility therefor.

(b) The Lessee shall have the privilege of making such alterations of or additions to the Facility Realty or any part thereof from time to time as it in its discretion may determine to be desirable for its uses and purposes, provided that

(i) as a result of such alterations or additions, the fair market value of the Facility is not reduced below its value immediately before such alteration or addition and the usefulness, the structural integrity or operating efficiency of the Facility is not materially impaired,

(ii) such additions or alterations are effected with due diligence, in a good and workmanlike manner and in compliance with all applicable Legal Requirements,

(iii) such additions or alterations are promptly and fully paid for by the Lessee in accordance with the terms of the applicable contract(s) therefor, and in order that the Facility shall at all times be free of any mortgage, lien, charge, encumbrance, security interest or claim other than Permitted Encumbrances,

(iv) if the cost of such additions or alterations is estimated to exceed \$250,000, unless the Lessee can demonstrate to the reasonable satisfaction of the Agency that the Lessee has available funds sufficient to pay the cost thereof, such alterations or additions shall be conducted only after the Lessee shall have furnished to the Agency a labor and materials payment bond, or other security, satisfactory to the Agency, and

(v) such additions or alterations do not change the nature of the Facility so that it would not constitute an Approved Facility and a “project” within the meaning of the Act.

All alterations of and additions to the Facility shall constitute a part of the Facility, subject to the Company Lease, this Agreement and the Sublease Agreement, and the Lessee shall deliver or cause to be delivered to the Agency appropriate documents as may be necessary to convey a leasehold interest to such property to the Agency and to subject such property to the Company Lease, this Agreement and the Sublease Agreement, free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances.

(c) The Lessee shall have the right to install or permit to be installed at the Facility Realty, machinery, equipment and other personal property at the Lessee’s own cost and expense (the “**Lessee’s Property**”) without subjecting such Lessee’s Property to the Company Lease, this Agreement and the Sublease Agreement. The Lessee’s Property shall not constitute part of the Facility subleased hereunder. The Agency shall not be responsible for any loss of or damage to the Lessee’s Property. The Lessee shall have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Lessee’s Property, without the consent of or notice to the Agency.

(d) The Lessee shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Facility or any part thereof, or the interest of the Agency, the Lessee or the Sublessees in the Facility or the Company Lease, this Agreement or the Sublease Agreement except for Permitted Encumbrances.

(e) To the extent required by the New York State Finance Law Section 137, prior to executing any contract with any party for any improvement (as such term is defined in the New York Lien Law) in connection with the Project or the Facility or the provision of any goods or services in connection therewith, and prior to authorizing any party to undertake such improvement (or the provision of such goods and services) without an executed contract, the Lessee shall deliver to the Agency a copy of the proposed contract therefor along with a bond if any is required under this Agreement, in compliance with New York State Finance Law Section 137 and otherwise satisfactory to the Agency, guaranteeing prompt payment of monies due all persons furnishing labor or materials for the contractor or his subcontractor in the prosecution of his work provided for in such contract. The Agency shall have no liability or responsibility for the cost of such bond(s). Should the Lessee fail to comply with the foregoing requirement, the Lessee shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked).

**Section 4.2. Removal of Property of the Facility.** (a) The Lessee shall have the privilege from time to time of removing from the Facility any fixture constituting part of the Facility Realty (the “**Existing Facility Property**”) and thereby removing such Existing Facility Property from the leasehold estate of the Company Lease, this Agreement and the Sublease

Agreement, **provided, however**, such Existing Facility Property is substituted or replaced by property (t) having equal or greater fair market value, operating efficiency and utility and (u) free of all mortgages, liens, charges, encumbrances, claims and security interests other than Permitted Encumbrances, and no such removal shall be effected if (v) such removal is to another location other than the Facility, (w) such removal would change the nature of the Facility as an Approved Facility and a "project" within the meaning of the Act, (x) such removal would impair the usefulness, structural integrity or operating efficiency of the Facility, or (y) such removal would materially reduce the fair market value of the Facility below its value immediately before such removal.

(b) The Lessee shall deliver or cause to be delivered to the Agency any necessary documents conveying to the Agency a leasehold estate in any property installed or placed upon the Facility pursuant to Section 4.2(a) hereof and subjecting such substitute or replacement property to the Company Lease, this Agreement and the Sublease Agreement, and within thirty (30) days after receipt of written request of the Lessee, the Agency shall deliver to the Lessee appropriate documents conveying to the Lessee all of the Agency's right, title and interest in any property removed from the Facility pursuant to Section 4.2(a) hereof. The Lessee agrees to pay all costs and expenses (including reasonable counsel fees) incurred by the Agency in subjecting to the Company Lease, this Agreement and the Sublease Agreement any property installed or placed on the Facility as part of the Facility pursuant to this Section 4.2 or Section 4.1 hereof.

(c) The removal from the Facility of any Existing Facility Property pursuant to the provisions of Section 4.2(a) hereof shall not entitle the Lessee to any abatement or reduction in the Rental Payments payable by the Lessee under this Agreement.

(d) Within 120 days after the close of each Fiscal Year of the Lessee during which (i) action was taken by the Lessee pursuant to Section 4.1(b) hereof or action involving property having a value in the aggregate exceeding \$250,000 was taken by the Lessee pursuant to Section 4.2(a) hereof, the Lessee shall, upon request of the Agency, furnish to the Agency a written report of an Authorized Representative of the Lessee summarizing the action taken by the Lessee, during such preceding Fiscal Year and stating that, in its opinion, such action complied with the applicable provisions of Section 4.1(b) or 4.2(a) hereof, as the case may be; or (ii) no action was taken by the Lessee pursuant to Section 4.1(b) or no action involving property having a value in the aggregate exceeding \$250,000 was taken by the Lessee pursuant to Section 4.2(a) hereof, the Lessee shall, upon request of the Agency, furnish to the Agency a certificate of an Authorized Representative of the Lessee certifying to the fact that no such action was taken by the Lessee pursuant to such Section 4.1(b) or 4.2(a) during such preceding Fiscal Year.

**Section 4.3. Payment in Lieu of Real Estate Taxes.**

(a) *Description and Address of Project:*

The Project consists of the improvement of a commercial facility, consisting of the renovation of an approximately 77,420 square foot parcel of land and an approximately 57,430 square foot building thereon (including but not limited to the improvement of the staging area, loading dock, new offices, refrigeration and security systems), located at 57-48 49th Street, Maspeth, New York 11378, all for use in the distribution of assorted food products. The Facility is located at 57-48 49th Street, Maspeth, New York 11378, being Section 14, Block 2602 and Lot 220.

(b) *Payments Prior to PILOT Commencement Date:*

Until the PILOT Commencement Date, or such later date as the Facility Realty is determined to be exempt from real estate taxes, the Lessee shall pay to the City all real estate taxes with respect to the Facility Realty at such times, in such manner and in such amounts as would be applicable if the Facility Realty were owned by the Lessee and not subleased by the Agency.

(c) *Payments in Lieu of Real Estate Taxes, Generally:*

It is recognized that under the provisions of the Act the Agency is required to pay no real estate taxes upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities. The Agency and the Lessee agree, however, that the Lessee shall be required to make payments in lieu of real estate taxes with respect to the Facility Realty in accordance with the provisions of Section 4.3(g) hereof, as follows: (i) with respect to the Land, payments in lieu of real estate taxes shall be in the amounts determined pursuant to subsection (d) below; and (ii) with respect to the Improvements, payments in lieu of real estate taxes shall be in the amounts determined pursuant to subsections (e) and (f) below.

The Agency makes no representation as to the availability of an exemption from real estate taxes for the Facility Realty in the event that the Department of Finance, Assessors' Office of the City, the City Surveyor, or any other relevant official of the City fails to recognize the Agency's exemption from real estate taxes on the basis of a discrepancy existing between the Facility Realty and the tax map of the City or the existence of another impediment to implementation of the Agency's exemption contemplated hereunder.

The Lessee shall take such action as is reasonably necessary to correct any defect or deficiency that may prevent the Facility Realty from being recognized as exempt by the City. The Lessee acknowledges that the Agency has not represented the availability of any such exemption for the Facility Realty, and the Lessee hereby releases the Agency from any claim arising from any loss of the benefits that were contemplated hereunder.

The Lessee acknowledges that the PILOT Commencement Date will not be deferred notwithstanding any loss of benefits contemplated hereunder in the event that the City does not recognize the Agency's exemption from real estate taxes on the PILOT Commencement Date.

(d) *Payments in Lieu of Taxes on the Land:*

For the period commencing on the PILOT Commencement Date and ending on the earliest to occur of (i) the Expiration Date, or (ii) the date on which the Agency no longer has a leasehold interest in the Facility Realty, or (iii) the Termination Date, the Lessee shall make payments in lieu of real estate taxes, in accordance with Section 4.3(g) hereof, with respect to the Land (subject to Section 4.3(i)) but only to the extent that Full Land Taxes (as defined below) shall exceed the Maximum Land Tax Abatement for the City Tax Fiscal Year in question:

<u>Year</u>	<u>Maximum Land Tax Abatement</u>
PILOT Commencement Date - June 30, 2028	\$23,500
July 1, 2028 - June 30, 2029	\$18,800
July 1, 2029 - June 30, 2030	\$14,100
July 1, 2030 - June 30, 2031	\$9,400
July 1, 2031 - Expiration Date	\$4,700

**"PILOT Commencement Date"** shall mean July 1, 2007.

**"City Tax Fiscal Year"** shall mean each annual period commencing on July 1, and ending on the immediately succeeding June 30, or such other annual period as shall be established by lawful authority as the City's "tax fiscal year" or its equivalent.

**"Full Land Taxes"** shall mean that amount of taxes with respect to the Land as the Lessee would otherwise be required to pay from time to time if it were the owner of the Land and the Agency had no leasehold or other interest in the Land.

For the period commencing on the Expiration Date and ending on the date on which the Agency no longer has a leasehold interest in the Facility Realty, the Lessee shall make payments in lieu of real estate taxes equal to Full Land Taxes with respect to the Land.

If the Termination Date has occurred for reasons other than the Agency no longer having a leasehold estate in the Facility Realty, for the period commencing on such Termination Date until the date on which the Agency no longer has a leasehold estate in the Facility Realty, the Lessee shall make payments in lieu of real estate taxes on the Land equal to Full Land Taxes.



(e) *Payments in Lieu of Taxes on the Improvements:*

For the period commencing on the PILOT Commencement Date and ending on the PILOT Termination Date, the Lessee shall make, in accordance with Section 4.3(g) hereof, and subject to Section 4.3(i) hereof, the following payments in lieu of real estate taxes on the Improvements:

- A. from the PILOT Commencement Date through June 30, 2028, an amount equal to the lesser of CRET or STRET; and
- B. from July 1, 2028, through the Termination Date, the following amounts as respectively calculated for the following City Tax Fiscal Years:

<b>YEAR</b>	<b>LESSEE PAYS:</b>
July 1, 2028- June 30, 2029	STRET + [(CRET less STRET) x 0.2]
July 1, 2029- June 30, 2030	STRET + [(CRET less STRET) x 0.4]
July 1, 2030- June 30, 2031	STRET + [(CRET less STRET) x 0.6]
July 1, 2031- June 30, 2032	STRET + [(CRET less STRET) x 0.8]

*provided, however, with respect to this subsection "B," if for any City Tax Fiscal Year CRET is equal to or less than STRET, then the payment in lieu of real estate taxes on the Improvements for such year shall be an amount equal to CRET.*

*Certain terms used in this Section 4.3 with respect to the Improvements shall be defined as follows:*

**CRET** or "Current Real Estate Taxes" shall mean, for any City Tax Fiscal Year, an amount equal to the product of:

- (I) the then-current assessed value of Improvements, *and*
- (II) the City's then-current real estate tax rate;

*provided, however, that as defined herein, CRET shall not take into account, or in any way be reduced by, any tax exemption and/or abatement program of whatever nature, including but not limited to ICIP.*

**STRET** or "Stabilized Real Estate Taxes" shall mean the CRET applicable on the Commencement Date.

**ICIP** or the “Industrial and Commercial Incentive Program” is the program, including any successor program, administered by the New York City Department of Finance (or successor agency) for the exemption from New York City real property taxes of eligible industrial or commercial improvements to real property.

**ICIP Exemption** shall mean the exemption, from New York City real property taxes, of assessed valuation of industrial or commercial improvements that are eligible under ICIP.

**ICIP Abatement** shall mean the abatement of New York City real property taxes with respect to eligible industrial or commercial improvements under ICIP.

If the PILOT Termination Date has occurred for reasons other than the Agency no longer owning a leasehold or other controlling interest in the Facility Realty, for the period commencing on such PILOT Termination Date until the date on which the Agency no longer owns a leasehold estate or other controlling interest in the Facility Realty, the Lessee shall make payments in lieu of real estate taxes on the Improvements equal to CRET.

(f) *Subsequent Alterations and Improvements:*

If, at any time after the Operations Commencement Date (as such term is defined in Section 8.5(ii) hereof), the Lessee shall make any alterations of or additions to the Improvements (“**Additional Improvements**”), the Lessee shall: (i) notify an Authorized Representative of the Agency of such Additional Improvements by (y) delivering written notice thereof within thirty (30) days after the completion of the Additional Improvements, and (z) providing requested information about such Additional Improvements on the Employment and Benefits Report (see Schedule B attached hereto; and (ii) request that the Improvements (including any such Additional Improvements) be reassessed by the appropriate officer or officers of the City; and (iii) make additional payments in lieu of real estate taxes in accordance with Section 4.3(g) hereof in an amount which shall equal the product of:

- A. the increase in the assessed value of the Improvements as first assessed upon completion of the Additional Improvements and which are attributable to such Additional Improvements, *less* such portion of that incremental assessed value that may be exempt by operation of an ICIP Exemption (if any), *and*
- B. the City's real property tax rate prevailing at the time of such first assessment.

The product of “A” and “B” immediately hereinabove shall be added to STRET and the resulting sum shall be deemed the new STRET for purposes of subsection (e) of this Section 4.3; *provided, however*, that if a reduction in the incremental assessed value corresponding to an ICIP Exemption is applicable, then, as the amount of that reduction diminishes over time (in

accordance with the schedule of the applicable ICIP Exemption), the new STRET will correspondingly increase. In no event shall the new STRET in any way take into account or be reduced by any tax exemption and/or abatement program of whatever nature, including but not limited to ICIP.

(g) *General Payment Provisions:*

In order to provide for payments in lieu of real estate taxes payable pursuant to subsections (d), (e) and (f) above, the Lessee agrees to pay on a date which is at least seven (7) Business Days before January 1 and on a date which is at least seven (7) Business Days before July 1 of every year to the PILOT Depository, or to such other representative of the Agency, or at such other times, in either case as the Agency may designate from time to time by written notice to the Lessee, by certified check or bank draft payable at a bank in New York, New York, an installment payment equal to one-half of the payment in lieu of real estate taxes due for such year. The PILOT Depository shall deposit such installment payment to a special trust fund.

It is agreed that the Agency shall request the appropriate officer or officers of the City charged with the duty of levying and collecting real estate taxes, to submit to the Lessee at the times the levies for such real estate taxes are made, a statement specifying the amounts and due dates for the payments in lieu thereof, so that the Lessee may make such payments in the correct amounts and on a timely basis.

If the Lessee shall fail to make any such installment payments, the amount or amounts so in default shall continue as an obligation of the Lessee until fully paid and the Lessee agrees to pay the same to the PILOT Depository together with the lesser of (x) the maximum amount of interest thereon permitted by law and (y) the greater of (i) interest thereon at the same rate per annum from time to time and compounded at the same frequency as if such amounts were delinquent taxes and (ii) a late payment fee of 5% of the amount that was not paid when due and, for each month or part thereof that a payment is delinquent beyond the first month, an additional late payment fee of 1% per month on an amount equal to the original amount that was not paid when due that remains unpaid during such month or part thereof.

Nothing contained herein shall limit or impair the Lessee's right, to the extent permitted by law, to obtain reductions in the valuation of the Facility Realty or the right to obtain exemptions (and discounts, if any) therefrom and to seek to obtain a refund of any such payments made.

(h) *Apportionment of Payments after Transfer:*

The Agency shall cause the Collector of the City to return the Facility Realty to the tax rolls as of the date the Agency shall no longer have a leasehold estate in the Facility Realty. Subject to the paragraph immediately succeeding, the Lessee and/or other subsequent owner of the Facility Realty during the City Tax Fiscal Year in which such cessation of the

Agency's leasehold estate occurs, shall be responsible for paying the real estate taxes due for the portion of such City Tax Fiscal Year that remains after such cessation.

With respect to the semi-annual period of the City Tax Fiscal Year in which the Agency has ceased to have a leasehold estate in the Facility Realty, the Agency shall cause the Collector of the City to apportion that part of the installment of the payment in lieu of real estate taxes previously remitted for such semi-annual period (if any), which is attributable to the period commencing on the date of such cessation and ending on the June 30 or December 31 following (as the case may be), as a credit against the real estate taxes owed for such semi-annual period.

(i) *Withdrawal of Real Estate Tax Abatements:*

The Lessee understands and agrees that the Lessee is required, and shall be required throughout the term of this Agreement, to pay or cause to be paid, as additional payments in lieu of real estate taxes, the amount of taxes that the Lessee would have been required to pay as if the Agency did not have a leasehold estate in that portion of the Facility Realty, if any, utilized or occupied by any Person (other than the Lessee or the Sublessees but including any sublessee that is pre-approved pursuant to Section 9.3 hereof, if any) for so long as such utilization and/or occupation shall continue. The Lessee hereby represents to the Agency that no portion of the Facility Realty is utilized and/or occupied or is intended to be utilized and/or occupied by Persons other than the Lessee or the Sublessees or a sublessee that is pre-approved pursuant to Section 9.3 hereof, if any. The Lessee agrees that if ever during the term of this Agreement the Lessee intends to permit any Person (other than itself, the Sublessees or any sublessee that is pre-approved pursuant to Section 9.3 hereof, if any) to use and/or occupy a part of the Facility Realty, then, in such event, the Lessee shall provide to the Agency's Authorized Representative, written notice of such intended use and/or occupancy before such use and/or occupancy actually occur, and shall also obtain from the Agency prior written consent therefor in accordance with the requirements of Section 9.3 hereof.

Commencing as of the date on which the Facility Realty is not used in accordance with the Act and/or this Agreement or upon the occurrence of an Event of Default under this Agreement, the Lessee shall be required to make payments in lieu of real estate taxes on the Facility Realty in such amounts as would result from taxes levied on the Facility Realty if the Facility Realty were owned by the Lessee and the Agency had no leasehold estate in the Facility Realty.

Whenever in this Section 4.3 the Lessee is required to make additional payments in lieu of real estate taxes as if the Facility Realty were owned by the Lessee and the Agency had no leasehold estate in the Facility Realty or specified portions thereof, the applicable tax rate shall be the rate then in effect as shown on the records of the proper City department.

(j) *QEZE Tax Credits:*

Notwithstanding the provisions of subsections “d” and “e” and “f” of this Section 4.3, if at any time during the term of this Agreement (x) the Facility Realty is located in an Empire Zone, and (y) the Lessee is taking or has taken affirmative steps to become a Qualified Empire Zone Enterprise (“QEZE”), and (z) the Lessee has qualified or expects to qualify for QEZE tax credits, *then*, the Lessee shall make payments in lieu of real estate taxes for the current and successive year equal to the following amounts: (i) with respect to the Land, Full Land Taxes; and (ii) with respect to the Improvements, Adjusted CRET. In the event the State repeals the Empire Zone program, or that part of it providing for QEZE tax credits, and as a result of such repeal or as a result of the expiration of the period of the Lessee’s entitlement to QEZE benefits, the Lessee is no longer eligible to claim the QEZE tax credits as they are available under current law, the Lessee shall then make payments in lieu of real estate taxes in accordance with the aforesaid subsections “d” and “e” and “f”; *provided, however*, that for any period during which the Lessee receives QEZE tax credits, such period shall not be deemed to extend the term during which payments in lieu of real estate taxes, as provided for in the aforesaid subsections “d” and “e” and “f”, shall apply.

(k) *Survival of Obligations:*

The obligations of the Lessee under this Section 4.3 shall survive the termination or expiration of this Agreement for any reason whatsoever. The Agency, in its sole discretion and in furtherance of the purposes of the Act, may waive, in whole or in part, payments in lieu of taxes set forth in this Section 4.3, for good cause shown.

**Section 4.4. Taxes, Assessments and Charges.** The Lessee shall pay when the same shall become due all taxes (other than those taxes for which payments in lieu thereof are being paid pursuant to Section 4.3 hereof) and assessments, general and specific, if any, levied and assessed upon or against the Facility, the Company Lease, this Agreement, the Sublease Agreement, any ownership estate or interest of the Agency or the Lessee or the Sublessees in the Facility, or the Rental Payments or other amounts payable under the Company Lease, hereunder or under the Sublease Agreement during the term of this Agreement, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility, all of which are herein called “**Impositions**”. The Agency shall forward, as soon as practicable, to the Lessee any notice, bill or other statement received by the Agency concerning any Imposition. The Lessee may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

In the event the Facility Realty is exempt from Impositions (other than real estate taxes in respect of which amounts are payable under Section 4.3 hereof) solely due to the

Agency's leasehold estate in the Facility Realty, the Lessee shall pay all Impositions to the appropriate taxing authorities equivalent to the Impositions that would have been imposed on the Facility Realty if the Lessee were the owner of record of the Facility Realty and the Agency had no leasehold estate in the Facility Realty.

**Section 4.5. Insurance.** (a) At all times throughout the term of this Agreement, including without limitation during any period of construction or reconstruction of the Facility, the Lessee shall maintain insurance, with insurance companies admitted, authorized and licensed to do business in the State, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Lessee and the Sublessees. In addition to this general requirement, such insurance shall, for purposes of subsection (b) through (g) of this Section 4.5, include, without limitation (hereinafter "**Specific Coverage**"):

(i) During any period of construction, renovation, improvement or reconstruction of the Facility Realty, to the extent not covered by the General Liability insurance referred to below, Owners & Contractors Protective Liability Insurance for the benefit of the Lessee, the Sublessees and the Agency in a minimum amount of \$5,000,000 aggregate coverage for bodily and personal injury and property damage;

(ii) General Liability insurance and/or Umbrella Liability insurance, including contractual liability coverage, naming the Lessee and the Sublessees as primary insureds, in accordance with customary insurance practices for similar operations with respect to the Facility and the business thereby conducted in a minimum amount of \$5,000,000 per occurrence per location aggregate, which insurance (A) will also provide coverage of the Lessee's obligations of indemnity under Section 6.2 hereof (excluding, however, those obligations of the Lessee (1) requiring payment of taxes, (2) set forth in Section 6.2(a)(i) or (iv) hereof, and (3) under Section 6.2(a)(viii) hereof to the extent not available to the Lessee at commercially reasonable rates), and (B) may be effected under overall blanket or excess coverage policies of the Lessee or any Affiliate thereof, provided, however, that at least \$500,000 is effected by a General Liability insurance policy, and (C) shall not contain any provisions for a self-insured retention or deductible amount, except as may be otherwise approved by the Agency in its sole discretion;

(iii) Workers' compensation insurance, disability benefits insurance and such other forms of insurance that the Lessee, the Sublessees or the Agency is required by law to provide covering loss resulting from injury, sickness, disability or death of the employees of the Lessee or the Sublessees or any Affiliate thereof, or any contractor or subcontractor performing work with respect to the Facility; the Lessee shall require that all said contractors and subcontractors shall maintain all forms or types of insurance with respect to their employees required by law;

(iv) Automobile liability insurance, to the extent not covered by General Liability insurance, in the amount of \$5,000,000 covering the Lessee and/or the Sublessees, as applicable, for all owned, non-owned and/or hired automobiles, forklifts and other drivable machinery and/or vehicles used in connection with the Facility; and

(v) Such other insurance, including revision of the insurance requirements set forth above, in such amounts and against such insurable hazards as the Agency from time to time may reasonably require.

(b) Specific Coverage required by Section 4.5(a) above shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized and admitted to write such insurance in the State.

(c) Each of the policies evidencing the Specific Coverage required above to be obtained shall

(i) designate the Lessee, the Sublessees and the Agency as additional insureds as their respective interests may appear;

(ii) provide that there shall be no recourse against the Agency for the payment of premiums or commissions or (if such policies provide for the payment thereof) additional premiums or assessments;

(iii) provide that in respect of the interest of the Agency in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee or the Sublessees or any other Person and shall insure the Agency regardless of, and any losses shall be payable notwithstanding, any such action or inaction;

(iv) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Agency to the extent that such other insurance provides the Agency with contingent and/or excess liability insurance with respect to its interest in the Facility;

(v) provide that if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Agency until at least thirty (30) days, or ten (10) days if due to nonpayment of premium, after receipt by the Agency of written notice by such insurers of such cancellation, lapse, expiration or change;

(vi) waive any right of subrogation of the insurers thereunder against any Person insured under such policy, and waive any right of the insurers to any setoff or

counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any Person insured under such policy; and

(vii) contain such other terms and provisions as any owner or operator of facilities similar to the Facility would, in the prudent management of its properties, require to be contained in policies, binders or interim insurance contracts with respect to facilities similar to the Facility owned or operated by it.

(d) The Net Proceeds of any Specific Coverage received with respect to any loss or damage to the property of the Facility shall be applied in accordance with Section 5.1 hereof.

(e) The Lessee shall deliver or cause to be delivered to the Agency the following documents evidencing compliance with the Specific Coverage requirements of this Section 4.5: (i) on or prior to the Commencement Date: (A) a broker's certificate of coverage confirming that the Lessee, as of the Commencement Date, has obtained Specific Coverage in accordance with the requirements of this Section 4.5, and (B) a certificate of liability insurance and certificates or other evidence of other required insurance, and, (ii) as soon as practicable thereafter, duplicate copies of insurance policies. At least seven (7) Business Days prior to the expiration of any such policy, the Lessee shall furnish the Agency with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

(f) The Lessee shall, at its own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Agency to collect from insurers for any loss covered by any insurance required to be obtained by this Section 4.5. The Lessee shall not do any act, or suffer or permit any act to be done, whereby any Specific Coverage required by this Section 4.5 would or might be suspended or impaired.

(g) THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE OPERATION OF THE FACILITY OR THE BUSINESS, OPERATIONS FINANCIAL CONDITION OR INTEREST OF THE LESSEE OR THE SUBLESSEES.

**Section 4.6. Advances by Agency.** In the event the Lessee fails to make any payment or perform or observe any obligation required of it under this Agreement, the Agency, after first notifying the Lessee in writing of any such failure on its part (except that no prior notification of the Lessee shall be required in the event of an emergency condition that, in the reasonable judgment of the Agency, necessitates immediate action), may (but shall not be obligated to), and without waiver of any of the rights of the Agency under this Agreement or any other Project Document to which the Agency is a party, make such payment or otherwise cure any failure by the Lessee to perform and observe its other obligations hereunder. All amounts so advanced therefor by the Agency shall become an additional obligation of the Lessee to the



Agency, which amounts, together with interest thereon at the rate of eighteen percent (18%) per annum, from the date advanced, the Lessee will pay upon demand therefor by the Agency. Any remedy herein vested in the Agency for the collection of Rental Payments or other amounts due hereunder shall also be available to the Agency for the collection of all such amounts so advanced.

**Section 4.7. Compliance with Legal Requirements.** The Lessee agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply with all applicable Legal Requirements, whether foreseen or unforeseen, ordinary or extraordinary, that shall now or at any time hereafter be binding upon or applicable to the Lessee, the Facility, any occupant, user or operator of the Facility or any portion thereof, and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including, without limitation, zoning variances, special exception and non-conforming uses), privileges, franchises and concessions. The Lessee will not, without the prior written consent of the Agency (which consent shall not be unreasonably withheld or delayed), initiate, join in or consent to any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses that may be made of the Facility or any part thereof. The Lessee shall indemnify and hold harmless the Indemnified Parties (as defined in Section 6.2 hereof) from and against all loss, cost, liability and expense (a) in any manner arising out of or related to any violation of or failure by the Lessee (or any other Person occupying, operating or using the Facility or any part thereof) to comply with any Legal Requirement, or (b) imposed upon the Lessee or any of the Indemnified Parties by any Legal Requirement; in case any action or proceeding is brought against any of the Indemnified Parties in respect of any Legal Requirement, the Lessee shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel satisfactory to the Indemnified Party.

The Lessee may contest in good faith the validity, existence or applicability of any of the foregoing if (i) such contest shall not result in the Facility or any part thereof or interest therein being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Lessee, the Sublessees or the Agency being in any danger of any civil or any criminal liability for failure to comply therewith, and (iii) the Lessee shall have furnished such security, if any, as may be reasonably requested by the Agency for failure to comply therewith.

## ARTICLE V

### DAMAGE, DESTRUCTION AND CONDEMNATION

**Section 5.1. Damage, Destruction and Condemnation.** (a) In the event that at any time during the term of this Agreement the whole or part of the Facility shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement among the Agency, the Lessee and those authorized to exercise such right, or if the temporary use of the Facility shall be so taken by condemnation or agreement (a "Loss Event")

(i) the Agency shall have no obligation to rebuild, replace, repair or restore the Facility,

(ii) there shall be no abatement, postponement or reduction in the Rental Payments payable by the Lessee under this Agreement or any other Project Document to which it is a party, and

(iii) the Lessee will promptly give written notice of such Loss Event to the Agency, generally describing the nature and extent thereof.

(b) In the event a Loss Event shall occur, the Lessee shall

(i) at its own cost and expense (except to the extent paid from the Net Proceeds as provided below), promptly and diligently rebuild, replace, repair or restore the Facility to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, regardless of whether or not the Net Proceeds derived from the Loss Event shall be sufficient to pay the cost thereof, and the Lessee shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Agency, nor shall the Rental Payments payable by the Lessee under this Agreement or any other Project Document to which it is a party be abated, postponed or reduced, or

(ii) exercise its option to terminate this Agreement as provided in Section 8.1 hereof.

As soon as practicable but no later than ninety (90) days after the occurrence of the Loss Event, the Lessee shall advise the Agency in writing of the action to be taken by the Lessee under this Section 5.1(b).

(c) All rebuilding, replacements, repairs or restorations of the Facility in respect of or occasioned by a Loss Event shall

(i) automatically be deemed a part of the Facility and shall be subject to the Company Lease, this Agreement and the Sublease Agreement,

(ii) be effected only if the Lessee shall deliver to the Agency an Opinion of Counsel acceptable to the Agency to the effect that such rebuilding, replacement, repair or restoration shall not change the nature of the Facility as an Approved Facility and a qualified "project" as defined in the Act,

(iii) be effected only if the Lessee shall deliver to the Agency a labor and materials payment bond, or other security, satisfactory to the Agency where the cost of rebuilding, replacements, repairs or restorations of the Facility will exceed \$250,000, and

(iv) be effected with due diligence in a good and workmanlike manner, in compliance with all applicable Legal Requirements and be promptly and fully paid for by the Lessee in accordance with the terms of the applicable contract(s) therefor.

(d) The date of completion of the rebuilding, replacement, repair or restoration of the Facility shall be evidenced to the Agency by a certificate of an Authorized Representative of the Lessee stating (i) the date of such completion, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor and all costs and expenses in connection therewith have been paid for or arrangement for payment, reasonably satisfactory to the Agency, has been made, (iii) that the Facility has been rebuilt, replaced, repaired or restored to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, (iv) that the Agency has a good and valid leasehold interest in all property constituting part of the Facility and all property of the Facility is subject to the Company Lease, this Agreement and the Sublease Agreement, subject to Permitted Encumbrances, and (v) that the restored Facility is ready for occupancy, use and operation for its intended purposes. Notwithstanding the foregoing, such certificate shall state (x) that it is given without prejudice to any rights against third parties by the Lessee or the Sublessees that exist at the date of such certificate or that may subsequently come into being, (y) that it is given only for the purposes of this Section and (z) that no Person other than the Agency may benefit therefrom. Such certificate shall be accompanied by (i) a certificate of occupancy (either temporary or permanent, provided that if it is a temporary certificate of occupancy, the Lessee will proceed with due diligence to obtain a permanent certificate of occupancy), if required, and any and all permissions, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement; and (ii) a search prepared by a title company, or other evidence satisfactory to the Agency, indicating that there has not been filed with respect to the Facility any mechanic's, materialmen's or any other lien in connection with the rebuilding, replacement, repair and restoration of the Facility and that there exist no encumbrances on or affecting the Facility or any part thereof other than Permitted Encumbrances or those encumbrances consented to by the Agency.

(e) The Agency and the Lessee shall cooperate and consult with each other in all matters pertaining to the settlement, compromise, arbitration or adjustment of any claim or demand on account of any Loss Event, and the settlement, compromise, arbitration or adjustment

of any such claim or demand shall, as between the Agency and the Lessee, be subject to the written approval of the Lessee.

(f) Notwithstanding anything contained herein to the contrary, if all or substantially all of the Facility shall be taken or condemned, or if the taking or condemnation renders the Facility unsuitable for use by the Lessee as contemplated hereby, the Lessee shall exercise its option to terminate this Agreement as provided in Section 8.1 hereof.

(g) The Lessee shall be entitled to the Net Proceeds of any insurance proceeds or condemnation award, compensation or damages attributable to the Lessee's Property.

(h) The Lessee hereby waives the provisions of Section 227 of the New York Real Property Law or any law of like import now or hereafter in effect.

## ARTICLE VI

### PARTICULAR COVENANTS

**Section 6.1. Dissolution of Lessee; Restrictions on Lessee.** The Lessee covenants and agrees that at all times during the term of this Agreement, it will (i) maintain its existence as a partnership of business, (ii) continue to be subject to service of process in the State and organized under the laws of, or qualified to do business in, the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the Commencement Date, and (iv) not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it; provided, however, the Lessee, without violating the foregoing but with the prior written consent (not to be unreasonably withheld or delayed) of the Agency, may consolidate with or merge into another entity, or permit one or more entities to consolidate with or merge into it, or sell or otherwise transfer all or substantially all of its property, business or assets to another such entity (and thereafter liquidate, wind-up or dissolve or not, as the Lessee may elect) if, (i) the Lessee is the surviving, resulting or transferee entity, and has a net worth (as determined in accordance with generally accepted accounting principles) at least equal to that of the Lessee immediately prior to such consolidation, merger or transfer, or (ii) the Lessee is not the surviving, resulting or transferee entity and (1) the surviving, resulting or transferee entity (A) is solvent and subject to service of process in the State and organized under the laws of the State, or any other state of the United States, and duly qualified to do business in the State, (B) is not, nor is it an Affiliate of, a Prohibited Person, and (C) assumes in writing all of the obligations of the Lessee contained in this Agreement and all other Project Documents to which the Lessee shall be a party, (2) the Lessee delivers to the Agency an Opinion of Counsel to the effect that this Agreement and all other Project Documents to which the Lessee shall be a party constitute the legal, valid and binding obligations of such successor Lessee and are enforceable in accordance with their respective terms to the same extent as they were enforceable against the predecessor Lessee, and (3) in the opinion of an Independent Accountant, such successor Lessee has a net worth (as determined in accordance with generally accepted accounting principles) after the merger, consolidation, sale or transfer at least equal to that of the Lessee immediately prior to such merger, consolidation, sale or transfer.

The Lessee further represents, covenants and agrees that (i) the Lessee is and throughout the term of this Agreement will continue to be an Affiliate of both Sublessees, and (ii) it does not and throughout the term of this Agreement will not constitute a Prohibited Person.

**Section 6.2. Indemnity.** (a) The Lessee shall at all times indemnify, defend, protect and hold the Agency, and any director, member, officer, employee, servant, agent (excluding for this purpose the Lessee, which is not obligated hereby to indemnify its own employees, Affiliates or affiliated individuals) thereof and persons under the Agency's control or supervision, and the PILOT Depository (collectively, the "**Indemnified Parties**" and each an "**Indemnified Party**") harmless of, from and against any and all claims (whether in tort, contract

or otherwise), taxes (of any kind and by whomsoever imposed), demands, penalties, fines, liabilities, lawsuits, actions, proceedings, settlements, costs and expenses (collectively, "Claims") of any kind for losses, damage, injury and liability (collectively, "Liability") of every kind and nature and however caused (except, with respect to any Indemnified Party, Liability arising from the gross negligence or willful misconduct of such Indemnified Party), arising during the period commencing from August 9, 2005, the date the Agency adopted its inducement resolution for the Project, and continuing throughout the term of this Agreement (subject to Section 6.2(e) hereof), arising upon, about, or in any way connected with the Facility, the Project, or any of the transactions with respect thereto, including:

- (i) the financing of the costs of the Facility or the Project,
- (ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Facility, or any defects (whether latent or patent) in the Facility,
- (iii) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof,
- (iv) the execution and delivery by an Indemnified Party, the Lessee or any other Person of, or performance by an Indemnified Party, the Lessee or any other Person, as the case may be, of, any of their respective obligations under, this Agreement or any other Project Document, or other document or instrument delivered in connection herewith or therewith or the enforcement of any of the terms or provisions hereof or thereof or the transactions contemplated hereby or thereby,
- (v) any injury to any Person or the personal property of any Person in or on the premises of, the Facility, including, but not limited to, any injury for which Specific Coverage under Section 4.5(a) above applies to the Lessee and/or an Affiliate, but not to the Agency,
- (vi) any imposition arising from, burden imposed by, violation of, or failure to comply with any Legal Requirement, including, but not limited to, failure to comply with the requirements of the City's zoning resolution and related regulations,
- (vii) any damage or injury to the person or property of (A) the Lessee or (B) any other Person or their respective officers, directors, officials, partners, members, employees, attorneys, agents or representatives, or persons under the control or supervision of the Lessee, or (C) any other Person who may be in or about the premises of the Facility,

(viii) the presence, disposal, release, or threatened release of any Hazardous Materials (as defined in Section 6.2(d) below) that are on, from, or affecting the Facility; any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or any violation of Legal Requirements, including demands of government authorities, or any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses, or

(ix) any Claim commenced against an Indemnified Party, or other action or proceeding taken by an Indemnified Party, in any case with respect to any of the matters set forth in subparagraphs (i) through (viii) of this Section 6.2(a),

Such indemnification set forth above shall be binding upon the Lessee for any and all Claims set forth herein and shall survive the termination of this Agreement.

(b) The Lessee releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable to the Lessee or its Affiliates for, any Claims or Liability arising from or incurred as a result of action taken or not taken by such Indemnified Party with respect to any of the matters set forth in Section 6.2(a) hereof, including any Claims or Liability arising from or incurred as a result of the gross negligence or willful misconduct of such Indemnified Party, or at the direction of the Lessee or any other obligor under any of the Security Documents with respect to any of such matters above referred to. An Indemnified Party shall promptly notify the Lessee in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Lessee pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Lessee to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Lessee under this Section 6.2.

(c) (i) In addition to and without being limited by any other representations, warranties and covenants made by the Lessee under this Agreement, the Lessee further represents, warrants and covenants that (A) the Lessee has not used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and (B) except as set forth in a certain Phase I Environmental Site Assessment Report, dated September 23, 2005, prepared by Hydro Tech Environmental, Corp. (the "Audit"), a true and correct copy of which the Lessee has delivered to the Agency, to the best of the Lessee's knowledge, no prior owner or occupant of the Facility has used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements.

(ii) Without limiting the foregoing, the Lessee shall not cause or permit the Facility or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Legal Requirements, nor shall the Lessee cause or permit, as a result of any intentional or unintentional act or omission on the part of the Lessee or any occupant or user of the Facility, a release of Hazardous Materials onto the Facility or onto any other property.

(iii) The Lessee shall comply with, and require and enforce compliance by, all occupants and users of the Facility with all applicable Legal Requirements pertaining to Hazardous Materials, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all occupants and users of the Facility obtain and comply with, any and all approvals, registrations or permits required thereunder.

(iv) The Lessee shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, from, or affecting the Facility in accordance with all applicable Legal Requirements.

(v) In the event any mortgage is foreclosed, or a deed in lieu of foreclosure is tendered, or this Agreement is terminated, the Lessee shall deliver the Facility so that the conditions of the Facility with respect to any and all Hazardous Materials shall conform with all applicable Legal Requirements affecting the Facility.

(vi) The parties hereto agree that the reference in this Section 6.2(c) to the Audit is not intended, and should not be deemed to intend, to modify, qualify, reduce or diminish the Lessee's obligations to carry out and perform all of the covenants stated throughout this Section 6.2, including but not limited to, those covenants wherein the Lessee is obligated to indemnify each Indemnified Party and comply with all applicable Legal Requirements pertaining to Hazardous Materials.

(d) For purposes of this Section 6.2, the term "**Hazardous Materials**" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 5101, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation.

(e) To effectuate the purposes of this Section 6.2, the Lessee will provide for and insure, in the general liability policies required in Section 4.5 hereof, not only its own



liability in respect of the matters therein mentioned but also the liability pursuant to this Section 6.2 (excluding, however, those obligations of the Lessee (1) requiring payment of taxes, (2) set forth in Section 6.2(a)(i) or (iv) hereof, and (3) under Section 6.2(a)(viii) hereof to the extent not available to the Lessee at commercially reasonable rates). Anything to the contrary in this Agreement notwithstanding, the covenants of the Lessee contained in this Section 6.2 shall be in addition to any and all other obligations and liabilities that the Lessee may have to any Indemnified Party in any other agreement or at common law, and shall remain in full force and effect after the termination of this Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Indemnified Party relating to the enforcement of the provisions herein specified.

**Section 6.3. Compensation and Expenses of the Agency.** The Lessee shall pay the fees, costs and expenses of the Agency together with any fees and disbursements incurred by the Agency's Project Counsel and the Agency's General Counsel in performing services for the Agency in connection with this Agreement or any other Project Document.

On the Commencement Date, the Lessee shall pay to the Agency its fee of \$6,404.00 (said amount representing the \$8,104.00 financing fee, plus an annual administrative fee of \$800.00, less an application fee of \$2,500.00), payment of which has been received on the Commencement Date. The Lessee further agrees to pay, as an annual administrative servicing fee to the Agency, the amount of \$800.00 (subject to an adjustment up or down based on changes as of each November in the Consumer Price Index utilizing a base year of 2005) payable on each anniversary of the Commencement Date until the termination of this Agreement.

**Section 6.4. Retention of Title to or of Interest in Facility; Grant of Easements; Release of Facility.** (a) Neither the Lessee nor the Agency shall sell, assign, encumber (other than for Permitted Encumbrances), convey or otherwise dispose of its respective title to or leasehold estate in the Facility or any part thereof or interest therein during the term of this Agreement, except as set forth in Sections 4.2, 5.1 and 7.2 hereof, without the prior written consent of the other and any purported disposition without such consent shall be void.

Notwithstanding the foregoing paragraph, the Lessee may, upon prior written notice to the Agency, so long as there exists no Event of Default hereunder, grant such rights of way or easements over, across, or under, the Facility Realty, or grant such permits or licenses in respect to the use thereof, free from the leasehold estate of the Company Lease, of this Agreement and of the Sublease Agreement as shall be necessary or convenient in the opinion of the Lessee for the operation or use of the Facility, provided that such leases, rights of way, easements, permits or licenses shall not adversely affect the use or operation of the Facility. The Agency agrees, at the sole cost and expense of the Lessee, to execute and deliver any and all instruments necessary or appropriate to confirm and grant any such right of way or easement or

any such permit or license and to release the same from the leasehold estate of the Company Lease, of this Agreement and of the Sublease Agreement.

Notwithstanding any other provision of this Agreement, so long as there exists no Event of Default hereunder, the Lessee may from time to time request in writing to the Agency the release of and removal from the leasehold estate of the Company Lease, of this Agreement and of the Sublease Agreement of any unimproved part of the Land (on which none of the Improvements is situated) provided that such release and removal will not adversely affect the use or operation of the Facility. Upon any such request by the Lessee, the Agency shall, at the sole cost and expense of the Lessee, execute and deliver any and all instruments necessary or appropriate to so release and remove such portion of the Facility Realty from the leasehold estates of the Company Lease, of this Agreement and of the Sublease Agreement, subject to the following: (i) any liens, easements, encumbrances and reservations to which title to said property was subject at the time of recording of this Agreement; (ii) any liens, easements and encumbrances created at the request of the Lessee or to the creation or suffering of which the Lessee consented; (iii) any liens and encumbrances or reservations resulting from the failure of the Lessee to perform or observe any of the agreements on its part contained in this Agreement; (iv) Permitted Encumbrances (other than the liens of the Company Lease, of this Agreement and of the Sublease Agreement); and (v) any liens for taxes or assessments not then delinquent; **provided, however**, no such release shall be effected unless there shall be delivered to the Agency a certificate of an Authorized Representative of the Lessee, dated not more than sixty (60) days prior to the date of the release, stating that, in the opinion of the Person signing such certificate, the portion of the Facility Realty so proposed to be released and the release of such portion of the Facility Realty is not needed for the operation of the Facility, will not adversely affect the use or operation of the Facility and will not destroy the means of ingress thereto and egress therefrom.

(b) No conveyance or release effected under the provisions of this Section 6.4 shall entitle the Lessee to any abatement or diminution of the Rental Payments payable under Section 3.3 hereof required to be made by the Lessee under this Agreement or any other Project Document to which it shall be a party.

**Section 6.5. Discharge of Liens.** (a) If any lien, encumbrance or charge is filed or asserted (including, without limitation, any lien for the performance of any labor or services or the furnishing of materials), or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "**Liens**"), whether or not valid, is made against the Facility or any part thereof or the interest therein of the Agency, the Lessee or the Sublessees or against any of the Rental Payments payable under the Company Lease, under this Agreement or under the Sublease Agreement or the interest of the Agency, the Lessee or the Sublessees under the Company Lease, under this Agreement or under the Sublease Agreement, other than Liens for Impositions (as defined in Section 4.4 hereof) not yet payable, Permitted Encumbrances, or Liens being contested as

permitted by Section 6.5(b) hereof, the Lessee forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Agency and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Facility.

(b) The Lessee may at its sole expense contest (after prior written notice to the Agency), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (1) such proceeding shall suspend the execution or enforcement of such Lien against the Facility or any part thereof or interest therein, or in the Company Lease, in this Agreement or in the Sublease Agreement, of the Agency, the Lessee or the Sublessees or against any of the Rental Payments payable under the Company Lease, under this Agreement or under the Sublease Agreement, (2) neither the Facility nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (3) neither the Lessee nor the Sublessees nor the Agency would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (4) the Lessee or the Sublessees shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Agency.

**Section 6.6. Agency's Authority; Covenant of Quiet Enjoyment.** The Agency covenants and agrees that it has full right and lawful authority to enter into this Agreement for the full term hereof, and that, subject to the terms and provisions of the Permitted Encumbrances (and any other impairments of title whether or not appearing on the title insurance policy referred to in Section 2.3 hereof), so long as the Lessee shall pay the Rental Payments payable by it under this Agreement and shall duly observe all the covenants, stipulations and agreements herein contained obligatory upon it and an Event of Default shall not exist hereunder, the Agency shall take no action to disturb the peaceful, quiet and undisputed possession of the Facility by the Lessee under this Agreement, and the Agency (at the sole cost and expense of the Lessee) shall from time to time take all necessary action to that end, subject to Permitted Encumbrances.

**Section 6.7. No Warranty of Condition or Suitability.** THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE LESSEE OR THE SUBLESSEES OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE LESSEE WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. THE LESSEE, ON BEHALF

OF ITSELF AND THE SUBLESSEES, IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE LESSEE AND THE SUBLESSEES. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEE OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

**Section 6.8. Financial Statements; No-Default Certificates.** (a) Upon request of the Agency, the Lessee shall deliver or cause to be delivered to the Agency, a copy of the most recent annual audited financial statements of the Lessee and of each Sublessee and of their subsidiaries, if any (including balance sheets as of the end of such fiscal year and the related statement of revenues, expenses and changes in fund balances and, if applicable, income, earnings, and changes in financial position) for such fiscal year, prepared in accordance with generally accepted accounting principles consistently applied, certified by an independent certified public accountant reasonably acceptable to the Agency.

(b) Upon request of the Agency, the Lessee shall deliver to the Agency a certificate of an Authorized Representative of the Lessee (i) as to whether or not, as of the close of the immediately preceding calendar year, and at all times during such year, the Lessee was in compliance with all the provisions that relate to the Lessee in this Agreement and in any other Project Document to which it shall be a party, and if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default, he shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Lessee with respect thereto; and (ii) that the insurance the Lessee maintained complies with the provisions of Section 4.5 of this Agreement, that such insurance has been in full force and effect at all times during the preceding calendar year, and that duplicate copies of all policies or certificates thereof have been filed with the Agency and are in full force and effect. In addition, upon twenty (20) days prior request by the Agency, the Lessee will execute, acknowledge and deliver to the Agency a certificate of an Authorized Representative of the Lessee either stating that to the knowledge of such Authorized Representative after due inquiry there is no default under or breach of any of the terms hereof that, with the passage of time or the giving of notice or both, would constitute an Event of Default hereunder, exists or specifying each such default or breach of which such Authorized Representative has knowledge.

(c) The Lessee shall immediately notify the Agency of the occurrence of any Event of Default, or any event that with notice and/or lapse of time would constitute an Event of Default under any Project Document. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the Lessee and set forth a

description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, the Lessee shall state this fact on the notice.

**Section 6.9. Employment Information, Opportunities and Guidelines.**

(a) Annually, by August 1 of each year, commencing August 1, 2007, until the termination of this Agreement, the Lessee and the Sublessees shall submit to the Agency an employment report relating to the period commencing July 1 of the previous year and ending June 30 of the year of the obligation of the filing of such report, substantially in the form of Schedule B attached hereto, certified as to accuracy by the chief financial or accounting officer of the Lessee and the Sublessees. Upon termination of this Agreement, the Lessee and the Sublessees shall submit to the Agency an employment report relating to the period commencing the date of the last report submitted to the Agency and ending on the last payroll date of the preceding month in substantially the form of Schedule B attached hereto, certified as to accuracy by the Lessee and the Sublessees. Nothing herein shall be construed as requiring the Lessee or the Sublessees to maintain a minimum number of employees on its respective payroll.

(b) The Lessee shall ensure that all employees and applicants for employment by the Lessee or its Affiliates (including the Sublessees) with regard to the Facility are afforded equal employment opportunities without discrimination. Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of the Project shall be listed with the New York State Department of Labor Community Services Division, and with the administrative entity of the service delivery area created by the Workforce Investment Act of 1998 (P.L. No. 105-220) in which the Facility Realty is located. Except as is otherwise provided by collective bargaining contracts or agreements, the Lessee agrees, where practicable, to consider first, and cause each of its Affiliates (including the Sublessees) at the Facility to consider first, persons eligible to participate in the Workforce Investment Act of 1998 (P.L. No. 105-220) programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the Community Services Division of the New York State Department of Labor for such new employment opportunities.

(c) The Lessee (on behalf of itself and the Sublessees) hereby authorizes any private or governmental entity, including but not limited to The New York State Department of Labor (“DOL”), to release to the Agency and/or the New York City Economic Development Corporation (“EDC”), and/or to the successors and assigns of either (collectively, the “**Information Recipients**”), any and all employment information under its control and pertinent to the Lessee and the Sublessees and the employees of the Lessee and the Sublessees to enable the Agency and/or EDC to comply with its reporting requirements required by New York City Local Law 48 of 2005 and any other applicable laws, rules or regulations. In addition, upon the Agency’s written request, the Lessee shall provide to the Agency any employment information in the possession of the Lessee or the Sublessees which is pertinent to the Lessee and the Sublessees and the employees of the Lessee and the Sublessees to enable the Agency and/or EDC to comply with its reporting requirements required by New York City Local Law 48 of 2005 and any other applicable laws, rules or regulations. Information released or provided to

Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Lessee or by the Sublessees, or any information previously released as provided by all or any of the foregoing parties (collectively, "**Employment Information**") may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, and/or EDC, and/or the successors and assigns of either, and/or The City of New York, and/or as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (x) reports prepared by the Information Recipients pursuant to New York City Local Law 48 of 2005, (y) other reports required of the Agency, and (z) any other reports required by law. This authorization shall remain in effect throughout the term of this Agreement.

(d) Nothing in this Section shall be construed to require the Lessee or the Sublessees to violate any existing collective bargaining agreement with respect to hiring new employees.

**Section 6.10. Further Assurances.** The Lessee will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, including Uniform Commercial Code financing statements, at the sole cost and expense of the Lessee, as the Agency deems reasonably necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Agency hereunder.

**Section 6.11. Recording and Filing.** This Agreement shall be recorded by the Lessee in the appropriate office of the Register of The City of New York, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

**Section 6.12. Further Encumbrances.** The Lessee shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Facility or any part thereof, or the interest of the Lessee or of the Sublessees in the Facility or the Company Lease, this Agreement or the Sublease Agreement, except for Permitted Encumbrances.

**Section 6.13. Subtenant Survey.** The Lessee shall file with the Agency by January 1 of each year, commencing January 1, 2007, a certificate of an Authorized Representative of the Lessee with respect to all subtenancies in effect at the Facility, in the form attached hereto as Schedule C.

**Section 6.14. Joint Venture Partners.** Each Joint Venture Partner of the Lessee represents that each of the Joint Venture Partners of the Lessee is a limited liability company duly formed, validly existing and in good standing under the laws of the State, is not in violation of any provision of its articles of organization or its operating agreement, has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement and each other Project Document to which it

is or shall be a party. Each Joint Venture Partner covenants and agrees that it will continue and remain a New York limited liability company throughout the term of this Agreement and that this Agreement and the other Project Documents constitute the legal, valid and binding joint and several obligations of the Joint Venture Partners of the Lessee and the Lessee and are enforceable against the Lessee and each Joint Venture Partner of the Lessee in accordance with their respective terms.

## ARTICLE VII

### EVENTS OF DEFAULT; REMEDIES

**Section 7.1. Events of Default.** Any one or more of the following events shall constitute an "Event of Default" hereunder:

(a) Failure of the Lessee to pay any Rental Payment within fifteen (15) days of the due date thereof;

(b) (i) Failure of the Lessee to observe and perform any covenant, condition or agreement on its part to be performed under Section 2.4, 4.3, 4.4, 4.6, 4.7, 5.1, 6.1, 6.2, 6.3, 6.12, 6.13, 6.14, 7.6, 8.5, 9.3 or 9.14 hereof and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency; or

(ii) Failure of the Lessee to observe and perform any covenant or agreement on its part to be performed under Section 4.5 hereof and continuance of such failure for a period of fifteen (15) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency;

(c) Failure of the Lessee to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 7.1(a) or (b) above) and (i) continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency, or (ii) if by reason of the nature of such default the same can be remedied, but not within the said thirty (30) days, the Lessee fails to proceed with reasonable diligence after receipt of said notice to cure the same or fails to continue with reasonable diligence its efforts to cure the same;

(d) The Lessee, either of the Sublessees or either of the Individual Guarantors shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under the Federal Bankruptcy Code, (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

(e) A proceeding or case shall be commenced, without the application or consent of the Lessee, either of the Sublessees or either of the Individual Guarantors in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or



composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Lessee, the Sublessees or either of the Individual Guarantors or of all or any substantial part of its respective assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or any order for relief against the Lessee, the Sublessees or either of the Individual Guarantors shall be entered in an involuntary case under the Federal Bankruptcy Code; the terms "dissolution" or "liquidation" of the Lessee, the Sublessees or either of the Individual Guarantors as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof, Section 7 of the Sublease Agreement or Section 2.6 of the Guaranty Agreement;

(f) Any representation or warranty made by the Lessee, either of the Sublessees or either of the Individual Guarantors (i) in the application and related materials submitted to the Agency for approval of the Project or the transactions contemplated by this Agreement, or (ii) herein or in any other Project Document, or (iii) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall in any case prove to be false, misleading or incorrect in any material respect as of the date made;

(g) The commencement of proceedings to foreclose any mortgage lien on or security interest in the Facility;

(h) Any loss of leasehold estate of the Agency in the Facility;

(i) An "Event of Default" under the Sublease Agreement, the Guaranty Agreement or any other Permitted Encumbrances, shall occur and be continuing;

(j) The Lessee, either of the Sublessees or either of the Individual Guarantors shall become a Prohibited Person; and

(k) An appointment of a receiver with respect to the Facility as may be specified in a mortgage encumbering the Facility.

**Section 7.2. Remedies on Default.** Whenever any Event of Default referred to in Section 7.1 hereof shall have occurred and be continuing, the Agency may take any one or more of the following remedial steps:

(a) The Agency may terminate this Agreement (with the effect that the term of this Agreement shall be deemed to have expired on such date of termination as if such date were the original expiration date of this Agreement) in which case this Agreement and all of the estate, right, title and interest herein granted or vested in the Lessee shall cease and terminate, and convey all of the Agency's right, title and interest in the Facility to the Lessee, which the Agency may accomplish by executing and recording, at the sole cost and expense of the Lessee,

lease termination agreements to terminate the Company Lease and this Agreement of record as required by law and the Lessee hereby waives delivery and acceptance of such termination agreements as a condition to its validity, and appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest) with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such termination agreements; or

(b) The Agency may bring an action for damages, injunction or specific performance;

(c) The Agency may suspend or terminate the Sales Tax Letter or require the Lessee to surrender the Sales Tax Letter to the Agency for cancellation;

(d) The Agency may require the Lessee to make payments in lieu of real estate taxes under Section 4.3 hereof with respect to the Facility Realty in an amount equal to that amount that the Lessee would otherwise be required to pay if it were the owner of the Facility Realty and the Agency had no leasehold interest in the Facility Realty; or

(e) The Agency may take whatever action at law or in equity as may appear necessary or desirable to collect the Rental Payments then due, or to enforce performance or observance of any obligations, agreements or covenants of the Lessee under this Agreement.

No action taken pursuant to this Section 7.2 (including termination of this Agreement pursuant to this Section 7.2 or by operation of law or otherwise) shall, except as expressly provided herein, relieve the Lessee from the Lessee's obligations hereunder, including without limitation, the obligations of the Lessee under Sections 4.3 (until such time as the Agency shall cease to have a leasehold estate in the Facility and, by reason thereof, the Lessee shall again pay taxes as if it were the record owner of the Facility Realty), 6.2, 7.6, 8.5, 9.13 and 9.15 hereof, all of which shall survive any such action.

**Section 7.3. Remedies Cumulative.** The rights and remedies of the Agency under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency allowed by law with respect to any default under this Agreement. Failure by the Agency to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Lessee hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy a strict compliance by the Lessee with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Lessee be continued or repeated.

**Section 7.4. No Additional Waiver Implied by One Waiver.** In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be

binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Agency and the Lessee or any delay or omission on the part of the Agency in exercising any rights hereunder or under any other Project Document shall operate as a waiver.

**Section 7.5. Effect on Discontinuance of Proceedings.** In case any proceeding taken by the Agency under this Agreement or under any other Project Document on account of any Event of Default hereunder or thereunder shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Agency, then, and in every such case, the Agency shall be restored to its former position and rights hereunder and thereunder, and all rights, remedies, powers and duties of the Agency shall continue as in effect prior to the commencement of such proceedings.

**Section 7.6. Agreement to Pay Attorneys' Fees and Expenses.** In the event the Lessee should default under any of the provisions of this Agreement and the Agency should employ outside attorneys or incur other out-of-pocket expenses for the collection of the Rental Payments payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Lessee herein contained, the Lessee agrees that it will on demand therefor pay to the Agency the reasonable fees and disbursements of such attorneys and such other expenses so incurred.

## ARTICLE VIII

### OPTIONS TO TERMINATE; RECAPTURE OF BENEFITS

**Section 8.1. Option to Terminate Agreement.** (a) The Lessee shall have the option to terminate the Company Lease and this Agreement by paying all Rental Payments and any other amounts due and payable under this Agreement (collectively, the “**Project Payments**”). The Lessee shall exercise such option by delivering to the Agency a written notice of an Authorized Representative of the Lessee to the Agency stating that the Lessee has elected to exercise its option under this Section 8.1(a) and the date on which such termination is to be effective (which date shall not be earlier than forty-five (45) days after the date of such notice). On a scheduled termination date, the Lessee shall (i) pay any and all Project Payments then due, plus one dollar (\$1.00), (ii) perform all accrued obligations hereunder, (iii) surrender the Sales Tax Letter to the Agency for cancellation, if applicable, and (iv) deliver or cause to be delivered to the Agency (x) with respect to any mortgage on the Facility for which the Agency shall have granted a mortgage recording tax exemption, an executed satisfaction of such mortgage in recordable form, executed by the mortgagee, and (y) with respect to any mortgage on the Facility to which the Agency shall be a party and intended to continue beyond the termination of this Agreement but with respect to which mortgage the Agency shall not have granted any mortgage recording tax exemption, a release of the Agency from such mortgage in recordable form executed by all other parties to such mortgage. Such termination shall become effective on such scheduled termination date, subject, however, to the survival of the obligations of the Lessee under Sections 4.3, 6.2, 8.5, 9.13 and 9.15 hereof.

(b) Upon termination of the Company Lease and this Agreement, the Agency, upon the written request and at the sole cost and expense of the Lessee, shall execute such instruments as the Lessee may reasonably request or as may be necessary to discharge this Agreement and the Company Lease as documents of record with respect to the Facility Realty, subject to Section 8.2 hereof.

**Section 8.2. Release of Interest in Facility upon Exercise of Option to Terminate.** At the closing of terminating the Agency’s interest in the Facility pursuant to Section 8.1 hereof, the Agency will, upon payment of the purchase price, deliver or cause to be delivered to the Lessee (i) termination agreements and all other necessary documents confirming the release of the Agency’s right, title and interest in and to the Facility Realty and terminating the Company Lease and this Agreement; and (ii) all necessary documents releasing all of the Agency’s rights and interests in and to any rights of action (other than as against the Lessee or any insurer of the insurance policies under Section 4.5(a)(iii) hereof), or any insurance proceeds (other than liability insurance proceeds for the benefit of the Agency) or condemnation awards, with respect to the Facility or any portion thereof.

Upon release of the Agency’s interest in the Facility pursuant to this Section 8.2, this Agreement and all obligations of the Lessee hereunder shall be terminated except the

obligations of the Lessee under Sections 4.3 (until such time as the Agency shall cease to have a leasehold estate in the Facility and, by reason thereof, the Lessee shall again pay taxes as the record owner of the Facility Realty), 6.2, 8.5, 9.13 and 9.15 hereof shall survive such termination.

**Section 8.3. [Reserved].**

**Section 8.4. Termination of Agreement.** Notwithstanding any other provision of this Agreement to the contrary, on or after the Expiration Date, and upon receipt of sixty (60) days prior written notice of the Agency requesting termination, the Lessee shall terminate the Company Lease and this Agreement by paying the fees and expenses of the Agency and all other amounts due and payable under this Agreement and any other Project Documents, and thereupon the Lessee shall terminate the Company Lease and this Agreement in accordance with Sections 8.1 and 8.2 hereof, and such termination shall forthwith become effective subject, however, to the survival of the obligations of the Lessee under Sections 4.3 (until such time as the Agency shall cease to have a leasehold estate in the Facility Realty and, by reason thereof, the Lessee shall again pay taxes as the record owner of the Facility Realty), 6.2, 8.5, 9.13 and 9.15 hereof. In the event the Lessee does not terminate the Company Lease and this Agreement within such sixty (60) day period, then, commencing on the 61<sup>st</sup> day after transmittal of the notice requesting termination as above provided, the Lessee shall, in addition to all other payment obligations due to the Agency hereunder, make rental payments to the Agency in the amount of \$500.00 per day until the Lessee shall have terminated the Company Lease and this Agreement in accordance with the provisions hereof.

**Section 8.5. Recapture of Public Benefits.** It is understood and agreed by the parties to this Agreement that the Agency is entering into this Agreement in order to provide financial assistance to the Lessee for the Project and to accomplish the public purposes of the Act. In consideration therefor, the Lessee hereby agrees as follows:

(i) If there shall occur a Recapture Event during the Recapture Period (as those terms are defined below), but such Recapture Event is prior to the Operations Commencement Date (defined hereinbelow), the Lessee shall pay to the Agency as a return of public benefits conferred by the Agency, the following amounts upon demand by the Agency: (i) all Benefits (as defined below); and (ii) interest described in subsection (ii)(c) and (if applicable) (d) immediately below.

(ii) If there shall occur a Recapture Event during the Recapture Period, but such Recapture Event occurs after the date on which the Project shall have been substantially completed (which shall be the earlier of (y) the completion date set forth in Section 2.2 hereof, or (z) the date stated in the certificate of an Authorized Representative of the Lessee delivered to the Agency pursuant to Section 2.2 hereof)(such earlier date to be referred to as the “**Operations Commencement Date**”), the Lessee shall pay to the Agency as a return of public benefits conferred by the Agency, the following amounts (as applicable) upon demand by the Agency:

- a. If the Recapture Event occurs within the first six (6) years after the Operations Commencement Date, one hundred percent (100%) of the Benefits.
- b. If the Recapture Event occurs within any month during any one of the seventh, eighth, ninth or tenth years after the Operations Commencement Date, X percent of the Benefits (where "X" is a percent equal to 100% less Y, and where "Y" equals the product of 1.666% and the number of months elapsed commencing with the first month of the seventh year through and including the month in which the Recapture Event occurs).
- c. The principal of the Benefits to be recaptured, whether pursuant to "a" or "b" preceding, shall bear interest equal to the effective rate resulting from the statutory judgment rate, compounded daily, commencing from the date that any amount of Benefit principal has accrued to the Lessee, through and including the date of the Agency's demand; such that (x) Benefit principal comprising mortgage recording taxes shall be deemed to have accrued to the Lessee on the Commencement Date, and (y) Benefit principal comprising real estate tax benefits shall be deemed to have accrued to the Lessee on each date upon which the Lessee shall make a payment under Section 4.3(g) hereof, and (z) Benefit principal comprising sales and/or use tax savings shall be deemed to have accrued to the Lessee on each date upon which such sales and/or use tax saving shall have been exempted by reason of the use by the Lessee of the Sales Tax Letter, provided, however, that if the Lessee cannot establish to the Agency's satisfaction the applicable date of receipt, the Agency shall deem the date of receipt (and therefore the date on which the Benefit principal accrued) to be the first day of the calendar year for which exemption was reported by the Lessee to the State Department of Taxation and Finance on Form ST-340, or, if the Lessee shall have failed to file Form ST-340, the Commencement Date.
- d. In addition to the interest payable pursuant to "c" preceding, the principal of the Benefits to be recaptured, whether pursuant to "a" or "b" preceding, and whether related to real estate tax savings or not, if not paid to the Agency upon demand, shall from the date of demand bear interest calculated at the rate and compounded in the same manner as the interest imposed by the City's Department of Finance on the delinquent payments of real estate taxes; *provided*,

*however*, that the effective rate of such interest shall not exceed the maximum interest permitted by law.

- e. For purposes of this subsection (ii) and subsection (i) of this Section 8.5, demand for payment by the Agency shall be made in accordance with the notice requirements of this Agreement and the due date for payment shall be not less than seven (7) business days from the date of the notice.

With respect to subsection (ii)(c) immediately hereinabove, the “statutory judgment rate” shall be the statutory judgment rate in effect on the date of the Agency’s demand; and with respect to subsection (ii)(d) immediately hereinabove, the interest rate and compounding “imposed by the City’s Department of Finance on delinquent payments of real estate taxes” shall be the rate and the compounding in effect on the date of the Agency’s demand.

The term “**Benefits**” shall mean, collectively:

- (y) all real estate tax benefits that have accrued to the benefit of the Lessee during such time as the Agency had a leasehold or controlling interest in the Facility Realty, such tax benefits to be computed by subtracting the payments in lieu of taxes paid under Section 4.3 hereof from those payments that the Lessee would have paid during the term of this Agreement had the Agency not had a leasehold or controlling interest in the Facility Realty during such term; and

- (z) all miscellaneous benefits derived from the Agency’s participation in the straight-lease transaction contemplated by this Agreement, including, but not limited to, any exemption from any applicable mortgage recording taxes, sales or use taxes, and filing and recording fees.

The term “**Recapture Period**” shall mean the period of time commencing on the Commencement Date, and expiring on the date which is the tenth anniversary of the Operations Commencement Date.

The term “**Recapture Event**” shall mean any one of the following events:

- (a) The Lessee or the Sublessees shall have failed to complete the Project by the Project completion date set forth in Section 2.2 hereof.

- (b) The Lessee or either Sublessee shall have liquidated all or substantially all of its operating assets or shall have ceased all or substantially all of its operations.

- (c) The Lessee or either Sublessee shall have transferred all or substantially all of its employees to a location outside of the City.

(d) The Lessee or either Sublessee shall have substantially changed the scope and nature of its operations at the Facility Realty.

(e) The Lessee and/or either Sublessee shall have sold, leased or otherwise disposed of all or substantially all of the Facility Realty.

(f) The Lessee or the Sublessee shall have subleased all or part of the Facility Realty in violation of Section 9.3 hereof.

(g) The Lessee or either Sublessee shall have relocated all or substantially all of its operations at the Facility Realty to another site; *provided, however, and notwithstanding the foregoing*, such relocation shall not be a Recapture Event (as defined herein) if (i) the Lessee and the Sublessees have relocated their operations at the Facility Realty and at least 90% of their employees employed at the Facility Realty prior to the relocation, to another site within the City; and (ii) the Lessee and the Sublessees maintain, for the remaining balance of the Recapture Period, an employment level equal to at least 90% of the number of employees employed by the Lessee and the Sublessees at the Facility Realty prior to relocation; and (iii) the Lessee and/or the Sublessees shall satisfy such other additional conditions as the Agency may from time to time impose provided such additional conditions are reasonable and uniformly imposed, at the time, to other similar transactions under similar circumstances. There shall arise another Recapture Event upon the failure of the Lessee and/or the Sublessees to satisfy continuously the foregoing requirements for the remaining balance of the Recapture Period. Upon the occurrence of such subsequent Recapture Event, the Agency shall have the right to demand payment of all amounts due under subsection (i) preceding, and the calculation of interest pursuant to subsection (ii)(c) of this Section 8.5 shall assume that the subsequent Recapture Event replaces the original Recapture Event for purposes of that computation. The determination of the pre-relocation, 90%-employment level shall be done in a manner, and in respect of a date or period of time, that the Agency deems satisfactory in its sole discretion.

(iii) Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event:

- (A) shall have arisen as a direct, immediate result of (x) *force majeure* as defined in this Agreement, or (y) a taking or condemnation by governmental authority of all or substantially all of the Facility Realty, or (z) the inability at law of the Lessee to rebuild, repair, restore or replace the Facility Realty after the occurrence of a Loss Event to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Lessee, the Sublessees, or any Affiliate, or



(B) is deemed, in the sole discretion of the Agency, to be (y) minor in nature, or (z) a cause of undue hardship to the Lessee and/or the Sublessees were the Agency to recapture any Benefits.

(iv) The Lessee covenants and agrees to furnish the Agency with written notification of any Recapture Event within ten (10) days of its occurrence and shall subsequently provide to the Agency in writing any additional information that the Agency may request.

(v) The provisions of this Section 8.5 shall survive the termination of this Agreement for any reason whatsoever, notwithstanding any provision of this Agreement to the contrary.

## ARTICLE IX

### MISCELLANEOUS

**Section 9.1. Force Majeure.** In case by reason of *force majeure* either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then except as otherwise expressly provided in this Agreement, if such party shall give notice and full particulars of such *force majeure* in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than the obligations of the Lessee to make the Rental Payments required under the terms hereof, or to comply with Section 4.5 or 6.2 hereof), so far as they are affected by such *force majeure*, shall be suspended during the continuance of the inability then claimed, which shall include a reasonable time for the removal of the effect thereof, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "*force majeure*", as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraining of government and people, war, terrorism, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other similar or different cause not reasonably within the control of the party claiming such inability. It is understood and agreed that the requirements that any *force majeure* shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be satisfied in the event of a strike or other industrial disturbance even though existing or impending strikes or other industrial disturbances could have been settled by the party claiming a *force majeure* hereunder by acceding to the demands of the opposing person or persons.

The Lessee shall promptly notify the Agency upon the occurrence of each *force majeure*, describing such *force majeure* and its effects in reasonable detail. The Lessee shall also promptly notify the Agency upon the termination of each such *force majeure*. The information set forth in any such notice shall not be binding upon the Agency, and the Agency shall be entitled to dispute the existence of any *force majeure* and any of the contentions contained in any such notice received from the Lessee.

#### **Section 9.2. [RESERVED]**

**Section 9.3. Assignment or Sublease.** (a) The Lessee shall not at any time (y) except as permitted by Section 6.1 hereof, assign or transfer this Agreement, or (z) sublet the whole or any part of the Facility, except to the Sublessees pursuant to the Sublease Agreement, without the prior written consent of the Agency (such consent to take into consideration the Agency's policies as in effect from time to time), and provided that:

(i) the Lessee shall deliver to the Agency an Opinion of Counsel acceptable to the Agency to the effect that the sublease shall not cause the Facility to cease being an Approved Facility and a "project" under the Act;

(ii) the Lessee shall remain primarily liable to the Agency for the payment of all Rental Payments hereunder and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Project Document to which it shall be a party;

(iii) any assignee or transferee of the Lessee or any sublessee in whole of the Facility shall have assumed in writing (and shall have executed and delivered to the Agency an instrument in form for recording) and have agreed to keep and perform all of the terms of this Agreement on the part of the Lessee to be kept and performed, shall be jointly and severally liable with the Lessee for the performance thereof, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State;

(iv) any assignee, transferee or sublessee shall utilize the Facility as an Approved Facility and a qualified "project" within the meaning of the Act;

(v) such assignment, transfer or sublease shall not violate any provision of this Agreement or any other Project Document;

(vi) with respect to any subletting in part, the term of each such sublease does not exceed five (5) years at any given date, and no more than an aggregate of twenty percent (20%) of the Facility Realty would be subleased by the Lessee or Sublessees;

(vii) in the Opinion of Counsel, such assignment, transfer or sublease shall not legally impair in any respect the obligations of the Lessee for the payment of all Rental Payments nor for the full performance of all of the terms, covenants and conditions of this Agreement or of any other Project Document to which the Lessee shall be a party, nor impair or limit in any respect the obligations of any Guarantor under the Guaranty Agreement;

(viii) such sublease shall in no way diminish or impair the Lessee's obligation to carry the insurance required under Section 4.5 of this Agreement and the Lessee shall furnish written evidence satisfactory to the Agency that such insurance coverage shall in no manner be limited by reason of such assignment, transfer or sublease; and

(ix) each such sublease shall contain such other provisions as the Agency may reasonably require.

The Lessee shall furnish or cause to be furnished to the Agency a copy of any such assignment, transfer or sublease in substantially final form at least thirty (30) days prior to the date of execution thereof.

(b) Any consent by the Agency to any act of assignment, transfer or sublease shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Lessee, or the successors or assigns of the Lessee, to obtain from the Agency consent to any other or subsequent assignment, transfer or sublease, or as modifying or limiting the rights of the Agency under the foregoing covenant by the Lessee.

(c) If the Facility or any part thereof is sublet or occupied by any Person other than the Lessee, the Agency, in the event of the Lessee's default in the payment of Rental Payments hereunder may, and is hereby empowered to, collect Rental Payments from the Sublessees, any sublessee or occupant during the continuance of any such default. In case of such event, the Agency may apply the net amount received by it to the Rental Payments herein provided, and no such collection shall be deemed a waiver of the covenant herein against assignment, transfer or sublease of this Agreement, or constitute the acceptance of the undertenant or occupant as tenant, or a release of the Lessee from the further performance of the covenants herein contained on the part of the Lessee.

(d) The Lessee covenants and agrees that it shall not, without the prior written consent of the Agency (which consent shall not be unreasonably withheld conditioned or delayed), amend, modify, terminate or assign, or to suffer any amendment, modification, termination or assignment of, the Sublease Agreement or any sublease entered into in accordance with this Section.

(e) The limitations in this Section 9.3 on assignment or transfer of this Agreement and subletting in whole or in part of the Facility shall have equal application to any assignment or transfer of the Sublease Agreement and sub-subletting in whole or in part of the Facility.

(f) Promptly after receipt from the Agency of any subtenant survey and questionnaire pertaining to the Facility, the Lessee shall complete and execute such survey and questionnaire and return the same to the Agency.

**Section 9.4. Amendments.** This Agreement may be amended by a written instrument executed and delivered by the parties hereto.

**Section 9.5. Notices.** All notices, certificates or other communications hereunder shall be sufficient if sent (i) by return receipt requested or registered or certified United States mail, postage prepaid, (ii) by a nationally recognized overnight delivery service, charges prepaid or (iii) by hand delivery, addressed, as follows:

(a) if to the Agency, to New York City Industrial Development Agency, 110 William Street, New York, New York 10038, Attention: General Counsel, with a copy to the Executive Director of the Agency at the same address, and

(b) if to the Lessee, to J & J Farms Realty Joint Venture, c/o J & J Farms Creamery, Inc., 57-48 49<sup>th</sup> Street, Attention: President, with a copy to Roy P. Kozupsky & Associates, LLP, 10 East 40<sup>th</sup> Street, Suite 1710, New York, New York 10016 Attention: William Waizer, Esq.

The Agency and the Lessee may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given (i) three (3) Business Days following posting if transmitted by mail, (ii) one (1) Business Day following sending if transmitted by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by an Authorized Representative of the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder. Notices may also be given in compliance with this Agreement by telecopy, provided that the recipient party consents to the use of telecopy transmissions for giving of notices hereunder and receipt of any such telecopy transmission is confirmed by the transmitting party.

The Lessee shall deliver to the Agency on August 1 of each year, commencing August 1, 2006, a completed location and contact information report in the form attached hereto as Schedule D.

Any notice, demand or report required to be given hereunder by the Agency or the Lessee shall also be delivered, at the same time and in the same manner as such notice, demand or report is required to be given to the Agency or the Lessee hereunder, to the Sublessees.

**Section 9.6. Prior Agreements Superseded.** This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency and the Lessee relating to the Facility, other than the Company Lease.

**Section 9.7. Severability.** If any clause, provision or section of this Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

**Section 9.8. Inspection of Facility.** The Lessee will permit the Agency, or its duly authorized agent, upon reasonable notice, at all reasonable times, to enter the Facility, but solely for the purpose of (y) assuring that the Lessee is operating the Facility, or is causing the Facility to be operated, as an Approved Facility and a qualified "project" within the meaning of the Act consistent with the purposes set forth in the recitals to this Agreement and with the public purposes of the Agency, and (z) determining whether the Facility and/or the use thereof is in violation of any environmental law, and not for any purpose of assuring the proper

maintenance or repair of the Facility as such latter obligation is and shall remain solely the obligation of the Lessee.

**Section 9.9. Effective Date; Counterparts.** This Agreement shall become effective upon its delivery on the Commencement Date. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 9.10. Binding Effect.** This Agreement shall inure to the benefit of, and shall be binding upon, the Agency and the Lessee and their respective successors and assigns.

**Section 9.11. Third Party Beneficiaries.** It is the intention of the parties hereto that nothing contained herein is intended to be for, or to inure to, the benefit of any Person other than the parties hereto.

**Section 9.12. Law Governing.** **THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD OR GIVING EFFECT TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.**

**Section 9.13. Waiver of Trial by Jury.** The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or the Facility or any matters whatsoever arising out of or in any way connected with this Agreement.

The provision of this Agreement relating to waiver of a jury trial and the right of re-entry or re-possession shall survive the termination or expiration of this Agreement.

**Section 9.14. Non-Discrimination.** (a) At all times during the maintenance and operation of the Facility, the Lessee shall not discriminate nor permit the Sublessees to discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Lessee shall use its best efforts to ensure that employees and applicants for employment with the Lessee or any subtenant of the Facility are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(b) The Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessee or the Sublessees state that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.

(c) The Lessee shall furnish to the Agency all information required by the Agency pursuant to this Section and will cooperate with the Agency for the purposes of investigation to ascertain compliance with this Section.

(d) The Agency and the Lessee shall, from time to time, mutually agree upon goals for the employment, training, or employment and training of members of minority groups in connection with performing work with respect to the Facility.

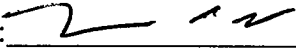
**Section 9.15. Recourse Under This Agreement.** All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in such person's individual capacity, and no recourse shall be had for any reason whatsoever hereunder against any member, director, officer, employee or agent of the Agency or any natural person executing this Agreement on behalf of the Agency. In addition, in the performance of the agreements of the Agency herein contained, any obligation the Agency may incur for the payment of money shall not subject the Agency to any pecuniary or other liability or create a debt of the State or the City, and neither the State nor the City shall be liable on any obligation so incurred and any such obligation shall be payable solely out of amounts payable to the Agency by the Lessee hereunder.

**Section 9.16. Date of Agreement for Reference Purposes Only.** The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was delivered on the Commencement Date.

[INTENTIONALLY LEFT BLANK]

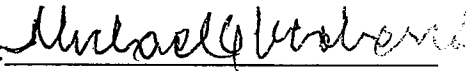
IN WITNESS WHEREOF, the Agency has caused its corporate name to be subscribed unto this Lease Agreement by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs and the Lessee has caused its name to be hereunto subscribed by its duly Authorized Representatives, all being done as of the year and day first above written.

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**

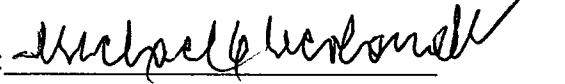
By:   
\_\_\_\_\_  
Maureen P. Babis  
Deputy Executive Director

**J & J FARMS REALTY JOINT VENTURE**  
By its Joint Venture Partners

J & J Farms Redevelopment Company, LLC

By:   
\_\_\_\_\_  
Michael Oberlander  
Member

J & J Farms Creamery Company Real Estate, LLC  
By J & J Farms Creamery, Inc., Member

By:   
\_\_\_\_\_  
Michael Oberlander  
President



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


On the 17<sup>th</sup> day of November, in the year two thousand six, before me, the undersigned, personally appeared Maureen P. Babis, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Judith A. Capolongo  
Notary Public/Commissioner of Deeds

JUDITH A. CAPOLONGO  
Commissioner of Deeds, City of New York  
No. 5-1425  
Cert. Filed in New York County  
Commission Expires October ~~2~~ 1, 2007

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

On the 20 day of November, in the year two thousand six, before me, the undersigned, personally appeared Michael Oberlander, personally known to be or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

KEVIN REGAN  
Notary Public, State of New York  
No. 01RE6069089  
Qualified in Queens County  
Commission Expires Jan. 22, 2010

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

On the 20 day of November, in the year two thousand six, before me, the undersigned, personally appeared Michael Oberlander, personally known to be or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

KEVIN REGAN  
Notary Public, State of New York  
No. 01RE6069089  
Qualified in Queens County  
Commission Expires Jan. 22, 2010

## **APPENDICES**

Exhibit A

DESCRIPTION OF THE LAND

ALL that certain plot, piece or parcel of land, situate, lying and being in Maspeth in the Second Ward of the Borough and County of Queens, City and State of New York, more particularly bounded and described as follows:

BEGINNING at a point on the westerly side of 49th Place, distant 590.50 feet northerly from the corner formed by the intersection of the northerly side of Grand Avenue (80 feet wide) with the westerly side of 49th Place;

RUNNING THENCE westerly parallel with Grand Avenue, 99.93 feet;

THENCE northwesterly along a line which forms an interior angle of 144 degrees 08 minutes 25 seconds with the last mentioned course and part of the distance through a proposed party wall, 239.73 feet;

THENCE northeasterly along a line which forms an interior angle of 89 degrees 59 minutes 05 seconds with the last mentioned course and part of the distance through a proposed party wall, 247.31 feet;

THENCE southeasterly along a line which forms an interior angle of 90 degrees 02 minutes 22.6 seconds with the last mentioned course and part of the distance through a proposed party wall, 245.21 feet to the northwesterly side of 49th Place;

THENCE southwesterly along the northwesterly side of 49th Place, 83.64 feet to a point;

THENCE southerly along the westerly side of 49th Place, 129.86 feet to the point or place of BEGINNING.

TOGETHER with an easement and right of way for ingress and egress to and from Grand Avenue over the following described parcel;

BEGINNING at a point on the northerly side of Grand Avenue (80 feet wide), distant 595 feet easterly from the corner formed by the intersection of the northerly side of Grand Avenue and the easterly side of 47th Street;

RUNNING THENCE northerly at right angles to the northerly side of Grand Avenue, 720.36 feet;

THENCE northeasterly on a line forming an interior angle of 143 degrees 42 minutes 33 seconds with the preceding course, 84.89 feet;

seconds with the preceding course, 60 feet;

THENCE southwesterly along a line forming an interior angle of 89 degrees 32 minutes 42 seconds with the preceding course, 65.70 feet;

THENCE southerly along a line forming an exterior angle of 143 degrees 42 minutes 33 seconds with the preceding course, 493.16 feet;

THENCE southwesterly on a line forming an interior angle of 144 degrees 09 minutes 51 seconds with the preceding course, 0.55 feet;

THENCE southeasterly on a line at right angles with the preceding course, 0.39 feet;

THENCE southerly at right angles to the northerly side of Grand Avenue, 206.86 feet to the northerly side of Grand Avenue;

THENCE westerly along the northerly side of Grand Avenue, 60 feet to the point or place of BEGINNING.

SUBJECT to the rights of others over said easement and right of way.

**Exhibit B**

**PROJECT COST BUDGET**

	<u>Company Funds</u>
Renovation	\$490,288
Fees/Soft Costs	50,000
	<hr/> <hr/>
Total	\$540,288

**Exhibit C**

[FORM OF SALES TAX LETTER]

**LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION**

**EXPIRATION DATE: March 31, 2007**

November \_\_, 2006

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency  
(2006 J & J Creamery Inc. and Fisher Foods of Queens Corp.)

Ladies and Gentlemen:

The New York City Industrial Development Agency (the "Agency"), by this notice, hereby advises you as follows:

1. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, is exempt from the imposition of any New York State or New York City sales and use tax. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required.

2. Pursuant to resolutions adopted by the Agency on August 9, 2005 and April 11, 2006, and a certain Lease Agreement, dated as of November 1, 2006 (the "Lease Agreement"), between the Agency and J & J Farms Realty Joint Venture, a New York joint venture partnership of businesses (the "Company"), the Agency has authorized the Company to act as its agent for the improvement of a commercial facility (the "Facility") the renovation of an approximately 77,420 square foot parcel of land and an approximately 57,430 square foot building thereon (including but not limited to the improvement of the staging area, loading dock, new offices, refrigeration and security systems), located at 57-48 49th Street, Maspeth, New York 11378, all for use in the distribution of assorted food products (the "Project"), for use and occupancy by the Company and its permitted sublessees, J & J Farms Creamery, Inc., a New York corporation, and Fisher Foods of Queens Corp., a New York corporation (collectively, the "Sublessees").

3. In connection with such resolution, the Lease Agreement and this Sales Tax Letter and pursuant to the authority therein granted, the Agency authorizes the Company to act as its agent in connection with the renovation of the Project and authorizes the Company to use this Sales Tax Letter as its agent only for the payment of the costs of building materials and building fixtures, as described in Exhibit A attached hereto, for such renovation of the Project.

4. As agent for the Agency, the Company agrees that each contract, agreement, invoice, bill or purchase order entered into by the Company as agent for the Agency for the renovation of the Project shall include language in substantially the following form:

“This [contract, agreement, invoice, bill or purchase order] is being entered into by J & J Farms Realty Joint Venture, a New York joint venture partnership of businesses (the “Agent”), as agent for and on behalf of the New York City Industrial Development Agency (the “Agency”) in connection with a certain project of the Agency for the Agent being the improvement of a commercial facility (the “Facility”), consisting of the renovation of an approximately 77,420 square foot parcel of land and an approximately 57,430 square foot building thereon (including but not limited to the improvement of the staging area, loading dock, new offices, refrigeration and security systems), located at 57-48 49th Street, Maspeth, New York 11378, all for use in the distribution of assorted food products (the “Project”). The building materials and fixtures (excluding trade fixtures) and capital improvements to be used for the Project which are the subject of this [contract, agreement, invoice, bill or purchase order] shall be exempt from the sales and use tax levied by the State of New York and The City of New York if purchased and used in accordance with the terms and conditions set forth in the attached Sales Tax Letter of the Agency, and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase order] is in compliance with the terms of the Sales Tax Letter. This [contract, agreement, invoice, bill or purchase order] is nonrecourse to the Agency, and the Agency shall not be directly or indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever, and the Agent shall be the sole party liable hereunder. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the [vendor or contractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.”

5. The acquisition of building materials and building fixtures constituting a part of the Project shall be exempt from the sales and use tax levied by the State of New York and The City of New York on the condition that (i) such building materials and building fixtures are separately identifiable property of the Agency, and (ii) any such property shall have a useful life of one year or more, and shall solely be for the use of the Company and the Sublessees at the Facility, and for no other entity and at no other location, and be effected by and at the sole cost of the Company.

6. The Agency shall have no liability or performance obligations under any contract, agreement, invoice, bill or purchase order entered into by the Company as agent for the



Agency hereunder. The Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever, and the Company shall be the sole party liable thereunder.

7. By execution by the Company of its acceptance of the terms of this Sales Tax Letter, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of this Sales Tax Letter by the Company is strictly for the purposes above stated.

8. Accordingly, until the earlier of (i) the Expiration Date referred to above, (ii) the completion of the Project as provided in Section 2.2 of the Lease Agreement, (iii) the termination of the Lease Agreement, or (iv) the receipt by the Company of notice from the Agency of the termination of this Sales Tax Letter (in each case as so terminated, the "Termination Date"), all vendors, contractors and subcontractors are hereby authorized to rely on this Sales Tax Letter (or on a photocopy or fax of this Sales Tax Letter) as evidence that purchases of the Project property, to the extent effected by the Company (or by a contractor or subcontractor engaged by the Company) as agent for the Agency, are exempt from all New York State and New York City sales and use taxes.

9. Notwithstanding any contrary provisions in the Lease Agreement, ten (10) days prior to the expiration of this letter, the Lessee shall surrender this letter to the Agency for annual renewal. The Lessee may continue to use a facsimile copy of this Authorization for Sales Tax Exemption until its stated expiration date. Within ten (10) days of receipt of this letter, the Agency, if required, shall provide such annual renewal of the letter to the Lessee as provided in the Lease Agreement.

10. The Agency further appoints the Sublessees its agents for purposes of using the Facility.

[Intentionally Left Blank]

The signature of a representative of the Company and the Sublessees where indicated below will indicate that the Company and the Sublessees have accepted the terms hereof.

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Maureen P. Babis  
Deputy Executive Director

ACCEPTED AND AGREED TO BY:

**J & J FARMS REALTY JOINT VENTURE**

By Its Joint Venture Partners

J & J Farms Redevelopment Company, LLC

By: \_\_\_\_\_  
Michael Oberlander  
Member

J & J Farms Creamery Company Real Estate, LLC  
By J & J Farms Creamery, Inc., Member

By: \_\_\_\_\_  
Michael Oberlander  
President

**J & J FARMS CREAMERY, INC.**

By: \_\_\_\_\_  
Michael Oberlander  
President

**FISHER FOODS OF QUEENS CORP.**

By: \_\_\_\_\_  
Michael Oberlander  
President

**Exhibit A**

Exemptions from sales or use tax relating to the acquisition of building materials and building fixtures for incorporation within the Facility Realty.

**Exhibit D**

ST-340 Annual Report of Sales and Use Tax Exemptions



# Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA)

**ST-340**  
(7/02)

For Period Ending December 31, \_\_\_\_\_ (enter year)

### Project information

Name of IDA agent/project operator \_\_\_\_\_ Federal employer identification number (FEIN) \_\_\_\_\_

Street address \_\_\_\_\_ Telephone number \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP code \_\_\_\_\_

Name of IDA agent/project operator's authorized representative, if any \_\_\_\_\_ Title \_\_\_\_\_

Street address \_\_\_\_\_ Telephone number \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP code \_\_\_\_\_

Name of IDA \_\_\_\_\_

Street address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP code \_\_\_\_\_

Name of project \_\_\_\_\_

Street address of project site \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP code \_\_\_\_\_

- 1 Project purpose:
- Services
  - Construction
  - Agriculture, forestry, fishing
  - Wholesale trade
  - Retail trade
  - Finance, insurance or real estate
  - Transportation, communication, electric, gas, or sanitary services
  - Manufacturing
  - Other (specify) \_\_\_\_\_

2 Date project began: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
MM DD YYYY

3 Beginning date of construction or installation (actual or expected): \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
MM DD YYYY

4 Completion date of construction phase of project (actual or expected): \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
MM DD YYYY

5 Completion date of project (actual or expected): \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
MM DD YYYY

6 Duration of project (years/months; actual or expected): \_\_\_\_\_ / \_\_\_\_\_  
Years Months

7 Total sales and use tax exemptions (actual tax savings; NOT total purchases) ..... 7 \$ \_\_\_\_\_

Print name of officer, employee, or authorized representative signing for the IDA agent/project operator \_\_\_\_\_ Title of person signing \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Failure to annually file a complete report may result in the removal of authority to act as an IDA agent/project operator.  
Mail completed report to: NYS Tax Department, IDA Unit, Bldg 8 Rm 738, W A Harriman Campus, Albany NY 12227.

## Instructions

### General information

#### Who must file?

The General Municipal Law (GML) and the Public Authorities Law require the agent/project operator (also known as *project occupant*) of an Industrial Development Agency or Authority (IDA) to file an annual report with the Tax Department. The agent/project operator required to file this report is the person directly appointed by the IDA to act for and to represent the IDA for the project. The agent/project operator is ordinarily the one for whom the IDA project was created.

There is usually only one agent/project operator directly appointed by the IDA for an IDA project. However, if the IDA directly appoints multiple agents/project operators, each agent/project operator must file this form (unless they are related corporations).

Only the agent/project operator(s) directly appointed by the IDA must file Form ST-340. Contractors, subcontractors, consultants, or agents appointed by the agent/project operator(s) should not themselves file Form ST-340. However, the agent/project operator(s) must include on Form ST-340 information obtained from such contractors, subcontractors, consultants, and agents, as described below.

#### What must be reported?

The report must show the total value of all state and local sales and use taxes exempted during the calendar year, as a result of the project's designation as an IDA project. This includes:

- the value of the exemptions obtained by the agent/project operator; and
- the value of the exemptions obtained by your contractors, subcontractors, consultants, and others, whether or not appointed as agents of the IDA.

The report requires only the total combined exemptions obtained by the above people. A break down of the total is not required. However, since the report must include the value of the exemptions they obtained, the agent/project operator must keep records of the amounts others report to the agent/project operator.

It is important that the agent/project operator make it clear to the contractors, subcontractors, consultants, and others that they must keep accurate tax information and have it available so that the agent/project operator can comply with the annual reporting requirements.

Do not include in this report the amount of any sales and use tax exemptions arising out of other provisions of the Tax Law (for example, manufacturer's production equipment exemption, research and development exemption, or contractor's exemption for tangible personal property incorporated into a project of an exempt organization).

See instructions below for additional information required.

#### When is the report due?

You must file Form ST-340 on a calendar-year basis. It is due by the last day of February of the following year. The reporting requirement applies to IDA projects started on or after July 21, 1993.

### Project information

At the top of the form, identify the reporting period by entering the year in the space provided. If an address is required, always include the ZIP code.

#### Name of IDA agent/project operator

Enter the name, address, federal employer identification number (FEIN), and telephone number of the IDA agent/project operator.

#### Name of IDA agent/project operator's authorized representative

Enter the name, address, title (for example, attorney or accountant), and telephone number of the individual authorized by the IDA agent/project operator to submit this report.

#### Name of IDA

Enter the name and address of the IDA. If more than one IDA is involved in a particular project, the IDA agent/project operator must file a separate report for the tax exemptions attributable to each IDA.

#### Name of project

Enter the name of the project and the address of the project site. If the IDA agent is involved in more than one project, a separate report must be filed by the IDA agent/project operator for each project, even if authorized by the same IDA.

### Line instructions

**Line 1 — Project purpose** — Check the box that identifies the purpose of the project. If you check *Other*, please be specific in identifying its purpose.

**Line 2** — Enter the date the project started (this means the earliest of the date of any bond or inducement resolution, the execution of any lease, or any bond issuance). Include month, day, and year.

**Line 3** — Enter the date on which you, or your general contractor or subcontractor, actually began, or expect to begin, construction or installation on the project. If the project does not involve any construction, enter *Does not apply*.

**Line 4** — Enter the date the construction phase of the project was completed. If it has not been completed by the end of the reporting period, enter the date you expect to complete this phase of the project.

**Line 5** — Enter the date on which installation, lease, or rental of property (for example, machinery or computers) on the project ended. If the project was not completed by the end of the reporting period, enter the date the project is expected to be completed.

**Line 6** — Enter the total number of years and months from the project's inception to its completion or expected completion.


**Line 7** — Enter the total amount of New York State and local sales and compensating use taxes exempted during the reporting period (if none, enter "0") as a result of the project's receipt of IDA financial assistance. This includes exemptions obtained at the time of purchase as well as through a refund or credit of tax paid. Include the sales and use taxes exempted on purchases of property or services incorporated into or used on the exempt project. This includes the taxes exempted on purchases made by or on behalf of the agent/project operator, the general contractor for the project, and any subcontractors, consultants, or others. Do not enter total purchases on line 7.

### Signature area

Enter the name and title of the person signing on behalf of the IDA agent/project operator (for example, the IDA agent/project operator's officer, employee, or other authorized representative). The IDA agent/project operator's officer, employee, or authorized representative must sign the report. Enter the date signed.

Mail completed report to: NYS Tax Department, IDA Unit, Bldg 8 Rm 738, W A Harriman Campus, Albany NY 12227.

### Need help?

 Telephone assistance is available from 8 a.m. to 5:55 p.m. (eastern time), Monday through Friday.

Business tax information: 1 800 972-1233

Forms and publications: 1 800 462-8100

From areas outside the U.S. and outside Canada: (518) 485-6800

Fax-on-demand forms: 1 800 748-3678

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110 (8 a.m. to 5:55 p.m., eastern time).



Internet access: [www.tax.state.ny.us](http://www.tax.state.ny.us)



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 225-5829.



If you need to write, address your letter to: NYS Tax Department, Taxpayer Contact Center, W A Harriman Campus, Albany NY 12227.

### Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 171, 171-a, 287, 308, 429, 475, 505, 687, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

**SCHEDULE A**

**PROJECT COMPLETION CERTIFICATE OF LESSEE AS  
REQUIRED BY SECTION 2.2(d) OF THE LEASE AGREEMENT**

The undersigned, an Authorized Representative (as defined in the Lease Agreement referred to below) of J & J Farms Realty Joint Venture, a New York joint venture partnership of businesses (the "Lessee"), HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 2.2(d) of that certain Lease Agreement, dated as of November 1, 2006 (the "Lease Agreement"), between the New York City Industrial Development Agency (the "Agency") and the Lessee, and FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement):

(i) the Project has been completed substantially in accordance with the plans and specifications therefor and the date of completion of the Project was \_\_\_\_\_;

(ii) except for any Project costs not due and payable or the liability for payment of which is being contested or disputed by the Lessee in good faith, all labor, service, machinery, equipment, materials and supplies used therefor have been paid for;

(iii) all other facilities necessary in connection with the Project have been completed and all costs and expenses incurred in connection therewith have been paid;

(iv) the Agency has a good and valid leasehold estate in the Facility, and all property constituting the Facility is subject to the Company Lease, the Lease Agreement and the Sublease Agreement, subject only to Permitted Encumbrances;

(v) in accordance with all applicable laws, regulations, ordinances and guidelines, the Facility is ready for occupancy, use and operation for its intended purposes;

(vi) this Certificate is given without prejudice to any rights of the Lessee against third parties existing on the date hereof or which may subsequently come into being and no Person other than the Agency may benefit from this Certificate; and

(vii) attached hereto are (a) releases of mechanics' liens by the general contractor and by all contractors and materialmen who supplied work, labor, services, materials or supplies in connection with the Project, (b) a certificate of occupancy, (c) any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by the Lease Agreement, and (d) evidence that all real property taxes and assessments, and payments in lieu of taxes, if any, due and payable under Section 4.3 of the Lease Agreement in respect of the Facility have been paid in full.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_.

**J & J FARMS REALTY JOINT VENTURE**  
By its Joint Venture Partners

J & J Farms Redevelopment Company, LLC

By: \_\_\_\_\_  
Michael Oberlander  
Member

J & J Farms Creamery Company Real Estate, LLC  
By J & J Farms Creamery, Inc., Member

By: \_\_\_\_\_  
Michael Oberlander  
President



EMPLOYMENT and BENEFITS REPORT
For the Fiscal Year July 1, - June 30, (FY ' )

In order to comply with State and Local Law reporting requirements, the Company is required to complete and return this form to NYCIDA, 110 William Street, Attention: Compliance, New York, NY 10038 no later than the next August 1, .

PLEASE SEE THE ATTACHED INSTRUCTIONS AND DEFINITIONS OF CAPITALIZED TERMS USED ON THIS PAGE.

- 1. Number of permanent Full-Time Employees as of June 30, 20\_\_
2. Number of non-permanent Full-Time Employees as of June 30, 20\_\_
3. Number of permanent Part-Time Employees as of June 30, 20\_\_
4. Number of non-permanent Part-Time Employees as of June 30, 20\_\_
5. Number of Contract Employees as of June 30, 20\_\_
6. Total Number of employees of the Company and its Affiliates included in Items 1, 2, 3 and 4.....

For each employee included in this item 6, attach the NYS-45 Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return for the period including June 30, 20\_\_.

- 7. Number of employees included in item 6 above who reside in the City of New York.....
8. Do the Company and its Affiliates offer health benefits to all Full-Time Employees? Y N (please circle Y or N)
Do the Company and its Affiliates offer health benefits to all Part-Time Employees?..... Y N (please circle Y or N)

If the answer to item 6 above is 250 or more employees, please complete Item 9 through 13 below:

- 9. Number of employees in Item 6 who are "Exempt" .....
10. Number of employees in Item 6 who are "Non-Exempt" .....
11. Number of employees in item 10 that earn up to \$25,000 annually.....
12. Number of employees in item 10 that earn \$25,001 - \$40,000 annually.....
13. Number of employees in item 10 that earn \$40,001 - \$50,000 annually.....

For Items 14 through 16, indicate the value of the benefits realized at Project Locations during FY' :

- 14. Value of sales and use tax exemption benefits ..... \$
15. Value of Commercial Expansion Program ("CEP") benefits..... \$
16. Value of Relocation and Employment Assistance Program ("REAP") benefits ..... \$
17. Were physical improvements made to any Project Location during FY' \_\_ at a cost exceeding 10% of the current assessed value of the existing improvements at such Project Location? Y N (please circle Y or N)

If the Company and/or its Affiliates have applied for Industrial and Commercial Incentive Program ("ICIP") benefits for new physical improvements at Project Location(s), please provide the ICIP application number(s).. #

Certification: I, the undersigned, an authorized officer or principal owner of the Company/Affiliate/Tenant, hereby certify to the best of my knowledge and belief, that all information contained in this report is true and complete. This form and information provided pursuant hereto may be disclosed to the New York City Economic Development Corporation ("NYCEDC") and New York City Industrial Development Agency ("NYCIDA") and may be disclosed by NYCEDC and NYCIDA in connection with the administration of the programs of NYCEDC and/or NYCIDA and/or the City of New York; and, without limiting the foregoing, such information may be included in (x) reports prepared by NYCEDC pursuant to New York City Charter Section 1301 et. seq., (y) other reports required of NYCIDA or NYCEDC, and (z) any other reports or disclosure required by law.

Entity Name: \_\_\_\_\_

Signature By: \_\_\_\_\_ Date: \_\_\_\_\_

Name (print): \_\_\_\_\_ Title: \_\_\_\_\_

## **DEFINITIONS:**

“**Affiliate**” is (i) a business entity in which more than fifty percent is owned by, or is subject to a power or right of control of, or is managed by, an entity which is a party to a Project Agreement, or (ii) a business entity that owns more than fifty percent of an entity which is a party to a Project Agreement or that exercises a power or right of control of such entity.

“**Company**” includes any entity that is a party to a Project Agreement.

“**Contract Employee**” is a person who is an independent contractor (i.e., a person who is not an “employee”), or is employed by an independent contractor (an entity other than the Company, an Affiliate or a Tenant), who provides services at a Project Location.

“**Financial Assistance**” is any of the following forms of financial assistance provided by or at the direction of NYCIDA and/or NYCEDC: a loan, grant, tax benefit and/or energy benefit pursuant to the Business Incentive Rate (BIR) program or New York City Public Utility Service (NYCPUS) program.

“**Full-Time Employee**” is an employee who works at least 35 hours per week at a Project Location.

“**Part-Time Employee**” is an employee who works less than 35 hours per week at a Project Location.

“**Project Agreement**” is any agreement or instrument pursuant to which an entity received or receives Financial Assistance.

“**Project Location**” is any location (a) with regard to which Financial Assistance has been provided to the Company and/or its Affiliates during the fiscal year reporting period covered by the Employment and Benefits Report, or (b) that is occupied by the Company and/or its Affiliates at which such entities have employees who are eligible to be reported per the terms of the Project Agreement with the Company and/or its Affiliates.

“**Tenant**” is a tenant or subtenant (excluding the Company and its Affiliates) that leases or subleases facilities from the Company or its Affiliates (or from tenants or subtenants of the Company or its Affiliates) at any Project Location.

**ITEM INSTRUCTIONS** For each Project Agreement, please submit one report that covers (i) the Company and its Affiliates and (ii) Tenants and subtenants of Tenants at all Project Locations covered by the Project Agreement. Each Tenant must complete items 1-5, 15 and 16 on this form with regard to itself and its subtenants and return it to the Company. The Company must include in its report information collected by the Company from its Affiliates and Tenants. The Company must retain for six (6) years all forms completed by its Affiliates and Tenants and at NYCIDA’s request must permit NYCIDA upon reasonable notice to inspect such forms and provide NYCIDA with a copy of such forms.

1-4. Items 1, 2, 3 and 4 must be determined as of **June 30, 20\_\_** and must include all permanent and non-permanent Full-Time Employees and Part-Time Employees at all Project Locations, including, without limitation, those employed by the Company or its Affiliates and by Tenants and subtenants of Tenants at the Project Locations. **Do not include Contract Employees in Items 1, 2, 3 and 4.**

5. Report all Contract Employees providing services to the Company and its Affiliates and Tenants and subtenants of Tenants at all Project Locations.

6-14. Report information requested only with respect to the Company and its Affiliates at all Project Locations. For item 6, report only the permanent and non-permanent Full-Time Employees and Part-Time Employees of the Company and its Affiliates. **Do not report employees of Tenants and subtenants of Tenants. Do not report Contract Employees.**

9. Indicate the number of employees included in item 6 who are classified as “Exempt”, as defined in the federal Fair Labor Standards Act. Generally, an Exempt employee is not eligible for overtime compensation.

10. Indicate the number of employees included in item 6 who are classified as “Non-Exempt”, as defined in the federal Fair Labor Standards Act. Generally, a Non-Exempt employee is eligible for overtime compensation.

14. Report all sales and use tax exemption benefits realized at all Project Locations by the Company and its Affiliates and granted by virtue of the exemption authority of NYCIDA or the City of New York. Do not include any sales and use tax savings realized under the NYS Empire Zone Program.

15. Report all CEP benefits received by the Company and its Affiliates and any Tenants and subtenants of Tenants at all Project Locations. CEP is a package of tax benefits designed to help qualified businesses to relocate or expand in designated relocation areas in New York City. For more information regarding CEP, please visit <http://www.nyc.gov/dof>.

16. Report all REAP benefits received by the Company and its Affiliates and any Tenants and subtenants of Tenants at all Project Locations. REAP is designed to encourage qualified businesses to relocate employees to targeted areas within New York City. REAP provides business income tax credits based on the number of qualified jobs connected to the relocation of employees. For more information regarding REAP, please visit <http://www.nyc.gov/dof>.



New York City  
Industrial Development Agency

# IDA SUBTENANT SURVEY

DUE DATE: January 4, \_\_\_\_

<<COMPANY>>  
<<ADDRESS>>  
<<CITY>>  
<<NAME>>

In order to verify compliance with your IDA Transaction Documents, please complete the information requested below for each and every subtenant occupying space in your facility as of **DECEMBER 31, \_\_\_\_**.

**Total Square Footage of Building(s): \_\_\_\_\_ Sq. Ft.**

<b>Subtenant</b>	<b>Square Footage</b>	<b>Beginning Date</b>	<b>End Date</b>	<b>Related Company Yes/No</b>
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I, the undersigned hereby certify to the best of my knowledge and belief that the information reported above is true and complete. I understand that this information is submitted pursuant to the requirements of the IDA Transaction Documents.

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Phone Number: \_\_\_\_\_

Please fax the completed form to:  
New York City Industrial Development Agency  
Compliance Unit  
**212-312-3918**

Help Line: 212-312-3963

• 110 William Street, New York, NY 10038• 212.619.5000



**LOCATION & CONTACT  
INFORMATION**

Due Date By Facsimile: July 31, 20xx

J & J Farms Realty Joint Venture

**Eligible Project Location(s):**

Please provide the information required below for the location or locations that are receiving benefits from the New York City Industrial Development Agency ("IDA").

Project Address & Floor	Borough	Zip Code	Type of Benefit (Pilot, Sales Tax, etc.)
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\* Please use additional pages if necessary \*

**Please provide below current Project Contact Information:**

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_  
(Please print CLEARLY)

Signature: \_\_\_\_\_

**Backup Contact Name/Title/Phone Number:**

\_\_\_\_\_

FAX YOUR RESPONSE TO: (212) 312-3918

Or mail to:  
NYC IDA  
Attention: Compliance Dept.  
110 William Street, 4<sup>th</sup> Floor  
New York, NY 10038

QUESTIONS: Please contact the IDA Compliance Helpline at (212) 312-3963



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J & J FARMS REALTY JOINT VENTURE

and

NEW YORK CITY  
INDUSTRIAL DEVELOPMENT AGENCY

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**COMPANY LEASE AGREEMENT**

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Dated as of November 1, 2006

New York City Industrial Development Agency  
(2006 J & J Farms Creamery, Inc. and Fisher Foods of Queens Corp. Project)

Affecting the Land generally known by the street address  
57-48 49th Street, Maspeth, New York  
Section 14, Block 2602 and Lot 220

in the County of Queens,  
City and State of New York  
as more particularly described in  
Exhibit A to this Lease Agreement  
on the Official Tax Map of Queens County

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Record and Return to:  
Hawkins Delafield & Wood LLP  
One Chase Manhattan Plaza  
New York, New York 10005  
Attention: Arthur M. Cohen, Esq.

## COMPANY LEASE AGREEMENT

**THIS COMPANY LEASE AGREEMENT**, made as of November 1, 2006 (this “**Company Lease**”), by and between **J & J FARMS REALTY JOINT VENTURE**, a joint venture partnership of businesses organized and existing under and by virtue of the laws of the State of New York (the “**Company**”), having its principal office at 57-48 49<sup>th</sup> Street, Maspeth, New York 11378, party of the first part, and **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York (the “**Agency**”), duly organized and existing under the laws of the State of New York, having its principal office at 110 William Street, New York, New York 10038, party of the second part (capitalized terms used in this Company Lease and not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement referred to below):

### WITNESSETH:

**WHEREAS**, 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 (the “**Enabling Act**”), authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including but not limited to machinery and equipment, deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, 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**, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by Chapter 1082 of the 1974 Laws of New York, as amended (together with the Enabling Act, the “**Act**”), for the benefit of The City of New York (the “**City**”) and the inhabitants thereof; and

**WHEREAS**, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Company and J & J Farms Creamery, Inc. and Fisher Foods of Queens Corp., each a corporation duly organized and existing under the laws of the State of New York (collectively, the “**Sublessees**”), for a “project” within the meaning of the Act within the territorial boundaries of the City and located on that certain lot, piece or parcel of land in Section 14, Block 2602 and Lot 220, generally known as and by the street address 57-48 49<sup>th</sup> Street, Maspeth, New York (the “**Land**”) and otherwise described in Exhibit A — “Description of Land” — attached hereto and made a part hereof; and

**WHEREAS**, the project will consist of the improvement of a commercial facility (the "Facility"), consisting of the renovation of an approximately 77,420 square foot parcel of land and an approximately 57,430 square foot building thereon (including but not limited to the improvement of the staging area, loading dock, new offices, refrigeration and security systems), located at 57-48 49th Street, Maspeth, New York, all for use in the distribution of assorted food products (the "**Project**"); and

**WHEREAS**, to facilitate the Project, the Agency, the Company and the Sublessees have entered into negotiations to enter into a "straight-lease transaction" within the meaning of the Act pursuant to the Agency's Industrial Incentive Program in which (i) the Company will lease the Facility Realty to the Agency pursuant to this Company Lease, (ii) the Agency will sublease its interest in the Facility Realty to the Company pursuant to a certain Lease Agreement, dated as of even date herewith (the "**Lease Agreement**"), between the Agency and the Company, and (iii) the Company will sub-sublease the Facility Realty to the Sublessees pursuant to a certain Sublease Agreement, dated as of even date herewith, between the Company and the Sublessees (the "**Sublease Agreement**"); and, in furtherance of such purposes the Agency adopted a resolutions on August 9, 2005 and April 11, 2006, authorizing the undertaking of the Project, the renovation of the Facility by the Company, the lease of the Facility Realty by the Company to the Agency, the sublease of the Facility Realty by the Agency to the Company, and the sub-sublease of the Facility Realty by the Company to the Sublessees; and

**WHEREAS**, the provision by the Agency of financial assistance to the Company and the Sublessees through a straight-lease transaction has been determined to be necessary to induce the Sublessees to remain and expand its operations within the City and not otherwise relocate the same outside of the City; and if the Agency does not provide such financial assistance, the Sublessees could not feasibly proceed with the Project; and

**WHEREAS**, the cost of the Project is being financed by equity furnished by the Company and/or the Sublessees and/or the proceeds of additional lending; and

**WHEREAS**, pursuant to this Company Lease, the Company will lease the Facility Realty to the Agency; and

**NOW, THEREFORE**, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows (provided that in the performance of the agreements of the Agency herein contained, any obligation it may incur for the payment of money shall not subject the Agency to any pecuniary or other liability nor create a debt of the State or of the City, and neither the State nor the City shall be liable on any obligation so incurred, but any such obligation shall be payable by the Agency solely out of the lease rentals, revenues and receipts payable by the Company under the Lease Agreement):



## ARTICLE I

The Company does hereby lease to the Agency and the Agency hereby leases from the Company the Land described in Exhibit A attached hereto, including all improvements thereto (but excluding the Lessee's Property within the meaning of Section 4.1(c) of the Lease Agreement and any Existing Facility Property released pursuant to Section 4.2 of the Lease Agreement), for the term herein provided and for use as provided in the Lease Agreement. It is the intention of the Company and the Agency that a leasehold estate in all improvements to the Facility Realty hereafter constructed by the Company shall vest in the Agency as and when the same are constructed. Accordingly, the Company and the Agency agree that the Agency shall hold a leasehold estate in all improvements hereafter constructed by the Company to the Facility Realty (but excluding the Lessee's Property within the meaning of Section 4.1(c) of the Lease Agreement and any Existing Facility Property released pursuant to Section 4.2 of the Lease Agreement).

## ARTICLE II

The term of this Company Lease shall commence on the Commencement Date and expire on the earlier of (i) 11:59 p.m. (New York City time) on June 30, 2032, or (ii) such earlier or later date as may be provided in accordance with the terms of the Lease Agreement (or upon such earlier termination of the Lease Agreement as provided therein).

## ARTICLE III

The sole rental hereunder shall be the single sum of ten dollars (\$10), receipt of which is hereby acknowledged by the Company.

## ARTICLE IV

The Company hereby delivers possession to the Agency of the Facility Realty.

## ARTICLE V

The Company represents and warrants that the execution and delivery by the Company of this Company Lease and the performance by the Company of its obligations under this Company Lease and the consummation of the transactions herein contemplated have been duly authorized by all requisite action on the part of the Company and will not violate (i) any provision of law, or any order of any court or agency of government, (ii) the business certificate or partnership agreement of the Company, or (iii) any indenture, agreement or other instrument to which the Company is a party or by which it or any of its property is subject to or bound or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or would result in the imposition of any lien, charge or encumbrance of any nature whatsoever on the Facility other than Permitted Encumbrances. The Company represents and warrants that it has full right and lawful authority to enter into this Company Lease for the full term hereof. The Company covenants and agrees that, so long as the Lease Agreement shall be in full force and effect, the

Agency shall have, hold and enjoy a valid leasehold estate in the Facility Realty during the term hereof (subject to Permitted Encumbrances), and the Company shall from time to time take all necessary action to that end.

#### ARTICLE VI

Neither the Agency nor the Company shall assign or transfer this Company Lease nor sublease the whole or any part of the Facility (except to the extent permitted in accordance with Section 9.3 of the Lease Agreement), nor subject this Company Lease to any lien, claim, mortgage or encumbrance (other than Permitted Encumbrances), in any manner, nor sell, assign, convey or otherwise dispose of the Facility or any part thereof, during the term of this Company Lease, in any manner, to any Person, except that (i) the Agency will sublease the Facility Realty to the Company pursuant to the Lease Agreement; and (ii) the Company will sub-sublease the Facility Realty to the Sublessees pursuant to the Sublease Agreement.

#### ARTICLE VII

Except for the Lease Agreement, this Company Lease contains the entire agreement between the parties hereto with respect to the subject matter hereof and all prior negotiations and agreements are merged in this Company Lease. This Company Lease may not be changed, modified or discharged in whole or in part and no oral or executory agreement shall be effective to change, modify or discharge in whole or in part this Company Lease or any obligations under this Company Lease, unless such agreement is set forth in a written instrument executed by the Company and the Agency. No consent or approval of the Company shall be deemed to have been given or to be effective for any purposes unless such consent or approval is set forth in a written instrument executed by the Company. No consent or approval of the Agency shall be deemed to have been given or to be effective for any purposes unless such consent or approval is set forth in a written instrument executed by the Agency.

#### ARTICLE VIII

All notices, certificates or other communications hereunder shall be sufficient if sent (i) by return receipt requested or registered or certified United States mail, postage prepaid, (ii) by a nationally recognized overnight delivery service, charges prepaid or (iii) by hand delivery, addressed, as follows:

(a) if to the Agency, New York City Industrial Development Agency, 110 William Street, New York, New York 10038, Attention: General Counsel, with a copy to the Executive Director of the Agency at the same address, and

(b) if to the Company, to J & J Farms Realty Joint Venture, c/o J & J Farms Creamery, Inc., 57-48 49th Street, Maspeth, New York, 11378, Attention: President, with a copy to Roy P. Kozupsky & Associates, LLP, 10 East 40<sup>th</sup> Street, Suite 1710, New York, New York 10016, Attention: William P. Walzer, Esq.

## ARTICLE IX

This Company Lease shall be governed by, and construed and enforced in accordance with, the laws of the State of New York.

The terms of this Company Lease are and shall be binding upon and inure to the benefit of the Agency and the Company and their respective successors and assigns.

If any one or more of the provisions of this Company Lease shall be ruled invalid by any court of competent jurisdiction, the invalidity of such provision(s) shall not affect any of the remaining provisions hereof, but this Company Lease shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

## ARTICLE X

This Company Lease shall become effective upon the Commencement Date. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

## ARTICLE XI

All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Company Lease shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in his individual capacity, and no recourse shall be had for the payment of any amounts hereunder against any member, director, officer, employee or agent of the Agency. In addition, in the performance of the agreements of the Agency herein contained, any obligation it may incur shall not subject the Agency to any pecuniary or other liability nor create a debt of the State or of the City, and neither the State nor the City shall be liable on any obligation so incurred.

All covenants, stipulations, promises, agreements and obligations of the Company contained in this Company Lease shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Company, and not of any director, officer, employee or agent of the Company in his individual capacity, and no recourse shall be had for the payment of any amounts hereunder against any director, officer, employee or agent of the Company.

## ARTICLE XII

The use of the Facility, and all other rights, duties, liabilities and obligations of the Company and the Agency with respect thereto and including the renovation of the Facility, and the use, operation, leasing and financing of the Facility, not provided for in this Company Lease, shall be as set forth in the Lease Agreement.

**ARTICLE XIII**

The Agency and the Company agree that this Company Lease or a memorandum hereof shall be recorded by the Company in the appropriate Office of the Register of The City of New York.


**IN WITNESS WHEREOF**, the Company has caused its name to be subscribed hereto by its Authorized Representative, and the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President of Legal Affairs, all being done as of the year and day first above written.

**J & J FARMS REALTY JOINT VENTURE**  
By its Joint Venture Partners, as Sublessor

J & J Farms Redevelopment Company, LLC

By:   
Michael Oberlander  
Member

J & J Farms Creamery Company Real Estate, LLC  
By J & J Farms Creamery, Inc., Member

By:   
Michael Oberlander  
President

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Maureen P. Babis  
Deputy Executive Director

**IN WITNESS WHEREOF**, the Company has caused its name to be subscribed hereto by its Authorized Representative, and the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President of Legal Affairs, all being done as of the year and day first above written.

**J & J FARMS REALTY JOINT VENTURE**

By its Joint Venture Partners, as Sublessor

J & J Farms Redevelopment Company, LLC

By: \_\_\_\_\_

Michael Oberlander  
Member


J & J Farms Creamery Company Real Estate, LLC

By J & J Farms Creamery, Inc., Member

By: \_\_\_\_\_

Michael Oberlander  
President

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:  \_\_\_\_\_

Maureen P. Babis  
Deputy Executive Director

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

On the 20 day of November, in the year two thousand six, before me, the undersigned, personally appeared Michael Oberlander, personally known to be or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

KEVIN REGAN  
Notary Public, State of New York  
No. 01RE6069089  
Qualified in Queens County  
Commission Expires Jan. 22, 2010

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

On the 20 day of November, in the year two thousand six, before me, the undersigned, personally appeared Michael Oberlander, personally known to be or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

KEVIN REGAN  
Notary Public, State of New York  
No. 01RE6069089  
Qualified in Queens County  
Commission Expires Jan. 22, 2010

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

On the 17<sup>th</sup> day of November, in the year two thousand six, before me, the undersigned, personally appeared Maureen P. Babis, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Judith A. Capolongo  
Notary Public/Commissioner of Deeds

JUDITH A. CAPOLONGO  
Commissioner of Deeds, City of New York  
No. 5-1425  
Cert. Filed in New York County  
Commission Expires October ~~2~~ 1, 2007



Exhibit A

**DESCRIPTION OF THE LAND**

ALL that certain plot, piece or parcel of land, situate, lying and being in Maspeth in the Second Ward of the Borough and County of Queens, City and State of New York, more particularly bounded and described as follows:

**BEGINNING** at a point on the westerly side of 49th Place, distant 590.50 feet northerly from the corner formed by the intersection of the northerly side of Grand Avenue (80 feet wide) with the westerly side of 49th Place;

**RUNNING THENCE** westerly parallel with Grand Avenue, 99.93 feet;

**THENCE** northwesterly along a line which forms an interior angle of 144 degrees 08 minutes 25 seconds with the last mentioned course and part of the distance through a proposed party wall, 239.73 feet;

**THENCE** northeasterly along a line which forms an interior angle of 89 degrees 59 minutes 05 seconds with the last mentioned course and part of the distance through a proposed party wall, 247.31 feet;

**THENCE** southeasterly along a line which forms an interior angle of 90 degrees 02 minutes 22.6 seconds with the last mentioned course and part of the distance through a proposed party wall, 245.21 feet to the northwesterly side of 49th Place;

**THENCE** southwesterly along the northwesterly side of 49th Place, 83.64 feet to a point;

**THENCE** southerly along the westerly side of 49th Place, 129.86 feet to the point or place of **BEGINNING**.

**TOGETHER** with an easement and right of way for ingress and egress to and from Grand Avenue over the following described parcel;

**BEGINNING** at a point on the northerly side of Grand Avenue (80 feet wide), distant 595 feet easterly from the corner formed by the intersection of the northerly side of Grand Avenue and the easterly side of 47th Street;

**RUNNING THENCE** northerly at right angles to the northerly side of Grand Avenue, 720.36 feet;

**THENCE** northeasterly on a line forming an interior angle of 143 degrees 42 minutes 33 seconds with the preceding course, 84.89 feet;

seconds with the preceding course, 60 feet;

THENCE southwesterly along a line forming an interior angle of 89 degrees 32 minutes 42 seconds with the preceding course, 65.70 feet;

THENCE southerly along a line forming an exterior angle of 143 degrees 42 minutes 33 seconds with the preceding course, 493.16 feet;

THENCE southwesterly on a line forming an interior angle of 144 degrees 09 minutes 51 seconds with the preceding course, 0.55 feet;

THENCE southeasterly on a line at right angles with the preceding course, 0.39 feet;

THENCE southerly at right angles to the northerly side of Grand Avenue, 206.86 feet to the northerly side of Grand Avenue;

THENCE westerly along the northerly side of Grand Avenue, 60 feet to the point or place of BEGINNING.

SUBJECT to the rights of others over said easement and right of way.

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J & J FARMS REALTY JOINT VENTURE  
as Sublessor

and

J & J FARMS CREAMERY, INC.

and

FISHER FOODS OF QUEENS CORP.  
collectively, as Sublessees

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**SUBLEASE AGREEMENT**

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Dated as of November 1, 2006  
(2006 J & J Farms Creamery, Inc. and Fisher Foods of Queens Corp. Project)

Affecting the Land generally known by the street address  
57-48 49th Street, Maspeth, New York  
Section 14, Block 2602 and Lot 220

in the County of Queens,  
City and State of New York,  
as more particularly described in  
Exhibit A to this Sublease Agreement  
on the Official Tax Map of Queens County

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Record and Return to:  
Hawkins Delafield & Wood LLP  
One Chase Manhattan Plaza  
New York, New York 10005  
Attention: Arthur M. Cohen, Esq.

## SUBLEASE AGREEMENT

**THIS SUBLEASE AGREEMENT**, made and entered into as of November 1, 2006 (this “**Sublease Agreement**”), by and between **J & J FARMS REALTY JOINT VENTURE**, a joint venture partnership of businesses duly formed and existing under the laws of the State of New York (the “**Sublessor**”), party of the first part, having its principal office at 57-48 49<sup>th</sup> Street, Maspeth, New York 11378, and **J & J FARMS CREAMERY INC.** and **FISHER FOODS OF QUEENS CORP.**, each being a corporation duly organized and existing under the laws of the State of New York (collectively, the “**Sublessees**”), each having its principal office at 57-48 49<sup>th</sup> Street, Maspeth, New York 11378, parties of the second part.

### WITNESSETH:

**WHEREAS**, 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 (the “**Enabling Act**”), authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including but not limited to machinery and equipment, deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, 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**, pursuant to and in accordance with the provisions of the Enabling Act, the New York City Industrial Development Agency (the “**Agency**”) was established by Chapter 1082 of the 1974 Laws of New York, as amended (together with the Enabling Act, the “**Act**”), for the benefit of The City of New York and the inhabitants thereof; and

**WHEREAS**, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Sublessor and the Sublessees for a commercial “**project**” within the meaning of the Act within the territorial boundaries of the City and located on those certain lots, pieces or parcels of land in Section 14, Block 2602 and Lot 220, generally known as and by the street address 57-48 49th Street, Maspeth, New York (the “**Land**”) and otherwise described in Exhibit A — “**Description of Land**” — attached hereto and made a part hereof; and

**WHEREAS**, the project will consist of the improvement of a commercial facility (the “**Facility**”), consisting of the renovation of an approximately 77,420 square foot parcel of land and an approximately 57,430 square foot building thereon (including but not limited to the improvement of the staging area, loading dock, new offices, refrigeration and security systems), located at 57-48 49th Street, Maspeth, New York, all for use in the distribution of assorted food products (the “**Project**”); and

**WHEREAS**, to facilitate the Project, the Agency, the Sublessor and the Sublessees have entered into negotiations to enter into a “straight-lease transaction” within the meaning of the Act pursuant to the Agency’s Industrial Incentive Program in which (i) the Sublessor will lease the Facility Realty to the Agency pursuant to a certain Company Lease Agreement, dated as of even date herewith, between the Sublessor and the Agency (the “**Company Lease**”), (ii) the Agency will sublease its interest in the Facility Realty to the Sublessor pursuant to a certain Lease Agreement, dated as of even date herewith, between the Agency and the Sublessor (the “**Lease Agreement**”), and (iii) the Sublessor will sub-sublease its interest in the Facility Realty to the Sublessees pursuant to this Sublease Agreement, and, in furtherance of such purposes, the Agency adopted resolutions on August 9, 2005 and April 11, 2006 (collectively, the “**Authorizing Resolution**”), authorizing the undertaking of the Project, the improvement of the Facility, the lease of the Facility Realty by the Sublessor to the Agency, the sublease of the Facility Realty by the Agency to the Sublessor, and the sub-sublease of the Facility Realty by the Sublessor to the Sublessees; and

**WHEREAS**, the provision by the Agency of financial assistance to the Sublessor and the Sublessees through a straight-lease transaction has been determined to be necessary to induce the Sublessees to remain and expand its operations within the City and not otherwise relocate the same outside of the City, and if the Agency does not provide such financial assistance, the Sublessees could not feasibly proceed with the Project; and

**WHEREAS**, the cost of the Project is being financed with equity in the amount of \$450,000 provided by the Sublessor and/or the Sublessees; and

**WHEREAS**, simultaneously with the execution and delivery of this Sublease Agreement, the Sublessor will lease the Facility Realty to the Agency pursuant to the Company Lease, subject to Permitted Encumbrances, and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures and other improvements existing thereon or therein; and

**WHEREAS**, pursuant to the Lease Agreement, the Agency will sublease the Facility Realty to the Sublessor, with the understanding that the Sublessor will sub-sublease the Facility Realty to the Sublessees pursuant to this Sublease Agreement; and

**WHEREAS**, pursuant to Section 4.3 of the Lease Agreement, the Sublessor has agreed to make certain payments in lieu of real estate taxes with respect to the Land and the Improvements; and

**WHEREAS**, this Sublease Agreement is authorized pursuant to Section 9.3 of the Lease Agreement;

**NOW, THEREFORE**, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

Section 1. **Definitions.** Any term not defined herein shall have the meaning set forth for such term in the Lease Agreement or in Appendix A attached hereto and made a part hereof.

Section 2. **Construction.** In this Sublease Agreement, unless the context otherwise requires:

(a) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Sublease Agreement, refer to this Sublease Agreement, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the Commencement Date.

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) Words importing persons shall include firms, associations, limited liability companies, partnerships (including limited partnerships), trusts, corporations and other legal corporations, including public bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Sections of this Sublease Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Sublease Agreement, nor shall they affect its meaning, construction or effect.

Section 3. **Representations and Warranties by Sublessees.** The Sublessees make the following representations, warranties and covenants to the Agency and the Sublessor:

(a) Each of the Sublessees is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, is not in violation of any provision of its certificate of incorporation or bylaws, has the requisite corporate power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Sublease Agreement and each other Project Document to which it is or shall be a party.

(b) Each of the Sublessees shall remain, throughout the term of this Sublease Agreement, a corporation organized under the laws of the State of New York (subject to Section 7 hereof) and in good standing under the laws of the State of New York.

(c) The execution, delivery and performance of this Sublease Agreement and each other Project Document to which it is or shall be a party and the consummation of the transactions herein and therein contemplated have been duly authorized by all requisite corporate action on the part of each of the Sublessees and will not violate any provision of law, any order of any court or agency of government, or the certificate of incorporation or bylaws of either of the Sublessees, or any indenture, agreement or other instrument to which either of the Sublessees is a party or by which it or any of its property is subject to or bound, or be in conflict with or

result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

(d) There is no action or proceeding pending or threatened by or against either of the Sublessees by or before any court or administrative agency that would adversely affect the ability of the Sublessees to perform their obligations under this Sublease Agreement or any other Project Document to which it shall be a party and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Sublessees as of the Commencement Date in connection with the execution and delivery of this Sublease Agreement and each other Project Document to which the Sublessees shall be parties or in connection with the performance of the obligations of the Sublessees hereunder and under each of the Project Documents have been obtained.

(e) The Facility will constitute a "project" under the Act, and the Sublessees intend to operate the Facility, or cause the Facility to be operated, in accordance with this Sublease Agreement and as an Approved Facility and a qualified "project" in accordance with and as defined under the Act.

(f) The financial assistance (within the meaning of the Act) provided by the Agency to the Sublessor and the Sublessees through the straight-lease transaction (within the meaning of the Act) as contemplated by this Sublease Agreement is reasonably necessary to induce the Sublessees to proceed with the Project.

(g) The transactions contemplated by this Sublease Agreement shall not result in the removal of any facility or plant of either of the Sublessees or any other occupant or user of the Facility from one area of the State to within the City or in the abandonment of one or more facilities or plants of either of the Sublessees or any other occupant or user of the Facility located within the State.

(h) The transactions contemplated by this Sublease Agreement shall not provide financial assistance in respect of any project where facilities or property that are primarily used in making retail sales (within the meaning of the Act) of goods or services to customers who personally visit such facilities constitute more than one-third of the total project costs and undertaking the Project will serve the public purposes of the Act by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State.

(i) No funds of the Agency shall be used in connection with the transactions contemplated by this Sublease Agreement for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promoting materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given hereunder to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.



(j) This Sublease Agreement and the other Project Documents to which the Sublessees shall be parties constitute the legal, valid and binding obligations of the Sublessees enforceable against the Sublessees in accordance with their respective terms.

(k) The Sublessor and each of the Sublessees are in compliance, and will continue to comply, with all Federal, State and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality applicable to the Project and the operation of the Facility.

(l) Except as permitted by Section 9.3 of the Lease Agreement, no Person other than the Sublessor and the Sublessees is or will be in use, occupancy or possession of any portion of the Facility.

(m) The Project will be designed, and the operation of the Facility will be, in compliance with all applicable Federal, State and local laws or ordinances (including rules and regulations) relating to safety and environmental quality.

(n) Neither of the Sublessees nor any Affiliate of either thereof is a Prohibited Person.

(o) The officers of the Sublessees are members and/or officers of the Sublessor.

Section 4. **Incorporation of Lease Agreement.** The Sublessees acknowledge receipt of a true and complete copy of the Lease Agreement and consent to the terms thereof. All of the terms, conditions and covenants of the Lease Agreement are deemed incorporated by reference in this Sublease Agreement, with the same force and effect as if each and every provision thereof were more fully and at length set forth herein, provided, however, that only the Sublessor can exercise the option to terminate the Lease Agreement as set forth in Article VIII of the Lease Agreement.

Section 5. **Sublease of Facility.** (a) The Sublessor hereby sub-subleases the Facility Realty to the Sublessees, and the Sublessees hereby sub-sublease the Facility Realty from the Sublessor for and during the term herein provided and upon and subject to the terms and conditions herein set forth. The Sublessees shall at all times during the term of this Sublease Agreement occupy, use and operate the Facility as an Approved Facility in accordance with the provisions of the Act and as a qualified project for the general purposes specified in the recitals to the Lease Agreement.

The term of this Sublease Agreement shall commence on the date of the execution and delivery of this Sublease Agreement and shall expire at 11:57 p.m. (New York City time) on June 30, 2032, or upon such earlier or later date as may be provided in accordance with the terms of the Lease Agreement (or upon such earlier termination of the Lease Agreement as provided therein).

(b) During the term of this Sublease Agreement, the Sublessees agree to pay sublease rentals to the Sublessor in an amount which will equal the amounts necessary to pay the Rental Payments as the same come due under the Lease Agreement. The Sublessor agrees that any sublease rentals payable pursuant to the preceding sentence of this paragraph (b) shall be paid directly or for the account of the Agency as provided in the Lease Agreement (and hereby directs the Sublessees and the Sublessees agree to make such payments), except that if the Lease Agreement requires Rental Payments to be paid otherwise, such sublease rentals shall be paid in the same manner as so required thereunder.

(c) Each of the Sublessees hereby agrees to be bound by each and every obligation, term, covenant, condition and agreement of the Lease Agreement by which the Sublessor as Lessee thereunder is bound and hereby assumes all of the Sublessor's obligations and makes all of the waivers made by the Sublessor under the Lease Agreement as if the Sublessees were the named Lessee under the Lease Agreement and agrees to keep and perform all of the obligations, terms, covenants, conditions and agreements of the Lease Agreement and to pay all sums due under the Lease Agreement on the part of the Sublessor thereunder to be kept and performed and further assumes all obligations as specifically relate to the Sublessees as are contained in the Lease Agreement. Those obligations of the Sublessor in the Lease Agreement which are set forth as surviving the termination of the Lease Agreement shall similarly survive as obligations of the Sublessees, jointly and severally, and survive the termination of this Sublease Agreement.

Section 6. **Sublessees' Obligations Unconditional.** The Sublessees' joint and several obligations under this Agreement to pay sublease rentals shall be absolute, unconditional and general obligations, and irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Sublessor, the Agency or any other Person and the obligation of the Sublessees shall arise whether or not the Project has been completed as provided in the Lease Agreement. The Sublessees will not suspend or discontinue payment of any sublease rental due and payable hereunder or performance or observance of any covenant or agreement required on the part of the Sublessees hereunder for any cause whatsoever, and the Sublessees waive all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction in the sublease rentals due or to become due hereunder.

Section 7. **Dissolution or Merger of Sublessees; Restrictions on Sublessees.** Each of the Sublessees covenants and agrees that at all times during the term of this Sublease Agreement, it will (i) maintain its existence, (ii) continue to be a corporation subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business in the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the execution and delivery of this Sublease Agreement, and (iv) not consolidate with or merge into another corporation or permit one or more corporations to consolidate with or merge into it; provided, however, either of the Sublessees, without violating the foregoing but with the prior written consent (not to be unreasonably withheld or delayed) of the Agency, may consolidate with or merge into another

corporation, or permit one or more corporations to consolidate with or merge into it, or sell or otherwise transfer all or substantially all of its property, business or assets to another such corporation (and thereafter liquidate, wind-up or dissolve or not, as such Sublessee may elect) if, (i) such Sublessee is the surviving, resulting or transferee corporation, and has a net worth (as determined in accordance with generally accepted accounting principles) at least equal to that of such Sublessee immediately prior to such consolidation, merger or transfer, or (ii) in the event that such Sublessee is not the surviving, resulting or transferee company (1) the surviving, resulting or transferee company (A) is solvent and subject to service of process in the State and organized under the laws of the State, or any other state of the United States, and duly qualified to do business in the State, (B) assumes in writing all of the obligations of such Sublessee contained in this Sublease Agreement and all other Project Documents to which such Sublessee shall be a party, and (C) is not, nor is it an Affiliate of, a Prohibited Person, (2) such Sublessee delivers to the Agency an Opinion of Counsel to the effect that this Sublease Agreement and all other Project Documents to which such Sublessee shall be a party constitute the legal, valid and binding obligations of such successor to such Sublessee and are enforceable in accordance with their respective terms to the same extent as they were enforceable against the predecessor Sublessee, and (3) in the opinion of an Independent Accountant, such successor Sublessee has a net worth (as determined in accordance with generally accepted accounting principles) after the merger, consolidation, sale or transfer at least equal to that of such Sublessee immediately prior to such merger, consolidation, sale or transfer. Each of the Sublessees further represents, covenants and agrees that it is and throughout the term of this Sublease Agreement will (x) continue to be owned by the same individuals as shall own the beneficial ownership in the Sublessor, and (y) not constitute a Prohibited Person.

Section 8. **Events of Default.** Any one or more of the following events shall constitute an "Event of Default" hereunder:

(a) Failure of the Sublessees to pay any rental under Section 5(b) hereof that has become due and payable by the terms hereof which results in the occurrence of an Event of Default under the Lease Agreement;

(b) (i) Failure of the Sublessees to pay any amount (except the obligation to pay rent under Section 5(b) hereof) that has become due and payable or to observe and perform any covenant, condition or agreement on their part to be performed under Section 6 or 7 hereunder or with respect to Section 2.4, 4.3, 4.4, 4.6, 4.7, 5.1, 6.1, 6.2, 6.3, 6.12, 6.13, 7.6, 8.5, 9.3 or 9.14 of the Lease Agreement and continuance of such failure for a period of thirty (30) days after receipt by the Sublessees of written notice specifying the nature of such default from the Agency;

(ii) Failure of the Sublessees to pay any amount (except the obligation to pay rent under Section 5(b) hereof) that has become due and payable or to observe and perform any covenant, condition or agreement on their part to be performed with respect to Section 4.5 of the Lease Agreement and continuance of such failure for a period of fifteen (15) days after receipt by the Sublessees of written notice specifying the nature of such default from the Agency;

(c) Failure of the Sublessees to observe and perform any covenant, condition or agreement hereunder on their part to be performed (except as set forth in Section 8(a) or (b) above) and (1) continuance of such failure for a period of thirty (30) days after receipt by the Sublessees of written notice specifying the nature of such default from the Agency, or (2) if by reason of the nature of such default the same can be remedied, but not within the said thirty (30) days, the Sublessees fail to proceed with reasonable diligence after receipt of said notice to cure the same or fail to continue with reasonable diligence their efforts to cure the same;

(d) Either of the Sublessees, the Sublessor or any Guarantor shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

(e) A proceeding or case shall be commenced, without the application or consent of either of the Sublessees, the Sublessor or any Guarantor, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of either of the Sublessees, the Sublessor or any Guarantor, or of all or any substantial part of their respective assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days, or any order for relief against either Sublessee, the Sublessor or any Guarantor shall be entered in an involuntary case under such Bankruptcy Code; the terms "dissolution" or "liquidation" of either of the Sublessees, the Sublessor or any Guarantor as used above shall not be construed to prohibit any action otherwise permitted by Section 7 hereof, Section 6.1 of the Lease Agreement, or Section 2.6 of the Guaranty Agreement;

(f) Any representation or warranty made by either of the Sublessees, the Sublessor or any Guarantor in (i) the application and related materials submitted to the Agency for approval of the Project or the transactions contemplated by this Sublease Agreement, (ii) herein or in any other Project Document, or (iii) any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall in any case prove to be false, misleading or incorrect in any material respect as of the date made;

(g) An "Event of Default" under the Guaranty Agreement or the Lease Agreement shall occur and be continuing; or

(h) The Sublessor, either of the Sublessees or any Guarantor shall become a Prohibited Person.

Whenever any Event of Default shall have occurred and be continuing, the Agency may take any of the same remedial steps with respect to the Sublessees under this Sublease Agreement as are set forth in Section 7.2 of the Lease Agreement with respect to an Event of Default thereunder.

Section 9. **Sublease Agreement for Benefit of the Agency.** It is understood and agreed by the parties hereto that this Sublease Agreement is entered into for the benefit of the Agency, and the payments, obligations, covenants and agreements of the parties hereto may be enforced by the Agency as if it were a party to this Sublease Agreement.

Section 10. **Recording.** An original of this Sublease Agreement shall be recorded by the Sublessees subsequent to the recordation of the Lease Agreement in the appropriate office of the Register of The City of New York, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

Section 11. **Miscellaneous.** (a) This Sublease Agreement shall inure to the benefit of the Sublessor, the Sublessees and the Agency, and shall be binding upon the Sublessor and the Sublessees and their respective successors and assigns.

(b) This Sublease Agreement shall be governed by, and construed in accordance with, the laws of the State, without regard or giving effect to the principles of conflicts of laws thereof.

(c) The Sublessor and the Sublessees agree that this Sublease Agreement is subject to and is expressly subordinated to the Lease Agreement, the Company Lease, and the other Permitted Encumbrances and all extensions, modifications, amendments and renewals thereof.

(d) This Sublease Agreement shall not be assigned, modified, amended, rescinded, terminated, repealed or cancelled without the prior written consent of the Agency.

(e) Neither of the Sublessees shall seek to recover from the Agency any moneys paid to the Agency pursuant to this Sublease Agreement, whether by reason of set-off, counterclaim or deduction or for any reason whatsoever. Each of the Sublessees covenants and agrees (w) that whenever the consent or approval of the Sublessor is required or permitted under this Sublease Agreement, the written consent or approval of the Agency shall first be obtained before taking any action or omitting to take any action for which such consent or permission is needed by the Sublessor; (x) simultaneously to give to the Agency copies of all notices and communications by the Sublessees under this Sublease Agreement; (y) that the Agency shall not be obligated by reason of the assignment of this Sublease Agreement or otherwise to perform or be responsible for the performance of any duties or obligations of the Sublessor hereunder; and (z) not to make any prepayments of rents or other sums due hereunder to the Sublessor unless

such prepayments shall also be simultaneously applied as a prepayment of Rental Payments due or to become due under the Lease Agreement.

(f) The Sublessees hereby waive the provisions of Section 227 of the New York Real Property Law or any law of like import now or hereafter in effect.

(g) All notices, certificates or other communications hereunder shall be sufficient if sent by return receipt requested or registered or certified United States mail, postage prepaid, addressed, if to the Sublessor, to J & J Farms Realty Joint Venture c/o J & J Farms Creamery, Inc., Attention: President, with a copy to Roy P. Kozupsky & Associates, 10 East 40<sup>th</sup> Street, New York, NY 10011, Attention: William Walzer, Esq., if to the Sublessees, to J & J Farms Creamery, Inc., 57-48 49<sup>th</sup> Street, Maspeth, New York 11378, Attention: President, with a copy to Roy P. Kozupsky & Associates, 10 East 40<sup>th</sup> Street, New York, NY 10011, Attention: William Walzer, Esq. Copies of any notices delivered to the Sublessor or to the Sublessees shall also be sent to the Agency at 110 William Street, New York, New York 10038, Attention: General Counsel, with a copy to the Executive Director of the Agency at the same address.

(h) This Sublease Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Sublessor and the Sublessees relating to the Facility.

(i) If any clause, provision or section of this Sublease Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

(j) The Sublessees will permit the Agency, or its duly authorized agent, at all reasonable times and upon reasonable prior notice, to enter the Facility Realty but solely for the purpose of (y) assuring that the Sublessees are operating the Facility, or are causing the Facility to be operated, as an Approved Facility and a qualified "project" within the meaning of the Act consistent with the purposes set forth in the recitals to this Agreement and with the public purposes of the Agency, and (z) determining whether the Facility and/or the use thereof is in violation of any environmental law, and not for any purpose of assuring the proper maintenance or repair of the Facility as such latter obligation is and shall remain solely the obligation of the Sublessees.

(k) This Sublease Agreement shall become effective on the Commencement Date. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(l) It is the intention of the parties hereto that this Sublease Agreement be a "net lease" and that the portion of the rent set forth in Section 5(b) of this Sublease Agreement be available for Rental Payments under the Lease Agreement and this Sublease Agreement shall be construed to effect such intent.

(m) The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this

Sublease Agreement or the Facility or any matters whatsoever arising out of or in any way connected with this Sublease Agreement.

The provision of this Sublease Agreement relating to waiver of a jury trial and the right of re-entry or re-possession shall survive the termination or expiration of this Sublease Agreement.

(n) The Sublessees shall not make, or suffer to be made, any leases (other than the Lease Agreement and the Sublease Agreement and subleases made in accordance with Section 9.3 of the Lease Agreement) or cancel or modify any leases or further assign the whole or any part of the rents without the prior written consent of the Agency. No lease (other than the Lease Agreement and this Sublease Agreement) covering all or any part of the Facility shall be valid or effective without the prior written approval of the Agency. In respect of any lease, the Sublessees will (i) fulfill or perform each and every provision thereof on their part to be fulfilled or performed; (ii) promptly send copies of all notices of default which it shall send or receive thereunder to the Agency, and (iii) enforce, short of termination thereof, the performance or observance of the provisions thereof. Nothing contained in this Sublease Agreement shall be deemed to impose on the Agency any of the obligations of the lessor under the leases.

All leases must provide that the Sublessees and their tenant shall, at the Agency's option, furnish the Agency with an estoppel and attornment letter as to the leases in form and substance acceptable to the Agency.

The Sublessees will furnish to the Agency, upon its request therefor, a detailed statement in writing duly sworn, and covering the period of time specified in such request, containing a list of the names of all tenants of the Facility and occupants other than those claiming possession through such tenants, the portion or portions of the Facility occupied by such tenant and occupant, the rents and other charges payable under the terms of their leases or other agreements, and the periods covered by such leases or other agreements.

(o) The date of this Sublease Agreement shall be for reference purposes only and shall not be construed to imply that this Sublease Agreement was executed on the date first above written. This Sublease Agreement was executed and delivered on the Commencement Date.

[INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Sublessor and the Sublessees have authorized the execution of this Sublease Agreement, all being done as of the year and day first above written.

**J & J FARMS REALTY JOINT VENTURE**

By its Joint Venture Partners, as Sublessor

J & J Farms Redevelopment Company, LLC

By:   
Michael Oberlander  
President

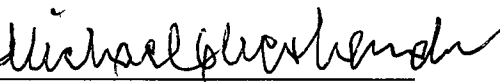
J & J Farms Creamery Company Real Estate, LLC

By J & J Farms Creamery, Inc., Member

By:   
Michael Oberlander  
President

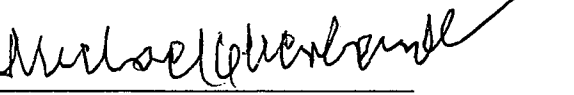
**J & J FARMS CREAMERY, INC.,**

as Sublessee

By:   
Michael Oberlander  
President

**FISHER FOODS OF QUEENS CORP.,**

as Sublessee

By:   
Michael Oberlander  
President



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

On the 26 day of November, in the year two thousand six, before me, the undersigned, personally appeared Michael Oberlander, personally known to be or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

KEVIN REGAN  
Notary Public, State of New York  
No. 01RE6069089  
Qualified in Queens County  
Commission Expires Jan. 22, 2010

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

On the 20 day of November, in the year two thousand six, before me, the undersigned, personally appeared Michael Oberlander, personally known to be or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.




Notary Public

KEVIN REGAN  
Notary Public, State of New York  
No. 01RE6069089  
Qualified in Queens County  
Commission Expires Jan. 22, 2010


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

On the 20 day of November, in the year two thousand six, before me, the undersigned, personally appeared Michael Oberlander, personally known to be or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
KEVIN REGAN  
Notary Public, State of New York  
No. 01RE6069089  
Qualified in Queens County  
Commission Expires Jan. 22, 2010

STATE OF NEW YORK )  
 : ss.:  
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\_\_\_\_\_  
Notary Public  
KEVIN REGAN  
Notary Public, State of New York  
No. 01RE6069089  
Qualified in Queens County  
Commission Expires Jan. 22, 2010

## **APPENDICES**

Exhibit A

DESCRIPTION OF THE LAND

ALL that certain plot, piece or parcel of land, situate, lying and being in Maspeth in the Second Ward of the Borough and County of Queens, City and State of New York, more particularly bounded and described as follows:

BEGINNING at a point on the westerly side of 49th Place, distant 590.50 feet northerly from the corner formed by the intersection of the northerly side of Grand Avenue (80 feet wide) with the westerly side of 49th Place;

RUNNING THENCE westerly parallel with Grand Avenue, 99.93 feet;

THENCE northwesterly along a line which forms an interior angle of 144 degrees 08 minutes 25 seconds with the last mentioned course and part of the distance through a proposed party wall, 239.73 feet;

THENCE northeasterly along a line which forms an interior angle of 89 degrees 59 minutes 05 seconds with the last mentioned course and part of the distance through a proposed party wall, 247.31 feet;

THENCE southeasterly along a line which forms an interior angle of 90 degrees 02 minutes 22.6 seconds with the last mentioned course and part of the distance through a proposed party wall, 245.21 feet to the northwesterly side of 49th Place;

THENCE southwesterly along the northwesterly side of 49th Place, 83.64 feet to a point;

THENCE southerly along the westerly side of 49th Place, 129.86 feet to the point or place of BEGINNING.

TOGETHER with an easement and right of way for ingress and egress to and from Grand Avenue over the following described parcel;

BEGINNING at a point on the northerly side of Grand Avenue (80 feet wide), distant 595 feet easterly from the corner formed by the intersection of the northerly side of Grand Avenue and the easterly side of 47th Street;

RUNNING THENCE northerly at right angles to the northerly side of Grand Avenue, 720.36 feet;

THENCE northeasterly on a line forming an interior angle of 143 degrees 42 minutes 33 seconds with the preceding course, 84.89 feet;

seconds with the preceding course, 60 feet;

THENCE southwesterly along a line forming an interior angle of 89 degrees 32 minutes 42 seconds with the preceding course, 65.70 feet;

THENCE southerly along a line forming an exterior angle of 143 degrees 42 minutes 33 seconds with the preceding course, 493.16 feet;

THENCE southwesterly on a line forming an interior angle of 144 degrees 09 minutes 51 seconds with the preceding course, 0.55 feet;

THENCE southeasterly on a line at right angles with the preceding course, 0.39 feet;

THENCE southerly at right angles to the northerly side of Grand Avenue, 206.86 feet to the northerly side of Grand Avenue;

THENCE westerly along the northerly side of Grand Avenue, 60 feet to the point or place of BEGINNING.

SUBJECT to the rights of others over said easement and right of way.

## APPENDIX A

Event of Default shall have the meaning specified in Section 8 hereof.

Land shall mean those certain lots, pieces or parcels of land generally known by the street address 57-48 49th Street, Maspeth, New York as more particularly described in Exhibit A "Description of the Land" hereto, which is made a part hereof, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 6.4 of the Lease Agreement.

Lease Agreement shall mean the Lease Agreement, dated as of November 1, 2006, between the Agency and the Sublessor, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

Sublease Agreement shall mean this Sublease Agreement, dated as of November 1, 2006, between the Sublessor and the Sublessees, and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith.

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**GUARANTY AGREEMENT**

From

J & J FARMS REALTY JOINT VENTURE,

as Lessee,

and

J & J FARMS CREAMERY, INC.,

a New York Corporation

and

FISHER FOODS OF QUEENS CORP.,

a New York Corporation, collectively as Sublessees

and

Michael Oberlander,

an individual residing at

166 Hewes Street

Brooklyn, New York 11211,

and

Pearl Oberlander,

an individual residing at

166 Hewes Street

Brooklyn, New York 11211,

and

Simon Friedman,

an individual residing at

166 Hewes Street

Brooklyn, New York 11211,

and

Morris Schlager,

an individual residing at

299 Hewes Street

Brooklyn, New York 11211,

collectively, as Individual Guarantors,

To

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

Dated as of November 1, 2006

2006 J & J Farms Creamery, Inc. and Fisher Foods of Queens Corp. Project

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## GUARANTY AGREEMENT

This Guaranty Agreement made and entered into as of the date set forth on the cover page hereof (this “**Guaranty**”) (capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Lease Agreement referred to herein or in Appendix A attached hereto and made a part hereof), from the Lessee, the Sublessees and the Individual Guarantors indicated on the cover page hereof (the Lessee, the Sublessees and the Individual Guarantors being collectively, the “**Guarantors**”), to New York City Industrial Development Agency (the “**Agency**”), a public benefit corporation organized and existing under the laws of the State of New York, having its principal office at 110 William Street, New York, New York 10038:

### WITNESSETH:

**WHEREAS**, 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 (the “**Enabling Act**”), authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including but not limited to machinery and equipment, deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, commercial, research, commercial, industrial or civic purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, 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**, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by Chapter 1082 of the 1974 Laws of New York, as amended (together with the Enabling Act, the “**Act**”), for the benefit of The City of New York and the inhabitants thereof; and

**WHEREAS**, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Lessee and the Sublessees for a commercial “**project**” within the meaning of the Act within the territorial boundaries of the City and located on that certain lot, piece or parcel of land in Section 14 Block 2602 and Lot 220, generally known as and by the street address 57-48 49th Street, Maspeth, New York (the “**Land**”); and

**WHEREAS**, the project will consist of the improvement of a commercial facility (the “**Facility**”), consisting of the renovation of an approximately 77,420 square foot parcel of land and an approximately 57,430 square foot building thereon (including but not limited to the improvement of the staging area, loading dock, new offices, refrigeration and security systems), located at 57-48 49th Street, Maspeth, New York all for use in the distribution of assorted food products (the “**Project**”); and

**WHEREAS**, to facilitate the Project, the Agency, the Lessee and the Sublessees have commenced negotiations to enter into a “straight-lease transaction” within the meaning of the Act and pursuant to the Agency’s Industrial Incentive Program, and pursuant thereto, (i) the Lessee will lease the Facility Realty to the Agency pursuant to a certain Company Lease Agreement, dated as of even date herewith, between the Lessee and the Agency (the “**Company Lease**”), (ii) the Agency will sublease its interest in the Facility Realty to the Lessee pursuant to a certain Lease Agreement, dated as of even date herewith, between the Agency and the Lessee (the “**Lease Agreement**”), and (iii) the Lessee will sub-sublease its interest in the Facility Realty to the Sublessees pursuant to a certain Sublease Agreement, dated as of even date herewith (the “**Sublease Agreement**”), and in furtherance of such purposes, the Agency adopted resolutions on August 9, 2005 and April 11, 2006 authorizing the undertaking of the Project, the renovation of the Facility by the Lessee, the lease of the Facility Realty by the Lessee to the Agency, the sublease of the Facility Realty by the Agency to the Lessee, and the sub-sublease of the Facility Realty by the Lessee to the Sublessees; and

**WHEREAS**, the provision by the Agency of financial assistance to the Lessee and the Sublessees through a straight-lease transaction has been determined to be necessary to induce the Sublessees to remain and expand its operations within the City and not otherwise relocate the same outside of the City; and if the Agency does not provide such financial assistance, the Sublessees could not feasibly proceed with the Project; and

**WHEREAS**, the Guarantors are desirous that the Agency enter into the Lease Agreement with the Lessee and provide financial assistance to the Lessee and the Sublessees as a “straight-lease transaction” within the meaning of the Act and are willing to enter into this Guaranty in order to guarantee to the Agency all payments, obligations, covenants and agreements of the Lessee under the Lease Agreement, and of the Sublessees under the Sublease Agreement, and thereby induce the Agency to take such actions;

**NOW, THEREFORE**, in consideration of the premises, and for other good and valuable consideration received, the Guarantors do hereby, subject to the terms hereof, represent, warrant, covenant and agree, jointly and severally, with the Agency, as follows:

## ARTICLE I

## REPRESENTATIONS AND WARRANTIES OF GUARANTORS

Section 1.1. Representations and Warranties of Guarantors. (a) The Guarantors do hereby represent and warrant that: (i) the Lessee is a partnership of businesses duly formed, validly existing and in good standing under the laws of the State of New York, has power to enter into and perform this Guaranty and to own its property and assets, has duly authorized the execution and delivery of this Guaranty by proper action, and neither this Guaranty, the authorization, execution, delivery and performance hereof, the performance of the agreements herein contained nor the consummation of the transactions herein contemplated will violate any provision of law, any order of any court or agency of government or any agreement, indenture or other instrument to which the Lessee is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or any provision of its business certificate or partnership agreement, or any other requirement of law; (ii) each of the Sublessees is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, has power to enter into and perform this Guaranty and to own its property and assets, has duly authorized the execution and delivery of this Guaranty by proper action, and neither this Guaranty, the authorization, execution, delivery and performance hereof, the performance of the agreements herein contained nor the consummation of the transactions herein contemplated will violate any provision of law, any order of any court or agency of government or any agreement, indenture or other instrument to which either of the Sublessees is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or any provision of its certificate of incorporation or bylaws or any other requirement of law; and (iii) each of the Individual Guarantors is subject to service of process in the State of New York, has power and capacity to enter into and perform this Guaranty and to own his respective property and assets, has duly executed and delivered this Guaranty, and neither this Guaranty, the execution, delivery and performance hereof, the performance of the agreements herein contained nor the consummation of the transactions herein contemplated will violate any provision of law, any order of any court or agency of government or any agreement, indenture or other instrument to which either of the Individual Guarantors is a party or by which either or any of his respective property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/ or lapse of time) a default under any such indenture, agreement, or other instrument, or any other requirement of law.

(b) The Guarantors do hereby further represent, warrant and covenant that none of the Guarantors nor any Affiliate is or will become a Prohibited Person.

(c) This Guaranty constitutes the legal, valid and binding joint and several obligation of the Guarantors, enforceable against the Guarantors in accordance with its terms, except as such enforceability may be limited by bankruptcy, moratorium or insolvency or other law affecting creditors' rights generally and subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(d) The assumption by each Guarantor of his or its obligations hereunder will result in a direct financial benefit to such Guarantor.

## ARTICLE II

## AGREEMENT TO GUARANTEE

Section 2.1. Obligations Guaranteed. (a) The Guarantors hereby unconditionally and jointly and severally guarantee to the Agency (1) the full and prompt payment of an amount equal to each and all of the rental payments when and as the same shall become due, required to be paid by the Lessee under the terms of the Lease Agreement; (2) the full and prompt performance and observance by the Lessee of all of the obligations, covenants and agreements required to be performed and observed by the Lessee under the terms of the Lease Agreement; (3) the full and prompt payment of the rental payments under the Sublease Agreement when and as the same shall become due and payable (excluding the rental payments under Section 5(d) of the Sublease Agreement); and (4) the full and prompt performance and observance of all of the obligations, covenants and agreements required to be performed and observed by the Sublessees under the terms of the Sublease Agreement (the payments, obligations, covenants and agreements in this paragraph being collectively referred to herein as the “**Guaranteed Obligations**”). The Guarantors further hereby irrevocably and unconditionally agree, jointly and severally, that upon default in any of the Guaranteed Obligations, the Guarantors will promptly pay the same or effect the observance of such obligations, covenants and agreements, as the case may be. All payments by the Guarantors shall be paid in lawful money of the United States of America. Each and every default in any of the Guaranteed Obligations shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises.

(b) The Guarantors further agree, jointly and severally, that this Guaranty constitutes an absolute, unconditional, present and continuing guarantee of performance and payment and not of collection, and waive any right to require that any resort be had by the Agency to the Agency’s rights against any other Person, or to any other right or remedy available to the Agency by contract, applicable law or otherwise. The respective obligations of the Guarantors under this Guaranty are direct, unconditional and completely independent of the obligations of any other Person, and a separate cause of action or separate causes of action may be brought and prosecuted against any or all of the obligated Guarantors without the necessity of joining the Sublessees or any other party or previously proceeding with or exhausting any other remedy against any other Person who might have become liable for the obligations guaranteed hereunder.

Section 2.2. Obligations Unconditional. The respective obligations of the Guarantors under this Guaranty shall be absolute and unconditional, and joint and several, to the extent so provided herein, and shall remain in full force and effect until all the Guaranteed Obligations shall have been paid in full or provided for, and all costs, Agency’s fees and expenses, if any, referred to in Section 2.5 hereof shall have been paid in full, and, to the extent permitted by law, such obligations shall not be affected, modified, released, or impaired by any state of facts or the happening from time to time of any event.

Section 2.3. No Waiver or Set-Off. No act of commission or omission of any kind or at any time upon the part of the Agency or its successors or assigns, in respect of any matter whatsoever shall in any way impair the rights of the Agency to enforce any right, power or benefit under this Guaranty and no set-off, counterclaim, reduction, or diminution of any obligation, or any defense of any kind or nature (other than performance by the Guarantors of their obligations hereunder), which any Guarantor or any obligor under any of the Project Documents has or may have against the Agency or any assignee or successor thereof shall be available hereunder to the Guarantors.

Section 2.4. Events of Default. An "Event of Default" shall exist if any of the following occurs and is continuing:

(a) any Guarantor defaults in the payment or performance of any Guaranteed Obligation for which such Guarantor is obligated and such default continues for more than three (3) business days after written notice thereof has been given to any or all of the Guarantors by the Agency;

(b) any Individual Guarantor fails to observe and perform any covenant, condition or agreement on its part to be performed under Section 2.6 hereof and such failure continues for a period of thirty (30) days after receipt by any or all of the Guarantors of written notice specifying the nature of such default or failure from the Agency;

(c) any or all of the Guarantors fails to observe and perform any covenant, condition or agreement hereunder on their part to be performed (except as set forth in Section 2.4(a) or (b) above) and (i) continuance of such failure for a period of thirty (30) days after receipt by any or all of the Guarantors of written notice from the Agency specifying the nature of such default or failure, or (ii) if by reason of the nature of such default or failure the same can be remedied, but not within the said thirty (30) days, any or all of the Guarantors fails to proceed with reasonable diligence after receipt of said notice to cure the same or fails to continue with reasonable diligence their efforts to cure the same or fails to cure the same within sixty (60) days of receipt of said notice;

(d) any Guarantor shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

(e) a proceeding or case shall be commenced, without the application or consent of any Guarantor in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the

appointment of a trustee, receiver, liquidator, custodian or the like of any Guarantor or of all or any substantial part of its respective assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or any order for relief against any Guarantor shall be entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect); the terms "dissolution" or "liquidation" of any Guarantor as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 of the Lease Agreement, Section 7 of the Sublease Agreement or Section 2.6 hereof;

(f) any representation or warranty made by any Guarantor (i) in the application and related materials submitted to the Agency for approval of the Project or the transactions contemplated by this Guaranty, or (ii) herein or by any Guarantor in any other Project Document, or (iii) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall in any case prove to be false, misleading or incorrect in any material respect as of the date made; or

(g) any Guarantor shall become a Prohibited Person.

Upon an Event of Default, the Agency shall have the right to proceed first and directly against any or all of the Guarantors jointly and severally under this Guaranty without proceeding against or exhausting any other remedies which it may have under the Lease Agreement or any other Project Document and without resorting to any security held by any other Person.

Section 2.5. Waiver of Notice; Expenses. Each Guarantor hereby expressly waives presentment, demand, protest and notice of non-payment and further waives notice from the Agency of its acceptance and reliance on this Guaranty or of any action taken or omitted in reliance hereon, and of any default by any Guarantor in the Guaranteed Obligations. Each Guarantor further expressly waives diligence, presentment, demand for payment, protest, and requirement that any right or power be exhausted or any action be taken against the Lessee or the Sublessees. Each Guarantor agrees to pay all reasonable costs, fees and expenses (including all reasonable attorneys' fees and disbursements) which may be incurred by the Agency in enforcing or attempting to enforce the provisions of this Guaranty following any default on the part of any or all of the Guarantors hereunder, whether the same shall be enforced by suit or otherwise.

Section 2.6. Dissolution or Merger of Guarantors, Restrictions on Guarantors. Each Individual Guarantor agrees that he will not dispose of all or substantially all of his property, business or assets remaining after the execution and delivery of this Guaranty, except (i) in an arms' length bona fide transaction with an unrelated party in exchange for fair market value consideration, (ii) for transfers to members of his immediate family or to trusts for bona fide good faith estate and gift tax planning purposes, or (iii) as the direct result of an award of equitable dissolution (or similar award) and/or a settlement agreement concluded in a bona fide transaction as a result of, or arising from, a marital dissolution; provided, however, that no transfers made pursuant to clause (ii) shall be deemed to relieve or otherwise discharge such

Individual Guarantor, or his estate, from any and all duties and obligations hereunder. Further, each Individual Guarantor, without the prior written consent of the Agency, will not permit the sale or other disposition of a controlling interest in the Lessee or either Sublessee (whether by a single transaction or a series of transactions) to any other persons, corporations or other entities. Controlling interest shall mean the ownership of 51% of the beneficial ownership and voting interest in the Lessee and the Sublessees.

Section 2.7. Benefit and Enforcement. This Guaranty is entered into by the Guarantors for the benefit of the Agency, and the Agency is entitled to all rights and remedies as may exist at law or in equity or otherwise in the enforcement of this Guaranty.

Section 2.8. Survival of Guaranteed Obligations. If the Agency receives any payment on account of the Guaranteed Obligations, which payment or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be transferred or repaid to a trustee, receiver, assignee for the benefit of creditors or any other party under any bankruptcy act or code, state or federal law or common law or equitable doctrine or for any other reason whatsoever, then to the extent of any sum not finally retained by the Agency, this Guaranty shall remain in full force and effect until the Guarantors obligated with respect thereto shall have made payment to the Agency of such sum, which payment shall be due on demand. If the Agency chooses to contest any such matter, the Guarantors obligated with respect thereto agree to indemnify and hold harmless the Agency with respect to all costs (including court costs and reasonable attorneys' fees) of such litigation.

Section 2.9. No Subrogation. No payment hereunder by any or all of the Guarantors shall entitle any or all of the Guarantors by subrogation to the rights of the Agency to any payment by any other obligor or out of the property of any other obligor, except after payment and performance in full of the Guaranteed Obligations.



## ARTICLE III

## NOTICE OF SERVICE OF PROCESS, PLEADINGS AND OTHER PAPERS

Section 3.1. Service of Process. Each Guarantor represents that it or he is subject to service of process in the State of New York and covenants that it or he will remain so subject so long as any of the Guaranteed Obligations remain unpaid or unsatisfied. If for any reason any Guarantor should cease to be so subject to service of process in the State of New York, such Guarantor hereby designates and appoints the president of one of the Sublessees as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon any Guarantor as a result of any of its obligations under this Guaranty, and if such agent shall cease to act or otherwise cease to be subject to service of process in the State of New York, each Guarantor hereby irrevocably designates and appoints the Secretary of State of the State of New York as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon such Guarantor as a result of any of its obligations under this Guaranty; provided, however, that the serving of such process, pleadings, notices or other papers shall not constitute a condition to any Guarantor's obligations hereunder.

Section 3.2. Notices. Any notice required to be sent to any Guarantor, or any notice including process, pleadings or other papers served upon any of the foregoing agents shall at the same time, be sent by facsimile and by registered or certified mail, postage prepaid, to the Guarantors, at the Guarantors' Notice Address, or to such other address as may be furnished by any Guarantor to the Agency in writing. Notices will be deemed to have been received five (5) Business Days after the mailing thereof.

Section 3.3. Consent to Jurisdiction. Each Guarantor irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of this Guaranty may be brought in the courts of record of the State of New York in New York County or the courts of the United States, Southern District of New York; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; and (c) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts. For such time as any of the Guaranteed Obligations shall be unpaid in whole, or in part, the Guarantors' agents designated in Section 3.1 hereof shall accept and acknowledge on the Guarantors' behalf service of any and all process in any such suit, action or proceeding brought in any such court. The Guarantors agree and consent that any such service of process upon such agents and written notice of such service to the Guarantors in the manner set forth in Section 3.2 hereof shall be taken and held to be valid personal service upon the Guarantors whether or not the Guarantors shall then be doing, or at any time shall have done, business within the State of New York and that any such service of process shall be of the same force and validity as if service were made upon the Guarantors according to the laws governing the validity and requirements of such service in the State of New York, and waive all claim of error by reason of any such service. Such agents shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the

Guarantors or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Guarantors.

Section 3.4. Waiver of Trial by Jury. The Guarantors do hereby expressly waive all rights to a trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Guaranty or any matters whatsoever arising out of or in any way connected with this Guaranty.

## ARTICLE IV

### MISCELLANEOUS

Section 4.1. No Alteration Without Consent. No amendment, change, modification, alteration or termination of the provisions of the Guaranteed Obligations shall be made which would in any way increase any or all of the Guarantors' obligations under this Guaranty without obtaining the prior written consent of the Guarantors. No acts or omissions recited in Section 2.2 hereof shall constitute any such amendment, change, modification, alteration or termination within the meaning of this Section 4.1.

Section 4.2. Guaranty to Become Effective. The obligations of the Guarantors hereunder shall arise absolutely and unconditionally on the Commencement Date when the Lease Agreement shall have been executed and delivered by the Agency and the Lessee and the Sublease Agreement shall have been executed and delivered by the Lessee and the Sublessees.

Section 4.3. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default, default, omission or failure of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Guaranty, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Guaranty or otherwise required by law. In the event any provision contained in this Guaranty should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, release or modification of this Guaranty shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the parties thereunto duly authorized by this Guaranty.

Section 4.4. Entire Agreement; Counterparts. This Guaranty constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, other than the Lease Agreement and any other Project Document, between the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Section 4.5. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or Sections in this Guaranty contained, shall not affect the validity or enforceability of the remaining portions of this Guaranty, or any part thereof.

Section 4.6. Release. Upon the payment and satisfaction of all Guaranteed Obligations and, if applicable, upon payment of the costs, fees and expenses required by Section 2.5, the Agency shall release in writing the Guarantors from their obligations hereunder (except as provided in Section 2.8 hereof and except to the extent that any of the Guaranteed Obligations are stated to survive the termination of the Lease Agreement or the Sublease Agreement).

Section 4.7. Applicable Law. This Guaranty shall be governed by and construed in accordance with the laws of the State of New York, without regard or giving effect to the principles of conflicts of laws thereof.

Section 4.8. Successors and Assigns. This Guaranty shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

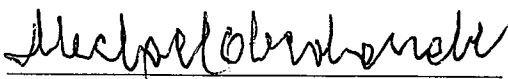
Section 4.9. Right of Set-Off. Each Guarantor hereby grants to the Agency a lien and right to set-off for all of its liabilities and obligations under this Guaranty against all the deposits, credits and property of such Guarantor and any collateral of such Guarantor now or hereafter in the possession, under the control or in transit to the Agency, and agrees that the same may be applied against such liabilities and obligations then due, at any time after an Event of Default has occurred and continues under this Guaranty.

Section 4.10. Date of Guaranty for Reference Purposes Only. The date of this Guaranty shall be for reference purposes only and shall not be construed to imply that this Guaranty was executed on the date first above written. This Guaranty was executed and delivered on the Commencement Date.

[INTENTIONALLY LEFT BLANK]


IN WITNESS WHEREOF, each Guarantor has duly authorized the execution of this Guaranty as of the date first above written.

**J & J FARMS CREAMERY, INC.,**  
as Sublessee

By:   
Michael Oberlander  
President

**J & J FARMS REALTY JOINT VENTURE**  
By its Joint Venture Partners, as Lessee

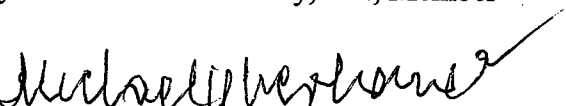
J & J Farms Redevelopment Company, LLC

By:   
Michael Oberlander  
Member

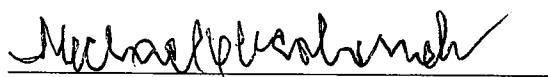
**FISHER FOODS OF QUEENS CORP.,**  
as Sublessee

By:   
Michael Oberlander  
President

J & J Farms Creamery Company Real Estate, LLC  
By J & J Farms Creamery, Inc., Member

By:   
Michael Oberlander  
President

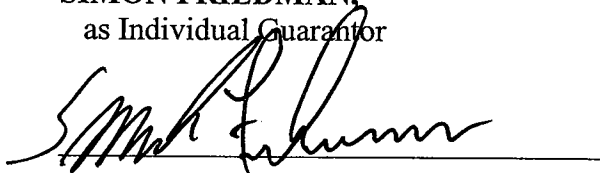
**MICHAEL OBERLANDER,**  
as Individual Guarantor



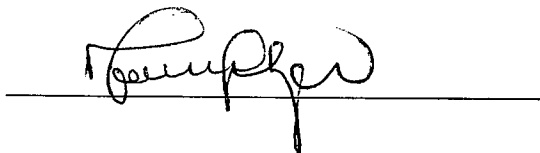
**PEARL OBERLANDER,**  
as Individual Guarantor



**SIMON FRIEDMAN,**  
as Individual Guarantor

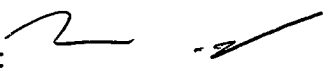


**MORRIS SCHLAGER,**  
as Individual Guarantor



Accepted this November 20, 2006

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Maureen P. Babis  
Deputy Executive Director

## APPENDIX A

“Event of Default” shall have the meaning assigned to that term in Section 2.4 hereof.

“Guarantors’ Notice Address” shall mean c/o J & J Farms Realty Joint Venture, c/o J & J Farms Creamery Inc., 57-48 49<sup>th</sup> Street, Maspeth, New York, Attention: President, with a copy to Roy P. Kozupsky & Associates, LLP, 10 East 40<sup>th</sup> Street, Suite 1710, New York, New York 10016, Attention: William P. Walzer, Esq.

“Guaranty” shall mean this Guaranty Agreement, dated as of November 1, 2006, from the Guarantors to the Agency, and includes any and all amendments hereof and supplements hereto.

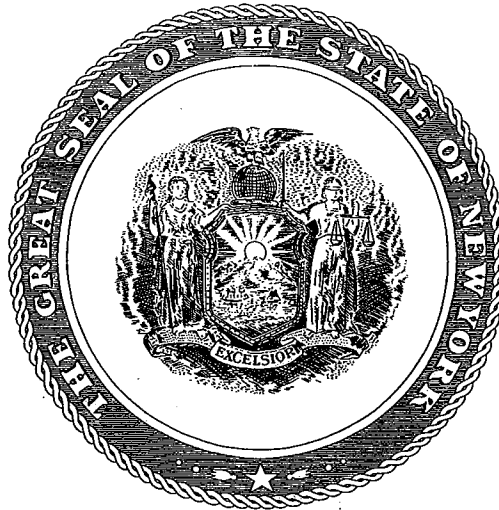
“Lease Agreement” shall mean the Lease Agreement, dated as of November 1, 2006, between the Agency and the Lessee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

“State” shall mean the State of New York.

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# STATE OF NEW YORK



## SENATE and ASSEMBLY


Pursuant to the authority vested in us by section 70-b of the Public Officers Law and upon information and belief, I, Joseph L. Bruno, Temporary President of the Senate and I, Sheldon Silver, Speaker of the Assembly, hereby jointly certify that the text of the provisions of law contained in this publication is a correct transcript of the text of such law as last amended as of the date of execution of this certificate, and, in accordance with such section, is entitled to be read into evidence.

Given under my hand and seal of office, in  
the County of Albany this 30th day  
of June 2006.



Temporary President of the Senate

Given under my hand and seal of office, in  
the County of Albany this 30th day  
of June 2006.



Speaker of the Assembly

certification is issued for: (title of publication) General Municipal Law §§850-888, §917



§ 850. Short title. This chapter may be cited as the "New York State Industrial Development Agency Act."

§ 852. Policy and purposes of article. It is hereby declared to be the policy of this state to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation, economically sound commerce and industry and economically sound projects identified and called for to implement a state heritage area management plan as provided in title G of the parks, recreation and historic preservation law through governmental action for the purpose of preventing unemployment and economic deterioration by the creation of industrial development agencies which are hereby declared to be governmental agencies and instrumentalities and to grant to such industrial development agencies the rights and powers provided in this article.

It is hereby further declared to be the policy of this state to protect and promote the health of the inhabitants of this state by the conservation, protection and improvement of the natural and cultural or historic resources and environment and to control land, sewer, water, air, noise or general environmental pollution derived from the operation of industrial, manufacturing, warehousing, commercial, recreation, horse racing facilities, railroad facilities and research facilities and to grant such industrial development agencies the rights and powers provided by this article with respect to industrial pollution control facilities.

It is hereby further declared to be the policy of this state to protect and promote the health of the inhabitants of this state and to

increase trade through promoting the development of facilities to provide recreation for the citizens of the state and to attract tourists from other states.

The use of all such rights and powers is a public purpose essential to the public interest, and for which public funds may be expended.

§ 854. Definitions. As used in this act, unless the context otherwise requires:

(1) "Agency" - shall mean an Industrial Development Agency created pursuant to this act.

(2) "Bonds" - shall mean the bonds, notes, interim certificates and other obligations issued by the agency pursuant to this act.

(3) "Municipality" - shall mean any county, city, village, town or Indian reservation in the state.

\* (4) "Project" - shall mean any land, any building or other improvement, and all real and personal properties located within the state of New York and within or partially within and partially outside the municipality for whose benefit the agency was created, including, but not limited to, machinery, equipment and other facilities deemed necessary or desirable in connection therewith, or incidental thereto, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, civic, commercial or industrial purposes or other economically sound purposes identified and called for to implement a state designated urban cultural park management plan as provided in title G of the parks, recreation and historic preservation law and which may include or mean an industrial pollution control facility, a recreation facility, educational or



cultural facility, a horse racing facility, a railroad facility, a continuing care retirement community, or a civic facility, provided, however, that, of agencies governed by this article, only agencies created for the benefit of a county and the agency created for the benefit of the city of New York shall provide financial assistance in any respect to a continuing care retirement community, and provided, however, no agency shall provide financial assistance in respect of any project partially outside the municipality for whose benefit the agency was created without the prior consent thereto by the governing body or bodies of all the other municipalities in which any part of the project is, or is to be, located. Where a project is located partially within and partially outside the municipality for whose benefit the agency was created, the portion of the project outside the municipality must be contiguous with the portion of the project inside the municipality. Provided further, that no agency shall provide financial assistance for any project where the project applicant has any agreement to subsequently contract with a municipality for the lease or purchase of such project or project facility.

\* NB Effective until July 1, 2006

\* (4) "Project" - shall mean any land, any building or other improvement, and all real and personal properties located within the state of New York and within or outside or partially within and partially outside the municipality for whose benefit the agency was created, including, but not limited to, machinery, equipment and other facilities deemed necessary or desirable in connection therewith, or incidental thereto, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes or other economically sound

purposes identified and called for to implement a state designated urban cultural park management plan as provided in title G of the parks, recreation and historic preservation law and which may include or mean an industrial pollution control facility, a recreation facility, educational or cultural facility, a horse racing facility or a railroad facility, provided, however, no agency shall use its funds in respect of any project wholly or partially outside the municipality for whose benefit the agency was created without the prior consent thereto by the governing body or bodies of all the other municipalities in which a part or parts of the project is, or is to be, located.

\* NB Effective July 1, 2006

(5) "Governing body" - shall mean the board or body in which the general legislative powers of the municipality are vested.

(6) "Mortgage" - shall mean a mortgage or other security device.

(7) "Revenues" - shall mean all rents, revenues, fees, charges and other sources of income derived by the agency from the leasing, sale or other disposition of a project or projects.

(8) "Industrial pollution control facility"--shall mean any equipment, improvement, structure or facility or any land and any building, structure, facility or other improvement thereon, or any combination thereof, and all real and personal property deemed necessary therewith, which if within any city are not of a character or nature then or formerly furnished or supplied by the city, having to do with or the end purpose of which is the control, abatement or prevention of land, sewer, water, air, noise or general environmental pollution deriving from the operation of industrial, manufacturing, warehousing, commercial, recreation and research facilities, including, but not limited to any air pollution control facility, noise abatement facility, water



management facility, waste water collecting system, waste water treatment works, sewage treatment works system, sewage treatment system or solid waste disposal facility or site.

(9) "Recreation facility"--shall mean any facility for the use of the general public as spectators or participants in recreation activities, including but not limited to skiing, golfing, swimming, tennis, ice skating or ice hockey facilities, together with all buildings, structures, machinery, equipment, facilities and appurtenances thereto which the agency may deem necessary, useful or desirable in connection with the construction, improvement or operation of any such facility, including overnight accommodations and other facilities incidental thereto and facilities that may permit the use of recreation facilities by the general public as participants in recreation activities, but shall not include facilities for automobile or horse racing or other similar activities.

(10) "Horse racing facility"--shall mean any facility for the use of the general public for purpose of conducting pari-mutuel wagering, licensed by the state racing and wagering board, as of January first, nineteen hundred seventy-seven, except non-profit racing associations, including buildings, structures, machinery, equipments, facilities and appurtenances thereto, the construction, reconstruction, acquisition and/or improvement of which shall have been approved by the state racing and wagering board, and which the agency may deem necessary, useful or desirable in connection with the construction, improvement or operation of such racing facility.

(11) "Railroad facility"--shall mean, but shall not be limited to, railroad rights-of-way, beds, bridges, viaducts, tracks, switches and rolling stock and any other attendant structure, equipment, facility or

property necessary or appropriate to railroading conducted in conjunction with industrial, commercial, manufacturing, recreational or warehousing operations; provided, however, that (i) no agency shall itself operate a railroad facility for freight or passenger service, but may lease or otherwise make such facility available to an operator, subject to an agreement for the maintenance and operation of such facility for freight or passenger service, provided that passenger service does not constitute the primary purpose of the railroad facility; (ii) prior to undertaking any project involving acquisition, construction, reconstruction, improvement, maintenance, equipping or furnishing of a railroad facility, an agency shall submit its plans for the proposed project to the commissioner of transportation; the commissioner shall, within sixty days of his receipt of the proposal, submit an analysis of the financial and operational feasibility of the proposed project, along with any recommendations for modification for improving the project's viability, to the agency, the governor, the commissioner of commerce, the temporary president of the senate, the speaker of the assembly and the governing body of the municipality in which the agency is located; and (iii) no agency shall enter into any contract for the acquisition, construction, reconstruction, improvement, maintenance, equipping or furnishing of a railroad facility until fifteen days after the submission of the analysis and recommendations of the commissioner of transportation, or seventy-five days after submission of the agency's plan to the commissioner, whichever is earlier.

(12) "Educational or cultural facility"--shall mean any facility identified and called for to implement a state designated heritage area management plan as provided in title G of the parks, recreation and



historic preservation law that is open to the public at large as participants in educational and cultural activities including but not limited to theaters, museums, exhibitions and festival and interpretive facilities, together with buildings, structures, machinery, equipment, facilities and appurtenances thereto which the agency may deem necessary, useful or desirable in connection with the construction, improvement or operation of any such facility, including overnight accommodations and other facilities incidental thereto and facilities that may permit the use of educational or cultural facilities by the general public.

\* (13) "Civic facility" - shall mean any facility which shall be owned or occupied by a not-for-profit corporation organized and existing under the laws of this state or authorized to conduct activities in this state. Such facilities shall not include convention centers, housing facilities, dormitories for educational institutions or roads, buildings, water systems, sewer systems, or any public facility for use by a municipality in the performance of its governmental functions or medical facilities which are predominately used for the delivery of medical services, except that such facilities shall include habilitation centers and hospices.

\* NB Repealed July 2, 2006

\* NB There are 2 sb (13)'s

\* (13) "Civic facility" - shall mean any facility which shall be owned or occupied by a not-for-profit corporation organized and existing under the laws of this state or authorized to conduct activities in this state. Such facilities shall not include convention centers, housing facilities, dormitories for educational institutions or roads, buildings, water systems, sewer systems, or any public facility for use

by a municipality in the performance of its governmental functions or medical facilities which are predominately used for the delivery of medical services, except that such facilities shall include habilitation centers and hospices.

Notwithstanding the limitations contained in the preceding sentence, a civic facility project may include: (a) dormitories for educational institutions; (b) facilities as defined in article twenty-eight of the public health law; and (c) housing facilities primarily designed to be occupied by individuals sixty years of age or older provided that the total cost of such projects as provided for in paragraphs (a), (b), and (c) herein does not exceed twenty million dollars. Nothing in this article shall be deemed to waive any applicable requirement for an operating facility certificate, consent or any other approval as provided by law.

\* NB Repealed July 1, 2006

\* NB There are 2 sb (13)'s

(14) "Financial assistance" - shall mean the proceeds of bonds issued by an agency, straight-leases, or exemptions from taxation claimed by a project occupant as a result of an agency taking title, possession or control (by lease, license or otherwise) to the property or equipment of such project occupant or of such project occupant acting as an agent of an agency.

(15) "Straight-lease transaction" - shall mean a transaction in which an agency takes title, possession or control (by lease, license or otherwise) to the property or equipment of a project occupant, entitling such property or equipment to be exempt from taxation according to the provisions of section eight hundred seventy-four of this article, and no



financial assistance in the form of the proceeds of bonds issued by the agency is provided to the project occupant.

(16) "Affected tax jurisdiction" - shall mean any municipality or school district, in which a project is located, which will fail to receive real property tax payments, or other tax payments which would otherwise be due, except for the tax exempt status of an agency involved in a project.

(17) "Payments in lieu of taxes" - shall mean any payment made to an agency, or affected tax jurisdiction equal to the amount, or a portion of, real property taxes, or other taxes, which would have been levied by or on behalf of an affected tax jurisdiction if the project was not tax exempt by reason of agency involvement.

(18) "Highly distressed area" - shall mean (a) a census tract or tracts or block numbering areas or areas or such census tract or block numbering area contiguous thereto which, according to the most recent census data available, has:

(i) a poverty rate of at least twenty percent for the year to which the data relates or at least twenty percent of households receiving public assistance; and

(ii) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relates; or

(b) a city, town, village or county within a city with a population of one million or more for which: (i) the ratio of the full value property wealth, as determined by the comptroller for the year nineteen hundred ninety, per resident to the statewide average full value property wealth per resident; and (ii) the ratio of the income per resident; as shown in the nineteen hundred ninety census to the statewide average income per

resident; are each fifty-five percent or less of the statewide average;  
or

(c) an area which was designated an empire zone pursuant to article eighteen-B of this chapter.

(19) "Continuing care retirement community" - shall mean any facility that has been granted a certificate of authority pursuant to article forty-six or forty-six-A of the public health law and is established to provide, pursuant to continuing care retirement contracts approved pursuant to article forty-six of the public health law, or fee-for-service continuing care contracts approved pursuant to article forty-six-A of the public health law, a comprehensive, cohesive living arrangement for the elderly, and certified by the commissioner of health, that (i) has been approved for the issuance of industrial development agency bonds by the continuing care retirement community council pursuant to section forty-six hundred four-a of the public health law except that paragraphs b and g of subdivision two of section forty-six hundred four-a of the public health law shall not apply to a continuing care retirement community granted a certificate of authority pursuant to article forty-six-A of the public health law and (ii) is a not-for-profit corporation as defined in section one hundred two of the not-for-profit corporation law that is (a) eligible for tax-exempt financing under section forty-six hundred four-a of the public health law and this chapter and (b) is exempt from taxation pursuant to section 501(c)(3) of the federal internal revenue code; except that "continuing care retirement community" shall not include a facility granted a certificate of authority upon application of a state or local government applicant.

§ 856. Organization of industrial development agencies. 1. (a) Upon the establishment of an industrial development agency by special act of the legislature, the governing body of the municipality for whose benefit such agency is established shall file within six months after the effective date of the special act of the legislature establishing such agency or before the first day of July, nineteen hundred sixty-nine, whichever date shall be later, in the office of the secretary of state, a certificate setting forth: (1) the date of passage of the special act establishing the agency; (2) the name of the agency; (3) the names of the members and their terms of office, specifying which member is the chairman; and (4) facts establishing the need for the establishment of an agency in such municipality.

(b) Every such agency shall be perpetual in duration, except that if (1) such certificate is not filed with the secretary of state within six months after the effective date of the special act of the legislature establishing such agency or before the first day of July, nineteen hundred sixty-nine, whichever date shall be later, or if (2) at the expiration of ten years subsequent to the effective date of the special act, there shall be outstanding no bonds or other obligations theretofore issued by such agency or by the municipality for or in behalf of the agency, then the corporate existence of such agency shall thereupon terminate and it shall thereupon be deemed to be and shall be dissolved.

(c) On or before March first of each year, the secretary of state shall prepare a list of agencies which failed to file a certificate in accordance with provisions of paragraph (a) of this subdivision within the preceding calendar year and transmit a copy of such list to the state comptroller and the commissioner of the department of economic



development. On or before March first of each year the commissioner of the department of economic development shall prepare a list of agencies which have dissolved pursuant to paragraph (b) of this subdivision or have ceased to exist pursuant to section eight hundred eighty-two of this chapter and shall transmit a copy of such list to the state comptroller.

2. An agency shall be a corporate governmental agency, constituting a public benefit corporation. Except as otherwise provided by special act of the legislature, an agency shall consist of not less than three nor more than seven members who shall be appointed by the governing body of each municipality and who shall serve at the pleasure of the appointing authority. Such members may include representatives of local government, school boards, organized labor and business. A member shall continue to hold office until his successor is appointed and has qualified. The governing body of each municipality shall designate the first chairman and file with the secretary of state a certificate of appointment or reappointment of any member. Such members shall receive no compensation for their services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of their duties.

3. A majority of the members of an agency shall constitute a quorum.

4. Any one or more of the members of an agency may be an official or an employee of the municipality. In the event that an official or an employee of the municipality shall be appointed as a member of the agency, acceptance or retention of such appointment shall not be deemed a forfeiture of his municipal office or employment, or incompatible therewith or affect his tenure or compensation in any way. The term of office of a member of an agency who is an official or an employee of the municipality when appointed as a member thereof by special act of the



legislature creating the industrial development agency shall terminate at the expiration of the term of his municipal office.

§ 858. Purposes and powers of the agency. The purposes of the agency shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research and recreation facilities including industrial pollution control facilities, educational or cultural facilities, railroad facilities, horse racing facilities and continuing care retirement communities, provided, however, that, of agencies governed by this article, only agencies created for the benefit of a county and the agency created for the benefit of the city of New York shall be authorized to provide financial assistance in any respect to a continuing care retirement community, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the state of New York and to improve their recreation opportunities, prosperity and standard of living; and to carry out the aforesaid purposes, each agency shall have the following powers:

- (1) To sue and be sued;
- (2) To have a seal and alter the same at pleasure;
- (3) To acquire, hold and dispose of personal property for its corporate purposes;
- (4) To acquire by purchase, grant, lease, gift, pursuant to the provisions of the eminent domain procedure law, or otherwise and to use, real property or rights or easements therein necessary for its corporate purposes in compliance with the local zoning and planning regulations



and shall take into consideration regional and local comprehensive land use plans and state designated heritage area management plans, and to sell, convey, mortgage, lease, pledge, exchange or otherwise dispose of any such property in such manner as the agency shall determine. In the case of railroad facilities, however, the phrase to use real property or rights or easements therein shall not be interpreted to include operation by the agency of rail service upon or in conjunction with such facilities.

(5) To make by-laws for the management and regulation of its affairs and, subject to agreements with its bondholders, for the regulation of the use of a project or projects.

(6) With the consent of the municipality, to use agents, employees and facilities of the municipality, paying the municipality its agreed proportion of the compensation or costs;

(7) To appoint officers, agents and employees, to prescribe their qualifications and to fix their compensation and to pay the same out of funds of the agency;

(8) (a) To appoint an attorney, who may be the counsel of the municipality, and to fix the attorney's compensation for services which shall be payable to the attorney, and to retain and employ private consultants for professional and technical assistance and advice;

(b) An attorney acting as bond counsel for a project must file with the agency a written statement in which the attorney identifies each party to the transaction which such attorney represents. If bond counsel provides any legal services to parties other than the agency the written statement must describe the nature of legal services provided by such bond counsel to all parties to the transaction, including the nature of the services provided to the agency.

(9) To make contracts and leases, and to execute all instruments necessary or convenient to or with any person, firm, partnership or corporation, either public or private; provided, however, that any extension of an existing contract, lease or other agreement entered into by an agency with respect to a project shall be guided by the provisions of this article;

(10) To acquire, construct, reconstruct, lease, improve, maintain, equip or furnish one or more projects;

(11) To accept gifts, grants, loans, or contributions from, and enter into contracts or other transactions with, the United States and the state or any agency of either of them, any municipality, any public or private corporation or any other legal entity, and to use any such gifts, grants, loans or contributions for any of its corporate purposes;

(12) To borrow money and to issue bonds and to provide for the rights of the holders thereof;

(13) To grant options to renew any lease with respect to any project or projects and to grant options to buy any project at such price as the agency may deem desirable;

(14) To designate the depositories of its money either within or without the state;

(15) To enter into agreements requiring payments in lieu of taxes. Such agreements shall be in writing and in addition to other terms shall contain: the amount due annually to each affected tax jurisdiction (or a formula by which the amount due can be calculated), the name and address of the person, office or agency to which payment shall be delivered, the date on which payment shall be made, and the date on which payment shall be considered delinquent if not paid. Unless otherwise agreed by the affected tax jurisdictions, any such agreement shall provide that

payments in lieu of taxes shall be allocated among affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the project not been tax exempt due to the status of the agency involved in the project. A copy of any such agreement shall be delivered to each affected tax jurisdiction within fifteen days of signing the agreement. In the absence of any such written agreement, payments in lieu of taxes made by an agency shall be allocated in the same proportions as they had been prior to January first, nineteen hundred ninety-three for so long as the agency's activities render a project non-taxable by affected tax jurisdictions;

(16) To establish and re-establish its fiscal year; and

(17) To do all things necessary or convenient to carry out its purposes and exercise the powers expressly given in this title.

§ 858-a. Compensation, procurement and investment. 1. The compensation of an officer or full-time employee of the agency (but not including part-time employees or consultants, including accountants, attorneys and bond counsel to the agency) shall not be contingent on the granting of financial assistance by an agency.

2. The provisions of section one hundred four-b of this chapter shall be applicable to the procurement of goods and services paid for by an agency for its own use and account.

3. The provisions of sections ten and eleven of this chapter shall be applicable to deposits and investments of funds for an agency's own use and account.





§ 858-b. Equal employment opportunities. 1. Each agency shall ensure that all employees and applicants for employment are afforded equal employment opportunity without discrimination.

2. Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of projects of the agency shall be listed with the New York state department of labor community services division, and with the administrative entity of the service delivery area created by the federal job training partnership act (P.L. No. 97-300) in which the project is located. Except as is otherwise provided by collective bargaining contracts or agreements, sponsors of projects shall agree, where practicable, to first consider persons eligible to participate in the federal job training partnership (P.L. No. 97-300) programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the community services division of the department of labor for such such new employment opportunities.

§ 859. Financial records. 1. (a) Each agency shall maintain books and records in such form as may be prescribed by the state comptroller.

(b) Within ninety days following the close of its fiscal year, each agency or authority shall prepare a financial statement for that fiscal year in such form as may be prescribed by the state comptroller. Such statement shall be audited within such ninety day period by an independent certified public accountant in accordance with government accounting standards established by the United States general accounting office. The audited financial statement shall include supplemental schedules listing all straight-lease transactions and bonds and notes



issued, outstanding or retired during the applicable accounting period whether or not such bonds, notes or transactions are considered obligations of the agency. For each issue of bonds or notes such schedules shall provide the name of each project financed with proceeds of each issue, and whether the project occupant is a not-for-profit corporation, the name and address of each owner of each project, the estimated amount of tax exemptions authorized for each project, the purpose for which each bond or note was issued, date of issue, interest rate at issuance and if variable the range of interest rates applicable, maturity date, federal tax status of each issue, and an estimate of the number of jobs created and retained by each project. For each straight-lease transaction, such schedules shall provide the name of each project, and whether the project occupant is a not-for-profit corporation, the name and address of each owner of each project, the estimated amount of tax exemptions authorized for each project, the purpose for which each transaction was made, the method of financial assistance utilized by the project, other than the tax exemptions claimed by the project and an estimate of the number of jobs created and retained by each project.

(c) Within thirty days after completion, a copy of the audited financial statement shall be transmitted to the commissioner of the department of economic development, the state comptroller and the governing body of the municipality for whose benefit the agency was created.

(d) An agency with no bonds or notes issued or outstanding and no projects during the applicable accounting period may apply to the state comptroller for a waiver of the required audited financial statement. Application shall be made on such form as the comptroller may prescribe.

(e) If an agency or authority shall fail to file or substantially complete, as determined by the state comptroller, the financial statement required by this section, the state comptroller shall provide notice to the agency or authority. The notice shall state the following:

(i) that the failure to file a financial statement as required is a violation of this section, or in the case of an insufficient financial statement, the manner in which the financial statement submitted is deficient;

(ii) that the agency or authority has thirty days to comply with this section or provide an adequate written explanation to the comptroller of the agency's or authority's reasons for the inability to comply; and

(iii) that the agency's or authority's failure to provide either the required financial statement or an adequate explanation will result in the notification of the chief executive officer of the municipality for whose benefit the agency or authority was created of the agency's noncompliance with this section. Where such agency or authority has failed to file the required statement, the comptroller shall additionally notify the agency or authority that continued failure to file the required statement may result in loss of the agency's or authority's authority to provide exemptions from state taxes.

(iv) If an agency or authority after thirty days has failed to file the required statement or the explanation in the manner required by subparagraph (i) of this paragraph, or provides an insufficient explanation, the comptroller shall notify the chief executive officer of the municipality for whose benefit the agency or authority was created and the agency of the agency's or authority's noncompliance with this section. Such notice from the state comptroller shall further delineate in what respect the agency or authority has failed to comply with this

section. If the agency or authority has failed to file the required statement, the notice shall additionally state that continued failure to file the required statement may result in loss of the agency's or authority's authority to provide exemptions from state taxes.

(v) If, thirty days after notification of the chief executive officer of the municipality for whose benefit the agency or authority was created of the agency's or authority's noncompliance, the agency or authority fails to file the required statement, the comptroller shall notify the chief executive officer of the municipality for whose benefit that agency or authority was created and the agency or authority that if such report is not provided within sixty days, that the agency or authority will no longer be authorized to provide exemptions from state taxes.

(vi) If, sixty days after the notification required by subparagraph (v) of this paragraph, the comptroller has not received the required statement, the agency or authority shall not offer financial assistance which provides exemptions from state taxes until such financial statement is filed and the comptroller shall so notify the agency or authority and the chief executive officer of the municipality for whose benefit the agency was created. Provided, however, that nothing contained in this paragraph shall be deemed to modify the terms of any existing agreements.

(f) Within thirty days after completion, a copy of an audited financial statement which contains transactions of or bonds or notes of civic facilities as defined in paragraph (b) of subdivision thirteen of section eight hundred fifty-four of this article, shall be transmitted by the agency to the commissioner of health, the chair of the senate finance committee, the chair of the assembly ways and means committee,

the chair of the senate health committee and the chair of the assembly health committee.

2. On or before September first of each year, the commissioner of the department of economic development shall prepare and submit to the governor, speaker of the assembly, majority leader of the senate, and the state comptroller, a report setting forth a summary of the significant trends in operations and financing by agencies and authorities; departures from acceptable practices by agencies and authorities; a compilation by type of the bonds and notes outstanding; a compilation of all outstanding straight-lease transactions; an estimate of the total number of jobs created and retained by agency or authority projects; and any other information which in the opinion of the commissioner bears upon the discharge of the statutory functions of agencies and authorities.

3. On or before April first, nineteen hundred ninety-six, the commissioner shall submit to the director of the division of the budget, the temporary president of the senate, the speaker of the assembly, the chairman of the senate finance committee, the chairman of the assembly ways and means committee, the chairman of the senate local government committee, the chairman of the senate committee on commerce, economic development and small business, the chairman of the assembly committee on commerce, industry and economic development, the chairman of the assembly local governments committee and the chairman of the assembly real property taxation committee an evaluation of the activities of industrial development agencies and authorities in the state prepared by an entity independent of the department. Such evaluation shall identify the effect of agencies and authorities on: (a) job creation and retention in the state, including the types of jobs created and

retained; (b) the value of tax exemptions provided by such agencies and authorities; (c) the value of payments received in lieu of taxes received by municipalities and school districts as a result of projects sponsored by such entities; (d) a summary of the types of projects that received financial assistance; (e) a summary of the types of financial assistance provided by the agencies and authorities; (f) a summary of criteria for evaluation of projects used by agencies and authorities; (g) a summary of tax exemption policies of agencies and authorities; and (h) such other factors as may be relevant to an assessment of the performance of such agencies and authorities in creating and retaining job opportunities for residents of the state. Such evaluation shall also assess the process by which agencies and authorities grant exemptions from state taxes and make recommendations for the most efficient and effective procedures for the use of such exemptions. Such evaluation shall further include any recommendations for changes in laws governing the operations of industrial development agencies and authorities which would enhance the creation and retention of jobs in the state.

§ 859-a. Additional prerequisites to the provisions of financial assistance. Prior to providing any financial assistance of more than one hundred thousand dollars to any project, the agency must comply with the following prerequisites:

1. The agency must adopt a resolution describing the project and the financial assistance that the agency is contemplating with respect to such project. Such assistance shall be consistent with the uniform tax exemption policy adopted by the agency pursuant to subdivision four of section eight hundred seventy-four of this chapter, unless the agency

has followed the procedures for deviation from such policy specified in paragraph (b) of such subdivision.

2. The agency must hold a public hearing with respect to the project and the proposed financial assistance being contemplated by the agency. Said public hearing shall be held in a city, town or village where the project proposes to locate. At said public hearing, interested parties shall be provided reasonable opportunity, both orally and in writing, to present their views with respect to the project.

\* 3. The agency must give at least thirty days published notice of said public hearing and shall, at the same time, provide notice of such hearing to the chief executive officer of each affected tax jurisdiction within which the project is located. The notice of hearing must state the time and place of the hearing, contain a general, functional description of the project, describe the prospective location of the project, identify the initial owner, operator or manager of the project and generally describe the financial assistance contemplated by the agency with respect to the project, and provide an opportunity for the public to review the project application, which shall include an analysis of the costs and benefits of the proposed project.

\* NB Effective until July 1, 2006

\* 3. The agency must give at least ten days published notice of said public hearing and shall, at the same time, provide notice of such hearing to the chief executive officer of each affected tax jurisdiction within which the project is located. The notice of hearing must state the time and place of the hearing, contain a general, functional description of the project, describe the prospective location of the project, identify the initial owner, operator or manager of the project

and generally describe the financial assistance contemplated by the agency with respect to the project.

\* NB Effective July 1, 2006

§ 859-b. Special procedure for the provision of financial assistance to continuing care retirement communities. 1. Any applicant for financing of a continuing care retirement community shall present a completed application for a certificate of authority and documentation establishing the continuing care retirement community council's approval of that application, pursuant to article forty-six of the public health law.

2. If requested by the agency, the applicant shall present an analysis dealing with any of the issues identified in paragraph (a) of subdivision four of section eight hundred seventy-four of this article.

3. Applicants shall present the financial feasibility study, including a financial forecast and market study, and the analysis of economic costs and benefits required by article forty-six of the public health law.

4. Any information presented by the applicant pursuant to subdivisions one, two and three of this section shall be made available at the time required for published notice of the public hearing required by section eight hundred fifty-nine-a of this article. The agency shall make such information available during regular office hours in at least two locations, at least one of which shall be in the city, town or village within which the proposed project is located. Such notice shall include a statement indicating the location and times of availability of the information required by this section.



5. The industrial development agency may require the applicant to provide any additional information which it requires in order to meet the purposes of this article.

§ 860. Moneys of the agency. The agency shall have power to contract with the holders of any of its bonds or notes as to the custody, collection, securing, investment and payment of any moneys of the agency or any moneys held in trust or otherwise for the payment of bonds or notes or in any way to secure bonds or notes and to carry out any such contract. Moneys held in trust or otherwise for the payment of bonds or notes or in any way to secure bonds or notes and deposits of such moneys may be secured in the same manner as moneys of the agency, and all banks and trust companies are authorized to give such security for such deposits.

§ 861. Notification of budget. Each agency shall mail or deliver to the chief executive officer and the governing body of the municipality for whose benefit the agency was established and make available for public inspection and comment its proposed budget for the forthcoming fiscal year, no later than twenty business days before adoption. At such time, the agency shall file its proposed budget with the clerk of the municipality for whose benefit the agency was established. Such proposed budget shall contain detailed estimates in writing of the amount of revenues to be received and expenditures to be made during the forthcoming fiscal year. Following its consideration of the comments

received, the agency may revise its budget accordingly and shall file the revised budget with the clerk of the municipality.

\* § 862. Restrictions on funds of the agency. 1. No financial assistance of the agency shall be used in respect of any project if the completion thereof would result in the removal of a facility or plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, provided, however, that neither restriction shall apply if the agency shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.

2. (a) Except as provided in paragraph (b) of this subdivision, no financial assistance of the agency shall be provided in respect of any project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost. For the purposes of this article, retail sales shall mean: (i) sales by a registered vendor under article twenty-eight of the tax law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the tax law; or (ii) sales of a service to such customers. Except, however, that tourism destination projects and projects operated by not-for-profit corporations shall not be prohibited

by this subdivision. For the purpose of this paragraph, "tourism destination" shall mean a location or facility which is likely to attract a significant number of visitors from outside the economic development region as established by section two hundred thirty of the economic development law, in which the project is located.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, financial assistance may, however, be provided to a project where facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain such goods or services constitute more than one-third of the total project cost, where (i) the project occupant would, but for the assistance provided by the agency, locate the related jobs outside the state, or (ii) the predominant purpose of the project would be to make available goods or services which would not, but for the project, be reasonably accessible to the residents of the city, town, or village within which the proposed project would be located because of a lack of reasonably accessible retail trade facilities offering such goods or services, or (iii) the project is located in a highly distressed area.

(c) With respect to projects authorized pursuant to paragraph (b) of this subdivision, no project shall be approved unless the agency shall find after the public hearing required by section eight hundred fifty-nine-a of this chapter that undertaking the project will serve the public purposes of this article by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the state. Where the agency makes such a finding, prior to providing financial assistance to the project by the agency, the chief executive



officer of the municipality for whose benefit the agency was created shall confirm the proposed action of the agency.

3. No funds of the agency shall be used for the purpose of preventing the establishment of an industrial or manufacturing plant, nor shall any funds of the agency be given to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within this state nor shall such funds be used for advertising or promotional materials which depict elected or appointed government officials in either print or electronic media.

\* NB Effective until July 2, 2006

\* § 862. Restrictions on funds of the agency. No funds of the agency shall be used in respect of any project if the completion thereof would result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, provided, however, that neither restriction shall apply if the agency shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.

\* NB Effective July 2, 2006

§ 862-a. Additional restrictions on funds of the agency in connection with continuing care retirement communities. No resolution authorizing the issuance of bonds, notes or other obligations of the agency, or for

providing financial assistance in any respect, for any continuing care retirement community project shall be adopted unless and until the project has received a certificate of authorization pursuant to section forty-six hundred four-a of the public health law, and unless the project will serve the public purposes of this article by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the state.

§ 864. Bonds of the agency. (1) The agency shall have the power and is hereby authorized from time to time to issue negotiable bonds for any of its corporate purposes without limitation as to amount. The agency shall have power from time to time and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and may issue bonds partly to refund bonds then outstanding and partly for any other purpose hereinabove described. The refunding bonds may be exchanged for the bonds to be refunded, with such cash adjustments as may be agreed, or may be sold and the proceeds applied to the purchase or redemption of the bonds to be refunded. Except as may otherwise be expressly provided by the agency, the bonds of every issue shall be special obligations of the agency payable solely from revenues derived from the leasing, sale or other disposition of a project, subject only to any agreements with the holders of particular bonds pledging any particular moneys or revenues. Whether or not the bonds are of such form and character as to be negotiable instruments under article eight of the uniform commercial code, the bonds shall be, and are hereby made, negotiable instruments

within the meaning of and for all the purposes of the uniform commercial code, subject only to the provisions of the bonds for registration.

(2) The bonds shall be authorized by resolution of the agency and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, either within or without the state, and be subject to such terms of redemption as such resolution or resolutions may provide. The bonds may be sold at public or private sale at such price or prices as the agency shall determine.

(3) Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds thereby authorized, as to:

(a) pledging all or any part of the revenues derived from the leasing, sale or other disposition of a project or projects to secure the payment of the bonds, subject to such agreements with bondholders as may then exist;

(b) the rentals, fees, and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues;

(c) the setting aside of reserves or sinking funds, and the regulation and disposition thereof;

(d) limitations on the right of the agency to restrict and regulate the use of a project;

(e) limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied and

pledging such proceeds to secure the payment of the bonds or any issue of the bonds;

(f) the terms upon which additional bonds may be issued and secured; the refunding of outstanding or other bonds;

(g) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(h) vesting in a trustee or trustees such property, rights, powers and duties in trust as the agency may determine which may include any or all the rights, powers and duties of the trustees appointed by the bondholders and limiting or abrogating the right of the bondholders to appoint a trustee or limiting the rights, duties and powers of trustee;

(i) any other matters, of like or different character, which in any way affect the security or protection of the bonds.

§ 866. Notes of the agency. The agency shall have power from time to time to issue notes and from time to time to issue renewal notes (herein referred to as notes) maturing not later than five years from their respective original dates for any purpose or purposes for which bonds may be issued, whenever the agency shall determine that payment thereof can be made in full from any moneys or revenues which the agency expects to receive from any source. The agency may secure the notes in the same manner and with the same effect as herein provided for bonds. The notes shall be issued in the same manner as bonds. The agency shall have power to make contracts for the future sale from time to time of the notes, by which the purchasers shall be committed to purchase the notes from time

to time on terms and conditions stated in such contracts, and the agency shall have power to pay such consideration as it shall deem proper for such commitments. In case of default on its notes or violation of any of the obligations of the agency to the noteholders, the noteholders shall have all the remedies provided herein for bondholders. Such notes shall be as fully negotiable as the bonds of the agency.

§ 868. Agreements of the municipality and state. The municipality is authorized to, and the state does hereby, pledge to and agree with the holders of the bonds or notes that neither the municipality nor the state, respectively, will limit or alter the rights, hereby vested in the agency to acquire, construct, reconstruct, improve, maintain, equip and furnish the project or projects, to establish and collect rentals, fees and other charges and to fulfill the terms of any agreements made with the holders of the bonds or notes nor in any way impair the rights and remedies of the bondholders or noteholders until the bonds or notes, together with interest thereon, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceeding by or on behalf of the bondholders or noteholders are fully met and discharged.

§ 870. State and municipality not liable on bonds or notes. The bonds or notes and other obligations of the authority shall not be a debt of the state or of the municipality, and neither the state nor the municipality shall be liable thereon, nor shall they be payable out of any funds other than those of the agency.



§ 872. Bonds and notes as legal investment. The bonds and notes are hereby made securities in which all public officers and bodies of this state and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, and all other persons whatsoever except as hereinafter provided, who are now or may hereafter be authorized to invest in bonds or notes or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. The bonds or notes are also hereby made securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized.

§ 874. Tax exemptions. (1) It is hereby determined that the creation of the agency and the carrying out of its corporate purposes is in all respects for the benefit of the people of the state of New York and is a public purpose, and the agency shall be regarded as performing a governmental function in the exercise of the powers conferred upon it by this title and shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities.

(2) Any bonds or notes issued pursuant to this title, together with the income therefrom, as well as the property of the agency, shall be exempt from taxation, except for transfer and estate taxes.

(3) Payments in lieu of taxes received by the agency shall be remitted to each affected tax jurisdiction within thirty days of receipt.

(4) (a) The agency shall establish a uniform tax exemption policy, with input from affected tax jurisdictions, which shall be applicable to the provision of financial assistance pursuant to section eight hundred fifty-nine-a of this chapter and shall provide guidelines for the claiming of real property, mortgage recording, and sales tax exemptions. Such guidelines shall include, but not be limited to: period of exemption; percentage of exemption; types of projects for which exemptions can be claimed; procedures for payments in lieu of taxes and instances in which real property appraisals are to be performed as a part of an application for tax exemption; in addition, agencies shall in adopting such policy consider such issues as: the extent to which a project will create or retain permanent, private sector jobs; the estimated value of any tax exemptions to be provided; whether affected tax jurisdictions shall be reimbursed by the project occupant if a project does not fulfill the purposes for which an exemption was provided; the impact of a proposed project on existing and proposed businesses and economic development projects in the vicinity; the amount of private sector investment generated or likely to be generated by the proposed project; the demonstrated public support for the proposed project; the likelihood of accomplishing the proposed project in a timely fashion; the effect of the proposed project upon the environment; the extent to which the proposed project will require the provision of additional services, including, but not limited to additional



educational, transportation, police, emergency medical or fire services; and the extent to which the proposed project will provide additional sources of revenue for municipalities and school districts.

\* (b) The uniform tax exemption policy established pursuant to this section shall be reviewed and readopted by the agency on or before April first, nineteen hundred ninety-nine following a public hearing. Notice of this hearing shall be given to the chief executive officer of each affected tax jurisdictions at least sixty days before the hearing. Prior to the hearing the agency shall review, and respond to any correspondence received from any affected tax jurisdiction. The agency shall allow any representative of an affected tax jurisdiction to address the agency at the hearing. The agency shall develop and submit a report to the affected tax jurisdictions sixty days prior to the hearing which details the projects which the agency has assisted in the previous five years and shall include information specific to each project including the period of exemption; the type of project; the estimated percentage of exemption by year; the estimated value of any other assistance provided by the agency; whether commitments for payments in lieu of taxes were made and met, the estimated value of such payments by year and affected tax jurisdiction; the estimated amount of private sector investment generated by the project; and the extent to which the project created or retained permanent, private sector jobs.

\* NB Effective until July 1, 2006

\* (b) The agency shall establish a procedure for deviation from the uniform tax exemption policy required pursuant to this subdivision. The agency shall set forth in writing the reasons for deviation from such policy, and shall further notify the affected local taxing jurisdictions of the proposed deviation from such policy and the reasons therefor.

\* NB Effective July 1, 2006

\* (c) The agency shall establish a procedure for deviation from the uniform tax exemption policy required pursuant to this subdivision. The agency shall set forth in writing the reasons for deviation from such policy, and shall further notify the affected local taxing jurisdictions of the proposed deviation from such policy and the reasons therefor.

Such notice to the affected tax jurisdictions shall be given to the chief executive officer of each affected tax jurisdiction at least thirty days prior to the meeting of the agency at which the agency shall consider whether to approve such proposed deviation. Prior to taking final action at said meeting, the agency shall review and respond to any correspondence received from any affected tax jurisdiction regarding such proposed deviation. The agency shall allow any representative of an affected tax jurisdiction present at such meeting to address the agency regarding such proposed deviation.

\* NB Effective until July 1, 2006

(5) Payments in lieu of taxes which are delinquent under the agreement or which an agency fails to remit pursuant to subdivision three of this section, shall be subject to a late payment penalty of five percent of the amount due which shall be paid by the project occupant (where taxes are delinquent because of the occupant's failure to make the required payment) or the agency (because of the agency's failure to remit pursuant to subdivision three of this section) to the affected tax jurisdiction at the time the payment in lieu of taxes is paid. For each month, or part thereof, that the payment in lieu of taxes is delinquent beyond the first month, interest shall accrue to and be paid to the affected tax jurisdiction on the total amount due plus a late payment



penalty in the amount of one percent per month until the payment is made.

(6) An affected tax jurisdiction which has not received a payment in lieu of taxes due to it under an agreement may commence legal action in any court of competent jurisdiction directly against any person, firm, corporation, organization or agency which is obligated to make payments in lieu of taxes under an agreement and has failed to do so. In such an action, the affected tax jurisdiction shall be entitled to recover the amount due, the late payment penalty, interest, expenses, costs and disbursements together with the reasonable attorneys' fees necessary to prosecute such action. Nothing herein shall be construed as providing an affected tax jurisdiction with the right to sue and recover from an agency which has not received payments in lieu of taxes from a project occupant.

(7) Any refinancing of a project shall be subject to the provisions of section eight hundred fifty-nine-a of this chapter, except where such refinancing was previously approved pursuant to such section.

(8) Agents of an agency and project operators shall annually file a statement with the state department of taxation and finance, on a form and in such a manner as is prescribed by the commissioner of taxation and finance, of the value of all sales and use tax exemptions claimed by such agents or agents of such agents or project operators, including, but not limited to, consultants or subcontractors of such agents or project operators, under the authority granted pursuant to this section. The penalty for failure to file such statement shall be the removal of authority to act as an agent of an agency or a project operator.

\* (9) Within thirty days of the date that the agency designates a project operator or other person to act as agent of the agency for

purposes of extending a sales tax exemption to such person, the agency shall file a statement with the department of taxation and finance relating thereto, on a form and in such manner as is prescribed by the commissioner of taxation and finance, identifying each such agent so named by the agency, setting forth the taxpayer identification number of each such agent, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating the agency's rough estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease.

\* NB Repealed July 1, 2006

§ 876. Tax contract by the state. The state covenants with the purchasers and with all subsequent holders and transferees of bonds or notes issued by the agency pursuant to this title, in consideration of the acceptance of and payment for the bonds or notes, that the bonds and notes of the agency issued pursuant to this title and the income therefrom, and all moneys, funds and revenues pledged to pay or secure the payment of such bonds or notes shall at all times be free from taxation except for estate taxes and taxes on transfers by or in contemplation of death.

§ 878. Remedies of bondholders and noteholders. (1) In the event that the agency shall default in the payment of principal or of interest on any issue of the bonds or notes after the same shall become due, whether

at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the agency shall fail or refuse to comply with the provisions of this title, or shall default in any agreement made with the holders of any issue of the bonds or notes, the holders of twenty-five per centum in aggregate principal amount of the bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds for the purposes herein provided.

(2) Such trustee may, and upon written request of the holders of twenty-five per centum in principal amount of such bonds or notes, then outstanding shall, in his or its own name:

(a) by suit, action or special proceeding enforce all rights of the bondholders or noteholders, including the right to require the agency to collect revenues adequate to carry out any agreement as to, or pledge of, such revenues, and to require the agency to carry out any other agreements with the holders of such bonds or notes and to perform its duties under this title;

(b) bring suit upon such bonds or notes;

(c) by action or special proceeding, require the authority to account as if it were the trustee of an express trust for the holders of such bonds or notes;

(d) by action or special proceeding, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds or notes;

(e) declare all such bonds or notes due and payable, and if all defaults shall be made good then with the consent of the holders of

twenty-five per centum of the principal amount of such bonds or notes then outstanding, to annul such declaration and its consequences.

(3) The supreme court shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of bondholders or noteholders. The venue of any such suit, action or proceeding shall be laid in the county in which the project or projects are located.

(4) Before declaring the principal of all such bonds due and payable, the trustee shall first give thirty days' notice in writing to the agency.

(5) Any such trustee, whether or not the issue of bonds represented by such trustee has been declared due and payable, shall be entitled as of right to the appointment of a receiver of any part or parts of a project, the revenues of which are pledged for the security of the bonds of such issue, and such receiver may enter and take possession of such part or parts of the project and, subject to any pledge or agreement with bondholders or noteholders, shall take possession of all moneys and other property derived from or applicable to the acquisition, construction, operation, maintenance and reconstruction of such part or parts of the project and proceed with the acquisition of any necessary real property in connection with the project that the agency has covenanted to construct, and with any construction which the agency is under obligation to do and to operate, maintain and reconstruct such part or parts of the project and collect and receive all revenues thereafter arising therefrom subject to any pledge thereof or agreement with bondholders or noteholders relating thereto and perform the public duties and carry out the agreements and obligations of the agency under the direction of the court. In any suit, action or proceeding by the trustee, the fee, counsel fees and expenses of the trustee and of the



receiver, if any, shall constitute taxable disbursements and all costs and disbursements allowed by the court shall be a first charge on any revenues derived from such project.

(6) Such trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

§ 880. Actions against the agency. (1) In an action against the agency founded upon tort, the complaint shall contain an allegation that at least thirty days have elapsed since the demand, claim or claims upon which the action is founded were presented to a member of the agency and to its secretary or to its chief executive officer, and that the agency has neglected or refused to make an adjustment or payment thereof for thirty days after the presentment.

(2) In a case founded upon tort, a notice of claim shall be required as a condition precedent to the commencement of an action or special proceeding against the agency or an officer, appointee or employee thereof, and the provisions of section fifty-e of the general municipal law shall govern the giving of such notice. No action shall be commenced more than one year after the cause of action therefor shall have accrued.

§ 882. Termination of the agency. Whenever all of the bonds or notes issued by the agency shall have been redeemed or cancelled, the agency

shall cease to exist and all rights, titles, and interest and all obligations and liabilities thereof vested in or possessed by the agency shall thereupon vest in and be possessed by the municipality.

§ 883. Conflicts of interest. All members, officers, and employees of an agency or authority shall be subject to the provisions of article eighteen of this chapter.

§ 884. Public bidding. The provisions of any law relating to the requirement of public bidding with respect to the construction of public facilities or projects shall not be applicable to the acquisition, construction, reconstruction, improvement, maintenance, equipping and furnishing of projects authorized by this act.

§ 886. Title not affected if in part unconstitutional or ineffective. If any section, clause or provision of this title shall be unconstitutional or be ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective, it shall be valid and effective and no other section, clause or provision shall on account thereof be deemed invalid or ineffective.

§ 888. Inconsistent provisions in other acts superseded. Insofar as the provisions of this title are inconsistent with the provisions of any other act, general or special, or of any local laws of the municipality,



the provisions of this title shall be controlling except in cases of inconsistency with the Indian law.

\* § 917. New York City Industrial Development Agency. (a) Legislative intent. It is the policy and intent of the City of New York to promote the economic welfare of its inhabitants and to actively promote, attract, encourage and develop economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic deterioration by the creation of a New York City Industrial Development Agency. It is recognized that the viability and integrity of the residential communities in New York City should be protected and maintained so that no person be deprived of his place of residence by any condemnation for economic or industrial development undertaken pursuant to this article.

(b) For the purpose of this section "city" means the city of New York.

(b-1) For the purposes of this section, "rail freight facility" shall mean, but shall not be limited to, railroad rights-of-way, beds, bridges, viaducts, tracks, switches and any other attendant structure, facility, fixture or property necessary or appropriate for rail freight transportation conducted in conjunction with industrial, commercial, manufacturing, or warehousing operations solely for the purpose of providing or improving freight rail service between an industrial or commercial facility or group of such facilities in physical proximity to one another and a main line railroad track, freight yard or other means of connection to main line railroad facilities; provided, however, that (i) with respect to any rail freight facility project the New York City Industrial Development Agency shall be restricted solely to the

provision of financial assistance for such rail freight facility; (ii) that the project may not include any main line track (except to the extent that the project may include replacement of the amount of main line track used for passenger and/or freight service required to provide a suitable connection), any passenger facilities of any kind, or any rights-of-way, bridges or viaducts used for any purpose other than the rail transportation of freight from the industrial, commercial, manufacturing or warehousing facility or facilities to be served by the rail service to the main line track or other freight facility, provided, however, that nothing herein shall prohibit the project from including bridges or viaducts with separate provision for pedestrian traffic when it is determined that a separate pedestrian walkway is necessary or desirable for safety purposes; (iii) prior to undertaking the financing of any rail freight facility the New York City Industrial Development Agency shall submit a written description of such rail freight facility project to the commissioner of transportation who shall, within thirty days of receipt of such description, provide written comments on such project to the New York City Industrial Development Agency; and (iv) the New York City Industrial Development Agency shall not enter into any contract for providing financial assistance to such rail freight facility project until the earlier of either the date on which the New York City Industrial Development Agency addresses the comments of the commissioner of transportation to the satisfaction of such commissioner, or, if such commissioner has not submitted written comments, forty-five days after the New York City Industrial Development Authority submitted the written project description required by paragraph (iii) of this subdivision.



\*\* (c) For the benefit of the city and the inhabitants thereof an industrial development agency, to be known as the New York City Industrial Development Agency, is hereby established for the accomplishment of any or all of the purposes specified in title one of article eighteen-A of this chapter, except that it shall not have the power to construct or rehabilitate any residential facility or housing of any nature and kind whatsoever, nor shall it use any of its funds to further the construction or rehabilitation of any residential facility or housing of any nature and kind whatsoever. It shall constitute a body corporate and politic, and be perpetual in duration. It shall only have the powers and duties conferred by title one of article eighteen-A of this chapter upon industrial development agencies as of January 1, 1973 except that it shall have the power to finance a rail freight facility and it shall have the power to finance a civic facility as such project is defined in subdivision thirteen of section eight hundred fifty-four of this chapter and it shall not have the power of condemnation. In the exercise of the powers conferred upon such agency with respect to the acquisition of real property by article eighteen-A of this chapter such agency shall be limited to the geographical jurisdictional limits of the city.

\*\* NB Effective until July 2, 2006

\*\* (c) For the benefit of the city and the inhabitants thereof an industrial development agency, to be known as the New York City Industrial Development Agency, is hereby established for the accomplishment of any or all of the purposes specified in title one of article eighteen-A of this chapter, except that it shall not have the power to construct or rehabilitate any residential facility or housing of any nature and kind whatsoever, nor shall it use any of its funds to



further the construction or rehabilitation of any residential facility or housing of any nature and kind whatsoever. It shall constitute a body corporate and politic, and be perpetual in duration. It shall only have the powers and duties conferred by title one of article eighteen-A of this chapter upon industrial development agencies as of January 1, 1973 except that it shall have the power to finance a rail freight facility and it shall not have the power of condemnation. In the exercise of the powers conferred upon such agency with respect to the acquisition of real property by article eighteen-A of this chapter such agency shall be limited to the geographical jurisdictional limits of the city.

\*\* NB Effective July 2, 2006

(d) It shall be organized in a manner prescribed by and be subject to the provisions of title one of article eighteen-A of this chapter, except that its board shall consist of fifteen members. Among its membership shall be the city comptroller, the city administrator of the economic development administration, the corporation counsel of such city and the chairman of the city planning commission of such city, each of whom shall have the power to designate an alternate to represent them at board meetings with all the rights and powers, including the right to vote, reserved to all board members, provided that such designation be in writing to the chairman of the board. Six of the remaining eleven members shall be appointed by the mayor of such city upon consultation with the economic development council, business and labor organizations and elected officials and five shall be appointed by the mayor upon designation by the borough improvement boards of such city, one member from each borough.

(e) The Mayor shall designate the chairman of the board, who shall serve at the pleasure of the Mayor.



(f) The terms of the directors first appointed by the Mayor, other than the chairman of the board shall be as follows:

four shall serve for terms of one year each, two of whom shall have been designated by the borough improvement boards;

three shall serve for terms of two years each, two of whom shall have been designated by the borough improvements boards;

three shall serve for terms of three years each, one of whom shall have been designated by the borough improvement boards; thereafter the successors of all ten such directors shall serve for terms of three years each. The Mayor shall fill any vacancy which may occur by reason of death, resignation, or otherwise in a manner consistent with the original appointment. Members may be removed by the Mayor for cause after a hearing upon ten days' written notice. Such members shall receive no compensation for their services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of their duties.

(g) The chief executive officer of the agency shall be appointed by a two-thirds vote of the board of directors.

(h) The agency, its members, officers, and employees, shall be subject to article fourteen of the civil service law and for all such purposes the agency shall be deemed the "public employer" and its members, officers and employees shall be deemed "public employees"; provided, however, that chapter fifty-four of the New York City Charter, chapter fifty-four of the Administrative Code of the City of New York, and executive order number fifty-two dated September twenty-ninth, nineteen hundred sixty-seven, issued by the Mayor of the City, shall apply to the agency, its members, officers and employees except that section eight of said executive order shall not be applicable. The agency shall establish

general and special grievances as defined in chapter fifty-four of the Administrative Code of the City except as otherwise provided in collective bargaining agreements.

(i) The City shall have the power to make, or contract to make grants or loans, including but not limited to grants or loans of money, to the agency in such amounts, upon such terms and conditions and for such period or periods of time as in the judgment of the City and the agency are necessary or appropriate for the accomplishment of any of the purposes of the agency.

(j) The city shall have the power to condemn property for transfer to the New York City Industrial Development Agency under title one of article eighteen-A of this chapter upon the request of two-thirds of the members of the Board of Directors of the New York city industrial development agency. No property shall be condemned on behalf of the agency which is zoned "residential" as defined in the zoning resolution of the city, or which is occupied in whole or in part as a dwelling or residence.

(k) For the purpose of this section "governing body" as used in such title one of article eighteen-A of this chapter shall mean the Mayor of the City. Except as otherwise provided in this section, the agency, its members, officers and employees, and its operations and activities shall be governed by the provisions of title one of article eighteen-A of this chapter.

(l) The city shall save harmless and indemnify any person who is serving or has served as a director or officer or as employee of the New York City Industrial Development Agency against any financial loss arising out of or in connection with any claim, demand, suit or judgment, based on a cause of action involving allegations that





pecuniary harm was sustained by any person as a result of any transaction, act or omission to act of the Industrial Development Agency or of any action or inaction or vote of any director, officer or employee of such Agency unless such individual is found by a final judicial determination not to have acted in good faith for a purpose he reasonably believed to be in the best interests of the Agency or not to have had reasonable cause to believe that his conduct was lawful. Provided, however, that such individual must transmit to the corporation counsel of the city of New York any notice of claim, summons or complaint or other analogous paper served on him within ten days of its receipt unless prevented from doing so by compelling circumstances. The corporation counsel shall, without charge, represent any such individual unless unable to do so by reason of conflict of interest. In the event that the corporation counsel is unable to give such representation, the city of New York shall indemnify the individual for any reasonable litigation expense incurred by him.

\* NB There are 2 § 917's

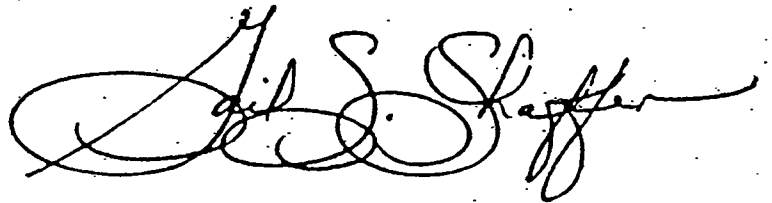
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State of New York  
DEPARTMENT OF STATE

It is Hereby Certified, That the attached copy of the certificate of establishment for the New York City Industrial Development Agency and the certificates of appointment of the members, filed November 27, 1974 and the certificates of appointment of the members, filed December 13, 1976, July 11, 1977, February 14, 1977, July 11, 1977, October 7, 1977, December 27, 1977, October 3, 1978, December 4, 1978, May 14, 1982, and March 3, 1987, are true copies of the originals thereof on file in this office.

Witness my hand and the official seal of the  
Department of State at the City of  
Albany, this 15th day  
of October one thousand  
nine hundred and eighty-seven



Secretary of State

CERTIFICATE OF ESTABLISHMENT

OF

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

For Filing with Secretary of State

-----

THIS is to certify that the NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY (the "Agency") has been established by special act of the New York State Legislature. The following facts and information are set forth pursuant to Section 856 of the New York State Industrial Development Agency Act:

1. The special act establishing the Agency was passed by the New York State Legislature on June 15, 1974, and became Chapter 1082 of the Laws of 1974, effective immediately.

2. The name of the Agency is: NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY.

3. The names of the members of the Agency, their Chairman, and their terms of office are as follows:

<u>NAME</u>	<u>TITLE</u>	<u>TERM OF OFFICE</u>
William S. Brennan	Chairman	At pleasure of the Mayor of the City of New York
Richard Lewisohn	Member	Three-year term
Harrison J. Goldin Comptroller of the City of New York	Member	Terminates at the expiration of the term of his municipal office

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED NOV 27 1974

*John J. [Signature]*

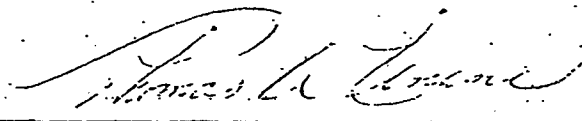
<u>NAME</u>	<u>TITLE</u>	<u>TERM OF OFFICE</u>
Alfred Eisenpreis Administrator of Economic Development Administration	Member	Terminates at the expiration of the term of his municipal office.
Adrian P. Burke Corporation Counsel	Member	Terminates at the expiration of the term of his municipal office.
John Zuccotti Chairman - City Planning Commission	Member	Terminates at the expiration of the term of his municipal office.
Edgardo N. Vazquez Basso	Member	1-year term
Joseph J. Holzka	Member	2-year term
Bruce Llewellyn	Member	3-year term
Joseph J. Solar	Member	1-year term
Dr. Eugene Callender	Member	2-year term
Samuel Plotkin	Member	3-year term
Bernard Richards	Member	1-year term
Thomas Schleier	Member	1-year term
Jerome B. Sheir	Member	2-year term

STATE OF NEW YORK  
DEPARTMENT OF SOCIAL SERVICES  
FILED NOV 27 1974  
*John J. [Signature]*  
Secretary of State

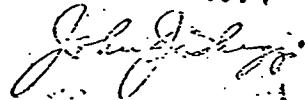
4. The facts establishing the need for the Agency in the municipality are as follows: The City of New York desires (i) to promote the economic welfare and the health of its

inhabitants, (ii) to actively promote, attract, encourage and develop an economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration and (iii) to abate and control pollution of land, air and water. The purpose of the Agency is to promote, develop and encourage and assist in the acquiring, construction, reconstructing, improving, maintaining and equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and pollution control facilities and thereby to advance the job opportunities, general prosperity, economic welfare and health of the inhabitants of the City of New York.

THE MAYOR OF THE CITY OF NEW YORK

By:   
Clerk of the City of New York  
First Deputy City Clerk

STATE OF NEW YORK  
DEPARTMENT OF STATE  
RECORDED NOV 27 1974

  
Secretary of State

**IDA BOARD OF DIRECTORS**  
**MEMBERS (15)**

**Mayoral Appointments (6):**

- Andrew M. Alper, Chairman
- Barbara Basser-Bigio
- Robert D. Santos
- Joshua Sirefman
- Albert V. De Leon
- Derek B. Park, Vice Chairman

**Mayoral Appointments based on Borough President Designations (5):**

- José L. Orengo - Manhattan
- Joseph I. Douek - Brooklyn
- Rafael A. Salaberrios - Bronx
- Bernard Haber - Queens
- Julius Rendinaro - Staten Island

**Ex Officio Members (4):**

- Michael A. Cardozo, Esq., Corporation Counsel of The City of New York
- Daniel L. Doctoroff, Deputy Mayor for Economic Development and Rebuilding of The City of New York
- Amanda M. Burden, Chair of the City Planning Commission of The City of New York
- William C. Thompson, Jr., Comptroller of The City of New York



CITY PLANNING COMMISSION  
CITY OF NEW YORK

OFFICE OF THE CHAIR

February 17, 2004

Andrew M. Alper, Chairman  
New York City Industrial Development Agency  
110 William Street  
New York, New York 10038

Dear Mr. Alper:

Please be advised that, pursuant to Section 917(g) of the General Municipal Law of the State of New York, I hereby designate Barry Dinerstein to act as my alternate and to represent me at the meetings of the Board of Directors of New York City Industrial Development Agency, with all rights and powers, including the right to vote, reserved to me as an ex officio member of such Board of Directors.

Very sincerely,

Amanda M. Burden

c. Barry Dinerstein

Amanda M. Burden, AICP, Chair  
22 Rector Street, New York, N.Y. 10007-1204  
(212) 720-3221 Fax (212) 720-3215  
aig-post@planning.nyc.gov





THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N. Y. 10007

June 13, 2005

Ms. Barbara Basser-Bigio  
40 East 80<sup>th</sup> Street, Apt. 15B  
New York, New York 10021

Dear Ms. Basser-Bigio: ✓

Pursuant to the authority vested in me as Mayor by Section 917 of the General Municipal Law of the State of New York, I am pleased to appoint you as a member of the New York City Industrial Development Agency (IDA).

Your appointment is effective immediately and is for the remainder of a three-year term ending on September 30, 2005, to be immediately followed by a full three-year term ending on September 30, 2008.

On behalf of the people of New York City, I extend my thanks and congratulations to you. I am grateful you have agreed to share your time and experience with the IDA Board, and I wish you the very best.

Sincerely,

Michael R. Bloomberg  
Mayor

MRB:jb

cc: Andrew M. Alper, IDA Chair



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N.Y. 10007

June 13, 2005

Robert D. Santos, Esq.  
39-12 Packard Street  
Sunnyside Gardens, New York 11104

Dear Mr. Santos:

Pursuant to the authority vested in me as Mayor by Section 917 of the General Municipal Law of the State of New York, I am pleased to appoint you as a member of the New York City Industrial Development Agency (IDA).

Your appointment is effective immediately and is for the remainder of a three-year term ending on September 30, 2005, to be immediately followed by a full three-year term ending on September 30, 2008.

On behalf of the people of New York City, I extend my thanks and congratulations to you. I am grateful you have agreed to share your time and experience with the IDA Board, and I wish you the very best.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. Bloomberg".

Michael R. Bloomberg  
Mayor

MRB:jb

cc: Andrew M. Alper, IDA Chair



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N.Y. 10007

June 13, 2005

Mr. Josh Sirefman  
60 Pineapple Street, Apt. 4A  
Brooklyn, New York 11201

Dear Mr. Sirefman:

Pursuant to the authority vested in me as Mayor by Section 917 of the General Municipal Law of the State of New York, I am pleased to appoint you as a member of the New York City Industrial Development Agency (IDA).

Your appointment is effective immediately for the remainder of a three-year term expiring on September 30, 2006.

On behalf of the people of New York City, I extend my thanks and congratulations to you. I am grateful you have agreed to share your time and experience with the IDA Board, and I wish you the very best.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. Bloomberg".

Michael R. Bloomberg  
Mayor

MRB:jb



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N.Y. 10007

June 13, 2005

Albert V. De Leon, Esq.  
140 8<sup>th</sup> Avenue, Apt. 2P  
Brooklyn, New York 11215

Dear Mr. De Leon: ✓

Pursuant to the authority vested in me as Mayor by Section 917 of the General Municipal Law of the State of New York, I am pleased to appoint you as a member of the New York City Industrial Development Agency (IDA).

Your appointment is effective immediately and is for the remainder of a three-year term expiring on September 30, 2007.

On behalf of the people of New York City, I extend my thanks and congratulations to you. I am grateful you have agreed to share your time and experience with the IDA Board, and I wish you the very best.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. Bloomberg".

Michael R. Bloomberg  
Mayor

MRB:jb

cc: Andrew M. Alper, IDA Chair



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N. Y. 10007

June 13, 2005

Derek B. Park, Ph.D.  
Trump Parc Tower  
106 Central Park South  
New York, New York 10019

Dear Dr. Park:

Pursuant to the authority vested in me as Mayor by Section 917 of the General Municipal Law of the State of New York, I am pleased to appoint you as a member of the New York City Industrial Development Agency (IDA).

Your appointment is effective immediately for a three-year term expiring on September 30, 2007.

On behalf of the people of New York City, I extend my thanks and congratulations to you. I am grateful you have agreed to share your time and experience with the IDA Board, and I wish you the very best.

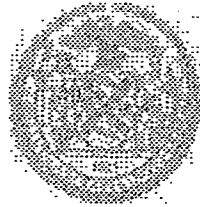
Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. Bloomberg".

Michael R. Bloomberg  
Mayor

MRB:jb

cc: Andrew M. Alper, IDA Chair



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N.Y. 10007

July 11, 2005

José L. Orengo, Esq.  
260 East 10<sup>th</sup> Street, Apt. 9  
New York, New York 10009

Dear Mr. Orengo: ✓

Following your designation by the Manhattan Borough President, and pursuant to the authority vested in me as Mayor by Section 917 of the General Municipal Law of the State of New York, I am pleased to appoint you as a member of the New York City Industrial Development Agency (IDA).

Your appointment is effective immediately and is for the remainder of a three-year term expiring on November 20, 2006.

On behalf of the people of New York City, I extend my thanks and congratulations to you. I am grateful you have agreed to share your time and experience with the IDA Board, and I wish you the very best.

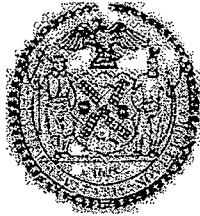
Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. Bloomberg".

Michael R. Bloomberg  
Mayor

MRB:jb

cc: Andrew M. Alper  
C. Virginia Fields



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N.Y. 10007

#895  
S. Edwards  
C. Edwards  
B. B. B. B.  
J. Farr  
E. Marshall

May 13, 2002

Mr. Joseph L. Douck  
1761 East 8<sup>th</sup> Street  
Brooklyn, New York 11223

Dear Mr. Douck:

By the authority vested in me as Mayor by Section 217 of the General Municipal Law of the State of New York, I hereby appoint you as a member of the Board of Directors of the New York City Industrial Development Agency.

On February 5, 2002, the President of the Borough of Brooklyn designated you for appointment to the Industrial Development Agency. Your appointment is for the remainder of a three-year term that commenced on December 10, 2001 and that expires on December 9, 2004.

On behalf of the people of New York City, I send my thanks and congratulations to you.

Sincerely,



Michael R. Bloomberg  
Mayor


MRB:asd

cc: Honorable Marty Markowitz  
Andrew Alper, IDA Chair

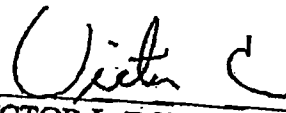
CERTIFICATE AS TO APPOINTMENT  
as a member of the  
NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY  
for filing with the  
SECRETARY OF STATE OF  
THE STATE OF NEW YORK

This is to certify that RAFAEL A. SALABERRIOS has been appointed, as of February  
10, 2004, as a MEMBER of the NEW YORK CITY INDUSTRIAL DEVELOPMENT  
AGENCY, which has been duly established by Chapter 1082 of the Laws of 1974, as amended.

New York, New York  
Dated: February 10, 2004

  
MICHAEL R. BLOOMBERG  
Mayor

New York, New York  
Dated: Feb 12, 2004

  
VICTOR L. ROBLES  
City Clerk, Clerk of the Council

STATE OF NEW YORK  
DEPARTMENT OF STATE  
**FILED**

FEB 20 2004

MISCELLANEOUS  
& STATE RECORDS

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED:







THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N.Y. 10007

March 3, 1987

Mr. Bernard Haber  
29-25 211th Street  
Bayside, New York 11360

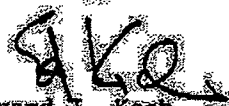
Dear Mr. Haber:

It is with great pleasure that I notify you of your appointment to a three year term effective immediately as a Director of the New York City Industrial Development Agency.

The Industrial Development Agency plays a key role in the financing of development projects in the City of New York. With the changes in federal tax law, as well as the on-going competitiveness of policy issues, I am confident that your presence on the Board will contribute to thoughtful consideration and resolution of these issues, which are of great concern to me.

Economic Development is a priority of my administration and I am pleased someone with your background and skills will have an important role in our continuing efforts to invigorate the City's economy through a comprehensive program.

Sincerely,

  
Edward I. Koch  
MAYOR



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N.Y. 10007

June 11, 1992

Mr. Julius Rendinaro  
373 Tysens Lane  
Staten Island, New York 10306

Dear Mr. Rendinaro:

I am please to appoint you, upon nomination by the Borough President of Staten Island, a Director of the New York City Industrial Development Agency for a three year term, effective immediately.

The New York City Industrial Development Agency plays a key role in the financing of economic development projects in the City of New York. Economic Development is a priority of my administration and I am pleased that someone of your background and skills will have an important role in our continuing efforts to invigorate the City's economy.

Sincerely,

David N. Dinkins  
MAYOR

cc: The Honorable Guy Molinari



**AGENCY GENERAL CERTIFICATE**

We, the undersigned Deputy Executive Director and an Assistant Secretary of New York City Industrial Development Agency (the "Agency"), a corporate governmental agency constituting a body corporate and politic and a public benefit corporation organized and existing under the laws of the State of New York, HEREBY CERTIFY as follows (all capitalized terms used but not defined herein shall have the respective meanings set forth in the Lease Agreement referred to herein):

1. The following persons are the members of the Agency, holding the offices, if any, set forth opposite their names:

Joshua J. Sirefman	Chairman
Derek B. Park	Vice Chairman
Daniel L. Doctoroff	Deputy Mayor for Economic Development and Rebuilding of The City of New York (ex officio)
Michael A. Cardozo, Esq.	Corporation Counsel of The City of New York (ex officio)
William C. Thompson, Jr.	Comptroller of The City of New York (ex officio)
Amanda M. Burden	Chairperson of the City Planning Commission of The City of New York (ex officio)
Barbara Basser-Bigio	
Albert V. DeLeon	
Joseph I. Douek	
Bernard Haber	
José L. Orengo	
Julius Rendinaro	
Rafael A. Salaberrios	
Robert D. Santos	

Kei Hayashi is the Executive Director of the Agency.

Maureen P. Babis is the Deputy Executive Director of the Agency.

Meredith J. Jones, Esq. is the General Counsel of the Agency.

Jason Wright is the Chief Financial Officer of the Agency.

Richard E. Marshall, Esq. is the Vice President for Legal Affairs of the Agency.

Deo Singh is the Treasurer of the Agency.

Christopher Malin is the Assistant Treasurer of the Agency.

2. That attached hereto is a true and correct copy of the bylaws of the Agency as in effect on the date hereof, and that said copy has been compared by us with the original thereof on file in the Minute Book of the Agency and that said copy is a correct copy thereof and of the whole of said bylaws, and that the same has not been altered, amended or repealed, but is in full force and effect.

3. That attached hereto are true, correct and complete copies of the notice of the meetings of the Agency held on August 9, 2005 and on April 11, 2006, which notices were

given pursuant to the bylaws of the Agency and duly sent to each member of the Agency, all in accordance with the applicable provisions of the Agency's bylaws.

4. That attached to the Record of Proceedings (being those documents delivered on the date hereof referred to below (the "Record of Proceedings")) is a true, correct and complete copy of each of the Lease Agreement, dated as of November 1, 2006 (the "Lease Agreement"), between the Agency and J & J Farms Realty Joint Venture, as lessee (the "Lessee"); the Company Lease Agreement, dated as of November 1, 2006 (the "Company Lease"), between the Lessee and the Agency; and the Guaranty Agreement, dated as of November 1, 2006, from the Lessee, J & J Farms Creamery, Inc. and Fisher Foods of Queens Corp. (collectively, the "Sublessees"), and Michael Oberlander, Pearl Oberlander, Simon Friedman and Morris Schlager, as individual guarantors (collectively, the "Individual Guarantors"), to the Agency (each of the documents and agreements referred to above in this paragraph 4 being, collectively, the "Agency Documents"), each of which was duly approved and authorized by the members of the Agency by a resolution on April 11, 2006, and each of which was executed and delivered by the officers of the Agency authorized to do so, and that none of the Agency Documents has been modified, supplemented, amended, rescinded, repealed or canceled, but each continues in full force and effect.

5. That attached hereto is a true, correct and complete copy of the resolutions duly adopted by the Agency on August 9, 2005 and on April 11, 2006 (collectively, the "Resolutions"), accepting the application of the Sublessees for processing and undertaking a straight-lease transaction for the Project, and (1) authorizing financial assistance in the form of a straight-lease transaction for the improvement and renovation of the Facility, the leasing of the Facility Realty to the Agency, and the subleasing of the Facility Realty to the Lessee; (2) authorizing the execution and delivery of the Agency Documents; and (3) approving other matters in connection therewith.

6. That the Resolutions were duly adopted at meetings of the Agency duly called and held on August 9, 2005 and on April 11, 2006, that a quorum was present and acted throughout each such meeting, and that the Resolutions are in full force and effect and have not been further modified or amended, and the form of each of the Agency Documents as approved at the April 11, 2006 meeting is substantially in the form as executed and delivered on the date hereof.

7. The Agency is a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York duly organized and existing under the laws of the State of New York, particularly the Act. The Agency is authorized to provide financial assistance to the Lessee and the Sublessees in accordance with the Act pursuant to a straight-lease transaction for the improvement and renovation of the Facility, to lease the Facility Realty from the Lessee, and to sublease the Facility Realty to the Lessee for sub-sublease of the Facility Realty to the Sublessees for the purpose of promoting, developing, encouraging and assisting in the improvement and renovation of a commercial facility and thereby advancing the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their standard of living.

8. The Agency has complied with the provisions of the Act and has full power and authority pursuant to law and the Act to act with respect to all transactions contemplated by the Resolutions and each of the Agency Documents and to carry out and consummate all other transactions contemplated by each of the aforesaid documents.

9. The execution and delivery of each of the Agency Documents, and compliance with the provisions thereof, will not conflict with or constitute on the part of the Agency a violation of the Constitution of the State of New York or a violation of, breach of or default under its bylaws or any statute, indenture, mortgage, deed of trust, note agreement or other agreement or instrument to which the Agency is a party or by which the Agency is bound, or, to the knowledge of the Agency, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Agency or any of its activities or properties; and all consents, approvals, authorizations and orders of governmental or regulatory authorities that are required of the Agency for the consummation of the transactions contemplated thereby have been obtained.

10. There is no action, suit, proceeding or investigation at law or in equity, of which the Agency has notice, by or before any court or public agency, nor, to the best knowledge of the Agency, is there any basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by any of the Agency Documents, or that in any way would adversely affect the validity of the Agency Documents, the Resolutions or any agreement or instrument to which the Agency is a party and that is used or contemplated for use in consummation of the transactions contemplated by the Lease Agreement.

11. The Agency makes no representation or warranty concerning the financial position or business condition of the Lessee, either of the Sublessees, or any of the Individual Guarantors, nor does it represent or warrant as to the correctness of any statements or representations made or materials furnished by or on behalf of the Lessee, either of the Sublessees or any of the Individual Guarantors in connection with the Project.

12. No controversy or litigation of any nature of which the Agency has notice is now pending or, to the best knowledge of the Agency, threatened (either in state or Federal courts) against or affecting the Agency restraining or enjoining or questioning or affecting, directly or indirectly, the validity of or the authority for the making and entering into of any of the Agency Documents or any proceedings taken by the Agency with respect to the foregoing, or the organization, creation, corporate existence or powers of the Agency or the title of any of the present officers to the respective offices, or the right or power of the Agency to acquire, construct or improve the Project or mortgage, sell, assign, lease or sublease the Project property.

13. The seal that has been impressed upon this certificate is the legally adopted, proper and only official corporate seal of the Agency.

14. To the best knowledge of the Agency, each of the representations, warranties and covenants of the Agency set forth in Section 1.3 of the Lease Agreement is true and correct in all material respects as of the date hereof as if such representations, warranties and covenants were made as of the date hereof, and the Agency has complied with all of the terms of the Lease Agreement to be complied with by the Agency on or prior to the date hereof.

15. The copies of each of the Agency Documents being delivered this day are true, correct and complete copies of such documents as executed, and attached hereto are true, correct and complete copies of the Resolutions as adopted, and neither the Agency Documents nor the Resolutions have been further modified, amended or rescinded as of the date hereof.

16. The Agency Documents and any and all other agreements and documents required to be executed and delivered by the Agency in order to carry out, give effect to and consummate the transactions contemplated by the Lease Agreement have each been duly authorized, executed and delivered by the Agency, and, as of the date hereof, each is in full force and effect, and each constitutes the valid, binding and enforceable obligation of the Agency, and the Agency is entitled to the benefits of the same.

17. To the best knowledge of the Agency, no legislation, ordinance, rule or regulation has been enacted or introduced or favorably reported for passage by any governmental body, department or agency of the State of New York or of The City of New York, and no decision by any court of competent jurisdiction of such State or City has been rendered that would adversely affect the exemption from all taxation (except for transfer and estate taxes) in the State of New York or The City of New York of the Agency or of any similar body and all properties owned by it or by such similar body.

18. With respect to each of the Agency Documents, we further certify that we have made a careful inquiry of each member, officer and employee of the Agency having the power or duty to (a) negotiate, prepare, authorize or approve any of the Agency Documents or authorize or approve payment thereunder, (b) audit bills or claims under any of the Agency Documents, or (c) appoint an officer or employee who has any of the powers or duties as set forth above, as to whether or not such member, officer or employee has an interest (as defined pursuant to Article 18 of the General Municipal Law) in any of the Agency Documents, and, upon information and belief, as a result of such inquiry, no such member, officer or employee has any such interest in any of the Agency Documents.

19. Attached hereto is a true, correct and complete copy of (i) the notice of public hearing published on March 7, 2006 in the *New York Post* in compliance with Section 859-a of the New York State Industrial Development Agency Act, (ii) a transcript of the hearing so held on April 6, 2006, and (iii) notice of such hearing given to the Mayor of The City of New York.


[Intentionally Left Blank]


WE FURTHER CERTIFY that on the date or dates of the execution of each of the Agency Documents, and on the date hereof, we are the duly appointed and qualified incumbents of the offices of the Agency set forth below our respective names, and the signatures appearing above our respective names are our signatures.

IN WITNESS WHEREOF, the undersigned have hereunto set their official signatures and the corporate seal of the Agency this November 20, 2006.

NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY

(SEAL)

By:   
Maureen P. Babis  
Deputy Executive Director

By:   
Assistant Secretary

I HEREBY CERTIFY that the signatures of the officers of New York City Industrial Development Agency that appear above are true and genuine, and that I know said officers and know them to hold the offices set opposite their names.

Signature

  
Richard E. Marshall, Esq.

Title

Vice President for Legal Affairs  
New York City Industrial Development Agency



REVISED 7/09/96

**BY-LAWS OF NEW YORK CITY  
INDUSTRIAL DEVELOPMENT AGENCY**

Pursuant to the authority contained in Section 858, Title I of Article 18-A of the General Municipal Law, as set out in Chapter 1030 of the Laws of 1969, and Section 917 of the General Municipal Law as set out in Chapter 1082 of the Laws of 1974 of the State of New York, the New York City Industrial Development Agency hereby approves the following by-laws for the regulation of its activities:

**ARTICLE I  
The Agency**

Section 1.1. Description. The New York City Industrial Development Agency (the "Agency") is a corporate governmental agency of the State of New York, constituting a body corporate and politic and a public benefit corporation, created by and having the powers and functions set forth in the General Municipal Law, Article 18-A, and Section 917 thereunder (collectively referred to as the "Act").

Section 1.2. Membership. The membership of the Agency shall consist of fifteen members, who shall constitute the Board of Directors (the "Board") and shall be selected and shall hold office as provided in the Act.

Section 1.3. Offices. The principal office of the Agency shall be located in the City, County and State of New York. The Agency may also have other offices at such places within the State of New York as it may from time to time designate by resolution.

Section 1.4. Seal. (1) The official seal of the Agency shall be in the form of a circle and shall bear the name of the Agency and the year of its creation. Such seal may also include such other insignia as may be approved by the Board.

(2) In the execution on behalf of the Agency of any instrument, document, writing, notice or paper it shall not be necessary to affix the official seal of the Agency thereon, and any such instrument, document, writing, notice or paper when executed without said seal affixed thereon shall be of the same force and effect and as binding on the Agency as if said official seal had been affixed thereon in each instance.

(3) The official seal need not be impressed on any instrument, document, writing, notice or paper, but the same shall be sufficiently sealed if the official seal or a facsimile thereof is engraved, imprinted or otherwise reproduced thereon.

(4) The Secretary or the Executive Director, or in the absence of the Secretary or the Executive Director, the Chairman may certify as to the official seal or its facsimile as of any date or with respect to any instrument, document, writing, notice or paper and any such certification shall be conclusive as to the form of said official seal and that any such instrument, document, writing, notice or paper has been duly and properly sealed by the Agency.

Section 1.5. Fiscal Year. The fiscal year of the Agency shall begin on the first day of July in each calendar year and shall end at the close of business on the 30th day of June in the following calendar year.

## ARTICLE II Officers

Section 2.1. Appointment. The officers of the Agency shall be a Chairman and a Vice-Chairman, who shall be members, and an Executive Director, Treasurer, Secretary, Assistant Treasurers and such other officers as it may be determined by the Board, who shall have such duties, powers and functions as hereinafter provided, all of whom shall be elected by the Board, except the Chairman, who shall be designated by the Mayor of The City of New York.

Section 2.2. Terms of Office. All officers of the Agency other than the Chairman, shall hold office at the pleasure

of the Board. The Chairman shall serve as such at the pleasure of the Mayor of The City of New York as provided in the Act.

Section 2.3. Chairman. The Chairman shall preside at all meetings of the Agency, but, for any particular meeting of the Agency, the Chairman may delegate the responsibility to so preside to any member or officer of the Agency. He shall sign by manual or facsimile signature and execute on behalf of the Agency all agreements, deeds, contracts, notes, bonds, trust indentures or other evidences of indebtedness when so authorized by resolution of the Agency, and shall perform such other duties as may be prescribed for him by law or by the Agency. The Chairman shall submit to the Board such recommendations and information as he may consider proper concerning the business, affairs and polices of the Agency.

Section 2.4. Vice-Chairman. The Vice-Chairman, during the absence or disability of the Chairman, shall have all the powers and perform all the duties of the Chairman. The Vice-Chairman shall also perform such other duties as the Board shall prescribe or designate. In case of the resignation or the death of the Chairman, the Vice-Chairman shall perform such duties as are imposed on the Chairman until such time as the Mayor of The City of New York designates a new Chairman.

Section 2.5. Secretary. The Secretary shall record all the votes and record the minutes of the Agency in a journal to be kept for that purpose; attend to the serving of notices of all meetings when required; shall keep in safe custody the seal of the Agency and shall have power to affix such seal to all papers or other documents as may be required and may certify by manual or facsimile signature to the seal of the Agency or its facsimile; shall perform all duties as the Agency may designate.

Section 2.5(1). Assistant Secretary. The Assistant Secretary shall exercise such powers and perform such duties as from time to time may be assigned to him by the Board. At the request of the Secretary or in his absence or disability, the Assistant Secretary shall perform all the duties of the Secretary and when so acting shall have all the powers of and shall be subject to all the restrictions upon the Secretary.

Section 2.6. Treasurer. The Treasurer shall be the chief financial officer of the Agency and shall exercise general supervision over the receipt, custody and disbursement of all Agency funds and securities, except as otherwise provided by resolution and shall cause the same to be deposited forthwith in the name of the Agency in such bank or banks as the Board may designate.

The Treasurer shall sign all instruments of indebtedness, orders and checks for the payments of moneys by the Agency pursuant to the direction of the Board, unless otherwise authorized by resolution of the Board. Except as otherwise authorized by resolution of the Board, all such instruments of indebtedness, orders and checks shall be countersigned by the Chairman, Vice-Chairman or Executive Director.

The Treasurer shall have charge of the treasury and supervision of receipts, deposits and disbursements of all Agency moneys. He shall cause to be maintained full and accurate and separate accounts of the various funds and moneys under his supervision. The Treasurer shall at a reasonable time exhibit the said books and accounts showing all receipts and expenditures, to any member of the Agency during business hours and he shall cause to be rendered an accounting of the current financial condition of the Agency at each regular meeting and a full financial report at each annual meeting covering the Agency's prior fiscal year. He shall have such other powers and duties as are conferred upon him by the Board or by any special or general law.

Section 2.7. Assistant Treasurer. The Assistant Treasurer shall exercise such powers and perform such duties as from time to time may be assigned to him by the Board. At the request of the Treasurer or in his absence or disability, the Assistant Treasurer shall perform all the duties of the Treasurer and when so acting shall have all the powers of and shall be subject to all the restrictions upon the Treasurer.

Section 2.8. Executive and other Committees. The Board may by resolution passed by a majority of the members of the Board then in office, designate an Executive Committee which to the extent provided in such resolution shall have all the authority of the Board which may be delegated and shall have and exercise such powers of the Board in the management of the business and affairs

of the Agency and may authorize the seal of the Agency to be affixed to all papers which may require it. The Executive Committee may consist of the Chairman of the Board, Vice-Chairman, the Secretary, the Treasurer, the Assistant Secretary and Deputy Mayor/Administrator of the Economic Development Administration, his or her representative, or such other or additional persons designated by resolution of the Board. The Board may by resolution designate other committees of the Board each to consist of at least three members which to the extent provided in such resolution shall have the authority of the Board which may be delegated. The Board may by resolution designate members to act as alternative members of any committee, other than the Executive Committee, to replace absent members at meetings of the Committee. The Board may establish a Chairman of the Executive Committee with such powers, duties or responsibilities as are imposed pursuant to the resolutions of the Board or Executive Committee. The Executive Committee shall keep minutes of all proceedings and report such minutes to the Board when required. Each other committee shall keep such minutes to carry out its delegated duties and to report thereon to the Board.

Section 2.9. Other Officers. All other officers of the Agency shall perform such duties pertaining to their respective offices as may be assigned to them from time to time by the Board or the Chairman. Such other officers who are not members shall receive such compensation as may be authorized by the Board.

Section 2.10. Officers Holding Two or More Offices. Any two or more offices may be held by the same person, except as otherwise provided by Law. No officer shall execute or verify any instrument in more than one capacity if such instrument be required by law or otherwise to be executed or verified by any two or more officers.

Section 2.11. Duties of Officers may be Delegated. In case of the absence or disability of any officer of the Agency, or in the case of a vacancy in any office or for any other reason that the Board or the Chairman may deem sufficient, the Board or the Chairman, except as otherwise provided by law or these By-Laws, may delegate, for the time being, the powers or duties of any officer to any other officer or to any member.

Section 2.12. Executive Director. The Executive Director shall be the chief executive officer and shall be appointed by the Board by a two-thirds vote of the members of the Board then in office and shall be responsible for the administration of its affairs. He shall be the general manager of the Agency. He shall exercise supervision and control of all administrative functions of the Agency. He shall be responsible for the implementation of all resolutions, orders, programs or projects of the Agency. He shall act for and in place of any absent officer or employee of the Agency, except the Chairman, Vice-Chairman, Secretary or Treasurer of the Agency. The Executive Director, as well as the Chairman, shall have the power to sign and execute on behalf of the Agency all contracts, notes, bonds or other evidence of indebtedness and to affix and attest to the seal of the Agency when so authorized by resolution of the Agency. He shall attend all meetings of the Agency with the right to take part in the discussion and to recommend such measures as he may deem necessary or expedient, and shall perform such other duties and have such other powers as may be prescribed for him by law of the Board. He shall have all necessary incidental powers to perform and exercise any of the duties and functions specified above or lawfully delegated to him.

Section 2.12(1). Deputy Executive Director. The Deputy Executive Director shall be appointed by the Board by a majority vote of the members of the Board. At the request of the Executive Director or in his absence or disability, the Deputy Executive Director shall perform all the duties of the Executive Director and when so acting shall have the powers of and shall be subject to all the restrictions upon the Executive Director.

Section 2.13. Additional Duties. The Officers of the Agency shall perform such other duties and functions as may, from time to time, be required by the Board, by its By-Laws, or its rules and regulations.

Section 2.14. Additional Personnel. The Board may appoint such other officers and employees as the Agency may require for the performance of its duties, and fix and determine their qualifications, duties and compensation. The Board may also appoint counsel, fixing compensation for services, which, if permitted by law, shall be payable in addition to other official

compensation, and may retain and employ private consultants for professional and technical assistance and advice.

Section 2.15. Compensation of Members. Members shall receive no compensation for their services as members. The Board may by resolution provide for reimbursement of all necessary expenses, including travel expenses incurred in the discharge of their duties as members.

Section 2.16. Removal of Officers. Any officer appointed by the Agency shall serve at the pleasure of the Board. The Executive Director may be removed by a two-thirds vote of the members of the Board then in office at a meeting providing notice thereof; all other officers may be removed upon a vote of a majority of the Board then in office at a meeting providing notice thereof.

Section 2.17. General Counsel. The General Counsel shall be appointed by the Board by a majority vote of the members of the Board present at such meeting. The General Counsel shall provide legal representation in connection with all of the Agency's proceedings and activities, and shall perform all the duties as the Agency may designate.

### ARTICLE III Meetings

Section 3.1. (a) Annual Meeting. The Annual Meeting of the Board shall be held on the second Tuesday in November of each year or such earlier or later date in each calendar year as may be designated in the notice or waiver of notice of such meeting.

(b) Regular Meetings. Regular meetings of the Board for the transaction of any lawful business of the Agency shall be held on the second Tuesday in each month at such time and place as designated in a notice to be given to the members by the Chairman, Vice-Chairman or Executive Director. When any regular meeting of the Board falls upon a holiday observed by the Agency, the meeting of the Board shall be held upon such other day as the members may previously designate by resolution, and if no such day is designated the meeting shall be held at the same hour on the

next Tuesday following the said holiday or holidays. Any regular meeting of the Agency may be dispensed with by appropriate resolution adopted by the members at any prior meeting of the Board, or by an appropriate resolution adopted by the members at a special meeting held in lieu of a monthly regular meeting.

Section 3.2. Special Meetings. The Chairman, may, when he deems it desirable, and shall upon a written request of three members, call or direct the Executive Director to call a special meeting of the Board for the purpose of transacting any business designated in the notice, or a written agenda accompanying the notice. At such special meeting, no business shall be considered other than as designated in the notice, but if all members of the Board are present at a special meeting, with or without notice thereof, and all are agreeable thereto, any and all business may be transacted at such special meeting.

Section 3.3. Notice. Notice of the time and place of each meeting of the Agency shall be given to each member by mail at least five calendar days before such meeting or personally or by telegram or cable at least twenty-four hours before such meeting. Except as otherwise provided in Article IV, relating to the amendment of these By-Laws, Section 2.16, relating to removal of officers, and in Section 3.2 relating to special meetings, such notice need not specify the matters to be considered at the meeting. Notices by mail shall be deemed to have been given when mailed to each member at his address appearing on records of the Agency, and notices by telegram or cable shall be deemed to have been given when presented for transmission to an office of the telegram or cable company, addressed as in the case of notices by mail.

Section 3.4. Waiver of Notice. Notice of any meeting of the Agency need not be given to a member if waived in writing by him either before or after such meeting, or if he shall be present at such meeting. No notice need be given of any meeting if all the members then in office shall be present thereat. Notice of an adjourned meeting need not be given to any member present at the time of the adjournment.

Section 3.5. Quorum and Notice. A majority of the members shall constitute a quorum for the transaction of any business or the exercise of any power or function of the Board and,



except as otherwise provided in these By-Laws or by any special or general law, any act taken by vote of a majority of those present at any meeting at which a quorum is present shall be the act of the Board. A majority of the members present at any meeting, whether or not constituting a quorum, may adjourn the meeting to another time and place.

Section 3.6. Order of Business. At the regular meeting of the Board, the following shall be the order of business:

1. Roll Call
2. Reading and approval of minutes of previous meeting
3. Reports of the Treasurer
4. Bond Resolutions
5. Reports of Committees
6. Inducement Resolutions.
7. Unfinished Business
8. New Business
9. Adjournment

All resolutions shall be in writing and shall be recorded in the journal of the proceedings of the Agency.

The foregoing order of business may be changed or modified at any regular meeting by a resolution of the members made immediately following the roll call or prior to such meeting by service upon each member of a written agenda with the notice of meeting provided in Section 3.3. of this Article.

Section 3.7. Certification of Instruments. Each officer of the Agency shall have the authority, when necessary or appropriate, to certify the records, proceedings, rules and regulations, and other instruments of the Agency and to affix and attest to the official seal of the Agency on contracts and other instruments of the Agency.

Section 3.8. Action by Written Consent of Members. Any action required or permitted to be taken by the Board, other than adoption of a bond resolution or an inducement resolution, or any action required or permitted to be taken by any committee of the Board may be taken without a meeting if all members of the Board or the committee consent in writing to the adoption of a resolution

authorizing the action. The resolution and the written consents thereto by the members of the Board or committee shall be filed with the minutes of the proceedings of the Board or committee.

Section 3.9. Action Taken by Telephone Communications. Any action required or permitted to be taken by the Board, other than adoption of a bond resolution or in inducement resolution, or any action required or permitted to be taken by any committee thereof may be taken when any one or more members of the Board or any committee thereof participates in a meeting of such Board or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

#### ARTICLE IV By-Laws

Section 4.1. Amendments. These By-Laws may be amended, supplemented or repealed by majority vote of the members then in office at any meeting of the Board if either all the members then in office are present at such meeting or notice of the proposed amendment, supplement, or repeal shall have been included in the notice or waiver of notice of such meetings.

#### ARTICLE V Policies and Procedures

Section 5.1. The Agency by resolution may adopt such rules, regulations, policies, and procedures as it may deem necessary and appropriate to the operation so long as the same shall not be contrary to these By-Laws as they may be amended from time to time.

Section 5.2. Audit of Records and Accounts. (1) The Agency shall annually secure a certified audit by accountants designated by the Board of its financial records and accounts in its possession and under its supervision and shall file a copy of such certified audit with the Mayor, and upon request, with the Council of the City of New York, within one-hundred and twenty days

after the close of the Agency's fiscal year for its proceedings and its activities during the preceding fiscal year.

(2) The Board may authorize any other operating statement which it may determine is required for its operation.

ARTICLE VI  
Miscellaneous Provisions

Section 6.1. Indemnification. The Agency shall, to the fullest extent permitted by law, indemnify any person made or threatened to be made, a party to any action or proceeding, other than a criminal action, by reason of the fact that such person, his testator or intestate, was a director or an officer or employee of the Agency or served at the request of the Agency, as a director or an officer or employee of any subsidiary of the Agency, against judgments, fines, amounts paid in settlement and reasonable expenses, including, attorneys' fees, actually and necessarily incurred as a result of such action or proceeding (including any appeal therein), providing (a) such director, officer or employee acted in good faith for a purpose which he reasonably believed to be in the best interests of the Agency and (b) it is not determined in any action or proceeding that such director, officer or employee acted without reasonable cause to believe that this conduct was lawful, and (c) such person, his testator or intestate, shall have first exhausted all the rights and remedies granted, and shall have satisfied all the obligations imposed by subdivision (1) of Section 917 of the General Municipal Law as set out in Chapter 958 of the Laws of 1977 of the State of New York.

August 2<sup>nd</sup>, 2005

To the Members and Alternates of the Board of Directors:

**Andrew M. Alper, Chairman**

**Derek Park, Vice Chairman**

**Amanda M. Burden, Chair of the City Planning Commission of The City of New York**

**Michael A. Cardozo, Esq., Corporation Counsel of The City of New York**

**Daniel L. Doctoroff, Deputy Mayor for Economic Development and Rebuilding**

**William C. Thompson, Jr., Comptroller of The City of New York**

**Barbara Basser-Bigio**

**Albert V. De Leon**

**Barry Dinerstein**

**Joseph Douek**

**Bernard Haber**

**Michael Kalt**

**Jose L. Orengo, Esq.**

**Julius Rendinaro**

**Rafael Salaberrios**

**Rita Sallis**

**Robert D. Santos, Esq.**

**Josh Sirefman**

**Leonard Wasserman, Esq.**

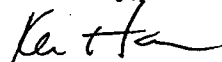
A meeting of the Board of Directors of the New York City Industrial Development Agency ("NYCIDA") will be held on Tuesday, August 9<sup>th</sup>, 2005, at 9:00 a.m. at the offices of the New York City Economic Development Corporation ("NYCEDC"), 4<sup>th</sup> Floor Conference Room, 110 William Street, New York, New York. Kindly confirm your attendance by calling Ilir Sadikay at (212) 312-3831.

As required by law, a public hearing on projects to be presented at this Board meeting will be held at 10 a.m. on Thursday, August 4<sup>th</sup>, 2005, in the offices of the NYCEDC. Applications and related information to be discussed at the August hearing were made available starting Friday, July 29<sup>th</sup>, 2005. Please notify David Shelley at (212) 312-3581 if you are interested in obtaining any of this background material. Also, you are welcome to attend these hearings. In case you are unable to attend the hearing, staff will summarize for you in writing any issues raised at the hearing and provide copies of any written testimony for your review in advance of the coming Board meeting. NYCIDA's next public hearing will take place on Thursday, September 8<sup>th</sup>, 2005 at 10:00 a.m. and the next Board meeting will be held on Tuesday, September 13<sup>th</sup>, 2005 at 9:00 a.m.

In addition to the items contained in this Board book, there may be a walk-in item related to a contract request. Staff will fax you this item if and/or when it becomes final.

We look forward to seeing you on August 9<sup>th</sup>, 2005.

Sincerely,



**Kei Hayashi**

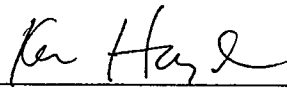
**Deputy Executive Director**

**NOTICE OF MEETING  
OF  
BOARD OF DIRECTORS  
NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**

A meeting of the Board of Directors of the New York City Industrial Development Agency will be held on Tuesday, August 9, 2005, at 9:00 a.m. at the offices of the New York City Economic Development Corporation, 110 William Street, 4th Floor Conference Room, New York, New York.

- A. Minutes of the July 12, 2005 Meeting**
- B. Interim Financial Statements (June 2005)**
- C. Officer Appointment**
- D. New Transaction Resolutions**
  - a. Acme Metal Cap Co., Inc. and American Star Cork Co., Inc.**
  - b. American National Red Cross**
  - c. Bnos Bais Yaakov of Far Rockaway**
  - d. BP Air Conditioning Corp.**
  - e. Canada Dry Bottling Company of New York, L.P. Pepsi-Cola Bottling Company of New York, Inc.**
  - f. Coronet Parts Manufacturing Company, Inc.**
  - g. J & J Farms Creamery Co., Inc. and Fisher Foods of Queens, Inc.**
  - h. Jewish Community Center of Staten Island, Inc.**
  - i. Miller Day Care Center, Inc. d/b/a Basic Trust**
  - j. SKH Trading Company, Inc. (d.b.a Wonder Foods)**
  - k. Special Needs Facilities Pooled Program Round X**
    - a. Life's WORC, Inc.**
    - b. Queens Parents Resource Center, Inc.**
    - c. Services for the Underserved, Inc.**
    - d. Women's League Community Residences, Inc.**
    - e. Young Adult Institute, Inc.**
- E. Additional Resolutions**
  - a. Bank of America Corporation**
  - b. Trey Whitfield School**
  - c. Tri-State Camera Exch., Inc.**
  - d. Van Blarcom Closures, Inc.**

- F. **Other Item for Consideration**
  - a. **Item Regarding Proposal for Purchase Contract**
- G. **Progress Report**

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**Deputy Executive Director**



April 4, 2006

To the Members of the Board of Directors and their Alternates:

Andrew M. Alper, Chairman

Derek Park, Vice Chairman

Amanda M. Burden, Chair of the City Planning Commission of The City of New York

Michael A. Cardozo, Esq., Corporation Counsel of The City of New York

Daniel L. Doctoroff, Deputy Mayor for Economic Development and Rebuilding

William C. Thompson, Jr., Comptroller of The City of New York

Barbara Basser-Bigio

Albert V. De Leon

Barry Dinerstein

Joseph Douek

Bernard Haber

Jose L. Orengo, Esq.

Rafael Salaberrios

Rita Sallis

Robert D. Santos, Esq.

Josh Sirefman

Matthew Wambua

Leonard Wasserman, Esq.

A meeting of the Board of Directors of the New York City Industrial Development Agency (the "Agency") will be held at 9:00 a.m. on Tuesday, April 11, 2006, at the offices of the New York City Economic Development Corporation ("NYCEDC"), 4<sup>th</sup> Floor Conference Room, 110 William Street, New York, New York. Please confirm your attendance by calling Ilir Sadikay at (212) 312-3831.

As required by law, public hearings on projects to be presented at this Board meeting will be held at 10 a.m. on Thursday, April 6, 2006, at the offices of the NYCEDC. Applications and related information to be discussed at the April hearings were made available starting Friday, March 31, 2006. Please notify David Shelley at (212) 312-3581 if you are interested in obtaining any of this background material. You are of course welcome to attend the hearings. In any event, we will send to you in advance of the Board meeting a summary of any issues raised and a copy of any written testimony submitted.

Following the April Board meeting, the Agency's next public hearing will take place at 10:00 a.m. on Thursday, May 4, 2006 and the next Board meeting will be held on Tuesday, May 9, 2006.

We look forward to seeing you on April 11.

Sincerely,

Steven M. Berzin  
Executive Director



## NOTICE OF MEETING OF THE BOARD OF DIRECTORS

A meeting of the Board of Directors of the New York City Industrial Development Agency will be held at 9:00 a.m. on Tuesday, April 11, 2006 at the offices of the New York City Economic Development Corporation, 4th Floor Conference Room, 110 William Street, New York, New York.

- A. Minutes of the March 14, 2006 Meeting
- B. Interim Financial Statements (February 2006)
- C. New Transaction Resolutions
  - a. Furniture Design by Knossos, Inc.
  - b. New York Congregational Nursing Center
  - c. Sephardic Community Youth Center, Inc.
  - d. The Gillen Brewer School
- D. Additional Resolutions
  - a. American International Group, Inc.
  - b. College of Mount Saint Vincent
  - c. J & J Farms Creamery, Inc. and Fisher Foods of Queens Corp.
  - d. News America Publishing Incorporated
- E. Progress Report
- F. Ratio Definitions

Steven M. Berzin  
Executive Director



**RESOLUTION OF NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING, AS PART OF THE AGENCY'S INDUSTRIAL INCENTIVE PROGRAM, A REAL ESTATE HOLDING COMPANY ON BEHALF OF J&J FARMS CREAMERY, INC. AND FISHER FOODS OF QUEENS CORP. TO RENOVATE, IMPROVE AND EQUIP A COMMERCIAL FACILITY AS A STRAIGHT LEASE TRANSACTION CONSISTING OF THE IMPROVEMENT AND EQUIPPING OF AN APPROXIMATELY 57,430 SQUARE FOOT BUILDING LOCATED AT 57-48 49TH STREET, IN MASPETH, NEW YORK, FOR USE BY J&J FARMS CREAMERY, INC. AND FISHER FOODS OF QUEENS CORP. IN THE DISTRIBUTION OF DAIRY PRODUCTS, FOR LEASE BY THE AGENCY, SUB-LEASE TO A RELATED REAL ESTATE HOLDING COMPANY AND SUBSEQUENT SUB-SUBLEASE TO J&J FARMS CREAMERY, INC. AND FISHER FOODS OF QUEENS CORP. AND TO TAKE OTHER PRELIMINARY ACTION**

**WHEREAS**, New York City Industrial Development Agency (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, civic, 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**, J&J Farms Creamery, Inc. ("J&J") and Fisher Foods of Queens Corp., an affiliate of J&J (collectively, the "Applicant") has entered into negotiations with officials of the Agency with respect to the renovation, improvement and equipping of an approximately 57,430 square foot building upon an approximately 77,420 square foot parcel of land located at 57-48 49th Street, in Maspeth, New York (the "Facility") by the Applicant or a related real estate holding company (collectively, the "Company") on behalf of the Applicant, all for use by the Applicant in the distribution of dairy products (the "Project"), for lease to the Agency from, through or for the benefit of the Company, sublease to the Company and subsequent sub-sublease to the Applicant; and

**WHEREAS**, the Applicant submitted a Project Application to the Agency to initiate the accomplishment of the above; and

**WHEREAS**, the Project Application sets forth certain information with respect to the Applicant and the Project, including the following: that renovation, improvement and equipping of the Facility is required to induce the Applicant to remain and expand its operation in New York City by providing low operating costs and the necessary commercial space in order for the Applicant to expand its operations, so that 47 jobs will be retained and 8 jobs will be created within the first three years of the Project; and that, therefore, Agency financial assistance is necessary to encourage the Applicant to proceed with the Project; and

**WHEREAS**, based upon the Project 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 are necessary to induce the Applicant to remain and expand its operations within the City; and

**WHEREAS**, the Applicant expects to enter into, or has entered into, loan commitments with a bank or banks and/or certain governmental entities (collectively, the "Lender") that will provide funds to the Applicant in the form of loans to finance a portion of the costs of the Project; and

**WHEREAS**, the Agency desires further to encourage the Applicant with respect to the renovation, improvement and equipping of the Project, if by so doing it is able to induce the Applicant to remain in New York City and to expand its facilities and operations in New York City;

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

**Section 1.** The Agency hereby determines that the renovation, improvement and equipping of the Project and the providing of financial assistance to the Applicant 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 any other occupant or user of the Project 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 any other occupant or user of the Project 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 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 cost of the Project 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.** 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 renovation, improvement and equipping of the Project.

**Section 3.** The Applicant and the Company are authorized to proceed with the Project on behalf of the Agency as set forth in this Resolution; provided, however, that it is acknowledged and agreed by the Applicant and the Company that (i) leasehold title to or other interest of the Agency in the Project shall be in the Agency solely 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 and/or the Company for such purpose.

**Section 4.** 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.

**Section 5.** Any expenses incurred by the Agency with respect to the Project shall be paid by the Applicant. By acceptance hereof, the Applicant agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages 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 6.** This Resolution is subject to the approval of a private investigative report with respect to the Applicant. 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 5 hereof).

**Section 7.** The Agency, as lead agency, hereby determines, based upon information furnished to the Agency by the Applicant and such other information as the Agency has deemed necessary to make this determination, that the Project, an unlisted action, pursuant to the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation Law and the implementing regulations, will not have a significant effect on the environment and that a Draft Environmental Impact Statement will not be prepared. The reasons supporting this determination are as follows:

- (a) The Project will not result in a substantial adverse change in existing air quality, traffic or noise levels.
- (b) The Project will not result in the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character.
- (c) The Project will not result in the creation of a hazard to human health.
- (d) No other significant effects upon the environment that would require the preparation of an Environmental Impact Statement are foreseeable.

**Section 8.** In connection with the Project, the Agency intends to grant the Applicant mortgage recording tax exemption, real estate tax abatements, building tax stabilization and sales and/or use tax exemptions.

**Section 9.** This Resolution shall take effect immediately.

Adopted: August 9, 2005

Accepted: \_\_\_\_\_, 2005

**J&J FARMS CREAMERY, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**FISHER FOODS OF QUEENS CORP.**

By: \_\_\_\_\_  
Name:  
Title:

Resolution authorizing and approving the execution and delivery of agreements and other documents in connection with the industrial incentive program (straight-lease) project for J & J Farms Creamery, Inc. and Fisher Foods of Queens Corp.

WHEREAS, the New York City Industrial Development Agency (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, civic, 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, J & J Farms Creamery, Inc. and Fisher Foods of Queens Corp. (collectively, the "Applicants") entered into negotiations with officials of the Agency for the improvement and equipping of a commercial facility (the "Facility"), consisting of the renovation and equipping of an approximately 77,420 square foot parcel of land and an approximately 57,430 square foot building thereon, located at 57-48 49<sup>th</sup> Street, Maspeth, New York, all for use in the distribution of assorted food products, for lease to the Agency by J&J Farms Realty, Joint Venture, a partnership affiliated with the Applicants (the "Company"), for sublease by the Agency to the Company for subsequent sub-sublease to the Applicants (the "Project") and having an approximate total project cost of \$450,000; and

WHEREAS, on August 9, 2005, the Agency adopted a resolution approving the taking of preliminary action with respect to providing financial assistance in the form of an Industrial Incentive Program (Straight-Lease) transaction; and

WHEREAS, the Applicants intend to apply their own equity to the costs of the Project, and

WHEREAS, in order to provide financial assistance to the Company for the Project, the Agency intends to grant the Company financial assistance through an Industrial Incentive Program (Straight-Lease) transaction in the form of real property tax abatements and exemptions and sales tax exemptions, all pursuant to the Act;

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

Section 1. To accomplish the purposes of the Act and to provide financial assistance to the Company for the financing of the renovation and equipping of the Facility, a Small Industrial Incentive Program (Straight-Lease) transaction is hereby authorized subject to the provisions of this Resolution and the Lease Agreement hereinafter authorized.

Section 2. The execution and delivery of a Company Lease Agreement leasing the Facility to the Agency, a Lease Agreement from the Agency subleasing the Facility to the Company (the "Lease Agreement") (for sub-sublease to the Applicants), a Sales Tax Letter from the Agency to the Company and the Applicants and a Guaranty Agreement from the Company, the Applicants and the Applicants' and the Company's owners and/or principals in favor of the Agency (the "Guaranty Agreement") (each document referenced in this Section 2 being, collectively, the "Agency Documents"), each being substantially in the form approved by the Agency for prior transactions, is hereby authorized. The Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel and Vice President for Legal Affairs 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 3. 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 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 the Agency Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity 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 4. 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, General Counsel or Vice President for Legal Affairs to approve modifications to the terms approved hereby which do not affect the intent and substance of this Resolution. The approval of such modifications shall be evidenced by the certificate of determination of an Agency officer.

Section 5. This Resolution shall take effect immediately.

ADOPTED: April 11, 2006

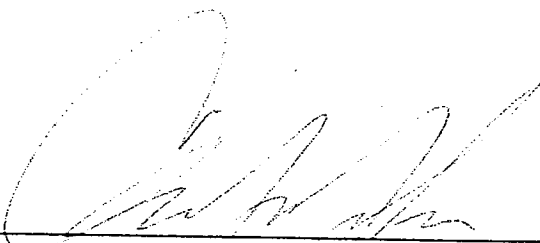
SS:

493900

Carolyn Johnson being duly sworn,  
says that he/she is the principal Clerk of the Publisher of the

***New York Post***

a daily newspaper of general circulation printed and published  
in the English language, in the County of New York, State of  
New York; that advertisement hereto annexed has been  
regularly published in the said "NEW YORK POST" once,  
on the 10 day of May, 2005



Sworn to before me this 12 day of May 2005

Byron Stevens

**Notary Public**

BYRON STEVENS  
Notary Public, State of New York  
No. 01ST6117803  
Qualified in New York County  
Commission Expires November 1, 2008

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

NOTICE OF PUBLIC HEARING

The New York City Industrial Development Agency (the "Agency") is empowered under the New York State Industrial Development Agency Act (constituting Title 1 of Article 18-A of the General Municipal Law, and Chapter 1082 of the 1974 Laws of New York, as amended, to issue nonrecourse revenue bonds to provide financing for qualified projects, and to enter into industrial and small industry incentive program transactions and other straight-lease transactions for the benefit of qualified projects, and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York (the "State") and to improve their prosperity and standard of living. The Agency has been requested (i) to make available the proceeds of its bonds to be issued in the approximate aggregate dollar amounts, to be used by the persons, for the purposes, and at the addresses identified below, and (ii) to participate in industrial and small industry incentive program straight-lease transactions and other straight-lease transactions for the purposes and at the addresses also identified below. As used herein, "bonds" are bonds, the interest on which may be exempt from local and/or State and/or Federal income taxes; and the "City" shall mean The City of New York. As used herein with reference to bond amounts, "approximately" shall be deemed to mean up to such stated bond amount or a greater principal amount not to exceed 10% of such stated bond amount.

Approximately \$7,000,000 civic facility revenue bond transaction for the benefit of Bnos Bais Yaakov, an independent, not-for-profit private girls school to finance and refinance the costs incurred for acquiring, constructing, furnishing and equipping an approximately 78,266 square foot facility located on an approximately 87,120 square foot parcel of land located at 613 Beach 9th Street in Far Rockaway, Queens, New York, for use as a school serving students from nursery through grade eight. The financial assistance proposed to be conferred by the Agency will consist of such bond financing and exemption from City and State mortgage recording taxes.

Straight lease (Industrial Incentive Program) transaction for the benefit of Cargo Ventures LLC on behalf of DHL Express (USA) Inc., in connection with the acquisition of an approximately 230,000 square-foot parcel of land and any improvements thereon, and the construction, renovation, furnishing and equipping of a facility thereon, such facility to be used in the sorting and distribution of freight and such land and improvements being located (and such facility to be located) at 59 Pidge Avenue, Brooklyn, New York. The financial assistance proposed to be conferred by the Agency will consist of payments in lieu of City real property taxes, exemption from City and State mortgage recording taxes, and exemption from City and State sales and use taxes.

Approximately \$12,600,000 civic facility revenue bond transaction for the benefit of Cong. Machne Chaim Inc. d/b/a Bais Sarah Educational Center For Girls, a not-for-profit private girls school, in connection with (i) the acquisition, improvement, furnishing and equipping of an approximately three-story, 63,000 square foot building located on an approximately 30,000 square foot parcel of land, and (ii) the construction and equipping of an approximately 21,000 square foot additional floor, located at 6101-6123 16th Avenue, Brooklyn, New York, to be used as a school serving girls in pre-kindergarten through grade twelve. The financial assistance proposed to be conferred by the Agency will consist of such bond financing and exemption from City and State sales and use taxes.

Straight Lease (Industrial Incentive Program) transaction for a real estate holding company to be determined for the benefit of Crystal Window & Doors Systems, Ltd., a manufacturer of metallic and non-metallic windows, doors and other related fenestration products, in connection with the acquisition, construction and equipping of an approximately 362,510 square feet building on an approximately 220,000 square foot parcel of land, located on the eastern side of College Point Boulevard between 28th and 31st Avenues, Queens, New York, Block 4323, p/o Lot 1, Block 4324, p/o Lot 1, Block 4325, p/o Lot 1, Block 4327, p/o Lot 1 and Block 4328, p/o Lot 1. The financial assistance proposed to be conferred by the Agency will consist of payments in lieu of City real property taxes, exemption from City and State mortgage recording taxes and exemption from City and State sales and use taxes.

Approximately \$3,000,000 civic facility revenue bond transaction for the benefit of Independent Living Association, Inc., a not-for-profit provider of long term residential care for people with developmental disabilities, in connection with (i) the acquisition, renovation, equipping, furnishing, and/or refinancing of an approximately 3,650 square foot building located on an approximately 4,000 square foot parcel of land located at 89 Lucille Avenue, Staten Island, New York, (ii) the acquisition, renovation, equipping, furnishing, and/or refinancing of an approximately 4,676 square foot building located on an approximately 6,700 square foot parcel of land located at 259 Charles Avenue, Staten Island, New York, and (iii) the acquisition, renovation, equipping, furnishing, and/or refinancing of an approximately 2,376 square foot building located on an approximately 4,000 square foot parcel of land located at 858 Jewett Avenue, Staten Island, New York. The financial assistance proposed to be conferred by the Agency will consist of such bond financing and exemption from City and State mortgage recording taxes.

Straight-lease (Industrial Incentive Program) transaction for the benefit of J&J Farms Creamery Co., Inc. and Fisher Foods of Queens, Inc., distributors of dairy products, in connection with the renovation and equipping of an approximately 57,430 square foot building on an approximately 77,420 square foot plot of land located at 57-48 49th Street, Maspeth, Queens, New York, Block 2602, Lot 220. The financial assistance proposed to be conferred by the Agency will consist of payments in lieu of City real property taxes, exemption from City and State mortgage recording taxes and exemption from City and State sales and use taxes.

Approximately \$15,300,000 civic facility revenue bond transaction for the benefit of the Jewish Community Center of Staten Island, Inc., organized and operated to address the needs of its community population, in connection with the financing, construction, furnishing and equipping of an approximately 115,000 square foot building to serve as its primary location. The proposed building is on a parcel of approximately 653,400 square feet, Block 955, p/o Lot 1, located at 1466 Manor Road, Staten Island, New York. The financial assistance proposed to be conferred by the Agency will consist of such bond financing and exemption from City and State mortgage recording taxes.

Approximately \$995,000 civic facility revenue bond transaction for the benefit of Life's WORC, Inc., a provider of residential and habilitation services for people with developmental disabilities, in connection with the acquisition, renovation, equipping, furnishing, and/or refinancing of an approximately 1,344 square foot building located on an approximately 2,500 square foot parcel of land located at 138-15 Whitelaw Street, Ozone Park, Queens, New York. The financial assistance proposed to be conferred by the Agency will consist of such bond financing and exemption from City and State mortgage recording taxes.

Approximately \$6,000,000 civic facility revenue bond transaction for the benefit of Metropolitan College of New York, a not-for-profit, private co-educational college, in connection with the renovation, equipping, furnishing, and/or refinancing of approximately 32,000 square feet of leased space including Floors 1 and 11 and related lobby of 75 Varick Street, New York, New York, for an approximate cost of up to \$6,000,000. The financial assistance proposed to be conferred by the Agency will consist of such bond financing and exemption from City and State mortgage recording taxes.

Approximately \$9,950,000 civic facility bond transaction for the benefit of Morris Heights Health Center, Inc., a not-for-profit health center which provides comprehensive primary care services to medically and socially disadvantaged residents of the Bronx, in connection with the construction, renovation and equipping of a condominium unit consisting of an approximately 46,000 square foot portion of an approximately 100,000 square foot building located upon an approximately 20,749 square foot parcel of land, to be located at 51-69 West Burnside Avenue, Bronx, New York. The approximately 46,000 square foot portion of the building will be comprised of an approximately 37,000 square foot health care facility and an approximately 9,000 square foot parking facility. The financial assistance proposed to be conferred by the Agency will consist of such bond financing and exemption from City and State mortgage recording taxes.

Straight Lease transaction for the benefit of Pepsi-Cola Bottling Company of New York, Inc., a bottler and distributor of Pepsi products, in connection with the acquisition, renovation and equipping of an approximately 140,000 square foot building on an approximately 228,027 square foot parcel of land located at 50-35 56th Road or Block 2573, Lot 1, Queens, New York. The financial assistance proposed to be conferred by the Agency will consist of payments in lieu of City real property taxes, exemption from City and State mortgage recording taxes and exemption from City and State sales and use taxes.

Straight-lease (commercial retention) transaction for the benefit of Pfizer, Inc. and its eligible affiliates, in connection with the renovation of approximately 210,000 square feet of office space on Floors 6 and 7 at 150 East 42nd Street, Floors 13, 14, and 16 at 205 East 42nd Street, and Floors 6, 7, 9 and 11 at 300 East 42nd Street, New York, New York and for the acquisition and/or leasing and installation of machinery, equipment, furniture, fixtures and other tangible personal property all for use at the above additional locations. The financial assistance proposed to be conferred by the Agency will consist of exemption from City and State sales and use taxes. The financial assistance for this project was induced and authorized on May 13, 2003 and June 10, 2003 respectively. No additional financial assistance is being provided.

Approximately \$15,500,000 tax-exempt civic facility revenue bond transaction for the benefit of Project Samaritan AIDS Services, Inc., a not-for-profit provider of health care services and social services to persons with HIV/AIDS, in connection with (i) refinancing the acquisition, renovation and/or equipping of an approximately 6,250 square foot facility located on approximately 2,500 square feet of land located at 1543 Inwood Avenue, Bronx, New York, (ii) refinancing the acquisition, renovation and/or equipping of an approximately 13,260 square foot facility located on approximately 7,500 square feet of land located at 1545 Inwood Avenue, Bronx, New York, (iii) refinancing the acquisition, renovation and/or equipping of an approximately 9,475 square foot facility located on approximately 16,522 square feet of land located at 105-06 Sutphin Boulevard, Jamaica, Queens, New York, (iv) refinancing the acquisition, renovation and/or equipping of an existing approximately 32,000 square foot facility located on approximately 13,008 square feet of land and the financing of the construction, furnishing and equipping of an approximately 7,500 square foot addition to such existing facility located at 1401-1407 University Avenue (a/k/a 1401-1407 Dr. M. L. King Jr. Blvd.), Bronx, New York; and (v) financing the renovation, furnishing, and equipping of an approximately 14,000 square foot facility located on approximately 10,646 square feet of land located at 803 Sterling Place, Brooklyn, New York. The financial assistance proposed to be conferred by the Agency will consist of such bond financing and exemption from City and State mortgage recording taxes.

Approximately \$1,500,000 civic facility revenue bond transaction for the benefit of Services for the Underserved, Inc., a provider of habilitation services for people with developmental disabilities, in connection with the acquisition and renovation, furnishing, equipping and/or refinancing of the following facility: an approximately 8,000 square foot condominium office on the 7th floor and an approximately 8,000 square foot condominium office on the 10th floor, located on an approximately 163,000 square foot parcel of land located at 305 7th Avenue, New York, New York. The financial assistance proposed to be conferred by the Agency will consist of such bond financing and exemption from City and State mortgage recording taxes.

Straight Lease transaction for the benefit of Tri-State Camera Exchange, Inc., a distributor of video equipment, computers, printers and peripherals, in connection with the acquisition, renovation and equipping of an approximately 22,500 square foot building on an approximately 30,000 square foot parcel of land located at 183 King Street (a.k.a. 150 Sullivan Street) or Block 554, Lot 40, Brooklyn, New York. The financial assistance proposed to be conferred by the Agency will consist of payments in lieu of City real property taxes, exemption from City and State mortgage recording taxes and exemption from City and State sales and use taxes.

To amend the Agency's Uniform Tax Exemption Policy established pursuant to Section 874(4)(a) of the Article 18-A, Title 1 of the General Municipal Law (the "Act"), which is applicable to the provision of financial assistance pursuant to Section 859(a) of the Act, to provide guidelines for the provision of financial assistance by the Agency for projects within the Hudson Yards Redevelopment Area, defined more particularly as that area in the Borough of Manhattan, New York, New York, bounded by a line starting from a point at centerline of Eleventh Avenue at its intersection with West 30th Street, then running easterly along West 30th Street, northerly along Ninth Avenue one block, easterly along West 31st Street to a point 250 feet west of Seventh Avenue, then northerly to West 33rd Street, easterly to Eighth Avenue, northerly to the intersection of Eighth Avenue and West 35th Street, then westerly along West 35th Street to a point 100 feet west of Eighth Avenue, then northerly parallel to Eighth Avenue to West 39th Street, easterly 100 feet to Eighth Avenue, northerly to the intersection of West 43rd and Eighth Avenue, westerly to Ninth Avenue, southerly to West 42nd Street, westerly to Tenth Avenue, northerly to West 43rd Street, westerly to Twelfth Avenue, southerly to West 41st Street, easterly to the centerline of Eleventh Avenue, and then southerly to the intersection with West 30th Street to the point or place of beginning.

Approximately \$2,150,000 civic facility revenue bond transaction for the benefit of Women's League Community Residences, Inc., a provider of habilitation and early intervention services for children and adults with developmental disabilities, in connection with the acquisition, renovation, equipping, furnishing, and/or refinancing of an approximately 6,300 square foot residential building located on an approximately 6,800 square foot parcel of land located at 4018 Manhattan Avenue, Brooklyn, New York. The financial assistance proposed to be conferred by the Agency will consist of such bond financing and exemption from City and State mortgage recording taxes.

Straight-lease (Industrial Incentive Program) transaction for a real estate holding company to be determined for the benefit of SKH Trading Company, Inc. (d/b/a Wonder Foods) and one or more affiliates, distributors of various dried and frozen food products, in connection with the acquisition, renovation and equipping of an approximately 56,500 square foot building on an approximately 65,300 square foot plot of land located at 131-151 Morgan Avenue, Brooklyn, New York, Block 3056, Lot 140. The financial assistance proposed to be conferred by the Agency will consist of payments in lieu of City real property taxes, exemption from City and State mortgage recording taxes and exemption from City and State sales and use taxes.

Approximately \$2,668,000 civic facility revenue bond transaction for the benefit of Young Adult Institute, Inc., a provider of habilitation and educational services for people with developmental disabilities, in connection with the acquisition and/or leasing, renovation, furnishing, equipping and/or refinancing of the following facilities: (i) the 9th and 11th floor of an approximately 527,280 square foot building located on an approximately 34,650 square foot parcel of land located at 460 West 34th Street, New York, New York, for an approximate cost of \$1,458,000; and (ii) an approximately 3,720 square foot building on an approximately 5,277 square foot parcel of land located at 281 West 261 Street, Bronx, New York, for an approximate cost of \$1,210,000. The financial assistance proposed to be conferred by the Agency will consist of such bond financing and exemption from City and State mortgage recording taxes.

Pursuant to Section 859a of the General Municipal Law of the State of New York and Internal Revenue Code Section 147(f), the Agency will hold a hearing on the proposed financings and transactions set forth above at the office of the New York City Economic Development Corporation ("NYCEDC") 110 William Street, 6th Floor, New York, New York commencing at 10:00 A.M. on Thursday, June 9, 2005. Interested members of the public are invited to attend. The Agency will present information at such hearing on the proposed financings and transactions set forth above. Pursuant to subdivision 3 of the above-referenced Section 859a, the Agency will, in addition, provide an opportunity for the public to review at such hearing the project application and the cost-benefit analysis for each of the proposed financings and transactions. For those members of the public desiring to review project applications and cost benefit analyses before the date of the hearing, copies of these materials will be made available, starting on or about noon on the Friday preceding the hearing. Persons desiring to obtain copies should call (212) 312-3543. Persons desiring to make a brief statement regarding the proposed financings and transactions should give prior notice to the Agency at the address or phone number shown below. Written comments may be submitted to the Agency to the attention of Mr. David Shetty at the address shown below. Please be advised that certain of the aforementioned proposed financings and transactions may possibly be removed from the hearing agenda prior to the hearing date. Information regarding such removals will be posted on NYCEDC's web site, www.nycdc.com on or about noon on the Friday preceding the hearing.

New York City Industrial Development Agency  
110 William Street, 6th Floor  
New York, New York 10038  
(212) 312-3543



**PUBLIC NOTICE PUBLIC NOTICE PUBLIC NOTICE PUBLIC NOTICE**

**NOTICE OF MEETING  
OF  
BOARD OF DIRECTORS  
OF  
NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**

A meeting of the Board of Directors of the New York City Industrial Development Agency ("IDA") will be held on Tuesday, June 14, 2005 at 9:00 a.m. at the offices of the New York City Economic Development Corporation, 110 William Street, 4th Floor Board Room, New York, New York. For more information please call Public Affairs at (212) 312-3523.

**PUBLIC NOTICE PUBLIC NOTICE PUBLIC NOTICE PUBLIC NOTICE**

**SUMMARY OF THE PUBLIC HEARING**  
of the  
**NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**  
held on behalf of the New York City Industrial Development Agency  
by the New York City Economic Development Corporation  
at 110 WILLIAM STREET, NEW YORK, NEW YORK  
on June 9, 2005 10:00 A.M.

**MR. MARSHALL:**

“This hearing will come to order. This is a hearing on each of the proposed projects to be described in a few minutes, called by the Mayor of The City of New York and the New York City Industrial Development Agency (the “Agency”) pursuant to Section 147(f) of the Internal Revenue Code and Section 859(a) of the General Municipal Law of the State of New York and pursuant to a public notice published in The New York Post on May 10, 2005 and in the City Record on May 27, 2005.

My name is Richard Marshall and I am Deputy General Counsel of the New York City Economic Development Corporation (“NYCEDC”), and I am also the Vice President for Legal Affairs for the Agency. I have been designated to preside at these hearings.”

At this time I will ask for an appearance on behalf of the Agency.”

**MR. SHELLEY:**

“I am David Shelley, Paralegal at the New York City Economic Development Corporation which, under contract, provides administrative and legal services to the Agency. In such connection I assist the General Counsel of the Agency. I make note that in addition to Mr. Marshall and myself, Ms. Judith Capolongo, Ms. Arti Bhatt, Ms. Kei Hayashi, Mr. Brad Hensley, Mr. Michael Johnson, Ms. Beth Kustina, Mr. Shin Mitsugi and Ms. Nimita Shaw of NYCEDC and the Agency are attending this public hearing.”

**MR. MARSHALL:**

“The Agency is empowered under the New York State Industrial Development Agency Act to issue tax-exempt, non-recourse revenue bonds to provide financing and financial assistance for industrial, manufacturing, warehousing, commercial, research and civic projects, and to enter into industrial and small industry incentive (straight-lease) transactions, also to provide financial assistance for the same projects, and thereby advance job opportunities, general prosperity and economic welfare of the people of The City of New York and to improve their prosperity and standard of living.

The Agency has been requested (i) to provide financial assistance to and to make the proceeds of its bonds available for the financing of a number of such projects, and/or (ii) to provide financial assistance through industrial and small industry incentive (straight-lease) transactions, also to a number of such projects. Our purpose at today's public hearing is to provide the public with an opportunity to make comments and to state questions with respect to

the proposed projects which are the subject of this public hearing. All comments and stated questions presented at this public hearing will be summarized in the written summary that will record the proceedings of this public hearing. Officers of the Agency will cause such summary to be prepared after this public hearing is concluded. In addition, at this time and subsequent to the public availability of these documents on or about June 3, 2005, the Agency is providing the public with an opportunity to review the project application and the cost-benefit analysis for each of the proposed projects covered by this public hearing today. Copies of the foregoing materials will be provided at this public hearing upon request by any attendee; copies will also be annexed to the summary that the Agency will cause to be prepared. Finally, a list of those persons requesting copies will also be annexed to this summary.”

**MR. SHELLEY:**

“The published public notices of this hearing invited written comments from interested persons to be submitted to the Agency at its offices at 110 William Street, New York, New York. To date, the Agency has received one written comment. The public notices also requested that any persons desiring to make a brief statement regarding any of the projects provide prior notice thereof to the Agency. To date the Agency has received one such notice.”

**MR. MARSHALL:**

“The name of each project will be given, and anybody wishing to be heard in connection with that project should give his or her name and address to Mr. Shelley and he will call upon you in the order in which your names are received. All statements are to be limited to three minutes.”

**MR. SHELLEY:**

“Let the record show that Mr. Joseph Andeano, Ms. Stephanie Greenwood from Good Jobs New York and Mr. Richard Ronde of the New York City Department of Small Business Services are attending this public hearing.”

**MR. SHELLEY:**

“At this time I would like to offer copies of the Notice of Public Hearing published in The New York Post on May 10, 2005 and in the City Record on May 27, 2005, together with respective affidavits of publication.”

**MR. SHELLEY:**

“The first project involves Bnos Bais Yaakov.”

**MR. MARSHALL:**

“Has anyone registered with you to be heard in connection with this project?”

**MR. SHELLEY:**

“No one has registered to be heard in connection with this project.”

**MR. MARSHALL:**

“Is there anyone present who has not registered who wishes to be heard in connection with this project?”

**MR. SHELLEY:**

“There is no one present who wishes to be heard in connection with this project.”

**MR. MARSHALL:**

“There being no statements or submissions, I hereby declare the hearing on the Bnos Bais Yaakov project to be closed.”

**MR. SHELLEY:**

“The second project involves Crystal Window & Doors Systems, Ltd.”

**MR. SHELLEY:**

“The New York Industrial Retention Network has submitted a written statement in support of this project which will be appended hereto.”

**MR. MARSHALL:**

“Is there anyone present who has not registered who wishes to be heard in connection with this project?”

**MR. SHELLEY:**

“There is no one present who wishes to be heard in connection with this project.”

**MR. MARSHALL:**

“There being no statements or submissions, I hereby declare the hearing on the Crystal Window & Doors Systems, Ltd. project to be closed.”

**MR. SHELLEY:**

“The third project involves Independent Living Association, Inc.”

**MR. MARSHALL:**

“Has anyone registered with you to be heard in connection with this project?”

**MR. SHELLEY:**

“No one has registered to be heard in connection with this project.”

**MR. MARSHALL:**

“Is there anyone present who has not registered who wishes to be heard in connection with this project?”

**MR. SHELLEY:**

“There is no one present who wishes to be heard in connection with this project.”

**MR. MARSHALL:**

“There being no statements or submissions, I hereby declare the hearing on the Independent Living Association, Inc. project to be closed.”

**MR. SHELLEY:**

“The fourth project involves J&J Farms Creamery Co., Inc. and Fisher Foods of Queens, Inc.”

**MR. MARSHALL:**

“Has anyone registered with you to be heard in connection with this project?”

**MR. SHELLEY:**

“No one has registered to be heard in connection with this project.”

**MR. MARSHALL:**

“Is there anyone present who has not registered who wishes to be heard in connection with this project?”

**MR. SHELLEY:**

“There is no one present who wishes to be heard in connection with this project.”

**MR. MARSHALL:**

“There being no statements or submissions, I hereby declare the hearing on the J&J Farms Creamery Co., Inc. and Fisher Foods of Queens, Inc. project to be closed.”

**MR. SHELLEY:**

“The fifth project involves Jewish Community Center of Staten Island, Inc.”

**MR. MARSHALL:**

“Has anyone registered with you to be heard in connection with this project?”

**MR. SHELLEY:**

“No one has registered to be heard in connection with this project.”

**MR. MARSHALL:**

“Is there anyone present who has not registered who wishes to be heard in connection with this project?”

**MR. SHELLEY:**

“There is no one present who wishes to be heard in connection with this project.”

**MR. MARSHALL:**

“There being no statements or submissions, I hereby declare the hearing on the Jewish Community Center of Staten Island, Inc. project to be closed.”

**MR. SHELLEY:**

“The sixth project involves Metropolitan College of New York.”

**MR. MARSHALL:**

“Has anyone registered with you to be heard in connection with this project?”

**MR. SHELLEY:**

“No one has registered to be heard in connection with this project.”

**MR. MARSHALL:**

“Is there anyone present who has not registered who wishes to be heard in connection with this project?”

**MR. SHELLEY:**

“There is no one present who wishes to be heard in connection with this project.”

**MR. MARSHALL:**

“There being no statements or submissions, I hereby declare the hearing on the Metropolitan College of New York project to be closed.

**MR. SHELLEY:**

“The seventh project involves Pfizer, Inc.”

**MR. MARSHALL:**

“Has anyone registered with you to be heard in connection with this project?”

**MR. SHELLEY:**

“Ms. Stephanie Greenwood from Good Jobs New York has registered to be heard in connection with this project.”

[At this point Ms. Greenwood inquired whether progress on job targets for retention projects that have received prior benefits could be announced at Board meetings.]

**MR. MARSHALL:**

“Is there anyone present who has not registered who wishes to be heard in connection with this project?”

**MR. SHELLEY:**

“There is no one present who wishes to be heard in connection with this project.”

**MR. MARSHALL:**

“There being no statements or submissions, I hereby declare the hearing on the Pfizer, Inc. project to be closed.

**MR. SHELLEY:**

“The eighth project involves Project Samaritan AIDS Services, Inc.”

**MR. MARSHALL:**

“Has anyone registered with you to be heard in connection with this project?”

**MR. SHELLEY:**

“No one has registered to be heard in connection with this project.”

**MR. MARSHALL:**

“Is there anyone present who has not registered who wishes to be heard in connection with this project?”

**MR. SHELLEY:**

“There is no one present who wishes to be heard in connection with this project.”

**MR. MARSHALL:**

“There being no statements or submissions, I hereby declare the hearing on the Project Samaritan AIDS Services, Inc. project to be closed.

**MR. SHELLEY:**

“The ninth project involves Tri-State Camera Exchange, Inc.”

**MR. MARSHALL:**

“Has anyone registered with you to be heard in connection with this project?”

**MR. SHELLEY:**

“No one has registered to be heard in connection with this project.”

**MR. MARSHALL:**

“Is there anyone present who has not registered who wishes to be heard in connection with this project?”

**MR. SHELLEY:**

“There is no one present who wishes to be heard in connection with this project.”

**MR. MARSHALL:**

“There being no statements or submissions, I hereby declare the hearing on the Tri-State Camera Exchange, Inc. project to be closed. I want to thank everyone for attending and assisting at these hearings which I now declare to be closed.” (10:15 A.M.)



April 4, 2006

BY HAND

Matthew Wambua  
Office of the Deputy Mayor for  
Economic Development and Rebuilding  
City Hall, 1st Floor  
New York, New York 10007

Re: Statutory Notice Concerning Benefits for New  
York City Industrial Development Agency  
Projects

Dear Mr. Wambua:

Enclosed is the notification for the Mayor pursuant to Section 859a of the General Municipal Law of the State of New York for public hearing with respect to proposed New York City Industrial Development Agency projects providing benefits of more than \$100,000. Such hearing will occur on May 4, 2006.

Please call me at 312-3534 if you have any questions about either the notice or the projects to which it pertains.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard E. Marshall".

Richard E. Marshall  
Vice President for Legal Affairs

Enclosure





# *Hawkins Delafield & Wood LLP*

ONE CHASE MANHATTAN PLAZA  
NEW YORK, NY 10005  
WWW.HAWKINS.COM

November 20, 2006

J & J Farms Creamery, Inc.  
Maspeth, New York

Fisher Foods of Queens Corp.  
Maspeth, New York

J & J Farms Realty Joint Venture  
Maspeth, New York

Ladies and Gentlemen:

We deliver to you herewith a copy of our legal opinion dated the date hereof relating to the straight-lease transaction of the New York City Industrial Development Agency for the benefit of J & J Farms Creamery, Inc. and Fisher Foods of Queens Corp., each a corporation organized and existing under the laws of the State of New York, and J & J Farms Realty Joint Venture, a joint venture partnership of businesses organized and existing under the laws of the State of New York.

You are entitled to rely on such opinion as though the same were addressed to you.

Very truly yours,

*Hawkins Delafield & Wood LLP*

# *Hawkins Delafield & Wood LLP*

ONE CHASE MANHATTAN PLAZA  
NEW YORK, NY 10005  
WWW.HAWKINS.COM

November 20, 2006

New York City Industrial  
Development Agency  
New York, New York

Ladies and Gentlemen:

We have examined a record of proceedings relating to the straight-lease transaction by the New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation organized and existing under the laws of the State of New York (the "Agency"), for the benefit of J & J Farms Creamery, Inc. and Fisher Foods of Queens Corp. (collectively, the "Sublessees"), each a corporation organized and existing under the laws of the State of New York, and J & J Farms Realty Joint Venture (the "Lessee"), a joint venture partnership of businesses organized and existing under the laws of the State of New York.

The straight-lease transaction is being entered into in connection with the improvement and renovation of a commercial facility (the "Facility"), consisting of the renovation of an approximately 77,420 square foot parcel of land and an approximately 57,430 square foot building thereon (including but not limited to the improvement of the staging area, loading dock, new offices, refrigeration and security systems), located at 57-48 49th Street, Maspeth, New York, all for use in the distribution of assorted food products (the "Project").

The Project is authorized under and pursuant to 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 the State of New York), as amended, and Chapter 1082 of the 1974 Laws of New York, as amended (collectively, the "Act"), and a resolution of the Agency adopted on April 11, 2006, authorizing, among other matters, the execution of the Lease Agreement referred to below.

On the date hereof, the Lessee and the Agency have entered into (i) a Company Lease Agreement, dated as of November 1, 2006 (the "Company Lease"), providing for the leasing of the Facility by the Lessee to the Agency; and (ii) a Lease Agreement, dated as of November 1, 2006 (the "Lease Agreement"), providing for, among other things, the improving of the Project, the subleasing of the Facility by the Agency to the Lessee and the providing of certain real estate tax benefits and sales tax benefits to the Lessee. The Lessee and the Sublessees have entered into a Sublease Agreement, dated as of November 1, 2006 (the "Sublease Agreement"), pursuant to which the Lessee has subleased the Facility to the Sublessees. In addition, the Lessee's obligations under the Lease Agreement, and certain of the Sublessees' obligations under the Sublease Agreement, have been guaranteed by Michael Oberlander, Pearl

Oberlander, Simon Friedman and Morris Schlager, as individual guarantors (collectively, the "Individual Guarantors"), and by the Lessee and the Sublessees, pursuant to a Guaranty Agreement, dated as of November 1, 2006 (the "Guaranty Agreement"), from the Lessee, the Sublessees and the Individual Guarantors to the Agency.

The cost of the Project is being financed by equity in the amount of \$450,000 provided by the Lessee and/or the Sublessees.

We are of the opinion that:

1. The Agency is duly created and validly existing under the Act and has good right and lawful authority to lease and renovate the Project, to lease the Facility from the Lessee in accordance with the terms of the Company Lease, and to sublease the Facility to the Lessee in accordance with the terms of the Lease Agreement.

2. The Agency has the right and power pursuant to the Act to enter into the Company Lease, the Lease Agreement and the Guaranty Agreement, and each agreement has been duly authorized, executed and delivered by the Agency, is in full force and effect, and constitutes the valid and binding agreement of the Agency enforceable against the Agency in accordance with its terms.

The foregoing opinion is qualified only to the extent that the enforceability of the Company Lease, the Lease Agreement and the Guaranty Agreement may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors' rights generally and is subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

In rendering this opinion, we have relied as to matters of title to the Facility upon a leasehold title insurance policy issued on the date hereof by First American Title Insurance Company of New York (the "Title Company") to the Agency insuring the leasehold estate of the Agency under the Company Lease to the Facility and upon the opinion of Roy P. Kozupsky & Associates LLP, counsel to the Lessee, the Sublessees and the Individual Guarantors, each dated the date hereof.

In rendering this opinion, we have assumed the due recording of the Company Lease, the Lease Agreement and the Sublease Agreement.

In rendering this opinion, with respect to (i) the due authorization, execution and delivery of the Company Lease, the Lease Agreement, the Sublease Agreement and the Guaranty Agreement by the Lessee, (ii) the due authorization, execution and delivery of the Sublease Agreement and the Guaranty Agreement by the Sublessees, and (iii) the due execution and delivery of the Guaranty Agreement by the Individual Guarantors, we have relied on the opinion of Roy P. Kozupsky & Associates LLP, counsel to the Lessee, the Sublessees and the Individual Guarantors, dated the date hereof.

In rendering this opinion, we express no opinion as to the necessity for obtaining any licenses, permits or other approvals relating to the lease or renovation of the Project or the operation of the Facility, or the application or effect of any environmental laws, ordinances,

rules, regulations or other requirements of any governmental authority with respect to the Facility or the Project or the transactions contemplated under the Lease Agreement.

In rendering the opinions set forth above, no opinion is expressed as to whether any of the real estate tax benefits or sales tax exemptions intended to be provided pursuant to any of the above-described documents and agreements will in fact be so provided.

The foregoing opinions are further subject, however, to the qualification that we express no opinion as to matters relating to the rights in, title to or sufficiency of the description of any property or collateral described in the Company Lease, the Lease Agreement or the Sublease Agreement or the creation, perfection or relative priority of any lien or security interest created with respect to such property or collateral thereunder.

This opinion is issued as of the date hereof, and we assume no obligation to update, revise or supplement this opinion to reflect any action hereafter taken or not taken, or any facts or circumstances, or any changes in law or in interpretations thereof, that may hereafter arise or occur, or for any other reason.

Very truly yours,

*Hawkins Delahfield & Wood LLP*



NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY  
110 William Street, New York, New York 10038

November 20, 2006

Mr. Hammerton Jeanty  
New York City Department  
of Finance  
Payment Operations Division/PILOT Section  
59 Maiden Lane, 26<sup>th</sup> Floor  
New York, New York 10038

Mr. Tim Greene  
New York City Department  
of Finance  
Property Division, Exemption Unit  
66 John Street, 12<sup>th</sup> Floor  
New York, New York 10038

Re: J & J Farms Realty Joint Venture, J & J Farms Creamery, Inc.  
and Fisher Foods of Queens Corp.  
57-48 49th Street  
Maspeth, New York 11378  
Block 2602; Lot 220

Dear Sirs:

On the date hereof, the New York City Industrial Development Agency (the "Agency") acquired a leasehold estate in the above-described realty (which is further described in Exhibit A attached hereto) from J & J Farms Realty Joint Venture, a New York joint venture partnership of businesses (the "Lessee"), pursuant to a certain Company Lease Agreement, dated as of November 1, 2006, between the Lessee and the Agency, and pursuant to the provisions of 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, Chapter 1030 of the 1969 Laws of New York), as amended, and Chapter 1082 of the 1974 Laws of New York, as amended (collectively, the "Act"). On this date, the Agency and the Lessee have entered into a certain Lease Agreement, dated as of November 1, 2006 (the "Lease Agreement"), pursuant to which the Agency subleased its interest in said realty to the Lessee.

Under the Act, the Agency is regarded as performing a governmental function in the exercise of the powers conferred by the Act and "shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities".

The Lessee, however, is required under Section 4.3 of the Lease Agreement, attached hereto as Exhibit B, to make payments in lieu of such taxes and assessments in the manner and amounts set forth therein. Pursuant to the Lease Agreement, the Agency hereby requests that you, as tax assessor, determine before such time as said realty shall become tax exempt the taxes that would be due and owing if said realty had remained privately owned, and submit statements directly to the Lessee at J & J Farms Realty Joint Venture, c/o J & J Farms Creamery, Inc., 57-48 49th Street, Maspeth, New York 11378 Attn: President, with a copy and

to the Agency at the address in the letterhead, in accordance with the Lease Agreement specifying the amounts and due dates of such payments in lieu of taxes payable by the Lessee therein.

Thank you for your attention to this matter.

Very truly yours,

NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY

By: 

Maureen P. Babis  
Deputy Executive Director



Exhibit A

DESCRIPTION OF THE LAND

ALL that certain plot, piece or parcel of land, situate, lying and being in Maspeth in the Second Ward of the Borough and County of Queens, City and State of New York, more particularly bounded and described as follows:

BEGINNING at a point on the westerly side of 49th Place, distant 590.50 feet northerly from the corner formed by the intersection of the northerly side of Grand Avenue (80 feet wide) with the westerly side of 49th Place;

RUNNING THENCE westerly parallel with Grand Avenue, 99.93 feet;

THENCE northwesterly along a line which forms an interior angle of 144 degrees 08 minutes 25 seconds with the last mentioned course and part of the distance through a proposed party wall, 239.73 feet;

THENCE northeasterly along a line which forms an interior angle of 89 degrees 59 minutes 05 seconds with the last mentioned course and part of the distance through a proposed party wall, 247.31 feet;

THENCE southeasterly along a line which forms an interior angle of 90 degrees 02 minutes 22.6 seconds with the last mentioned course and part of the distance through a proposed party wall, 245.21 feet to the northwesterly side of 49th Place;

THENCE southwesterly along the northwesterly side of 49th Place, 83.64 feet to a point;

THENCE southerly along the westerly side of 49th Place, 129.86 feet to the point or place of BEGINNING.

TOGETHER with an easement and right of way for ingress and egress to and from Grand Avenue over the following described parcel;

BEGINNING at a point on the northerly side of Grand Avenue (80 feet wide), distant 595 feet easterly from the corner formed by the intersection of the northerly side of Grand Avenue and the easterly side of 47th Street;

RUNNING THENCE northerly at right angles to the northerly side of Grand Avenue, 720.36 feet;

THENCE northeasterly on a line forming an interior angle of 143 degrees 42 minutes 33 seconds with the preceding course, 84.89 feet;

seconds with the preceding course, 60 feet;

THENCE southwesterly along a line forming an interior angle of 89 degrees 32 minutes 42 seconds with the preceding course, 65.70 feet;

THENCE southerly along a line forming an exterior angle of 143 degrees 42 minutes 33 seconds with the preceding course, 493.16 feet;

THENCE southwesterly on a line forming an interior angle of 144 degrees 09 minutes 51 seconds with the preceding course, 0.55 feet;

THENCE southeasterly on a line at right angles with the preceding course, 0.39 feet;

THENCE southerly at right angles to the northerly side of Grand Avenue, 206.86 feet to the northerly side of Grand Avenue;

THENCE westerly along the northerly side of Grand Avenue, 60 feet to the point or place of BEGINNING.

SUBJECT to the rights of others over said easement and right of way.

**EXHIBIT B**

**SECTION 4.3 OF LEASE AGREEMENT**

**Section 4.3. Payment in Lieu of Real Estate Taxes.****(a) *Description and Address of Project:***

The Project consists of the improvement of a commercial facility, consisting of the renovation of an approximately 77,420 square foot parcel of land and an approximately 57,430 square foot building thereon (including but not limited to the improvement of the staging area, loading dock, new offices, refrigeration and security systems), located at 57-48 49th Street, Maspeth, New York 11378, all for use in the distribution of assorted food products. The Facility is located at 57-48 49th Street, Maspeth, New York 11378, being Section 14, Block 2602 and Lot 220.

**(b) *Payments Prior to PILOT Commencement Date:***

Until the PILOT Commencement Date, or such later date as the Facility Realty is determined to be exempt from real estate taxes, the Lessee shall pay to the City all real estate taxes with respect to the Facility Realty at such times, in such manner and in such amounts as would be applicable if the Facility Realty were owned by the Lessee and not subleased by the Agency.

**(c) *Payments in Lieu of Real Estate Taxes, Generally:***

It is recognized that under the provisions of the Act the Agency is required to pay no real estate taxes upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities. The Agency and the Lessee agree, however, that the Lessee shall be required to make payments in lieu of real estate taxes with respect to the Facility Realty in accordance with the provisions of Section 4.3(g) hereof, as follows: (i) with respect to the Land, payments in lieu of real estate taxes shall be in the amounts determined pursuant to subsection (d) below; and (ii) with respect to the Improvements, payments in lieu of real estate taxes shall be in the amounts determined pursuant to subsections (e) and (f) below.

The Agency makes no representation as to the availability of an exemption from real estate taxes for the Facility Realty in the event that the Department of Finance, Assessors' Office of the City, the City Surveyor, or any other relevant official of the City fails to recognize the Agency's exemption from real estate taxes on the basis of a discrepancy existing between the Facility Realty and the tax map of the City or the existence of another impediment to implementation of the Agency's exemption contemplated hereunder.

The Lessee shall take such action as is reasonably necessary to correct any defect or deficiency that may prevent the Facility Realty from being recognized as exempt by the City. The Lessee acknowledges that the Agency has not represented the availability of any such exemption for the Facility Realty, and the Lessee hereby releases the Agency from any claim arising from any loss of the benefits that were contemplated hereunder.

The Lessee acknowledges that the PILOT Commencement Date will not be deferred notwithstanding any loss of benefits contemplated hereunder in the event that the City does not recognize the Agency's exemption from real estate taxes on the PILOT Commencement Date.

(d) *Payments in Lieu of Taxes on the Land:*

For the period commencing on the PILOT Commencement Date and ending on the earliest to occur of (i) the Expiration Date, or (ii) the date on which the Agency no longer has a leasehold interest in the Facility Realty, or (iii) the Termination Date, the Lessee shall make payments in lieu of real estate taxes, in accordance with Section 4.3(g) hereof, with respect to the Land (subject to Section 4.3(i)) but only to the extent that Full Land Taxes (as defined below) shall exceed the Maximum Land Tax Abatement for the City Tax Fiscal Year in question:

<u>Year</u>	<u>Maximum Land Tax Abatement</u>
PILOT Commencement Date - June 30, 2028	\$23,500
July 1, 2028 - June 30, 2029	\$18,800
July 1, 2029 - June 30, 2030	\$14,100
July 1, 2030 - June 30, 2031	\$9,400
July 1, 2031 - Expiration Date	\$4,700

**"PILOT Commencement Date"** shall mean July 1, 2007.

**"City Tax Fiscal Year"** shall mean each annual period commencing on July 1, and ending on the immediately succeeding June 30, or such other annual period as shall be established by lawful authority as the City's "tax fiscal year" or its equivalent.

**"Full Land Taxes"** shall mean that amount of taxes with respect to the Land as the Lessee would otherwise be required to pay from time to time if it were the owner of the Land and the Agency had no leasehold or other interest in the Land.

For the period commencing on the Expiration Date and ending on the date on which the Agency no longer has a leasehold interest in the Facility Realty, the Lessee shall make payments in lieu of real estate taxes equal to Full Land Taxes with respect to the Land.

If the Termination Date has occurred for reasons other than the Agency no longer having a leasehold estate in the Facility Realty, for the period commencing on such Termination Date until the date on which the Agency no longer has a leasehold estate in the Facility Realty, the Lessee shall make payments in lieu of real estate taxes on the Land equal to Full Land Taxes.

(e) *Payments in Lieu of Taxes on the Improvements:*

For the period commencing on the PILOT Commencement Date and ending on the PILOT Termination Date, the Lessee shall make, in accordance with Section 4.3(g) hereof, and subject to Section 4.3(i) hereof, the following payments in lieu of real estate taxes on the Improvements:

- A. from the PILOT Commencement Date through June 30, 2028, an amount equal to the lesser of CRET or STRET; and
- B. from July 1, 2028, through the Termination Date, the following amounts as respectively calculated for the following City Tax Fiscal Years:

<b>YEAR</b>	<b>LESSEE PAYS:</b>
July 1, 2028- June 30, 2029	STRET + [(CRET less STRET) x 0.2]
July 1, 2029- June 30, 2030	STRET + [(CRET less STRET) x 0.4]
July 1, 2030- June 30, 2031	STRET + [(CRET less STRET) x 0.6]
July 1, 2031- June 30, 2032	STRET + [(CRET less STRET) x 0.8]

*provided, however, with respect to this subsection "B," if for any City Tax Fiscal Year CRET is equal to or less than STRET, then the payment in lieu of real estate taxes on the Improvements for such year shall be an amount equal to CRET.*

*Certain terms used in this Section 4.3 with respect to the Improvements shall be defined as follows:*

**CRET** or "Current Real Estate Taxes" shall mean, for any City Tax Fiscal Year, an amount equal to the product of:

- (I) the then-current assessed value of Improvements, *and*
- (II) the City's then-current real estate tax rate;

*provided, however, that as defined herein, CRET shall not take into account, or in any way be reduced by, any tax exemption and/or abatement program of whatever nature, including but not limited to ICIP.*

**STRET** or "Stabilized Real Estate Taxes" shall mean the CRET applicable on the Commencement Date.

**ICIP** or the “Industrial and Commercial Incentive Program” is the program, including any successor program, administered by the New York City Department of Finance (or successor agency) for the exemption from New York City real property taxes of eligible industrial or commercial improvements to real property.

**ICIP Exemption** shall mean the exemption, from New York City real property taxes, of assessed valuation of industrial or commercial improvements that are eligible under ICIP.

**ICIP Abatement** shall mean the abatement of New York City real property taxes with respect to eligible industrial or commercial improvements under ICIP.

If the PILOT Termination Date has occurred for reasons other than the Agency no longer owning a leasehold or other controlling interest in the Facility Realty, for the period commencing on such PILOT Termination Date until the date on which the Agency no longer owns a leasehold estate or other controlling interest in the Facility Realty, the Lessee shall make payments in lieu of real estate taxes on the Improvements equal to CRET.

(f) *Subsequent Alterations and Improvements:*

If, at any time after the Operations Commencement Date (as such term is defined in Section 8.5(ii) hereof), the Lessee shall make any alterations of or additions to the Improvements (“**Additional Improvements**”), the Lessee shall: (i) notify an Authorized Representative of the Agency of such Additional Improvements by (y) delivering written notice thereof within thirty (30) days after the completion of the Additional Improvements, and (z) providing requested information about such Additional Improvements on the Employment and Benefits Report (see Schedule B attached hereto; and (ii) request that the Improvements (including any such Additional Improvements) be reassessed by the appropriate officer or officers of the City; and (iii) make additional payments in lieu of real estate taxes in accordance with Section 4.3(g) hereof in an amount which shall equal the product of:

- A. the increase in the assessed value of the Improvements as first assessed upon completion of the Additional Improvements and which are attributable to such Additional Improvements, *less* such portion of that incremental assessed value that may be exempt by operation of an ICIP Exemption (if any), *and*
- B. the City's real property tax rate prevailing at the time of such first assessment.

The product of “A” and “B” immediately hereinabove shall be added to STRET and the resulting sum shall be deemed the new STRET for purposes of subsection (e) of this Section 4.3; *provided, however*, that if a reduction in the incremental assessed value corresponding to an ICIP Exemption is applicable, then, as the amount of that reduction diminishes over time (in

accordance with the schedule of the applicable ICIP Exemption), the new STRET will correspondingly increase. In no event shall the new STRET in any way take into account or be reduced by any tax exemption and/or abatement program of whatever nature, including but not limited to ICIP.

(g) *General Payment Provisions:*

In order to provide for payments in lieu of real estate taxes payable pursuant to subsections (d), (e) and (f) above, the Lessee agrees to pay on a date which is at least seven (7) Business Days before January 1 and on a date which is at least seven (7) Business Days before July 1 of every year to the PILOT Depository, or to such other representative of the Agency, or at such other times, in either case as the Agency may designate from time to time by written notice to the Lessee, by certified check or bank draft payable at a bank in New York, New York, an installment payment equal to one-half of the payment in lieu of real estate taxes due for such year. The PILOT Depository shall deposit such installment payment to a special trust fund.

It is agreed that the Agency shall request the appropriate officer or officers of the City charged with the duty of levying and collecting real estate taxes, to submit to the Lessee at the times the levies for such real estate taxes are made, a statement specifying the amounts and due dates for the payments in lieu thereof, so that the Lessee may make such payments in the correct amounts and on a timely basis.

If the Lessee shall fail to make any such installment payments, the amount or amounts so in default shall continue as an obligation of the Lessee until fully paid and the Lessee agrees to pay the same to the PILOT Depository together with the lesser of (x) the maximum amount of interest thereon permitted by law and (y) the greater of (i) interest thereon at the same rate per annum from time to time and compounded at the same frequency as if such amounts were delinquent taxes and (ii) a late payment fee of 5% of the amount that was not paid when due and, for each month or part thereof that a payment is delinquent beyond the first month, an additional late payment fee of 1% per month on an amount equal to the original amount that was not paid when due that remains unpaid during such month or part thereof.

Nothing contained herein shall limit or impair the Lessee's right, to the extent permitted by law, to obtain reductions in the valuation of the Facility Realty or the right to obtain exemptions (and discounts, if any) therefrom and to seek to obtain a refund of any such payments made.

(h) *Apportionment of Payments after Transfer:*

The Agency shall cause the Collector of the City to return the Facility Realty to the tax rolls as of the date the Agency shall no longer have a leasehold estate in the Facility Realty. Subject to the paragraph immediately succeeding, the Lessee and/or other subsequent owner of the Facility Realty during the City Tax Fiscal Year in which such cessation of the



Agency's leasehold estate occurs, shall be responsible for paying the real estate taxes due for the portion of such City Tax Fiscal Year that remains after such cessation.

With respect to the semi-annual period of the City Tax Fiscal Year in which the Agency has ceased to have a leasehold estate in the Facility Realty, the Agency shall cause the Collector of the City to apportion that part of the installment of the payment in lieu of real estate taxes previously remitted for such semi-annual period (if any), which is attributable to the period commencing on the date of such cessation and ending on the June 30 or December 31 following (as the case may be), as a credit against the real estate taxes owed for such semi-annual period.

(i) *Withdrawal of Real Estate Tax Abatements:*

The Lessee understands and agrees that the Lessee is required, and shall be required throughout the term of this Agreement, to pay or cause to be paid, as additional payments in lieu of real estate taxes, the amount of taxes that the Lessee would have been required to pay as if the Agency did not have a leasehold estate in that portion of the Facility Realty, if any, utilized or occupied by any Person (other than the Lessee or the Sublessees but including any sublessee that is pre-approved pursuant to Section 9.3 hereof, if any) for so long as such utilization and/or occupation shall continue. The Lessee hereby represents to the Agency that no portion of the Facility Realty is utilized and/or occupied or is intended to be utilized and/or occupied by Persons other than the Lessee or the Sublessees or a sublessee that is pre-approved pursuant to Section 9.3 hereof, if any. The Lessee agrees that if ever during the term of this Agreement the Lessee intends to permit any Person (other than itself, the Sublessees or any sublessee that is pre-approved pursuant to Section 9.3 hereof, if any) to use and/or occupy a part of the Facility Realty, then, in such event, the Lessee shall provide to the Agency's Authorized Representative, written notice of such intended use and/or occupancy before such use and/or occupancy actually occur, and shall also obtain from the Agency prior written consent therefor in accordance with the requirements of Section 9.3 hereof.

Commencing as of the date on which the Facility Realty is not used in accordance with the Act and/or this Agreement or upon the occurrence of an Event of Default under this Agreement, the Lessee shall be required to make payments in lieu of real estate taxes on the Facility Realty in such amounts as would result from taxes levied on the Facility Realty if the Facility Realty were owned by the Lessee and the Agency had no leasehold estate in the Facility Realty.

Whenever in this Section 4.3 the Lessee is required to make additional payments in lieu of real estate taxes as if the Facility Realty were owned by the Lessee and the Agency had no leasehold estate in the Facility Realty or specified portions thereof, the applicable tax rate shall be the rate then in effect as shown on the records of the proper City department.

(j) *QEZE Tax Credits:*

Notwithstanding the provisions of subsections “d” and “e” and “f” of this Section 4.3, if at any time during the term of this Agreement (x) the Facility Realty is located in an Empire Zone, and (y) the Lessee is taking or has taken affirmative steps to become a Qualified Empire Zone Enterprise (“QEZE”), and (z) the Lessee has qualified or expects to qualify for QEZE tax credits, *then*, the Lessee shall make payments in lieu of real estate taxes for the current and successive year equal to the following amounts: (i) with respect to the Land, Full Land Taxes; and (ii) with respect to the Improvements, Adjusted CRET. In the event the State repeals the Empire Zone program, or that part of it providing for QEZE tax credits, and as a result of such repeal or as a result of the expiration of the period of the Lessee’s entitlement to QEZE benefits, the Lessee is no longer eligible to claim the QEZE tax credits as they are available under current law, the Lessee shall then make payments in lieu of real estate taxes in accordance with the aforesaid subsections “d” and “e” and “f”; *provided, however*, that for any period during which the Lessee receives QEZE tax credits, such period shall not be deemed to extend the term during which payments in lieu of real estate taxes, as provided for in the aforesaid subsections “d” and “e” and “f”, shall apply.

(k) *Survival of Obligations:*

The obligations of the Lessee under this Section 4.3 shall survive the termination or expiration of this Agreement for any reason whatsoever. The Agency, in its sole discretion and in furtherance of the purposes of the Act, may waive, in whole or in part, payments in lieu of taxes set forth in this Section 4.3, for good cause shown.

**Section 4.4. Taxes, Assessments and Charges.** The Lessee shall pay when the same shall become due all taxes (other than those taxes for which payments in lieu thereof are being paid pursuant to Section 4.3 hereof) and assessments, general and specific, if any, levied and assessed upon or against the Facility, the Company Lease, this Agreement, the Sublease Agreement, any ownership estate or interest of the Agency or the Lessee or the Sublessees in the Facility, or the Rental Payments or other amounts payable under the Company Lease, hereunder or under the Sublease Agreement during the term of this Agreement, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility, all of which are herein called “**Impositions**”. The Agency shall forward, as soon as practicable, to the Lessee any notice, bill or other statement received by the Agency concerning any Imposition. The Lessee may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

In the event the Facility Realty is exempt from Impositions (other than real estate taxes in respect of which amounts are payable under Section 4.3 hereof) solely due to the



**NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**  
**110 William Street, New York, New York 10038**

November 20, 2006

Mr. Martin Gbeneky  
New York City Department of Finance  
Payment Operations Division/PILOT Section  
59 Maiden Lane, 26<sup>th</sup> Floor  
New York, New York 10038

Re: J & J Farms Realty Joint Venture, Fisher Foods of Queens Corp. and  
J & J Farms Creamery, Inc.  
57-48 49th Street  
Maspeth, New York 11378  
Block 2602; Lot 220

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Dear Mr. Gbeneky:

On the date hereof, the New York City Industrial Development Agency acquired a leasehold estate in the above-referenced real property for a project for J & J Farms Creamery, Inc., Fisher Foods of Queens Corp. and J & J Farms Realty Joint Venture (collectively, the "Company") in Queens County.

Since the acquisition of such leasehold estate in the above-referenced property occurred in the second tax quarter, the Company has not received the remainder of the fiscal year's bill for taxes owed. Please forward a bill for the remainder of the tax year to:

J & J Farms Realty Joint Venture  
c/o J & J Farms Creamery, Inc.  
57-48 49th Street  
Maspeth, New York 11378  
Attention: President

Very truly yours,



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Maureen P. Babis  
Deputy Executive Director

cc: Robert Millus  
Compliance Department  
New York City Industrial Development Agency  
Michael L. Shelton  
The Bank of New York



-----X  
:
  
In the Matter :
  
of :
  
Taxation of the New York City :
  
Industrial Development Agency :
  
:
  
-----X

STATE OF NEW YORK )  
SS.:  
COUNTY OF NEW YORK )

RICHARD E. MARSHALL, ESQ. being duly sworn, deposes and says:

1. That I am an attorney-at-law duly licensed in the State of New York and am the Vice President for Legal Affairs of the New York City Industrial Development Agency (the "Agency").

2. That the Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, was established by Chapter 1030 of the 1969 Laws of the State of New York, constituting Title I 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 the State of New York, as amended (collectively the "Act").

3. That on or about November 20, 2006, the Agency will enter into a "straight-lease transaction" within the meaning of the Act, in which the Agency will acquire a leasehold estate in the Facility (as defined below) from J & J Farms Realty Joint Venture, a New York joint venture partnership of businesses (the "Lessee"), pursuant to a Company Lease Agreement, dated as of November 1, 2006, between the Lessee and the Agency (the "Company Lease"), and the Agency will sublease its interest therein to the Lessee to provide financial assistance for the improvement and renovation of a commercial facility (the "Facility"), consisting of the renovation of an approximately 77,420 square foot parcel of land and an approximately 57,430 square foot building thereon (including but not limited to the improvement of the staging area, loading dock, new offices, refrigeration and security systems), located at 57-48 49th Street, Maspeth, New York 11378, all for use in the distribution of assorted food products, for sub-sublease to J & J Farms Creamery, Inc. and Fisher Foods of Queens Corp., each of which is a corporation organized under the laws of the State of New York.

4. That simultaneously therewith, the Agency will enter into a Lease Agreement, dated as of November 1, 2006 (the "Lease Agreement"), with the Lessee, pursuant to which the Agency will sublease the Facility to the Lessee.

5. That pursuant to Section 874 of the Act, the Agency is regarded as performing a governmental function and is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities.

6. That pursuant to the provisions of Section 8017 of the Civil Practice Law and Rules of the State of New York, no clerk of any county within The City of New York shall charge or collect a fee for filing, recording or indexing any paper, documents, map or proceeding filed, recorded or indexed for the county, or an agency or officer thereof acting in an official capacity.

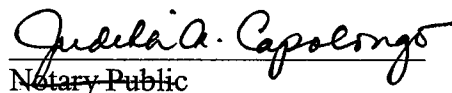
7. That pursuant to the provisions of Section 8019(d) of the Civil Practice Law and Rules of the State of New York, no clerk of any county within The City of New York shall charge or receive any fee from The City of New York or the State of New York, or from any agency or officer thereof acting in an official capacity.

8. I hereby submit that no tax or fee for filing, recording or indexing should be imposed in connection with the filing and recording of the Company Lease and the Lease Agreement, as hereinbefore described.



Richard E. Marshall, Esq.

Sworn to before me this  
17<sup>th</sup> day of November, 2006

  
Notary Public

JUDITH A. CAPOLONGO  
Commissioner of Deeds, City of New York  
No. 5-1425  
Cert. Filed in New York County  
Commission Expires October ~~28~~ 1, 2007





November 20, 2006

Hawkins Delafield & Wood LLP  
New York, New York

J & J Farms Creamery, Inc.  
Maspeth, New York

Fisher Foods of Queens Corp.  
Maspeth, New York

Re: New York City Industrial Development Agency  
Industrial Incentive Program  
(2006 J & J Farms Creamery, Inc. and Fisher Foods of Queens Corp. Project)

Ladies and Gentlemen:

This opinion is being furnished to you in connection with the straight-lease transaction by the New York City Industrial Development Agency (the "Agency") for the benefit of J & J Farms Creamery, Inc. and Fisher Foods of Queens Corp., each of which is a New York corporation (collectively, the "Sublessees") and J & J Farms Realty Joint Venture (the "Lessee"), which is a New York joint venture partnership of businesses, and pursuant to which the Agency will enter into (i) a Company Lease Agreement, dated as of November 1, 2006 (the "Company Lease"), with the Lessee, by which the Lessee will lease the Facility Realty (as defined in the Lease Agreement referred to below) to the Agency, and (ii) a Lease Agreement, dated as of November 1, 2006 (the "Lease Agreement"), with the Lessee, by which the Agency will sublease the Facility Realty (as defined in the Lease Agreement) to the Lessee. The Lessee will sub-sublease the Facility Realty to the Sublessees pursuant to a Sublease Agreement, dated as of November 1, 2006, between the Lessee and the Sublessees (the "Sublease Agreement").

I am the Vice President for Legal Affairs to the Agency, and, in such capacity, I am familiar with the acts and proceedings heretofore had or taken by the Agency relative to the authorization of the Company Lease, the Lease Agreement, the Sublease Agreement, the Guaranty Agreement, dated as of November 1, 2006 (the "Guaranty Agreement"), from the Lessee, the Sublessee, and Michael Oberlander, Pearl Oberlander, Simon Friedman and Morris Schlager, as individual guarantors (collectively, the "Individual Guarantors"), to the Agency, and a Sales Tax Letter, dated the date hereof, from the Agency to the Lessee. I have further caused to be entrusted to First American Title Insurance Company of New York (the "Title Insurance Company") for due recording the Company Lease and the Lease Agreement in the Office of the

Register of The City of New York in Queens County, New York. Based on the foregoing, I am of the opinion that:

(a) The Company Lease has been entrusted to the Title Insurance Company for due recording in proper form in the Office of the Register of The City of New York in Queens County, New York, which recording is the only recording necessary to give notice of the lease of the real property therein as against all creditors of the Lessee and subsequent purchasers. No rerecording is required in order to maintain notice of the Company Lease.

(b) The Lease Agreement has been entrusted to the Title Insurance Company for due recording in proper form in the office of the Register of The City of New York in Queens County, New York, which recording is the only recording necessary to give notice of the sublease of the real property therein described as against all creditors of the Agency or of the Lessee and subsequent purchasers. No rerecording is required in order to maintain notice of the Lease Agreement.

(c) There is no action, suit, proceeding or investigation at law or in equity by or before any court, public board or body, of which the Agency has notice, pending or, to the best of my knowledge, threatened against or affecting the Agency, or to the best of my knowledge is there any basis for such action, suit, proceeding or investigation, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Company Lease, the Lease Agreement or the Guaranty Agreement or the validity or the enforceability of the Company Lease, the Lease Agreement or the Guaranty Agreement.

(d) No legislation has been enacted by the Legislature of the State of New York or the Council of The City of New York that in any way affects the creation, organization or existence of the Agency or the titles to office of any officers thereof, or the power of the Agency to lease, sublease, or renovate the Facility or own, improve, sell, assign, lease or sublease the Facility referred to in the Lease Agreement.

In rendering this opinion, I have assumed the due authorization, execution and delivery by and enforceability against (i) the Lessee of the Company Lease, the Lease Agreement, the Sublease Agreement and the Guaranty Agreement; (ii) the Sublessees of the Sublease Agreement and the Guaranty Agreement; and (iii) the Individual Guarantors of the Guaranty Agreement.

This opinion is delivered to the addressees solely in connection with the transaction described herein, and it may be relied upon by the parties to whom this opinion is addressed and their counsel. This opinion may not be relied upon by any other person, firm or entity without the Agency's prior written consent.

Very truly yours,



Richard E. Marshall, Esq.,  
Vice President for Legal Affairs



## LETTER OF REPRESENTATION

November 20, 2006

New York City Industrial  
Development Agency  
New York, New York

Dear Sir/Madam:

In order to induce New York City Industrial Development Agency (the "Agency") to enter into a straight-lease transaction for the benefit of J & J Farms Creamery, Inc. and Fisher Foods of Queens Corp., each of which is a New York corporation (collectively, the "Sublessees"), and J & J Farms Realty Joint Venture, a New York joint venture partnership of businesses (the "Lessee"), and in consideration of the foregoing, Michael Oberlander, Pearl Oberlander, Simon Friedman and Morris Schlager, as individual guarantors (collectively, the "Individual Guarantors"), the Lessee and the Sublessees hereby certify, represent, warrant, and covenant to and with the Agency as follows (capitalized terms used but not defined herein shall have the respective meanings set forth in the Lease Agreement referred to herein):

1. There is no pending or threatened action, suit, proceeding, inquiry or investigation, at law or in equity, by or before any court, public board or body, known by the Lessee, the Sublessees, or the Individual Guarantors, nor to the best of knowledge of the Lessee, the Sublessees or the Individual Guarantors is there any basis therefor, looking toward the dissolution or liquidation of the Lessee or either of the Sublessees or wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by the Company Lease Agreement, dated as of November 1, 2006, between the Lessee and the Agency; the Lease Agreement, dated as of November 1, 2006, between the Agency and the Lessee (the "Lease Agreement"); the Sublease Agreement, dated as of November 1, 2006, between the Lessee and the Sublessees; the Guaranty Agreement, dated as of November 1, 2006, from the Lessee, the Sublessees and the Individual Guarantors to the Agency; the Letter of Authorization for Sales Tax Exemption, dated the date hereof, from the Agency to the Lessee; or this Letter of Representation (the documents referenced in this paragraph above being referred to collectively as the "Transaction Documents", and those Transaction Documents to which the Lessee, the Sublessees and the Individual Guarantors shall be a party, shall be referred to as the "Lessee Documents", the "Sublessees Documents" and the "Individual Guarantors Documents", respectively); or might result in any materially adverse condition (financial or otherwise), in the business or the property or assets of the Lessee, either of the Sublessees or any of the Individual Guarantors.

2. The Lessee is a joint venture partnership of businesses consisting of two joint venture partners (each a "Partner"), duly organized, validly existing and in good standing under the laws of the State of New York, has the authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Letter of Representation and the other of the Lessee Documents.

3. Each Partner of the Lessee is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, has the authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Letter of Representation and each other of the Lessee Documents.

4. Each of the Sublessees is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, has the authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Letter of Representation and each other of the Sublessees Documents.

5. The execution, delivery and performance of the Lessee Documents have been duly authorized by all requisite action on the part of the Lessee and both of its Partners, and the execution and delivery thereof and compliance with the provisions thereof have not and will not violate any provision of law, the business certificate for the Partners of the Lessee, any organizational document of any Partner, any order, judgment or decree of any court or agency of government, or any indenture, agreement or other instrument to which the Lessee or any Partner is a party or by which it or any of its property is subject to or bound, or be in conflict with, or constitute (with due notice and/or lapse of time) a breach of or default under any such indenture, agreement or other such instrument of the Lessee or any Partner.

6. The execution, delivery and performance of the Sublessees Documents have been duly authorized by all requisite corporate action on the part of each of the Sublessees, and the execution and delivery thereof and compliance with the provisions thereof have not and will not violate any provision of law, the certificate of incorporation or bylaws of either of the Sublessees, any order, judgment or decree of any court or agency of government, or any indenture, agreement or other instrument to which either of the Sublessees is a party or by which it or any of its property is subject to or bound, or be in conflict with, or constitute (with due notice and/or lapse of time) a breach of or default under any such indenture, agreement or other such instrument.

7. The execution, delivery and performance by the Individual Guarantors of the Individual Guarantors Documents and compliance with the provisions thereof have not and will not violate any provision of law, any order, judgment or decree of any court or agency of government, or any indenture, agreement or other instrument to which any of the Individual Guarantors is a party or by which any of the Individual Guarantors or any of their respective property is subject to or bound, or be in conflict with, or constitute (with due notice and/or lapse of time) a breach of or default under any such indenture, agreement or other such instrument.

8. The Lessee Documents, and any and all other agreements and documents required to be executed and delivered by the Lessee and each of its Partners in order to carry out, give effect to and consummate the transactions contemplated by the Lease Agreement, have been duly authorized, executed and delivered by the Lessee and each of its Partners and have not been amended, modified or rescinded, remain in full force and effect and are the legal, valid and binding obligations of the Lessee enforceable against the Lessee in accordance with their terms.

9. The Sublessees Documents, and any and all other agreements and documents required to be executed and delivered by the Sublessees in order to carry out, give effect to and consummate the transactions contemplated by the Lease Agreement, have been duly authorized, executed and delivered by the Sublessees and have not been amended, modified or rescinded, remain in full force and effect and are the legal, valid and binding obligations of the Sublessee, jointly and severally, enforceable against each of the Sublessees in accordance with their terms.

10. The Individual Guarantors Documents, and any and all other agreements and documents required to be executed and delivered by the Individual Guarantors in order to carry out, give effect to and consummate the transactions contemplated by the Lease Agreement, have been duly executed and delivered by the Individual Guarantors and have not been amended, modified or rescinded, remain in full force and effect and are the legal, valid and binding obligations of the Individual Guarantors enforceable against the Individual Guarantors in accordance with their terms.

11. The representations and warranties of the Lessee contained in the Lessee Documents are true, complete and correct and in full force and effect as of the date hereof, with the same effect as if those representations and warranties were made on and as of the date hereof. As of the date hereof, no Event of Default or default has occurred and is continuing with respect to any of the Lessee Documents.

12. The representations and warranties of the Sublessees contained in the Sublessees Documents are true, complete and correct and in full force and effect as of the date hereof with the same effect as if those representations and warranties were made on and as of the date hereof. As of the date hereof, no Event of Default or default has occurred and is continuing with respect to any of the Sublessees Documents.

13. The representations and warranties of the Individual Guarantors contained in the Individual Guarantors Documents are true, complete and correct and in full force and effect as of the date hereof with the same effect as if those representations and warranties were made on and as of the date hereof. As of the date hereof, no Event of Default or default has occurred and is continuing with respect to the Individual Guarantors Documents.

14. All out-of-pocket costs, expenses and fees of the Agency incident to the preparation, execution and delivery of the Transaction Documents, and all other agreements and documents contemplated hereby and thereby, and the fees and disbursements of Hawkins Delafield & Wood LLP and the Agency shall be paid by the Lessee and the Sublessees.

15. The Lessee is not a party to or bound by any contract, agreement or other instrument, or subject to any judgment, order, writ, injunction, decree, rule or regulation which, in the Lessee's opinion, materially adversely affects, or in the future may, so far as the Lessee can now foresee, materially adversely affect, the business, operations, affairs, properties, assets or condition, financial or otherwise, of the Lessee.

16. Neither Partner of the Lessee is a party to or bound by any contract, agreement or other instrument, or subject to any judgment, order, writ, injunction, decree, rule or

regulation which, in the Lessee's or Partner's opinion, materially adversely affects, or in the future may, so far as the Lessee or either Partner can now foresee, materially adversely affect, the business, operations, affairs, properties, assets or condition, financial or otherwise, of the Lessee or either Partner.

17. Neither of the Sublessees is a party to or bound by any contract, agreement or other instrument, or subject to any judgment, order, writ, injunction, decree, rule or regulation which, in the Sublessees' opinion, materially adversely affects, or in the future may, so far as the either of the Sublessees can now foresee, materially adversely affect, the business, operations, affairs, properties, assets or condition, financial or otherwise of either of the Sublessees.

18. None of the Individual Guarantors is a party to or bound by any contract, agreement or other instrument, or subject to any judgment, order, writ, injunction, decree, rule or regulation which, in the opinion of the Individual Guarantors, materially adversely affects, or in the future may, so far as the Individual Guarantors can now foresee, materially adversely affect, the business, operations, affairs, properties, assets or condition, financial or otherwise of any of the Individual Guarantors.

19. Neither this Letter of Representation nor any other document, certificate or statement furnished to you by or on behalf of the Lessee, either of the Sublessees or any of the Individual Guarantors contains any untrue statement of a material fact or omits to state a material fact necessary in order to make such statements contained herein and therein not misleading. There is no fact known to the Lessee, either of the Sublessees or any of the Individual Guarantors which materially adversely affects or in the future may (so far as the Lessee, either of the Sublessees or any of the Individual Guarantors can now foresee) materially adversely affect the business, operations, affairs, conditions, properties or assets of the Lessee, either of the Sublessees or any of the Individual Guarantors, which has not been set forth in this Letter of Representation or in a document, certificate or statement furnished to you by or on behalf of the Lessee, the Sublessees or the Individual Guarantors prior to or on the date hereof as provided therein.

20. The Lessee and the Sublessees have been induced to proceed with the Project by, among other things, the ability of the Agency to provide financial assistance for the Project.

21. The operation of the Facility in the manner presently contemplated and as described in the Lease Agreement will not conflict with any zoning, environmental, water or air pollution law, ordinance or regulation or any similar law, ordinance or regulation applicable thereto as they exist as of the date hereof.

22. The Project is not within the type of actions or classes of actions identified by the New York State Department of Environmental Conservation under the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation Law, which will in almost every instance have a significant effect on the environment and are therefore likely to require the preparation of environmental impact statements.

23. All provisions contained herein shall remain operative and in full force and effect, regardless of any investigation made by or on behalf of the Agency, and shall survive the delivery of the Transaction Documents.

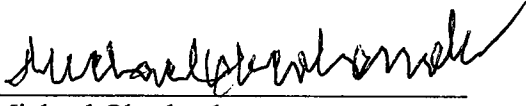
24. The validity, interpretation and performance of this Letter of Representation shall be governed by the laws of the State of New York.

25. This letter may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

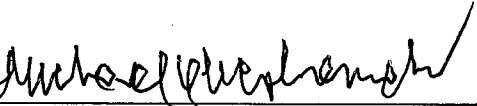
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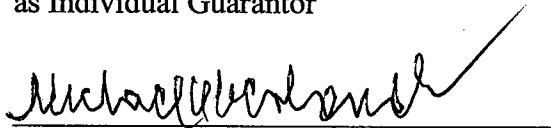
**J & J FARMS CREAMERY, INC.,**  
as Sublessee

By:   
Michael Oberlander  
President

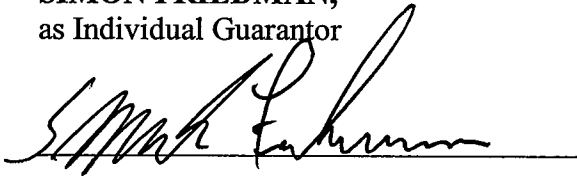
**FISHER FOODS OF QUEENS CORP.,**  
as Sublessee

By:   
Michael Oberlander  
President

**MICHAEL OBERLANDER,**  
as Individual Guarantor



**SIMON FRIEDMAN,**  
as Individual Guarantor



Very truly yours,

**J & J FARMS REALTY JOINT VENTURE**  
By its Joint Venture Partners

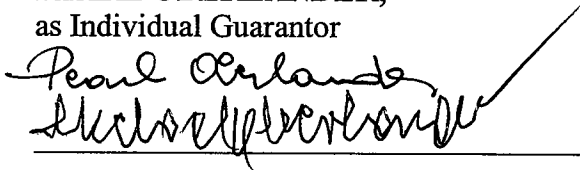
J & J Farms Redevelopment Company, LLC

By:   
Michael Oberlander  
Member

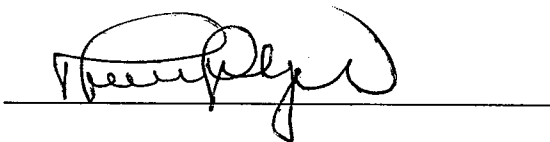
J & J Farms Creamery Company Real Estate, LLC  
By J & J Farms Creamery, Inc., Member

By:   
Michael Oberlander  
President

**PEARL OBERLANDER,**  
as Individual Guarantor



**MORRIS SCHLAGER,**  
as Individual Guarantor






**CERTIFICATE OF THE LESSEE AS TO COMPLIANCE  
WITH SECTIONS 4.5 AND 6.2 OF THE LEASE AGREEMENT**

The undersigned HEREBY CERTIFIES that he is an Authorized Representative (as defined in the Lease Agreement referred to below) of J & J Farms Realty Joint Venture, a joint venture partnership of businesses organized and existing under and by virtue of the laws of the State of New York (the "Lessee"), and HEREBY FURTHER CERTIFIES on behalf of the Lessee that the Lessee is in full compliance as of the date hereof with those requirements imposed on the Lessee under Sections 4.5 and 6.2 of the Lease Agreement, dated as of November 1, 2006 (the "Lease Agreement"), between the New York City Industrial Development Agency and the Lessee, and that attached hereto is a true and correct copy of that certificate of insurance evidencing the compliance by the Lessee with the insurance requirements set forth in Sections 4.5 and 6.2 of the Lease Agreement.

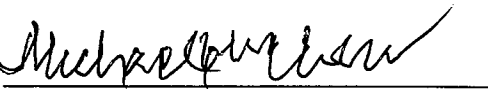
IN WITNESS WHEREOF, the undersigned has hereunto set its hand this November 20, 2006.

**J & J FARMS REALTY JOINT VENTURE  
By its Joint Venture Partners**

**J & J Farms Redevelopment Company, LLC**

By:   
Michael Oberlander  
Member

**J & J Farms Creamery Company Real  
Estate, LLC  
By J & J Farms Creamery, Inc.**

By:   
Michael Oberlander  
President

<b>ACORD™ CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY) <b>11/1/2006</b>
PRODUCER [Redacted] Administrative Agency 35 Queens Blvd West Hills, NY 11375	(718) 544-1700	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED J & J Farms Creamery, Inc. 57-48 49 Street Maspeth, NY 11378	INSURERS AFFORDING COVERAGE	
	INSURER A: <b>Travelers Ind. Co. of Illinois</b>	NAIC #
	INSURER B: <b>St. Paul Travelers</b>	<b>24767</b>
	INSURER C:	
	INSURER D:	
INSURER E:		

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS					
A	X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	Y630773X4827TIL06	7/21/2006	7/21/2007	EACH OCCURRENCE	\$ 1,000,000				
		DAMAGE TO RENTED PREMISES (Ea occurrence)				\$ 300,000					
		MED EXP (Any one person)				\$ 5,000					
		PERSONAL & ADV INJURY				\$ 1,000,000					
		GENERAL AGGREGATE				\$ 2,000,000					
		PRODUCTS - COMP/OP AGG				\$ 2,000,000					
		AUTOMOBILE LIABILITY									
		<input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS									
		GARAGE LIABILITY									
		<input type="checkbox"/> ANY AUTO <input type="checkbox"/> OTHER THAN AUTO ONLY:									
B		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10,000	QK06500486	7/21/2006	7/21/2007	EACH OCCURRENCE	\$ 5,000,000				
		AGGREGATE				\$ 5,000,000					
						\$					
						\$					
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below						<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER					
OTHER						E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$					

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**

Certificate Holder is included as Additional Insured, Mortgagee & Loss Payee with respects to location 5748 49th Street Maspeth, NY 11378

**CERTIFICATE HOLDER**

New York City Industrial Development Agency  
 Attn: Compliance Unit  
 110 William Street  
 New York, NY 10038-

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE



## IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.



**MEMBER'S CERTIFICATE OF  
J & J FARMS REDEVELOPMENT COMPANY, LLC**

The undersigned Member of J & J Farms Redevelopment Company, LLC, a New York limited liability company ("Redevelopment Company"), HEREBY CERTIFIES THAT:

1. This certificate is furnished in connection with the straight-lease transaction with the New York City Industrial Development Agency (the "Agency"), J & J Farms Realty Joint Venture (the "Lessee") and J & J Farms Creamery, Inc. and Fisher Foods of Queens Corp. (collectively, the "Sublessees") in connection with the improvement of a commercial facility (the "Facility"), consisting of the renovation of an approximately 77,420 square foot parcel of land and an approximately 57,430 square foot building thereon (including but not limited to the improvement of the staging area, loading dock, new offices, refrigeration and security systems), located at 57-48 49th Street, Maspeth, New York 11378, all for use in the distribution of assorted food products (the "Project").

2. Redevelopment Company is one of two joint venture partnerships of the Lessee.

3. Attached hereto as Exhibit A is a true, correct and complete copy of the Business Certificate for Partners, dated December 15, 2005, regarding Redevelopment Company and J & J Farms Creamery Company Real Estate, LLC.

4. Attached hereto as Exhibit B is a true, correct and complete copy of the articles of organization, as amended, of Redevelopment Company, certified by the Secretary of State of the State of New York as in effect on the date hereof.

5. Attached hereto as Exhibit C is a true, correct and complete copy of the operating agreement of Redevelopment Company, together with all amendments thereto as in effect on the date hereof.

6. Attached hereto as Exhibit D is a true, correct and complete copy of the resolutions duly adopted by the Members of Redevelopment Company, which resolutions have not been revoked, modified, amended or rescinded and are still in full force and effect, and authorize the obligations of Redevelopment Company with respect to the Project, and which further authorize the execution and delivery of all necessary documents by the undersigned.

7. Each document relating to the Project required to be executed by Redevelopment Company has been executed on behalf of Redevelopment Company by the person named below, who is duly authorized and empowered to execute such documents. The below-named person is the duly elected and qualified member of Redevelopment Company holding the title set forth opposite his name, and the signature below set forth opposite his name is his genuine signature:

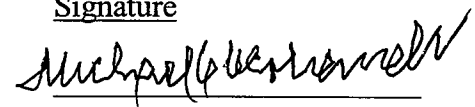
Name

Title

Signature

Michael Oberlander

Member



10/10/2010

10/10/2010

10/10/2010

10/10/2010





**EIN: 20-3933840**

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**JOINT VENTURE AGREEMENT**

**OF**

**J&J FARMS REALTY JOINT VENTURE**

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**COHEN, ESTIS & ASSOCIATES, LLP**

**40 Matthews Street**

**Suite 203**

**Coshen, New York 10924**

**(845) 291-1900**

Form **SS-4**

(Rev. December 2001)  
Department of the  
Treasury  
Internal Revenue Service

**Application for Employer Identification Number**

(For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.)  
\* See separate instructions for each line. \* Keep a copy for your records.

EIN  
20-3933840  
OMB No. 1545-0003

1* Legal name of entity (or individual) for whom the EIN is being requested 1&J Farms Realty Joint Venture		3 Executor, trustee, "care of" name			
2 Trade name of business (if different from name on line 1)		5a Street address (if different) (Do not enter a P.O. box)			
4a* Mailing address (room, apt., suite no. and street, or P.O. box) 57-48 49th Street Maspeth NY 11378 -		5b City, state, and ZIP code			
4b* City, state, and ZIP code Maspeth NY 11378 -		5c City, state, and ZIP code			
6* County and state where principal business is located County Queens State NY		7b* SSN, ITIN, EIN 124-26-4636			
7a* Name of principal officer, general partner, grantor, owner, or trustor Michael Oberlander		8a* Type of entity (check only one) <input type="checkbox"/> Sole Proprietor (SSN) <input checked="" type="checkbox"/> Partnership <input type="checkbox"/> Corporation (enter form number to be filed) * <input type="checkbox"/> Personal Service <input type="checkbox"/> Church or church-controlled organization <input type="checkbox"/> Other nonprofit organization (specify) * <input type="checkbox"/> Other (specify) *		<input type="checkbox"/> Estate (SSN of decedent) <input type="checkbox"/> Plan administrator (SSN) <input type="checkbox"/> Trust (SSN of grantor) <input type="checkbox"/> National Guard <input type="checkbox"/> Farmers' cooperative <input type="checkbox"/> REMFIC <input type="checkbox"/> Group Exemption No. (GEN) * <input type="checkbox"/> State/local government <input type="checkbox"/> Federal government/military <input type="checkbox"/> Indian tribal government/enterprises	
8b* If a corporation, name the state or foreign country (if applicable) where incorporated		State		Foreign country	
9* Reason for applying (check only one) <input checked="" type="checkbox"/> Started new business (specify type) * Partnership <input type="checkbox"/> Hired employees (Check the box and see line 12) <input type="checkbox"/> Compliance with IRS withholding regulations <input type="checkbox"/> Other (specify) *		<input type="checkbox"/> Banking purpose (specify purpose) * <input type="checkbox"/> Changed type of organization (specify new type) * <input type="checkbox"/> Purchased going business <input type="checkbox"/> Created a trust (specify type) * <input type="checkbox"/> Created a pension plan (specify type) *			
10* Date business started or acquired (month, day, year) DEC 15 2005		11* Closing month of accounting year DEC			
12 First date wages or annuities were paid or will be paid (month, day, year) <i>Note: If applicant is a withholding agent, enter date income will first be paid to nonresident alien.</i> (month, day, year) .....					
13 Highest number of employees expected in the next twelve months <i>Note: If the applicant does not expect to have any employees during the period, enter "0."</i> .....		Agriculture		Household	
14* Check box that best describes the principal activity of your business		<input type="checkbox"/> Health care & social assistance		<input type="checkbox"/> Wholesale-agent/broker	

<input checked="" type="checkbox"/> Construction <input checked="" type="checkbox"/> Real estate <input type="checkbox"/> Other (specify)		<input type="checkbox"/> Rental & leasing <input type="checkbox"/> Manufacturing <input type="checkbox"/> Transportation & warehousing <input type="checkbox"/> Finance & insurance <input type="checkbox"/> Accommodation & food service <input type="checkbox"/> Retail <input type="checkbox"/> Wholesale-other	
15* Indicate principal line of merchandise sold; specific construction work done; products produced; or services provided. Real Estate			
16a* Has the applicant ever applied for an employer identification number for this or any other business? ..... <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Note if "Yes" please complete lines 16b and 16c			
16b If you checked "Yes" on line 16a, give applicant's legal name and trade name shown on prior application if different from line 1 or 2 above. Legal name		Trade name	
16c Approximate date when, and city and state where, the application was filed. Enter previous employer identification number if known. Approximate date when filed (month, day, year)		City and state where filed Previous EIN	
Complete section only if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of this form			
Third Party Designee	Designee's name <u>Ronald J Cohen Esq</u> Address and ZIP code <u>40 Matthews Street Goshen NY 10924 -</u>	Designee's telephone number (include area code) ( 845 ) 291 - 1200 Designee's fax number (include area code) ( 845 ) 291 - 8601	Applicant's telephone number (include area code) ( ) - Applicant's fax number (include area code) ( ) -
Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete. Name and title (type or print clearly)			
Signature	Not Required	Date	December 14, 2005 GMT

Letter enclosed from number information sheet

10/14/2005

**JOINT VENTURE AGREEMENT**  
**OF**  
**J&J FARMS REALTY JOINT VENTURE**

Table of Contents

Article 1. Formation  
Article 2. Name  
Article 3. Purposes  
Article 4. Place of Business  
Article 5. Term  
Article 6. Capital Contributions  
Article 7. Loans and Advances by Venturers  
Article 8. Allocations and Distributions  
Article 9. Books, Records and Tax Returns  
Article 10. Bank Accounts  
Article 11. Management of the Joint Venture  
Article 12. Assignment of Joint Venture Interests  
Article 13. Admission of New Venturers  
Article 14. Withdrawal Events Regarding Venturers  
Article 15. Dissolution and Liquidation  
Article 16. Representations of Venturers  
Article 17. Notices  
Article 18. Amendments  
Article 19. Miscellaneous

JOINT VENTURE AGREEMENT, made December 15, 2005, between J & J Farms Redevelopment Company, LLC, a limited liability company, having an address at 57-48 49th Street, Maspeth, New York, and J & J Farms Creamery Company Real Estate, LLC, a limited liability company, having an address at 57-48 49th Street, Maspeth, New York (collectively hereinafter referred to as "Venturers").

WITNESSETH:

WHEREAS, the J & J Farms Creamery Company Real Estate, LLC has been formed to hold title to a certain parcel of real property in accord with a certain quit claim deed dated, December 15, 2005, by and between J & J Farms Creamery Co., Inc., and Michael Oberlander, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member"), and Simon Friedman, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member") and Pearl Oberlander, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member"), and Morris Schlager, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member"), and it is acknowledged that the J & J Farms Creamery Company Real Estate, LLC membership interest shall be held 100% by J & J Farms Creamery Company, Inc. as an asset on its balance sheet.

WHEREAS, it is understood that title to the subject property is presently held by the IDA as collateral security for a certain IDA loan which shall continue to be paid by J & J Farms Creamery Company, Inc.

WHEREAS, J & J Farms Creamery Company Real Estate, LLC has agreed to form a joint venture partnership for the redevelopment of the premises with J & J Farms Redevelopment Company, LLC (ID # ) and the name of this joint venture is J & J Farms Realty Joint Venture (ID# ).

WHEREAS, the J & J Farms Redevelopment Company, LLC was formed in New York State as a Limited Liability Company on December 1, 2005.

WHEREAS, J & J Farms Creamery Company Real Estate, LLC was formed in New York State as a Limited Liability Company on December 1, 2005.

WHEREAS, J & J Farms Realty Joint Venture was formed by the mutual agreement of J & J Redevelopment Company, LLC and J & J Farms Creamery Company Real Estate, LLC with the approval of J & J Farms Creamery Company, Inc. and all of its shareholders to wit Michael Oberlander, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member"), and Simon Friedman, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member") and Pearl Oberlander, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member"), and Morris Schlager, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member").

WHEREAS, this Limited Liability Company Operating Agreement shall be consistent with the Redevelopment goals and objectives of all of the parties and shall not be inconsistent therewith.

WHEREAS, the parties hereto desire to form a joint venture pursuant to the laws of the State of New York for the purposes hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Venturers agree as follows:

### 1. Formation

The parties hereby enter into and form a joint venture (the "Joint Venture") pursuant to the provisions of the Uniform Joint Venture Act of the State of New York, for the purposes and the period and upon the terms and conditions hereinafter set forth.

### 2. Name

The name of the Joint Venture shall be J&J Farms Realty Joint Venture, and all business of the Joint Venture shall be conducted under said name, or such other name as the Venturers from time to time may determine. Each such name shall be duly filed as an assumed name in the State of New York.

### 3. Purposes

The purposes of the Joint Venture are to improve, manage and operate the real property known as 57-48 49th Street, in Maspeth, New York (the "Property"); to incur indebtedness, secured and unsecured; to enter into and perform contracts and agreements of any kind necessary to, in connection with or incidental to the business of the Joint Venture; and to carry on any other activities necessary to, in connection with or incidental to the foregoing, as the Venturers in their discretion may deem desirable.

The Venturers are hereby authorized to cause the Joint Venture to acquire the Property for a purchase price and upon such other terms and conditions as the Venturers may deem appropriate.

#### 4. Place of Business

The principal place of business of the Joint Venture shall be at 57-48 49th Street, Maspeth, New York, in the County of , or at such other or additional places of business within or outside of the State of New York as the Venturers from time to time may designate.

#### 5. Term

The Term of the Joint Venture shall commence on the date first above written and shall continue until December 31, 2050, unless sooner terminated as hereinafter provided.

#### 6. Capital Contributions

Each of the Venturers shall contribute to the capital of the Joint Venture the amount set forth opposite his name below:

J & J Farms Redevelopment Company, LLC -- \$100.00

J & J Farms Creamery Company Real Estate, LLC -- all rights that J & J Farms Creamery Company Real Estate, LLC have in and to that certain property located at 57-48 49<sup>th</sup> Street, Maspeth New York, and such other financing obligations pursuant to the independent agreement of the co-venturers.

The Venturers shall not be required to make any additional capital contributions.

In the event the Venturers unanimously agree that additional capital contributions are necessary or desirable, then the Venturers shall contribute such additional capital to the Joint Venture in the same proportions as the initial capital contributions, unless otherwise unanimously agreed to by the Venturers.

Except as specifically provided in this Agreement or required by law, no Venturer shall have the right to withdraw or reduce his contributions to the capital of the Joint Venture until the termination of the Joint Venture. No Venturer shall have the right to demand and receive any distribution from the Joint Venture in any form other than cash, regardless of the nature of such Venturer's capital contribution. No Venturer shall be paid interest on capital contributions to the Joint Venture.

### 7. Loans and Advances by Venturers

If any Venturer shall loan or advance any funds to the Joint Venture in excess of the capital contribution of such Venturer prescribed herein, such loan or advance shall not be deemed a capital contribution to the Joint Venture and shall not in any respect increase such Venturer's interest in the Joint Venture.

### 8. Allocations and Distributions

As used in this Agreement, the terms "net profits" and "net losses" shall mean the profits or losses of the Joint Venture from the conduct of the Joint Venture's business, after all expenses incurred in connection therewith have been paid or provided for, including any allowance for depreciation or amortization of the cost of the Property. The net profits or net losses of the Joint Venture shall be determined by the Joint Venture's accountants in accordance with generally accepted accounting principles applied in determining the income, gains, expenses, deductions or losses, as the case may be, reported by the Joint Venture for federal income tax purposes.

The term "cash receipts" shall mean all cash receipts of the Joint Venture from whatever source derived, including without limitation capital contributions made by the Venturers; the proceeds of any sale, exchange, condemnation or other disposition of all or any part of the Property or other assets of the Joint Venture; the proceeds of any loan to the Joint Venture; the proceeds of any mortgage or refinancing of any mortgage on all or any part of the Property or other assets of the Joint Venture; the proceeds of any insurance policy for fire or other casualty damage payable to the Joint Venture; and the proceeds from the liquidation of the Property or other assets of the Joint Venture following a termination of the Joint Venture.

The term "capital transactions" shall mean any of the following: the sale of all or any part of the Property or other assets of the Joint Venture or interests therein; the refinancing or recasting of mortgages or other liabilities of the Joint Venture; the condemnation of the Property to the extent the award is not used for restoration; the receipt of insurance proceeds; and any other similar or extraordinary receipts or proceeds which in accordance with generally accepted accounting principles are attributable to capital, including transactions in connection with the termination and dissolution of the Joint Venture.

The "capital account" for each Venturer shall mean the account established, determined and maintained for such Venturer in accordance with Section 704(b) of the Internal Revenue Code and Treasury Regulation Section 1.704-1(b)(2)(iv). The capital account for each Venturer shall be increased by (1) the amount of money contributed by such Venturer to the Joint Venture, (2) the fair market value of property contributed by such Venturer to the Joint Venture (net of liabilities secured by such contributed property that the Joint Venture is considered to assume or take subject to under Section 752 of the Internal Revenue Code), and (3) allocations to such Venturer of Joint Venture income and gain (or items thereof), including income and gain exempt from tax and



income and gain described in Treas. Reg. Section 1.704-1(b)(2)(iv)(g), but excluding income and gain described in subsection (b)(4)(i) of said Regulation, and shall be decreased by (4) the amount of money distributed to such Venturer by the Joint Venture, (5) the fair market value of property distributed to such Venturer by the Joint Venture (net of liabilities secured by such distributed property that such Venturer is considered to assume or take subject to under Section 752 of the Code), (6) allocations to such Venturer of expenditures of the Joint Venture described in Section 705(a)(2)(B) of the Code, and (7) allocations of Joint Venture loss and deduction (or items thereof) including loss and deduction described in Treas. Reg. Section 1.704-1(b)(2)(iv)(g), but excluding items described in (6) above and loss or deduction described in subsections (b)(4)(i) or (b)(4)(iii) of said Regulation. Net profits and net losses of the Joint Venture from other than capital transactions, as of the end of any fiscal year or other period, shall be credited or charged to the capital accounts of the Venturers prior to any charge or credit to said capital accounts for net profits and net losses of the Joint Venture from capital transactions as of the end of such fiscal year or other period. The capital account for each Venturer shall be otherwise adjusted in accordance with the additional rules of Treas. Reg. Section 1.704-1(b)(2)(iv).

The term "Venturers' Percentage Interests" shall mean the percentages set forth opposite the name of each Venturer below:

<u>Venturers</u>	<u>Percentage Interest</u>
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I & J Farms Redevelopment Company, LLC	-- 50 percent
I & J Farms Creamery Company Real Estate, LLC	-- 50 percent

During each fiscal year, the net profits and net losses of the Joint Venture (other than from capital transactions), and each item of income, gain, loss, deduction or credit entering into the computation thereof, shall be credited or charged, as the case may be, to the capital accounts of each Venturer in proportion to the Venturers' Percentage Interests. The net profits of the Joint Venture from capital transactions shall be allocated in the following order of priority: (a) to offset any negative balance in the capital accounts of the Venturers in proportion to the amounts of the negative balance in their respective capital accounts, until all negative balances in the capital accounts have been eliminated; then (b) to the Venturers in proportion to the Venturers' Percentage Interests. The net losses of the Joint Venture from capital transactions shall be allocated in the following order of priority: (a) to the extent that the balances in the capital accounts of any Venturers are in excess of their original contributions, to such Venturers in proportion to such excess balances in the capital accounts until all such excess balances have been reduced to zero; then (b) to the Venturers in proportion to the Venturers' Percentage Interests.

The cash receipts of the Joint Venture shall be applied in the following order of priority: (a) to the payment by the Joint Venture of interest or amortization on any mortgages on the Property, amounts due on debts and liabilities of the Joint Venture other than to any Venturer, and operating expenses of the Joint Venture; (b) to the payment of interest and amortization due on any

loan made to the Joint Venture by any Venturer; (c) to the establishment of cash reserves determined by the Venturers to be necessary or appropriate, including without limitation reserves for the operation of the Joint Venture's business, repairs, replacements, taxes and contingencies; and (d) to the repayment of any loans made to the Joint Venture by any Venturer. Thereafter, the cash receipts of the Joint Venture shall be distributed among the Venturers as hereafter provided.

Except as otherwise provided in this Agreement or required by law, distributions of cash receipts of the Joint Venture, other than from capital transactions, shall be allocated among the Venturers in proportion to the Venturers' Percentage Interests.

Except as otherwise provided in this Agreement or required by law, distributions of cash receipts from capital transactions shall be allocated in the following order of priority: (a) to the Venturers in proportion to their respective capital accounts until each Venturer has received cash distributions equal to any positive balance in his capital account; then (b) to the Venturers in proportion to the Venturers' Percentage Interests.

Special Allocations -- Notwithstanding the preceding provisions of this Article 8, the following special allocations shall be made in the following order:

(1) Minimum Gain Chargeback -- Except as otherwise provided in Treas. Reg. Section 1.704-2(f), if there is a net decrease in partnership minimum gain (within the meaning of Treas. Reg. Sections 1.704-2(b)(2) and 1.704-2(d)) during any fiscal year, each Venturer shall be allocated items of the Joint Venture's income and gain for such fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to such Venturer's share of the net decrease in partnership minimum gain, determined in accordance with Treas. Reg. Section 1.704-2(g). Allocations made pursuant to the preceding sentence shall be made in proportion to the respective amounts required to be allocated to each Venturer pursuant thereto. The items to be so allocated shall be determined in accordance with Treas. Reg. Sections 1.704-2(f)(6) and 1.704-2(j)(2). This provision is intended to comply with the minimum gain chargeback requirement in Treas. Reg. Section 1.704-2(f) and shall be interpreted consistently therewith.

(2) Partner Minimum Gain Chargeback -- Except as otherwise provided in Treas. Reg. Section 1.704-2(i)(4), if there is a net decrease in partner nonrecourse debt minimum gain attributable to a partner nonrecourse debt during any fiscal year, each Venturer who has a share of the partner nonrecourse debt minimum gain attributable to such partner nonrecourse debt, determined in accordance with Treas. Reg. Section 1.704-2(i)(5), shall be allocated items of the Joint Venture's income and gain for such fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to such Venturer's share of the net decrease in partner nonrecourse debt minimum gain attributable to such partner nonrecourse debt, determined in accordance with Treas. Reg. Section 1.704-2(i)(4). Allocations made pursuant to the preceding sentence

shall be made in proportion to the respective amounts required to be allocated to each Venturer pursuant thereto. The items to be so allocated shall be determined in accordance with Trea. Reg. Sections 1.704-2(i)(4) and 1.704-2(j)(2). As used herein, "partner nonrecourse debt" has the meaning set forth in Trea. Reg. Section 1.704-2(b)(4). As used herein, "partner nonrecourse debt minimum gain" shall mean an amount, with respect to each partner nonrecourse debt, equal to the partnership minimum gain (within the meaning of Trea. Reg. Sections 1.704-2(b)(2) and 1.704-2(d)) that would result if such partner nonrecourse debt were treated as a nonrecourse liability (within the meaning of Trea. Reg. Section 1.704-2(b)(3)) determined in accordance with Trea. Reg. Section 1.704-2(i)(3). This provision is intended to comply with the minimum gain chargeback requirement in Trea. Reg. Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(3) Qualified Income Offset -- In the event any Venturer unexpectedly receives any adjustments, allocations or distributions described in Trea. Reg. Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of the Joint Venture's income and gain shall be allocated to such Venturer in an amount and manner sufficient to eliminate, to the extent required by the Regulations, any adjusted capital account deficit in such Venturer's capital account, as quickly as possible, provided that an allocation pursuant to this provision shall be made only if and to the extent that such Venturer would have an adjusted capital account deficit in such Venturer's capital account after all other allocations provided for in this Article 8 have been tentatively made as if this provision were not in this Agreement. As used herein, "adjusted capital account deficit" shall mean the deficit balance, if any, in a Venturer's capital account at the end of the relevant fiscal year after the following adjustments: (i) credit to such capital account the minimum gain chargeback which the Venturer is obligated to restore pursuant to the penultimate sentences of Trea. Reg. Sections 1.704-2(g)(1) and 1.704-2(i)(5); and (ii) debit to such capital account the items described in Trea. Reg. Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6). This provision is intended to constitute a qualified income offset within the meaning of Trea. Reg. Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(4) Gross Income Allocation -- In the event any Venturer has a deficit capital account at the end of any fiscal year which is in excess of the sum of the amounts such Venturer is deemed to be obligated to restore pursuant to the penultimate sentences of Trea. Reg. Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Venturer shall be allocated items of the Joint Venture's income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this provision shall be made only if and to the extent that such Venturer would have a deficit in such Venturer's capital account in excess of such sum after all other allocations provided for in this Article 8 have been tentatively made as if this provision and the provisions of clause (3) above were not in this Agreement.

(5) Nonrecourse Deductions -- Nonrecourse deductions (within the meaning of Treas. Reg. Section 1.704-2(b)(1)) for any fiscal year shall be allocated among the Venturers in proportion to the Venturers' Percentage Interests.

(6) Partner Nonrecourse Deductions -- Any partner nonrecourse deductions (within the meaning of Treas. Reg. Sections 1.704-2(b)(1) and 1.704-2(b)(2)) for any fiscal year shall be allocated to the Venturer who bears the economic risk of loss with respect to the partner nonrecourse debt (within the meaning of Treas. Reg. Section 1.704-2(b)(4)) to which such partner nonrecourse deductions are attributable in accordance with Treas. Reg. Section 1.704-2(i)(1).

(7) Other Mandatory Allocations -- In the event Section 704(c) of the Internal Revenue Code or the Regulations thereunder require allocations in a manner different than that set forth above in this Article 8, the provisions of Section 704(c) and the Regulations thereunder shall control such allocations among the Venturers.

It is the intention of the Venturers that the allocations hereunder shall be deemed to have "substantial economic effect" within the meaning of Section 704 of the Internal Revenue Code and Treas. Reg. Section 1.704-1. Should the provisions of this Agreement be inconsistent with or in conflict with Section 704 of the Code or the Regulations thereunder, then Section 704 of the Code and the Regulations shall be deemed to override the contrary provisions hereof. If Section 704 or the Regulations at any time require that partnership agreements contain provisions which are not expressly set forth herein, such provisions shall be incorporated into this Agreement by reference and shall be deemed a part of this Agreement to the same extent as though they had been expressly set forth herein, and the Venturers shall amend the terms of this Agreement to add such provisions, and any such amendment shall be retroactive to whatever extent required to create allocations with a substantial economic effect.

## 9. Books, Records and Tax Returns

At all times during the continuance of the Joint Venture, the Venturers shall keep or cause to be kept complete and accurate records and books of account in which shall be entered each transaction of the Joint Venture in accordance with generally accepted accounting principles.

The Joint Venture shall furnish to each Venturer, within sixty days after the end of each calendar quarter, an unaudited balance sheet as of the end of each quarter and a profit and loss statement of the Joint Venture for such quarter and such other information as may be necessary for the Venturers to prepare their income tax returns.

The Joint Venture shall furnish to each Venturer, within seventy-five days after the end of each fiscal year, an annual report of the Joint Venture which shall include a balance sheet as of the end of such fiscal year; a profit and loss statement of the Joint Venture for such fiscal year;

a statement of the balance in the capital account of such Venturer; and the amount of such Venturer's share of the Joint Venture's income, gain, losses, deductions and other relevant items for federal income tax purposes.

The Joint Venture shall prepare or cause to be prepared all federal, state and local income tax and information returns for the Joint Venture, and shall cause such tax and information returns to be filed timely with the appropriate governmental authorities. Within seventy-five days after the end of each fiscal year, the Joint Venture shall forward to each person who was a Venturer during the preceding fiscal year a true copy of the Joint Venture's information return filed with the Internal Revenue Service for the preceding fiscal year.

All elections required or permitted to be made by the Joint Venture under the Internal Revenue Code, and the designation of a tax matters partner pursuant to Section 6231(a)(7) of the Internal Revenue Code for all purposes permitted or required by the Code, shall be made by the Joint Venture by the affirmative vote or consent of Venturers holding a majority of the Venturers' Percentage Interests. The tax matters partner shall take such action as may be necessary to cause each other Venturer to become a notice partner within the meaning of Section 6223 of the Code. The tax matters partner may not take any action contemplated by Sections 6222 through 6232 of the Code without the consent of the Joint Venture by the affirmative vote or consent of Venturers holding a majority of the Venturers' Percentage Interests.

All such records, books of account, tax and information returns, and reports and statements, together with executed copies of this Agreement, shall at all times be maintained at the principal place of business of the Joint Venture, and shall be open to the inspection and examination of the Venturers or their duly authorized representatives during regular business hours. Each Venturer, or a duly authorized representative of such Venturer, may make copies of the Joint Venture's books of account and records at the expense of such Venturer. Any Venturer, at the expense of such Venturer, may conduct an audit of the Joint Venture's books of account and records.

The cost of preparing all of the aforesaid records, books, returns and other items shall be borne by the Joint Venture. Upon request of the Joint Venture, the Venturers shall pay to the Joint Venture, in proportion to the Venturers' Percentage Interests, the cost of preparing same, not to exceed in the aggregate \$2,000 for each fiscal year.

#### 10. Bank Accounts

All funds of the Joint Venture shall be deposited in the Joint Venture's name in such bank account or accounts as shall be designated by the Venturers. Withdrawals from any such bank accounts shall be made only in the regular course of business of the Joint Venture and shall be made upon such signature or signatures as the Venturers from time to time may designate.

### 11. Management of the Joint Venture

The business and affairs of the Joint Venture shall be conducted and managed by the Venturers in accordance with this Agreement and the laws of New York.

Except as expressly provided elsewhere in this Agreement, all decisions respecting the management, operation and control of the business and affairs of the Joint Venture and all determinations made in accordance with this Agreement shall be made by the affirmative vote or consent of Venturers holding a majority of the Venturers' Percentage Interests.

The Venturers shall devote such time and attention as the Venturers deem necessary to the conduct and management of the business and affairs of the Joint Venture.

Each of the Venturers shall have authority to execute instruments on behalf of the Joint Venture.

The Joint Venture shall purchase insurance against loss or damage to the Property by fire or other risks embraced by extended coverage, in amounts sufficient to prevent the Joint Venture from becoming a co-insurer, and shall maintain such other hazard and liability insurance against such risks and in such amounts as customarily is maintained for similar properties in the vicinity of the Property.

The Venturers shall receive, as compensation for the services of the Venturers to the Joint Venture, such sums as may be determined from time to time by the affirmative vote or consent of Venturers holding a majority of the Venturers' Percentage Interests.

### 12. Assignment of Joint Venture Interests

Except as otherwise provided in this Agreement, no Venturer or other person holding any interest in the Joint Venture may assign, pledge, hypothecate, transfer or otherwise dispose of all or any part of his interest in the Joint Venture, including without limitation the capital, profits or distributions of the Joint Venture without the prior written consent of the other Venturers in each instance.

The Venturers agree that no Venturer may voluntarily withdraw from the Joint Venture without the unanimous vote or consent of the Venturers.

A Venturer may assign all or any part of such Venturer's interest in the allocations and distributions of the Joint Venture to any of the following (collectively the "permitted assignees"): the spouse, parents, sisters, brothers, descendants, nieces or nephews of such Venturer, other than a minor or incompetent; any other Venturer; or the spouse, parents, sisters, brothers, descendants, nieces or nephews of a Venturer, other than a minor or incompetent; or trust for the sole benefit of

one or more of the foregoing; or any person, corporation, partnership or other entity, provided that such assignment is in compliance with the procedures and restrictions hereinafter set forth. An assignment to a permitted assignee shall only entitle the permitted assignee to the allocations and distributions to which the assigned interest is entitled, unless such permitted assignee applies for admission to the Joint Venture and is admitted to the Joint Venture as a Venturer in accordance with this Agreement.

An assignment, pledge, hypothecation, transfer or other disposition of all or any part of the interest of a Venturer in the Joint Venture in violation of the provisions hereof shall be null and void for all purposes.

No assignment, transfer or other disposition of all or any part of the interest of any Venturer permitted under this Agreement shall be binding upon the Joint Venture unless and until a duly executed and acknowledged counterpart of such assignment or instrument of transfer, in form and substance satisfactory to the Joint Venture, has been delivered to the Joint Venture.

As between a Venturer and an assignee or transferee of such Venturer's interest in accordance with this Agreement, allocations and distributions for any fiscal year shall be apportioned as of the date of the assignment or transfer, on the basis of the number of days before and after said date, without regard to the results of the Joint Venture's operations before or after the assignment or transfer.

No assignment or other disposition of any interest of any Venturer may be made if such assignment or disposition, alone or when combined with other transactions, would result in the termination of the Joint Venture within the meaning of Section 708 of the Internal Revenue Code or under any other relevant section of the Code or any successor statute. No assignment or other disposition of any interest of any Venturer may be made without an opinion of counsel satisfactory to the Joint Venture that such assignment or disposition is subject to an effective registration under, or exempt from the registration requirements of, the applicable federal and state securities laws. No interest in the Joint Venture may be assigned or given to any person below the age of 21 years or to a person who has been adjudged to be insane or incompetent.

Anything herein contained to the contrary, the Joint Venture shall be entitled to treat the record holder of the interest of a Venturer as the absolute owner thereof, and shall incur no liability by reason of distributions made in good faith to such record holder, unless and until there has been delivered to the Joint Venture the assignment or other instrument of transfer and such other evidence as may be reasonably required by the Joint Venture to establish to the satisfaction of the Joint Venture that an interest has been assigned or transferred in accordance with this Agreement.

### 13. Admission of New Venturers

The Venturers may admit new Venturers (or transferees of any interests of existing Venturers) into the Joint Venture by the unanimous vote or consent of the Venturers.

As a condition to the admission of a new Venturer, such Venturer shall execute and acknowledge such instruments, in form and substance satisfactory to the Joint Venture, as the Joint Venture may deem necessary or desirable to effectuate such admission and to confirm the agreement of such Venturer to be bound by all of the terms, covenants and conditions of this Agreement, as the same may have been amended. Such new Venturer shall pay all reasonable expenses in connection with such admission, including without limitation reasonable attorneys' fees and the cost of the preparation, filing or publication of any amendment to this Agreement or any registrations or filings of the Joint Venture, which the Joint Venture may deem necessary or desirable in connection with such admission.

No new Venturer shall be entitled to any retroactive allocation of income, losses, or expense deductions of the Joint Venture. The Joint Venture may make pro rata allocations of income, losses or expense deductions to a new Venturer for that portion of the tax year in which the Venturer was admitted in accordance with Section 706(d) or the Internal Revenue Code and regulations thereunder.

In no event shall a new Venturer be admitted to the Joint Venture if such admission would be in violation of applicable federal or state securities laws or would adversely affect the treatment of the Joint Venture as a partnership for income tax purposes.

### 14. Withdrawal Events Regarding Venturers and Election to Continue the Partnership

In the event of the death, retirement, withdrawal, expulsion, or dissolution of a Venturer, or an event of bankruptcy or insolvency, as hereinafter defined, with respect to a Venturer, or the occurrence of any other event which terminates the continued membership of a Venturer in the Joint Venture pursuant to the laws of New York (each of the foregoing being hereinafter referred to as a "Withdrawal Event"), the Joint Venture shall terminate sixty days after notice to the Venturers of such Withdrawal Event unless the business of the Joint Venture is continued as hereinafter provided.

Notwithstanding a Withdrawal Event with respect to a Venturer, the Joint Venture shall not terminate, irrespective of applicable law, if within aforesaid sixty day period the remaining Venturers, by the unanimous vote or consent of the Venturers (other than the Venturer who caused the Withdrawal Event), shall elect to continue the business of the Joint Venture.



In the event of a Withdrawal Event with respect to any Venturer, any successor in interest to such Venturer (including without limitation any executor, administrator, heir, committee, guardian, or other representative or successor) shall not become entitled to any rights or interest of such Venturer in the Joint Venture, other than the allocations and distributions to which such Venturer is entitled, unless such successor in interest is admitted as a Venturer in accordance with this Agreement.

An "event of bankruptcy or insolvency" with respect to a Venturer shall occur if such Venturer: applies for or consents to the appointment of a receiver, trustee or liquidator of all or a substantial part of his assets; or makes a general assignment for the benefit of creditors; or is adjudicated a bankrupt or an insolvent; or files a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or to take advantage of any bankruptcy, insolvency, readjustment of debt or similar law or statute, or an answer admitting the material allegations of a petition filed against him in any bankruptcy, insolvency, readjustment of debt or similar proceedings; or takes any action for the purpose of effecting any of the foregoing; or an order, judgment or decree shall be entered, with or without the application, approval or consent of such Venturer, by any court of competent jurisdiction, approving a petition for or appointing a receiver or trustee of all or a substantial part of the assets of such Venturer, and such order, judgment or decree shall continue unstayed and in effect for thirty days.

#### 15. Dissolution and Liquidation

The Joint Venture shall terminate upon the occurrence of any of the following: the expiration of the period fixed for the duration of the Joint Venture pursuant to Article 5, as the same may be extended by the Venturers; the election by the Venturers to dissolve the Joint Venture made by the unanimous vote or consent of the Venturers; the occurrence of a Withdrawal Event with respect to a Venturer and the failure of the remaining Venturers to elect to continue the business of the Joint Venture as provided for in Article 14 above; or any other event which pursuant to this Agreement, as the same may hereafter be amended, shall cause a termination of the Joint Venture.

The liquidation of the Joint Venture shall be conducted and supervised by a person designated for such purposes by the affirmative vote or consent of Venturers holding a majority of the Venturers' Percentage Interests (the "Liquidating Agent"). The Liquidating Agent hereby is authorized and empowered to execute any and all documents and to take any and all actions necessary or desirable to effectuate the dissolution and liquidation of the Joint Venture in accordance with this Agreement.

Promptly after the termination of the Joint Venture, the Liquidating Agent shall cause to be prepared and furnished to the Venturers a statement setting forth the assets and liabilities of the Joint Venture as of the date of termination. The Liquidating Agent, to the extent practicable, shall liquidate the assets of the Joint Venture as promptly as possible, but in an orderly and businesslike manner so as not to involve undue sacrifice.

The proceeds of sale and all other assets of the Joint Venture shall be applied and distributed in the following order of priority: (a) to the payment of the expenses of liquidation and the debts and liabilities of the Joint Venture, other than debts and liabilities to Venturers; (b) to the payment of debts and liabilities to Venturers; (c) to the setting up of any reserves which the Liquidating Agent may deem necessary or desirable for any contingent or unforeseen liabilities or obligations of the Joint Venture, which reserves shall be paid over to an attorney-at-law admitted to practice in the State of New York as escrowee, to be held for a period of two years for the purpose of payment of the aforesaid liabilities and obligations, at the expiration of which period the balance of such reserves shall be distributed as hereinafter provided; (d) to the Venturers in proportion to their respective capital accounts until each Venturer has received cash distributions equal to any positive balance in his capital account, in accordance with the rules and requirements of Treas. Reg. Section 1.704-1(b)(2)(ii)(b); and (e) to the Venturers in proportion to the Venturers' Percentage Interests.

If any Venturer has a deficit balance in his capital account following the liquidation of his interest in the Joint Venture, as determined after taking into account all capital account adjustments for the Joint Venture tax year during which such liquidation occurs, such Venturer shall restore the amount of such deficit balance to the Joint Venture by the end of such taxable year (or, if later, within ninety days after the date of such liquidation), which amount shall, upon liquidation of the Joint Venture, be paid to the creditors of the Joint Venture or distributed to the other Venturers in accordance with their positive capital account balances and the rules and requirements of Treas. Reg. Section 1.704-1(b)(2)(ii)(b).

The liquidation shall be complete within the period required by Treas. Reg. Section 1.704-1(b)(2)(ii)(b).

If the Liquidating Agent shall determine that it is not practicable to liquidate all of the assets of the Joint Venture, the Liquidating Agent may retain assets having a fair market value equal to the amount by which the net proceeds of liquidated assets are insufficient to satisfy the debts and liabilities referred to above. If, in the absolute judgment of the Liquidating Agent, it is not feasible to distribute to each Venturer his proportionate share of each asset, the Liquidating Agent may allocate and distribute specific assets to one or more Venturer in such manner as the Liquidating Agent shall determine to be fair and equitable, taking into consideration the basis for tax purposes of each asset.

A taking of all or substantially all of the Property by condemnation or eminent domain shall be treated as a sale of the Property upon the dissolution of the Joint Venture. In such event any portion of the Property not so taken shall be sold, and the proceeds of such sale and the award for such taking shall be distributed in the manner provided for in this Article 15. In the event of a sale of the Property or a taking of less than substantially all of the Property, which sale does not result in a termination or dissolution of the Joint Venture, the proceeds of such sale and the award for such taking shall be distributed in the manner provided for in this Article 15.

For purposes of allocating gain on the sale of the Property and other assets of the Joint Venture, gain shall be first allocated to the Venturers to the extent cash or other property was distributed to them pursuant to this Article 15 and the balance of such gain shall be allocated in proportion to the Venturers' Percentage Interests.

Upon compliance with the distribution plan, the Venturers shall cease to be such, and the Joint Venture shall execute, acknowledge and cause to be filed such certificates and other instruments as may be necessary or appropriate to evidence the dissolution and termination of the Joint Venture.

#### 16. Representations of Venturers

Each of the Venturers represents, warrants and agrees that the Venturer is acquiring the interest in the Joint Venture for the Venturer's own account for investment purposes only and not with a view to the sale or distribution thereof; the Venturer, if an individual, is over the age of 21; if the Venturer is an organization, such organization is duly organized, validly existing and in good standing under the laws of its state of organization and that it has full power and authority to execute this Agreement and perform its obligations hereunder; the execution and performance of this Agreement by the Venturer does not conflict with, and will not result in any breach of, any law or any order, writ, injunction or decree of any court or governmental authority against or which binds the Venturer, or of any agreement or instrument to which the Venturer is a party; and the Venturer shall not dispose of such interest or any part thereof in any manner which would constitute a violation of the Securities Act of 1933, the Rules and Regulations of the Securities and Exchange Commission, or any applicable laws, rules or regulations of any state or other governmental authorities, as the same may be amended.

#### 17. Notices

All notices, demands, requests or other communications which any of the parties to this Agreement may desire or be required to give hereunder shall be in writing and shall be deemed to have been properly given if sent by Federal Express courier or by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows: (a) if to the Joint Venture, to the Joint Venture at the principal place of business of the Joint Venture heretofore stated or to such other address or addresses as may be designated by the Joint Venture by notice to the Venturers pursuant to this Article 17; and (b) if to any Venturer, to the address of said Venturer first above written, or to such other address as may be designated by said Venturer by notice to the Joint Venture and the other Venturers pursuant to this Article 17. Each Venturer shall keep the Joint Venture and the other Venturers informed of such Venturer's current address.

### 18. Amendments

This Agreement may not be altered, amended, changed, waived or modified in any respect or particular unless the same shall be in writing and agreed to by the affirmative vote or consent of Venturers holding two-thirds of the Venturers' Percentage Interests. No amendment may be made to Articles 6, 8, 12 and 15 hereof, insofar as said Articles apply to the financial interests of the Venturers, except by the vote or consent of all of the Venturers. No amendment of any provision of this Agreement relating to the voting requirements of the Venturers on any specific subject shall be made without the affirmative vote or consent of at least the number or percentage of Venturers required to vote on such subject.

### 19. Miscellaneous

This Agreement and the rights and liabilities of the parties hereunder shall be governed by and determined in accordance with the laws of the State of New York. Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement, which shall remain in full force and effect.

The captions in this Agreement are for convenience only and are not to be considered in construing this Agreement. All pronouns shall be deemed to be the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require. References to a person or persons shall include partnerships, corporations, limited liability companies, unincorporated associations, trusts, estates and other types of entities. References to the Internal Revenue Code shall mean the Internal Revenue Code of 1986, as amended, and any successor or superseding federal revenue statute.

This Agreement, and any amendments hereto may be executed in counterparts all of which taken together shall constitute one agreement.

This Agreement sets forth the entire agreement of the parties hereto with respect to the subject matter hereof.

Subject to the limitations on transferability contained herein, this Agreement shall be binding upon and inure to the benefit of the parties hereto and to their respective heirs, executors, administrators, successors and assigns.

No provision of this Agreement is intended to be for the benefit of or enforceable by any third party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the

date first above written.

In the presence of:

J & J FARMS REDEVELOPMENT COMPANY, LLC

By Michael Oberlander  
Michael Oberlander, Member

---

---

J & J FARMS CREAMERY COMPANY REAL ESTATE, LLC

By Simon Friedman  
Simon Friedman, Member


---

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Acknowledgment for J & J Farms Redevelopment Company, LLC;

STATE OF NEW YORK, COUNTY OF KINGS , ss.

On the 15<sup>th</sup> day of December, 2005, before me, the undersigned notary public, personally appeared Michael Oberlander, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


  
JUDY GOTTESMAN  
Notary Public, State of New York  
No. 24-4754174  
Qualified in Kings County  
Commission Expires March 30, 06  
Notary Public

My commission expires on

Acknowledgment for J & J Farms Creamery Company Real Estate, LLC:

STATE OF NEW YORK, COUNTY OF KINGS , ss.

On the 15<sup>th</sup> day of December, 2005, before me, the undersigned notary public, personally appeared Simon Friedman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
JUDY GOTTESMAN  
Notary Public, State of New York  
No. 24-4754174  
Qualified in Kings County  
Commission Expires March 30, 06  
Notary Public

My commission expires on

**Exhibit B**

State of New York )  
Department of State ) ss:

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on

**June 20, 2006**



A handwritten signature in black ink, appearing to be "D. J. ...", written over a horizontal line.

*Special Deputy Secretary of State*



F 051202000 589

ARTICLES OF ORGANIZATION

OF

J & J FARMS REDEVELOPMENT COMPANY, LLC

Under Section 203 of the Limited Liability Company Law of the State of New York

THE UNDERSIGNED, being a natural person of at least eighteen (18) years of age and acting as the organizer of the limited liability company (the "Company") hereby being formed under Section 203 of the Limited Liability Company Law of the State of New York (the "LLCL"), certifies that:

FIRST: The name of the Company is:

J & J FARMS REDEVELOPMENT COMPANY, LLC

SECOND: The county within the State of New York in which the principal office of the Company is to be located is QUEENS.

THIRD: The Secretary of State is designated as the agent of the Company upon whom process against the Company may be served. The post office address within or without the State of New York to which the Secretary of State shall mail a copy of any process against the Company served upon such Secretary of State is: C/O RONALD J. COHEN, ESQ., 40 MATTHEWS STREET, GOSHEN, NY 10924.

FOURTH: The Company shall be managed by one or more MEMBERS.

IN WITNESS WHEREOF, I have subscribed these Articles of Organization and do hereby affirm the foregoing at my residence and domicile of Goshen, NY 10924.

*Sharon Dabala*

Sharon Dabala  
Sole Organizer  
c/o Blumberg & Associates, Corporate Services  
52 South Pearl Street, 2nd Floor  
Albany, NY 12207

FILED

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ARTICLES OF ORGANIZATION  
OF

J & J FARMS REDEVELOPMENT COMPANY, LLC

Under Section 203 of the Limited Liability Company Law of the State of New York

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DRAWDOWN

FILED BY:

HEUMBERG EXCHLSIOR CORPORATE SERVICES INC.  
52 SOUTH PEARL STREET, 2<sup>ND</sup> FLOOR  
ALBANY, NY 12207

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STATE OF NEW YORK  
DEPARTMENT OF STATE

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**OPERATING AGREEMENT**

for

**J & J FARMS REDEVELOPMENT COMPANY, LLC**

dated December 1, 2005

between

Michael Oberlander

and

Simon Friedman

and

Pearl Oberlander

and

Morris Schlager

Managing Members

---

**COHEN, ESTIS & ASSOCIATES, LLP**

40 Matthews Street

Suite 203

Goshen, New York 10924

(845)291-1900

**OPERATING AGREEMENT**

**OF**

**J & J FARMS REDEVELOPMENT COMPANY, LLC**

Table of Contents

Article 1. Formation  
Article 2. Name  
Article 3. Purposes  
Article 4. Place of Business  
Article 5. Term  
Article 6. Capital Contributions  
Article 7. Loans and Advances by Members  
Article 8. Allocations and Distributions  
Article 9. Books, Records and Tax Returns  
Article 10. Bank Accounts  
Article 11. Management of the Limited Liability Company  
Article 12. Meetings of Members  
Article 13. Assignment of Interests  
Article 14. Admission of New Members  
Article 14. Disability of Members  
Article 15. Dissolution and Liquidation  
Article 16. Representations of Members  
Article 17. Notices  
Article 18. Amendments  
Article 19. Miscellaneous

AGREEMENT, made December 1, 2005, between Michael Oberlander, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Managing Member"), and Simon Friedman, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Managing Member"), Pearl Oberlander, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Managing Member"), and Morris Schlager, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Managing Member") and Michael Oberlander, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member"), and Simon Friedman, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member") and Pearl Oberlander, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member"), and Morris Schlager, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member").

**WITNESSETH:**

WHEREAS, the J & J Farms Redevelopment Company, LLC was formed in the State of New York on December 1, 2005.

WHEREAS, the J & J Farms Redevelopment Company, LLC is a partner in the J & J Farms Realty Joint Venture formed on December 15, 2005, along with J & J Farms Creamery Company Real Estate, LLC.

WHEREAS, the J&J Farms Redevelopment Company, LLC is owned by Michael Oberlander, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member"), and Simon Friedman, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member") and Pearl Oberlander, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member"), and Morris Schlager, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member").

WHEREAS, the J&J Farms Redevelopment Company, LLC has substantial responsibilities and capacities with respect to the Redevelopment of that certain parcel of commercial and industrial real estate located at 57 - 48 49<sup>th</sup> Street, Maspeth, New York.

WHEREAS, it is acknowledged and agreed that all members of the J&J Farms Redevelopment Company, LLC have full right title and authority to assign their membership interest in this LLC to family members of their choosing or to a trust for the benefit of their family members, it also being acknowledged that any purported transfer to a third party shall be void unless the written consent of the members of the LLC are obtained.

WHEREAS, the parties hereto desire to form a limited liability company pursuant to the laws of the State of New York for the purposes hereinafter set forth, and to establish their respective rights and obligations in connection with the limited liability company;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Managing Member and Members agree as follows:

**1. Formation**

The parties hereby confirm that they have formed a limited liability company (the "Limited Liability Company") pursuant to the provisions of the New York Limited Liability Company Act, for the purposes and the period and upon the terms and conditions hereinafter set forth. The parties have caused to be filed the Articles of Organization of the Limited Liability Company, and shall execute, acknowledge, swear to and file any other documents required under applicable law.

**2. Name**

The name of the Limited Liability Company shall be J & J Farms Redevelopment Company, LLC, and all business of the Limited Liability Company shall be conducted under said name, or such other name as the Members from time to time may determine.

**3. Purposes**

The purposes of the Limited Liability Company are to conduct real estate investments, to incur indebtedness, secured and unsecured; to enter into and perform contracts and agreements of any kind necessary to, in connection with or incidental to the business of the Limited Liability Company, and to carry on any other activities necessary to, in connection with or incidental to the foregoing, as the Managing Member in its discretion may deem desirable.

**4. Place of Business**

The principal place of business of the Limited Liability Company shall be at 57-48 49th Street, Maspeth, New York 11738, in the County of Queens, or at such other or additional places of business within or outside of the State of New York as the Managing Members from time to time may designate. The Managing Members shall notify the other Members of any change of the principal place of business.

The Limited Liability Company hereby designates the Secretary of State of New York as agent of the Limited Liability Company for the service of process.

### 5. Term

The term of the Limited Liability Company shall commence on the filing of the Articles of Organization of the Limited Liability Company, and shall continue until the occurrence of an event hereinafter set forth which causes the termination of the Limited Liability Company.

### 6. Capital Contributions

The Managing Member shall not be required to contribute to the capital of the Limited Liability Company either on formation of the Limited Liability Company or at any time thereafter.

Each of the Members shall contribute to the capital of the Limited Liability Company the amount set forth opposite his name below:

Michael Oberlander -- \$100.00  
Simon Friedman -- \$100.00  
Pearl Oberlander - \$100.00  
Morris Schlager - \$100.00

The Members shall not be required to make any additional capital contributions.

Except as specifically provided in this Agreement or required by law, no Member shall have the right to withdraw or reduce his contributions to the capital of the Limited Liability Company until the termination of the Limited Liability Company. No Member shall have the right to demand and receive any distribution from the Limited Liability Company in any form other than cash, regardless of the nature of such Member's capital contribution. No Member shall be paid interest on capital contributions to the Limited Liability Company.

The liability of any Member(s) for the losses, debts, liabilities and obligations of the Limited Liability Company shall be limited to paying: the capital contribution of such Member(s) when due under this Agreement; such Member's share of any undistributed assets of the Limited Liability Company; and (only if and to the extent at any time required by applicable law) any amounts previously distributed to such Member by the Limited Liability Company.

### 7. Loans and Advances by Members

If any Member shall loan or advance any funds to the Limited Liability Company in excess of the capital contribution of such Member prescribed herein, such loan or advance shall not



be deemed a capital contribution to the Limited Liability Company and shall not in any respect increase such Member's interest in the Limited Liability Company.

### 8. Allocations and Distributions

As used in this Agreement, the terms "net profits" and "net losses" shall mean the profits or losses of the Limited Liability Company from the conduct of the Limited Liability Company's business, after all expenses incurred in connection therewith have been paid or provided for. The net profits or net losses of the Limited Liability Company shall be determined by the Limited Liability Company's accountants in accordance with generally accepted accounting principles applied in determining the income, gains, expenses, deductions or losses, as the case may be, reported by the Limited Liability Company for federal income tax purposes.

The term "cash receipts" shall mean all cash receipts of the Limited Liability Company from whatever source derived, including without limitation capital contributions made by the Members; the proceeds of any sale, exchange, or other disposition of all or any part of the assets of the Limited Liability Company; the proceeds of any loan to the Limited Liability Company; the proceeds of any insurance policy payable to the Limited Liability Company; and the proceeds from the liquidation of the assets of the Limited Liability Company following a termination of the Limited Liability Company.

The "capital account" for each Member shall mean the account established, determined and maintained for such Member in accordance with Section 704(b) of the Internal Revenue Code and Treasury Regulation Section 1.704-1(b)(2)(iv). The capital account for each Member shall be increased by (1) the amount of money contributed by such Member to the Limited Liability Company, (2) the fair market value of property contributed by such Member to the Limited Liability Company (net of liabilities secured by such contributed property that the Limited Liability Company is considered to assume or take subject to under Section 752 of the Internal Revenue Code), and (3) allocations to such Member of Limited Liability Company income and gain (or items thereof), including income and gain exempt from tax and income and gain described in Trea. Reg. Section 1.704-1(b)(2)(iv)(g), but excluding income and gain described in subsection (b)(4)(i) of said Regulation, and shall be decreased by (4) the amount of money distributed to such Member by the Limited Liability Company, (5) the fair market value of property distributed to such Member by the Limited Liability Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Section 752 of the Code), (6) allocations to such Member of expenditures of the Limited Liability Company described in Section 705(a)(2)(B) of the Code, and (7) allocations of Limited Liability Company loss and deduction (or items thereof) including loss and deduction described in Trea. Reg. Section 1.704-1(b)(2)(iv)(g), but excluding items described in (6) above and loss or deduction described in subsections (b)(4)(i) or (b)(4)(iii) of said Regulation. Net profits and net losses of the Limited Liability Company from other than capital transactions, as of the end of any fiscal year or other period, shall be credited or charged to the capital accounts of the Members prior to any charge or credit to said capital accounts for net profits and net

losses of the Limited Liability Company from capital transactions as of the end of such fiscal year or other period. The capital account for each Member shall be otherwise adjusted in accordance with the additional rules of Treas. Reg. Section 1.704-1(b)(2)(iv).

The term "Members' Percentage Interests" shall mean the percentages set forth opposite the name of each Member below:

<u>Member</u>	<u>Percentage Interest</u>
Michael Oberlander	-- 25 percent
Simon Friedman	- 25 percent
Pearl Oberlander	- 25 percent
Morris Schlager	- 25 percent

During each fiscal year, the net profits and net losses of the Limited Liability Company (other than from capital transactions), and each item of income, gain, loss, deduction or credit entering into the computation thereof, shall be credited or charged, as the case may be, to the capital accounts of each Member in proportion to the Members' Percentage Interests. The net profits of the Limited Liability Company from capital transactions shall be allocated in the following order of priority: (a) to offset any negative balance in the capital accounts of the Members in proportion to the amounts of the negative balance in their respective capital accounts, until all negative balances in the capital accounts have been eliminated; then (b) to the Members in proportion to the Members' Percentage Interests. The net losses of the Limited Liability Company from capital transactions shall be allocated in the following order of priority: (a) to the extent that the balances in the capital accounts of any Members are in excess of their original contributions, to such Members in proportion to such excess balances in the capital accounts until all such excess balances have been reduced to zero; then (b) to the Members in proportion to the Members' Percentage Interests.

The cash receipts of the Limited Liability Company shall be applied in the following order of priority: (a) to the payment by the Limited Liability Company of amounts due on debts and liabilities of the Limited Liability Company other than to any Member, and operating expenses of the Limited Liability Company; (b) to the payment of interest and amortization due on any loan made to the Limited Liability Company by any Member; (c) to the establishment of cash reserves determined by the Managing Member to be necessary or appropriate, including without limitation reserves for the operation of the Limited Liability Company's business, taxes and contingencies; and (d) to the repayment of any loans made to the Limited Liability Company by any Member. Thereafter, the cash receipts of the Limited Liability Company shall be distributed among the Members as hereafter provided.

The cash receipts of the Limited Liability Company shall be distributed to the Members from time to time at such times as the Managing Member shall determine. It is

contemplated that distributions will be made if the Managing Member deems such distributions to be prudent and feasible.

Except as otherwise provided in this Agreement or required by law, distributions of cash receipts of the Limited Liability Company, other than from capital transactions, shall be allocated among the Members in proportion to the Members' Percentage Interests.

Except as otherwise provided in this Agreement or required by law, distributions of cash receipts from capital transactions shall be allocated in the following order of priority: (a) to the Members in proportion to their respective capital accounts until each Member has received cash distributions equal to any positive balance in his capital account; then (b) to the Members in proportion to the Members' Percentage Interests.

**Special Allocations** -- Notwithstanding the preceding provisions of this Article 8, the following special allocations shall be made in the following order:

(1) **Minimum Gain Chargeback** -- Except as otherwise provided in Treas. Reg. Section 1.704-2(f), if there is a net decrease in partnership minimum gain (within the meaning of Treas. Reg. Sections 1.704-2(b)(2) and 1.704-2(d)) during any fiscal year, each Member shall be allocated items of the Limited Liability Company's income and gain for such fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to such Member's share of the net decrease in partnership minimum gain, determined in accordance with Treas. Reg. Section 1.704-2(g). Allocations made pursuant to the preceding sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treas. Reg. Sections 1.704-2(f)(6) and 1.704-2(j)(2). This provision is intended to comply with the minimum gain chargeback requirement in Treas. Reg. Section 1.704-2(f) and shall be interpreted consistently therewith.

(2) **Partner Minimum Gain Chargeback** -- Except as otherwise provided in Treas. Reg. Section 1.704-2(i)(4), if there is a net decrease in partner nonrecourse debt minimum gain attributable to a partner nonrecourse debt during any fiscal year, each Member who has a share of the partner nonrecourse debt minimum gain attributable to such partner nonrecourse debt, determined in accordance with Treas. Reg. Section 1.704-2(i)(5), shall be allocated items of the Limited Liability Company's income and gain for such fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to such Member's share of the net decrease in partner nonrecourse debt minimum gain attributable to such partner nonrecourse debt, determined in accordance with Treas. Reg. Section 1.704-2(i)(4). Allocations made pursuant to the preceding sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treas. Reg. Sections 1.704-2(i)(4) and 1.704-

2(j)(2). As used herein, "partner nonrecourse debt" has the meaning set forth in Treas. Reg. Section 1.704-2(b)(4). As used herein, "partner nonrecourse debt minimum gain" shall mean an amount, with respect to each partner nonrecourse debt, equal to the partnership minimum gain (within the meaning of Treas. Reg. Sections 1.704-2(b)(2) and 1.704-2(d)) that would result if such partner nonrecourse debt were treated as a nonrecourse liability (within the meaning of Treas. Reg. Section 1.704-2(b)(3)) determined in accordance with Treas. Reg. Section 1.704-2(i)(3). This provision is intended to comply with the minimum gain chargeback requirement in Treas. Reg. Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(3) Qualified Income Offset -- In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Treas. Reg. Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of the Limited Liability Company's income and gain shall be allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, any adjusted capital account deficit in such Member's capital account, as quickly as possible, provided that an allocation pursuant to this provision shall be made only if and to the extent that such Member would have an adjusted capital account deficit in such Member's capital account after all other allocations provided for in this Article 8 have been tentatively made as if this provision were not in this Agreement. As used herein, "adjusted capital account deficit" shall mean the deficit balance, if any, in a Member's capital account at the end of the relevant fiscal year after the following adjustments: (i) credit to such capital account the minimum gain chargeback which the Member is obligated to restore pursuant to the penultimate sentences of Treas. Reg. Sections 1.704-2(g)(1) and 1.704-2(i)(5); and (ii) debit to such capital account the items described in Treas. Reg. Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6). This provision is intended to constitute a qualified income offset within the meaning of Treas. Reg. Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(4) Gross Income Allocation -- In the event any Member has a deficit capital account at the end of any fiscal year which is in excess of the sum of the amounts such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Treas. Reg. Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be allocated items of the Limited Liability Company's income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this provision shall be made only if and to the extent that such Member would have a deficit in such Member's capital account in excess of such sum after all other allocations provided for in this Article 8 have been tentatively made as if this provision and the provisions of clause (3) above were not in this Agreement.

(5) Nonrecourse Deductions -- Nonrecourse deductions (within the meaning of Treas. Reg. Section 1.704-2(b)(1)) for any fiscal year shall be allocated among the Members in proportion to the Members' Percentage Interests.

(6) Partner Nonrecourse Deductions -- Any partner nonrecourse deductions (within the meaning of Treas. Reg. Sections 1.704-2(b)(1) and 1.704-2(b)(2)) for any fiscal year shall be allocated to the Member who bears the economic risk of loss with respect to the partner nonrecourse debt (within the meaning of Treas. Reg. Section 1.704-2(b)(4)) to which such partner nonrecourse deductions are attributable in accordance with Treas. Reg. Section 1.704-2(i)(1).

(7) Other Mandatory Allocations -- In the event Section 704(c) of the Internal Revenue Code or the Regulations thereunder require allocations in a manner different than that set forth above in this Article 8, the provisions of Section 704(c) and the Regulations thereunder shall control such allocations among the Members.

It is the intention of the Members that the allocations hereunder shall be deemed to have "substantial economic effect" within the meaning of Section 704 of the Internal Revenue Code and Treas. Reg. Section 1.704-1. Should the provisions of this Agreement be inconsistent with or in conflict with Section 704 of the Code or the Regulations thereunder, then Section 704 of the Code and the Regulations shall be deemed to override the contrary provisions hereof. If Section 704 or the Regulations at any time require that limited liability company operating agreements contain provisions which are not expressly set forth herein, such provisions shall be incorporated into this Agreement by reference and shall be deemed a part of this Agreement to the same extent as though they had been expressly set forth herein, and the Managing Member shall be authorized by an instrument in writing to amend the terms of this Agreement to add such provisions, and any such amendment shall be retroactive to whatever extent required to create allocations with a substantial economic effect.

## 9. Books, Records and Tax Returns

At all times during the continuance of the Limited Liability Company, the Managing Member shall keep or cause to be kept complete and accurate records and books of account in which shall be entered each transaction of the Limited Liability Company in accordance with generally accepted accounting principles.

The fiscal year of the Limited Liability Company for both accounting and income tax purposes shall be the calendar year. The Limited Liability Company shall report its operations, net income and net losses in accordance with the methods of accounting selected by the Managing Member.

The Managing Member may employ on behalf of the Limited Liability Company and at the expense of the Limited Liability Company such firm of certified public accountants as the Managing Member in its sole discretion deems appropriate to serve as the Limited Liability Company's accountants.

The Managing Member shall furnish to each Member, within sixty days after the end of each calendar quarter, an unaudited balance sheet as of the end of each quarter and a profit and loss statement of the Limited Liability Company for such quarter and such other information as may be necessary for the Members to prepare their income tax returns.

The Managing Member shall furnish to each Member, within seventy-five days after the end of each fiscal year, an annual report of the Limited Liability Company which shall include a balance sheet as of the end of such fiscal year; a profit and loss statement of the Limited Liability Company for such fiscal year; a statement of the balance in the capital account of such Member; and the amount of such Member's share of the Limited Liability Company's income, gain, losses, deductions and other relevant items for federal income tax purposes.

The Managing Member shall prepare or cause to be prepared all federal, state and local income tax and information returns for the Limited Liability Company, and shall cause such tax and information returns to be filed timely with the appropriate governmental authorities. Within seventy-five days after the end of each fiscal year, the Managing Member shall forward to each person who was a Member during the preceding fiscal year a true copy of the Limited Liability Company's information return filed with the Internal Revenue Service for the preceding fiscal year. The Managing Member shall not be liable to any Member if any taxing authority disallows or adjusts any deductions or credits in the Limited Liability Company's income tax or information returns.

All elections required or permitted to be made by the Limited Liability Company under the Internal Revenue Code, and the designation of a tax matters partner pursuant to Section 6231(a)(7) of the Internal Revenue Code for all purposes permitted or required by the Code, shall be made by the Managing Member. The tax matters partner shall take such action as may be necessary to cause each other Member to become a notice member within the meaning of Section 6223 of the Code. The tax matters partner may not take any action contemplated by Sections 6222 through 6232 of the Code without the consent of the Managing Member.

All such records, books of account, tax and information returns, and reports and statements, together with executed copies of this Agreement, shall at all times be maintained at the principal place of business of the Limited Liability Company, and shall be open to the inspection and examination of the Members or their duly authorized representatives during regular business hours. Each Member, or a duly authorized representative of such Member, may make copies of the Limited Liability Company's books of account and records at the expense of such Member. Any Member, at the expense of such Member, may conduct an audit of the Limited Liability Company's books of account and records.

The Managing Member shall furnish to each Member, promptly upon request, a current list of the names and addresses of all of the Managing Member and other Members of the Limited Liability Company, and any other persons or entities having any financial interest in the Limited Liability Company.

The cost of preparing all of the aforesaid records, books, returns and other items shall be borne by the Limited Liability Company. Upon request of the Managing Member, the Members shall pay to the Limited Liability Company, in proportion to the Members' Percentage Interests, the cost of preparing same, not to exceed in the aggregate \$2,000 for each fiscal year.

#### 10. Bank Accounts

All funds of the Limited Liability Company shall be deposited in the Limited Liability Company's name in such bank account or accounts as shall be designated by the Managing Member. Withdrawals from any such bank accounts shall be made only in the regular course of business of the Limited Liability Company and shall be made upon such signature or signatures as the Managing Member from time to time may designate.

#### 11. Management of the Limited Liability Company

The Members hereby designate Michael Oberlander, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738, and Simon Friedman, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 and Pearl Oberlander, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738, and Morris Schlager, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 to serve as Managing Members for the Limited Liability Company.

The business and affairs of the Limited Liability Company shall be conducted and managed by the Managing Members of the Limited Liability Company in accordance with this Agreement and the laws of New York.

At any time there is more than one Managing Member, any difference arising as to any matter within the authority of Managing Members shall be decided by a majority in number of the Managing Members.

If at any time the Managing Members do not own, in the aggregate, at least 20 percent of the Members' Percentage Interests, all of the Members shall be Managing Members until such time as the Members duly elect Managing Members who do own at least 20 percent of the Members' Percentage Interests.

The Managing Member shall have responsibility for the day-to-day management of the business and affairs of the Limited Liability Company and shall devote such time and attention as the Managing Member deems necessary to the conduct and management of the business and affairs of the Limited Liability Company.

The Managing Members hereby are given sole power and authority to execute instruments on behalf of the Limited Liability Company and to otherwise bind the Limited Liability Company. Unless authorized by the Managing Members, no other person shall have the power or authority to execute instruments on behalf of the Limited Liability Company and to otherwise bind the Limited Liability Company. No person, firm or corporation dealing with the Limited Liability Company shall be required to investigate the authority of the Managing Members or to secure the approval of or confirmation by the Members of any act of the Managing Members in connection with the business or affairs of the Limited Liability Company.

No Member, other than the Managing Members or its designees, shall have the authority, or shall take any action as a Member, to bind the Limited Liability Company.

The Managing Members shall be reimbursed by the Limited Liability Company for all direct out-of-pocket expenses incurred by the Managing Member on behalf of the Limited Liability Company in connection with the performance of its duties hereunder, including without limitation amounts payable by the Managing Members for office, accounting, bookkeeping and other services, materials, facilities and professional and legal services rendered or furnished to the Limited Liability Company.

The Managing Members shall receive, as compensation for the services of the Managing Members to the Limited Liability Company, such sums as may be determined from time to time by the affirmative vote or consent of Members holding a majority of the Members' Percentage Interests.

A Managing Member's duty of care in the discharge of the Managing Member's duties to the Limited Liability Company and the Members is limited to refraining from engaging in grossly negligent conduct, intentional misconduct, or a knowing violation of law. In discharging the duties of a Managing Member, the Managing Member shall be fully protected in relying in good faith upon the records of the Limited Liability Company and upon such information, opinions, reports or statements by other Managing Members, Members, agents or other persons as to matters the Managing Member reasonably believes are within such person's professional or expert competence, including without limitation information, opinions, reports or statements as to the value or amount of the assets, liabilities, profits or losses of the Limited Liability Company or any other facts pertinent to the existence and amount of assets from which distributions to Members might properly be paid.

To the extent of the Limited Liability Company's assets, and to the extent permitted by law, the Limited Liability Company shall indemnify and hold each Managing Members harmless from and against all liability, claim, loss, damage or expense, including reasonable attorneys' fees, incurred by the Managing Members by reason of any act or omission of the Managing Members made in good faith on behalf of the Limited Liability Company.



Except as expressly provided elsewhere in this Agreement, any decisions which are to be made by the Members, rather than the Managing Members, shall be made by the affirmative vote or consent of Members holding a majority of the Members' Percentage Interests.

## 12. Meetings of Members

The annual meeting of the Members shall be held on the first Tuesday in the month of January, at 10:00 A.M., at the principal office of the Limited Liability Company, for the purpose of transacting such business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day.

The Members may by resolution prescribe the time and place for the holding of regular meetings and may provide that the adoption of such resolution shall constitute notice of such regular meetings.

Special meetings of the Members, for any purpose or purposes, may be called by the Managing Member or by any two Members (or such other number of Members as the Members from time to time may specify).

Written or telephonic notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose for which the meeting is called, shall be delivered not less than three days before the date of the meeting, either personally or by mail, by or at the direction of the Managing Member, to each Member of record entitled to vote at such meeting. When all the Members of the Limited Liability Company are present at any meeting, or if those not present sign a written waiver of notice of such meeting, or subsequently ratify all the proceedings thereof, the transactions of such meeting shall be valid as if a meeting had been formally called and notice had been given.

At any meeting of the Members, the presence of Members holding a majority of the Members' Percentage Interests, as determined from the books of the Limited Liability Company, represented in person or by proxy, shall constitute a quorum for the conduct of the general business of the Limited Liability Company. However, if any particular action by the Limited Liability Company shall require the vote or consent of some other number or percentage of Members pursuant to this Agreement, a quorum for the purpose of taking such action shall require such other number or percentage of Members. If a quorum is not present, the meeting may be adjourned from time to time without further notice, and if a quorum is present at the adjourned meeting any business may be transacted which might have been transacted at the meeting as originally notified. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

At all meetings of the Members, a Member may vote by proxy executed in writing by the Member or by a duly authorized attorney-in-fact of the Member. Such proxy shall be filed

with the Managing Member of the Limited Liability Company before or at the time of the meeting. No proxy shall be valid after three months from the date of execution, unless otherwise provided in the proxy.

If at any time a Member is a corporation, partnership or limited liability company, the interest of such Member may be voted by such officer, partner, agent or proxy of such Member as the bylaws, board directors, or other organization documents of such entity may duly authorize.

The Managing Members or its designee shall preside at meetings of the Members. A record of the meetings shall be maintained by a secretary of the meetings designated by the Managing Members. The Members may adopt their own rules of procedure, which shall not be inconsistent with this Operating Agreement.

A Member of the Limited Liability Company who is present at a meeting of the Members at which action on any matter is taken shall be presumed to have assented to the action taken, unless the dissent of such Member shall be entered in the minutes of the meeting or unless such Member shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by certified mail to the Limited Liability Company within fifteen days after the adjournment of meeting. Such right to dissent shall not apply to a Member who voted in favor of such action.

Unless otherwise provided by law, any action required to be taken at a meeting of the Members, or any other action which may be taken at a meeting of the Members, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject thereof.

Members of the Limited Liability Company may participate in any meeting of the Members by means of conference telephone or similar communication if all persons participating in such meeting can hear one another for the entire discussion of the matters to be voted upon. Participation in a meeting pursuant to this paragraph shall constitute presence in person at such meeting.

### 13. Assignment of Interests

Except as otherwise provided in this Agreement, no Member or other person holding any interest in the Limited Liability Company may assign, pledge, hypothecate, transfer or otherwise dispose of all or any part of his interest in the Limited Liability Company, including without limitation the capital, profits or distributions of the Limited Liability Company without the prior written consent of the other Members in each instance.

A Member may assign all or any part of such Member's interest in the allocations and distributions of the Limited Liability Company to any of the following (collectively the "permitted

assignees"): any person, corporation, partnership or other entity as to which the Limited Liability Company has given consent to the assignment of such interest in the allocations and distributions of the Limited Liability Company by the affirmative vote or consent of Members holding a majority of the Members' Percentage Interests. An assignment to a permitted assignee shall only entitle the permitted assignee to the allocations and distributions to which the assigned interest is entitled, unless such permitted assignee applies for admission to the Limited Liability Company and is admitted to the Limited Liability Company as a Member in accordance with this Agreement.

An assignment, pledge, hypothecation, transfer or other disposition of all or any part of the interest of a Member in the Limited Liability Company or other person holding any interest in the Limited Liability Company in violation of the provisions hereof shall be null and void for all purposes.

No assignment, transfer or other disposition of all or any part of the interest of any Member permitted under this Agreement shall be binding upon the Limited Liability Company unless and until a duly executed and acknowledged counterpart of such assignment or instrument of transfer, in form and substance satisfactory to the Managing Member, has been delivered to the Limited Liability Company.

No assignment or other disposition of any interest of any Member may be made if such assignment or disposition, alone or when combined with other transactions, would result in the termination of the Limited Liability Company within the meaning of Section 708 of the Internal Revenue Code or under any other relevant section of the Code or any successor statute. No assignment or other disposition of any interest of any Member may be made without an opinion of counsel satisfactory to the Managing Member that such assignment or disposition is subject to an effective registration under, or exempt from the registration requirements of, the applicable federal and state securities laws. No interest in the Limited Liability Company may be assigned or given to any person below the age of 21 years or to a person who has been adjudged to be insane or incompetent.

Anything herein contained to the contrary, the Managing Member and the Limited Liability Company shall be entitled to treat the record holder of the interest of a Member as the absolute owner thereof, and shall incur no liability by reason of distributions made in good faith to such record holder, unless and until there has been delivered to the Managing Member the assignment or other instrument of transfer and such other evidence as may be reasonably required by the Managing Member to establish to the satisfaction of the Managing Member that an interest has been assigned or transferred in accordance with this Agreement.

#### 14. Admission of New Members

The Members may admit new Members (or transferees of any interests of existing Members) into the Limited Liability Company by the unanimous vote or consent of the Members.

As a condition to the admission of a new Member, such Member shall execute and acknowledge such instruments, in form and substance satisfactory to the Managing Member, as the Managing Member may deem necessary or desirable to effectuate such admission and to confirm the agreement of such Member to be bound by all of the terms, covenants and conditions of this Agreement, as the same may have been amended. Such new Member shall pay all reasonable expenses in connection with such admission, including without limitation reasonable attorneys' fees and the cost of the preparation, filing or publication of any amendment to this Agreement or the Articles of Organization, which the Managing Member may deem necessary or desirable in connection with such admission.

No new Member shall be entitled to any retroactive allocation of income, losses, or expense deductions of the Limited Liability Company. The Managing Member may make pro rata allocations of income, losses or expense deductions to a new Member for that portion of the tax year in which the Member was admitted in accordance with Section 706(d) or the Internal Revenue Code and regulations thereunder.

In no event shall a new Member be admitted to the Limited Liability Company if such admission would be in violation of applicable federal or state securities laws or would adversely affect the treatment of the Limited Liability Company as a partnership for income tax purposes.

#### **15. Dissolution and Liquidation**

The Limited Liability Company shall terminate upon the occurrence of any of the following: the election by the Members to dissolve the Limited Liability Company made by the unanimous vote or consent of the Members; or any other event which pursuant to this Agreement, as the same may hereafter be amended, shall cause a termination of the Limited Liability Company.

The liquidation of the Limited Liability Company shall be conducted and supervised by the Managing Members or if there be none then by a person designated for such purposes by the affirmative vote or consent of Members holding a majority of the Members' Percentage Interests (the "Liquidating Agent"). The Liquidating Agent hereby is authorized and empowered to execute any and all documents and to take any and all actions necessary or desirable to effectuate the dissolution and liquidation of the Limited Liability Company in accordance with this Agreement.

Promptly after the termination of the Limited Liability Company, the Liquidating Agent shall cause to be prepared and furnished to the Members a statement setting forth the assets and liabilities of the Limited Liability Company as of the date of termination. The Liquidating Agent, to the extent practicable, shall liquidate the assets of the Limited Liability Company as promptly as possible, but in an orderly and businesslike manner so as not to involve undue sacrifice.

The proceeds of sale and all other assets of the Limited Liability Company shall be applied and distributed in the following order of priority: (a) to the payment of the expenses of

liquidation and the debts and liabilities of the Limited Liability Company, other than debts and liabilities to Members; (b) to the payment of debts and liabilities to Members; (c) to the setting up of any reserves which the Liquidating Agent may deem necessary or desirable for any contingent or unforeseen liabilities or obligations of the Limited Liability Company, which reserves shall be paid over to an attorney-at-law admitted to practice in the State of New York as escrowee, to be held for a period of two years for the purpose of payment of the aforesaid liabilities and obligations, at the expiration of which period the balance of such reserves shall be distributed as hereinafter provided; (d) to the Members in proportion to their respective capital accounts until each Member has received cash distributions equal to any positive balance in his capital account, in accordance with the rules and requirements of Treas. Reg. Section 1.704-1(b)(2)(ii)(b); and (e) to the Members in proportion to the Members' Percentage Interests.

The liquidation shall be complete within the period required by Treas. Reg. Section 1.704-1(b)(2)(ii)(b).

If the Liquidating Agent shall determine that it is not practicable to liquidate all of the assets of the Limited Liability Company, the Liquidating Agent may retain assets having a fair market value equal to the amount by which the net proceeds of liquidated assets are insufficient to satisfy the debts and liabilities referred to above. If, in the absolute judgment of the Liquidating Agent, it is not feasible to distribute to each Member his proportionate share of each asset, the Liquidating Agent may allocate and distribute specific assets to one or more Member in such manner as the Liquidating Agent shall determine to be fair and equitable, taking into consideration the basis for tax purposes of each asset.

Upon compliance with the distribution plan, the Members shall cease to be such, and the Managing Member shall execute, acknowledge and cause to be filed such certificates and other instruments as may be necessary or appropriate to evidence the dissolution and termination of the Limited Liability Company.

#### 16. Representations of Members

Each of the Members represents, warrants and agrees that the Member is acquiring the interest in the Limited Liability Company for the Member's own account for investment purposes only and not with a view to the sale or distribution thereof; the Member, if an individual, is over the age of 21; if the Member is an organization, such organization is duly organized, validly existing and in good standing under the laws of its state of organization and that it has full power and authority to execute this Agreement and perform its obligations hereunder; the execution and performance of this Agreement by the Member does not conflict with, and will not result in any breach of, any law or any order, writ, injunction or decree of any court or governmental authority against or which binds the Member, or of any agreement or instrument to which the Member is a party; and the Member shall not dispose of such interest or any part thereof in any manner which would constitute a violation of the Securities Act of 1933, the Rules and Regulations of the Securities and Exchange

Commission, or any applicable laws, rules or regulations of any state or other governmental authorities, as the same may be amended.

#### 17. Notices

All notices, demands, requests or other communications which any of the parties to this Agreement may desire or be required to give hereunder shall be in writing and shall be deemed to have been properly given if sent by Federal Express courier or by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows: (a) if to the Limited Liability Company, to the Limited Liability Company c/o the Managing Member at its address first above written or to such other address or addresses as may be designated by the Limited Liability Company or the Managing Member by notice to the Members pursuant to this Article 17; (b) if to the Managing Member, to the Managing Member at its address first above written or to such other address or addresses as may be designated by the Managing Member by notice to the Limited Liability Company and the Members pursuant to this Article 17; and (c) if to any Member, to the address of said Member first above written, or to such other address as may be designated by said Member by notice to the Limited Liability Company and the other Members pursuant to this Article 17. Each Member shall keep the Limited Liability Company and the other Members informed of such Member's current address.

#### 18. Amendments

This Agreement may not be altered, amended, changed, supplemented, waived or modified in any respect or particular unless the same shall be in writing and agreed to by the affirmative vote or consent of Members holding two-thirds of the Members' Percentage Interests. No amendment may be made to Articles 6, 8, 13 and 15 hereof, insofar as said Articles apply to the financial interests of the Members, except by the vote or consent of all of the Members. No amendment of any provision of this Agreement relating to the voting requirements of the Members on any specific subject shall be made without the affirmative vote or consent of at least the number or percentage of Members required to vote on such subject.

#### 19. Miscellaneous

This Agreement and the rights and liabilities of the parties hereunder shall be governed by and determined in accordance with the laws of the State of New York. Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement, which shall remain in full force and effect.

The captions in this Agreement are for convenience only and are not to be considered in construing this Agreement. All pronouns shall be deemed to be the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require. References to a person or persons shall include partnerships, corporations, limited liability companies, unincorporated associations, trusts, estates and other types of entities. The Managing Member and the Members collectively are referred to herein as the Members. Any one of the Members is referred to herein as a Member. References to the Internal Revenue Code shall mean the Internal Revenue Code of 1986, as amended, and any successor or superseding federal revenue statute.

This Agreement, and any amendments hereto may be executed in counterparts all of which taken together shall constitute one agreement.

This Agreement sets forth the entire agreement of the parties hereto with respect to the subject matter hereof. It is the intention of the Members that this Agreement shall be the sole source of agreement of the parties, and, except to the extent a provision of this Agreement provides for the incorporation of federal income tax rules or is expressly prohibited or ineffective under the New York Limited Liability Company Act, this Agreement shall govern even when inconsistent with, or different from, the provisions of any applicable law or rule. To the extent any provision of this Agreement is prohibited or otherwise ineffective under the New York Limited Liability Company Act, such provision shall be considered to be ineffective to the smallest degree possible in order to make this Agreement effective under the New York Limited Liability Company Act. If the New York Limited Liability Company Act is subsequently amended or interpreted in such a way to make any provision of this Agreement that was formerly invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment.

Subject to the limitations on transferability contained herein, this Agreement shall be binding upon and inure to the benefit of the parties hereto and to their respective heirs, executors, administrators, successors and assigns.

No provision of this Agreement is intended to be for the benefit of or enforceable by any third party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

In the presence of:

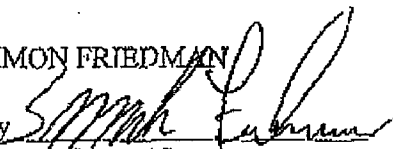
MICHAEL OBERLANDER

By Michael Oberlander  
General Partner

\_\_\_\_\_

**In the presence of:**

SIMON FRIEDMAN

By   
General Partner

\_\_\_\_\_

**In the presence of:**

PEARL OBERLANDER

By   
General Partner

\_\_\_\_\_

**In the presence of:**

MORRIS SCHLAGER

By   
General Partner




Acknowledgment for Michael Oberlander:

STATE OF NEW YORK, COUNTY OF Kings , ss.

On the 15<sup>th</sup> day of December, 2005, before me, the undersigned notary public, personally appeared

, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


  
JUDY GOTTESMAN  
Notary Public, State of New York  
No. 24-4754174  
Qualified in Kings County  
Commission Expires March 30, 06  
Notary Public  
My commission expires on

Acknowledgment for Simon Friedman:

STATE OF NEW YORK, COUNTY OF Kings , ss.

On the 15<sup>th</sup> day of December, 2005, before me, the undersigned notary public, personally appeared

, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
JUDY GOTTESMAN  
Notary Public, State of New York  
No. 24-4754174  
Qualified in Kings County  
Commission Expires March 30, 06  
Notary Public  
My commission expires on

Acknowledgment for Pearl Oberlander:

STATE OF NEW YORK, COUNTY OF *Kings*, ss.

On the *15<sup>th</sup>* day of December, 2005, before me, the undersigned notary public, personally appeared

, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

*Judy Gottesman*  
JUDY GOTTESMAN  
Notary Public, State of New York  
No. 24-4754174  
Qualified in Kings County  
Commission Expires March 30, *06*  
\_\_\_\_\_  
Notary Public  
My commission expires on

Acknowledgment for Morris Schlager:

STATE OF NEW YORK, COUNTY OF *Kings*, ss.

On the *15<sup>th</sup>* day of December, 2005, before me, the undersigned notary public, personally appeared

, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

*Judy Gottesman*  
JUDY GOTTESMAN  
Notary Public, State of New York  
No. 24-4754174  
Qualified in Kings County  
Commission Expires March 30, *06*  
\_\_\_\_\_  
Notary Public  
My commission expires on

**Exhibit D**

10/1/2011

10/1/2011



## EXHIBIT D

### **Resolutions of J & J Farms Redevelopment Company, LLC**

EXTRACT from the minutes of a meeting of the Members of J & J Farms Redevelopment Company, LLC (this "Company") held on November 1, 2006.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

"RESOLVED, that this Company authorizes and approves the straight-lease transaction with the New York City Industrial Development Agency (the "Agency") and J & J Farms Creamery, Inc. and Fisher Foods of Queens Corp. (collectively, the "Sublessees") and J & J Farms Realty Joint Venture (the "Lessee") in connection with the improvement of a commercial facility (the "Facility"), consisting of the renovation of an approximately 77,420 square foot parcel of land and an approximately 57,430 square foot building thereon (including but not limited to the improvement of the staging area, loading dock, new offices, refrigeration and security systems), located at 57-48 49th Street, Maspeth, New York 11378, all for use in the distribution of assorted food products (the "Project"); and further

RESOLVED, that each of the following documents, substantially in the form of the drafts on file with the Members of this Company, is hereby authorized, and any Member of the Company is directed to execute and deliver each such documents in the name and on behalf of this Company and the Lessee with such additions, deletions or modifications in or affecting each such documents thereof, or the effectiveness thereof, as such executing officer may determine, with advice of counsel, as conclusively evidenced by such officer's execution thereof, to be advisable and in the best interests of this Company:

1. Company Lease Agreement between the Lessee and the Agency;
2. Lease Agreement between the Agency and the Lessee;
3. Sublease Agreement between the Lessee and the Sublessees;
4. Guaranty Agreement from the Lessee, the Sublessees, and Michael Oberlander, Pearl Oberlander, Simon Friedman and Morris Schlager, as individual guarantors (collectively, the "Individual Guarantors"), to the Agency;
5. Sales Tax Letter from the Agency to the Lessee;
6. Letter of Representation from the Lessee, the Sublessees and the Individual Guarantors to the Agency; and

RESOLVED, that there is hereby approved the execution and delivery of any and all documents, certificates and agreements to effect the Project and all matters related thereto; and further

RESOLVED, that all action taken and all instruments executed by any Member of this Company prior to the adoption of this resolution with respect to the Project, and all matters related thereto, are hereby ratified, confirmed and approved; and further

RESOLVED, that in addition to and without limiting the generality of the foregoing resolutions with respect to the Project, any Member of this Company be, and each of them hereby is, authorized and directed to take such further action in connection with the Project and to execute and deliver such instruments and documents as such officers with advice of counsel may deem appropriate to carry out the foregoing resolutions; and the taking of such action or execution of such instruments shall be deemed conclusive evidence of the determination of such executing officer that such action or execution was appropriate and in the best interests of this Company.”



**State of New York**  
**Department of State** } **ss:**

I hereby certify, that J & J FARMS REDEVELOPMENT COMPANY, LLC a NEW YORK Limited Liability Company filed Articles of Organization pursuant to the Limited Liability Company Law on 12/02/2005, and that the Limited Liability Company is existing so far as shown by the records of the Department.

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*WITNESS my hand and the official seal  
of the Department of State at the City of  
Albany, this 08th day of November two  
thousand and six.*

*Special Deputy Secretary of State*

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**MEMBER'S CERTIFICATE OF  
J & J FARMS CREAMERY COMPANY REAL ESTATE, LLC**

The undersigned Member of J & J Farms Creamery Company Real Estate, LLC, a New York limited liability company ("Real Estate"), HEREBY CERTIFIES THAT:

1. This certificate is furnished in connection with the straight-lease transaction with the New York City Industrial Development Agency (the "Agency"), J & J Farms Realty Joint Venture (the "Lessee") and J & J Farms Creamery, Inc. ("J & J Farms") and Fisher Foods of Queens Corp. (collectively, the "Sublessees") in connection with the improvement of a commercial facility (the "Facility"), consisting of the renovation of an approximately 77,420 square foot parcel of land and an approximately 57,430 square foot building thereon (including but not limited to the improvement of the staging area, loading dock, new offices, refrigeration and security systems), located at 57-48 49th Street, Maspeth, New York 11378, all for use in the distribution of assorted food products (the "Project").

2. Real Estate is one of two joint venture partnerships of the Lessee. The sole Member of Real Estate is J & J Farms.

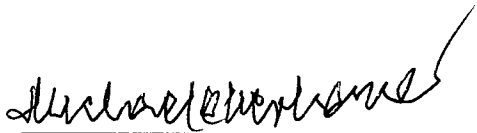
3. Attached hereto as Exhibit A is a true, correct and complete copy of the Joint Venture Agreement, dated December 15, 2005, regarding Real Estate and J & J Farms Redevelopment Company, LLC.

4. Attached hereto as Exhibit B is a true, correct and complete copy of the articles of organization, as amended, of Real Estate, certified by the Secretary of State of the State of New York as in effect on the date hereof.

5. Attached hereto as Exhibit C is a true, correct and complete copy of the operating agreement of Real Estate, together with all amendments thereto as in effect on the date hereof.

6. Attached hereto as Exhibit D is a true, correct and complete copy of the resolutions duly adopted by the Member of Real Estate, which resolutions have not been revoked, modified, amended or rescinded and are still in full force and effect, and authorize the obligations of Real Estate with respect to the Project, and which further authorize the execution and delivery of all necessary documents by the undersigned.

7. Each document relating to the Project required to be executed by Real Estate has been executed on behalf of Real Estate by the person named below, who is duly authorized and empowered to execute such documents. The below-named person is the duly elected and qualified member of Real Estate holding the office set forth opposite his name, and the signature below set forth opposite his name is his genuine signature:

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Michael Oberlander	President of J & J Farms Creamery, Inc., Member of J & J Farms Creamery Company Real Estate, LLC	





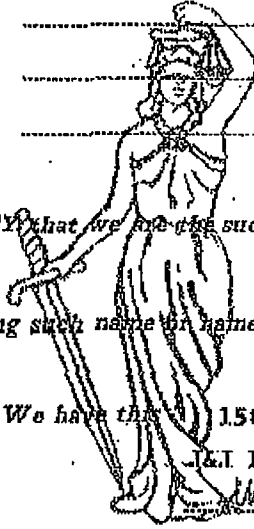
# Business Certificate for Partners

The undersigned do hereby certify that they are conducting or transacting business as members of a partnership under the name or designation of **J&J Farms Realty Joint Venture**

at **57-48 49th Street, Maspeth, New York**  
in the County of **Queens**, State of **New York**, and do further certify that the full names of all the persons conducting or transacting such partnership including the full names of all the partners with the residence address of each such person, and the age of any who may be infants, are as follows:

NAME Specify which are infants and state ages.	RESIDENCE
<u>J&amp;J Farms Redevelopment Company, LLC</u>	<u>57-48 49th Street, Maspeth, New York</u>
<u>J&amp;J Farms Creamery Company Real Estate, LLC</u>	<u>57-48 49th Street, Maspeth, New York</u>

.....  
.....  
.....



WE DO FURTHER CERTIFY that we are the successors in interest to the person or persons heretofore using such name or names to carry on or conduct or transact business.

In Witness Whereof, We have this 15th day of December 2005 made and signed this certificate.

J&J Farms Redevelopment Company, LLC  
Michael Oherlander  
By: Michael Oherlander, Managing Member

J&J Farms Creamery Company Real Estate, LLC  
Simon Friedman  
By: Simon Friedman, Managing Member

State of New York, County of \_\_\_\_\_ ss: \_\_\_\_\_ INDIVIDUAL ACKNOWLEDGMENT

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally appeared

to me known and known to me to be the individual described in, and who executed the foregoing certificate, and he thereupon duly acknowledged to me that he executed the same.



State of New York }  
Department of State } ss:

*I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.*

*Witness my hand and seal of the Department of State on*

**June 20, 2006**



A handwritten signature in black ink, appearing to read "R. A. ...", is written over the printed title.

*Special Deputy Secretary of State*

05120200074

ARTICLES OF ORGANIZATION

OF

**J & J FARMS CREAMERY COMPANY REAL ESTATE, LLC**

Under Section 203 of the Limited Liability Company Law of the State of New York

**THE UNDERSIGNED**, being a natural person of at least eighteen (18) years of age and acting as the organizer of the limited liability company (the "Company") hereby being formed under Section 203 of the Limited Liability Company Law of the State of New York (the "LLCL"), certifies that:

**FIRST:** The name of the Company is:

**J & J FARMS CREAMERY COMPANY REAL ESTATE, LLC**

**SECOND:** The county within the State of New York in which the principal office of the Company is to be located is **QUEENS**.

**THIRD:** The Secretary of State is designated as the agent of the Company upon whom process against the Company may be served. The post office address within or without the State of New York to which the Secretary of State shall mail a copy of any process against the Company served upon such Secretary of State is **C/O RONALD J. COHEN, ESQ., 40 MATTHEWS STREET, GOSHEN, NY 10924**.

**FOURTH:** The Company shall be managed by one or more **MEMBERS**.

IN WITNESS WHEREOF, I have subscribed these Articles of Organization and do hereby affirm the foregoing as true under penalties of perjury, this 12/02/05

*Sharon Babala*

Sharon Babala

Sole Organizer

c/o Blumberg Excelsior Corporate Services

52 South Pearl Street, 2<sup>nd</sup> Floor

Albany, NY 12207

F 051202000486

ARTICLES OF ORGANIZATION

OF

& J FARMS CREAMERY COMPANY REAL ESTATE, LLC

Under Section 203 of the Limited Liability Company Law of the State of New York

BLU-39  
DRAWDOWN

STATE OF NEW YORK  
DEPARTMENT OF STATE

DEC 02 2005

LED  
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FILED BY:

BLUMBERG/EXCELSIOR CORPORATE SERVICES INC.  
52 SOUTH PEARL STREET, 2<sup>ND</sup> FLR.  
ALBANY, NY 12207

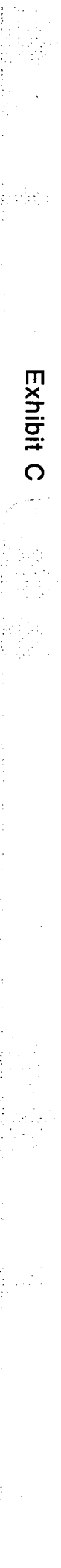
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**J&J FARMS CREAMERY COMPANY REAL ESTATE, LLC**  
**EIN:**

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**OPERATING AGREEMENT**

dated December 1, 2005

between

J & J Farms Creamery, Inc., and

Michael Oberlander,

Simon Friedtman,

Pearl Oberlander,

and

Morris Schlager,

Members

---

**COHEN, ESTIS & ASSOCIATES, LLP**

40 Matthews Street

Suite 203

Goshen, New York 10924

(845) 291-1900

**OPERATING AGREEMENT**

**OF**

**J & J FARMS CREAMERY COMPANY REAL ESTATE, LLC**

Table of Contents

Article 1. Formation  
Article 2. Name  
Article 3. Purposes  
Article 4. Place of Business  
Article 5. Term  
Article 6. Capital Contributions  
Article 7. Loans and Advances by Members  
Article 8. Allocations and Distributions  
Article 9. Books, Records and Tax Returns  
Article 10. Bank Accounts  
Article 11. Management of the Limited Liability Company  
Article 12. Meetings of Members  
Article 13. Assignment of Interests  
Article 14. Admission of New Members  
Article 14. Disability of Members  
Article 15. Dissolution and Liquidation  
Article 16. Representations of Members  
Article 17. Notices  
Article 18. Amendments  
Article 19. Miscellaneous

AGREEMENT, made December 1, 2005, between J & J Farms Creamery, Inc., and Michael Oberlander, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member"), and Simon Friedman, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member") and Pearl Oberlander, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member"), and Morris Schlager, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member").

**WITNESSETH:**

WHEREAS, the J & J Farms Creamery Company Real Estate, LLC has been formed to hold title to a certain parcel of real property in accord with a certain quit claim deed dated, December 15, 2005, by and between J & J Farms Creamery Co., Inc., and Michael Oberlander, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member"), and Simon Friedman, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member") and Pearl Oberlander, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member"), and Morris Schlager, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member"), and it is acknowledged that the J & J Farms Creamery Company Real Estate, LLC membership interest shall be held 100% by J & J Farms Creamery Company, Inc. as an asset on its balance sheet.

WHEREAS, it is understood that title to the subject property is presently held by the IDA as collateral security for a certain IDA loan which shall continue to be paid by J & J Farms Creamery Company, Inc.

WHEREAS, J & J Farms Creamery Company Real Estate, LLC has agreed to form a joint venture partnership for the redevelopment of the premises with J & J Farms Redevelopment Company, LLC (ID # ) and the name of this joint venture is J & J Farms Realty Joint Venture (ID# ).

WHEREAS, the J & J Farms Redevelopment Company, LLC was formed in New York State as a Limited Liability Company on December 1, 2005.

WHEREAS, J & J Farms Creamery Company Real Estate, LLC was formed in New York State as a Limited Liability Company on December 1, 2005.

WHEREAS, J & J Farms Realty Joint Venture was formed by the mutual agreement of J & J Redevelopment Company, LLC and J & J Farms Creamery Company Real Estate, LLC with the approval of J & J Farms Creamery Company, Inc. and all of its shareholders to wit Michael Oberlander, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member"), and Simon Friedman, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member") and Pearl Oberlander, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member"), and Morris Schlager, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member").

WHEREAS, this Limited Liability Company Operating Agreement shall be consistent with the Redevelopment goals and objectives of all of the parties and shall not be inconsistent therewith.

WHEREAS, the parties hereto desire to form a limited liability company pursuant to the laws of the State of New York for the purposes hereinafter set forth, and to establish their respective rights and obligations in connection with the limited liability company;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Managing Member and Members agree as follows:

### 1. Formation

The parties hereby confirm that they have formed a limited liability company (the "Limited Liability Company") pursuant to the provisions of the New York Limited Liability Company Act, for the purposes and the period and upon the terms and conditions hereinafter set forth. The parties have caused to be filed the Articles of Organization of the Limited Liability Company, and shall execute, acknowledge, swear to and file any other documents required under applicable law.

### 2. Name

The name of the Limited Liability Company shall be J & J Farms Creamery Company Real Estate, LLC, and all business of the Limited Liability Company shall be conducted under said name, or such other name as the Members from time to time may determine.

### 3. Purposes

The purposes of the Limited Liability Company are to conduct real estate investments, to incur indebtedness, secured and unsecured; to enter into and perform contracts and agreements of any kind necessary to, in connection with or incidental to the business of the Limited Liability Company; and to carry on any other activities necessary to, in connection with or incidental to the foregoing, as the Managing Member in its discretion may deem desirable.

a. J & J Farms Creamery Company Real Estate, LLC has been formed to hold title to a certain parcel of real property in accord with a certain quit claim deed dated, December 15, 2005, by and between J & J Farms Creamery Co., Inc., and Michael Oberlander, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member"), and Simon Friedman, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738

("Member") and Pearl Oberlander, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member"), and Morris Schlager, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member"), and it is acknowledged that the J & J Farms Creamery Company Real Estate, LLC membership interest shall be held 100% by J & J Farms Creamery Company, Inc. as an asset on its balance sheet.

b. it is understood that title to the subject property is presently held by the IDA as collateral security for a certain IDA loan which shall continue to be paid by J & J Farms Creamery Company, Inc.

c. J & J Farms Creamery Company Real Estate, LLC has agreed to form a joint venture partnership for the redevelopment of the premises with J & J Farms Redevelopment Company, LLC (ID # ) and the name of this joint venture is J & J Farms Realty Joint Venture (ID# ).

d. J & J Farms Redevelopment Company, LLC was formed in New York State as a Limited Liability Company on December 1, 2005.

e. J & J Farms Creamery Company Real Estate, LLC was formed in New York State as a Limited Liability Company on December 1, 2005.

f. J & J Farms Realty Joint Venture was formed by the mutual agreement of J & J Redevelopment Company, LLC and J & J Farms Creamery Company Real Estate, LLC with the approval of J & J Farms Creamery Company, Inc. and all of its shareholders to wit Michael Oberlander, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member"), and Simon Friedman, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member") and Pearl Oberlander, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member"), and Morris Schlager, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 ("Member").

j. this Limited Liability Company Operating Agreement shall be consistent with the Redevelopment goals and objectives of all of the parties and shall not be inconsistent therewith.

#### 4. Place of Business

The principal place of business of the Limited Liability Company shall be at 57-48 49th Street, Maspeth, New York 11738, in the County of Queens, or at such other or additional places of business within or outside of the State of New York as the Managing Member from time to time may designate. The Managing Member shall notify the other Members of any change of the principal place of business.

The Limited Liability Company hereby designates the Secretary of State of New York as agent of the Limited Liability Company for the service of process.

#### 5. Term

The term of the Limited Liability Company shall commence on the filing of the Articles of Organization of the Limited Liability Company, and shall continue until the occurrence of an event hereinafter set forth which causes the termination of the Limited Liability Company.

#### 6. Capital Contributions

The Managing Member shall not be required to contribute to the capital of the Limited Liability Company either on formation of the Limited Liability Company or at any time thereafter.

Each of the Members shall contribute to the capital of the Limited Liability Company the amount set forth opposite his name below:

J & J Farms Creamery Company, Inc. - transfer of real estate located at 57-48 49<sup>th</sup> Street, Maspeth, New York, as per Quit Claim Deed dated, December 15, 2005.

The Members shall not be required to make any additional capital contributions.

Except as specifically provided in this Agreement or required by law, no Member shall have the right to withdraw or reduce his contributions to the capital of the Limited Liability Company until the termination of the Limited Liability Company. No Member shall have the right to demand and receive any distribution from the Limited Liability Company in any form other than cash, regardless of the nature of such Member's capital contribution. No Member shall be paid interest on capital contributions to the Limited Liability Company.

The liability of any Member(s) for the losses, debts, liabilities and obligations of the Limited Liability Company shall be limited to paying: the capital contribution of such Member(s) when due under this Agreement; such Member's share of any undistributed assets of the Limited Liability Company; and (only if and to the extent at any time required by applicable law) any amounts previously distributed to such Member by the Limited Liability Company.

## 7. Loans and Advances by Members

If any Member shall loan or advance any funds to the Limited Liability Company in excess of the capital contribution of such Member prescribed herein, such loan or advance shall not be deemed a capital contribution to the Limited Liability Company and shall not in any respect increase such Member's interest in the Limited Liability Company.

## 8. Allocations and Distributions

As used in this Agreement, the terms "net profits" and "net losses" shall mean the profits or losses of the Limited Liability Company from the conduct of the Limited Liability Company's business, after all expenses incurred in connection therewith have been paid or provided for. The net profits or net losses of the Limited Liability Company shall be determined by the Limited Liability Company's accountants in accordance with generally accepted accounting principles applied in determining the income, gains, expenses, deductions or losses, as the case may be, reported by the Limited Liability Company for federal income tax purposes.

The term "cash receipts" shall mean all cash receipts of the Limited Liability Company from whatever source derived, including without limitation capital contributions made by the Members; the proceeds of any sale, exchange, or other disposition of all or any part of the assets of the Limited Liability Company; the proceeds of any loan to the Limited Liability Company; the proceeds of any insurance policy payable to the Limited Liability Company; and the proceeds from the liquidation of the assets of the Limited Liability Company following a termination of the Limited Liability Company.

The "capital account" for each Member shall mean the account established, determined and maintained for such Member in accordance with Section 704(b) of the Internal Revenue Code and Treasury Regulation Section 1.704-1(b)(2)(iv). The capital account for each Member shall be increased by (1) the amount of money contributed by such Member to the Limited Liability Company, (2) the fair market value of property contributed by such Member to the Limited Liability Company (net of liabilities secured by such contributed property that the Limited Liability Company is considered to assume or take subject to under Section 752 of the Internal Revenue Code), and (3) allocations to such Member of Limited Liability Company income and gain (or items thereof), including income and gain exempt from tax and income and gain described in Trea. Reg. Section 1.704-1(b)(2)(iv)(g), but excluding income and gain described in subsection (b)(4)(i) of said Regulation, and shall be decreased by (4) the amount of money distributed to such Member by the Limited Liability Company, (5) the fair market value of property distributed to such Member by the Limited Liability Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Section 752 of the Code), (6) allocations to such Member of expenditures of the Limited Liability Company described in Section 705(a)(2)(B) of the Code, and (7) allocations of Limited Liability Company loss and deduction (or items thereof) including loss and deduction described in Trea. Reg. Section 1.704-1(b)(2)(iv)(g), but excluding

items described in (6) above and loss or deduction described in subsections (b)(4)(i) or (b)(4)(iii) of said Regulation. Net profits and net losses of the Limited Liability Company from other than capital transactions, as of the end of any fiscal year or other period, shall be credited or charged to the capital accounts of the Members prior to any charge or credit to said capital accounts for net profits and net losses of the Limited Liability Company from capital transactions as of the end of such fiscal year or other period. The capital account for each Member shall be otherwise adjusted in accordance with the additional rules of Treas. Reg. Section 1.704-1(b)(2)(iv).

The term "Members' Percentage Interests" shall mean the percentages set forth opposite the name of each Member below:

Member      Percentage Interest

J & J Farms Creamery Company, Inc. - 100%

*During each fiscal year, the net profits and net losses of the Limited Liability Company (other than from capital transactions), and each item of income, gain, loss, deduction or credit entering into the computation thereof, shall be credited or charged, as the case may be, to the capital accounts of each Member in proportion to the Members' Percentage Interests. The net profits of the Limited Liability Company from capital transactions shall be allocated in the following order of priority: (a) to offset any negative balance in the capital accounts of the Members in proportion to the amounts of the negative balance in their respective capital accounts, until all negative balances in the capital accounts have been eliminated; then (b) to the Members in proportion to the Members' Percentage Interests. The net losses of the Limited Liability Company from capital transactions shall be allocated in the following order of priority: (a) to the extent that the balances in the capital accounts of any Members are in excess of their original contributions, to such Members in proportion to such excess balances in the capital accounts until all such excess balances have been reduced to zero; then (b) to the Members in proportion to the Members' Percentage Interests.*

The cash receipts of the Limited Liability Company shall be applied in the following order of priority: (a) to the payment by the Limited Liability Company of amounts due on debts and liabilities of the Limited Liability Company other than to any Member, and operating expenses of the Limited Liability Company; (b) to the payment of interest and amortization due on any loan made to the Limited Liability Company by any Member; (c) to the establishment of cash reserves determined by the Managing Member to be necessary or appropriate, including without limitation reserves for the operation of the Limited Liability Company's business, taxes and contingencies; and (d) to the repayment of any loans made to the Limited Liability Company by any Member. Thereafter, the cash receipts of the Limited Liability Company shall be distributed among the Members as hereafter provided.

*The cash receipts of the Limited Liability Company shall be distributed to the Members from time to time at such times as the Managing Member shall determine. It is*



contemplated that distributions will be made if the Managing Member deems such distributions to be prudent and feasible.

Except as otherwise provided in this Agreement or required by law, distributions of cash receipts of the Limited Liability Company, other than from capital transactions, shall be allocated among the Members in proportion to the Members' Percentage Interests.

Except as otherwise provided in this Agreement or required by law, distributions of cash receipts from capital transactions shall be allocated in the following order of priority: (a) to the Members in proportion to their respective capital accounts until each Member has received cash distributions equal to any positive balance in his capital account; then (b) to the Members in proportion to the Members' Percentage Interests.

**Special Allocations** -- Notwithstanding the preceding provisions of this Article 8, the following special allocations shall be made in the following order:

(1) **Minimum Gain Chargeback** -- Except as otherwise provided in Treas. Reg. Section 1.704-2(f), if there is a net decrease in partnership minimum gain (within the meaning of Treas. Reg. Sections 1.704-2(b)(2) and 1.704-2(d)) during any fiscal year, each Member shall be allocated items of the Limited Liability Company's income and gain for such fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to such Member's share of the net decrease in partnership minimum gain, determined in accordance with Treas. Reg. Section 1.704-2(g). Allocations made pursuant to the preceding sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treas. Reg. Sections 1.704-2(f)(6) and 1.704-2(j)(2). This provision is intended to comply with the minimum gain chargeback requirement in Treas. Reg. Section 1.704-2(f) and shall be interpreted consistently therewith.

(2) **Partner Minimum Gain Chargeback** -- Except as otherwise provided in Treas. Reg. Section 1.704-2(i)(4), if there is a net decrease in partner nonrecourse debt minimum gain attributable to a partner nonrecourse debt during any fiscal year, each Member who has a share of the partner nonrecourse debt minimum gain attributable to such partner nonrecourse debt, determined in accordance with Treas. Reg. Section 1.704-2(i)(5), shall be allocated items of the Limited Liability Company's income and gain for such fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to such Member's share of the net decrease in partner nonrecourse debt minimum gain attributable to such partner nonrecourse debt, determined in accordance with Treas. Reg. Section 1.704-2(i)(4). Allocations made pursuant to the preceding sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treas. Reg. Sections 1.704-2(i)(4) and 1.704-

2(j)(2). As used herein, "partner nonrecourse debt" has the meaning set forth in Trea. Reg. Section 1.704-2(b)(4). As used herein, "partner nonrecourse debt minimum gain" shall mean an amount, with respect to each partner nonrecourse debt, equal to the partnership minimum gain (within the meaning of Trea. Reg. Sections 1.704-2(b)(2) and 1.704-2(d)) that would result if such partner nonrecourse debt were treated as a nonrecourse liability (within the meaning of Trea. Reg. Section 1.704-2(b)(3)) determined in accordance with Trea. Reg. Section 1.704-2(i)(3). This provision is intended to comply with the *minimum gain chargeback requirement* in Trea. Reg. Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(3) Qualified Income Offset -- In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Trea. Reg. Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of the Limited Liability Company's income and gain shall be allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, any adjusted capital account deficit in such Member's capital account, as quickly as possible, provided that an allocation pursuant to this provision shall be made only if and to the extent that such Member would have an adjusted capital account deficit in such Member's capital account after all other allocations provided for in this Article 8 have been tentatively made as if this provision were not in this Agreement. As used herein, "adjusted capital account deficit" shall mean the deficit balance, if any, in a Member's capital account at the end of the relevant fiscal year after the following adjustments: (i) credit to such capital account the minimum gain chargeback which the Member is obligated to restore pursuant to the penultimate sentences of Trea. Reg. Sections 1.704-2(g)(1) and 1.704-2(i)(5); and (ii) debit to such capital account the items described in Trea. Reg. Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6). This provision is intended to constitute a qualified income offset within the meaning of Trea. Reg. Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(4) Gross Income Allocation -- In the event any Member has a deficit capital account at the end of any fiscal year which is in excess of the sum of the amounts such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Trea. Reg. Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be allocated items of the Limited Liability Company's income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this provision shall be made only if and to the extent that such Member would have a deficit in such Member's capital account in excess of such sum after all other allocations provided for in this Article 8 have been tentatively made as if this provision and the provisions of clause (3) above were not in this Agreement.

(5) Nonrecourse Deductions -- Nonrecourse deductions (within the meaning of Trea. Reg. Section 1.704-2(b)(1)) for any fiscal year shall be allocated among the Members in proportion to the Members' Percentage Interests.

(6) Partner Nonrecourse Deductions -- Any partner nonrecourse deductions (within the meaning of Treas. Reg. Sections 1.704-2(b)(1) and 1.704-2(b)(2)) for any fiscal year shall be allocated to the Member who bears the economic risk of loss with respect to the partner nonrecourse debt (within the meaning of Treas. Reg. Section 1.704-2(b)(4)) to which such partner nonrecourse deductions are attributable in accordance with Treas. Reg. Section 1.704-2(i)(1).

(7) Other Mandatory Allocations -- In the event Section 704(c) of the Internal Revenue Code or the Regulations thereunder require allocations in a manner different than that set forth above in this Article 8, the provisions of Section 704(c) and the Regulations thereunder shall control such allocations among the Members.

It is the intention of the Members that the allocations hereunder shall be deemed to have "substantial economic effect" within the meaning of Section 704 of the Internal Revenue Code and Treas. Reg. Section 1.704-1. Should the provisions of this Agreement be inconsistent with or in conflict with Section 704 of the Code or the Regulations thereunder, then Section 704 of the Code and the Regulations shall be deemed to override the contrary provisions hereof. If Section 704 or the Regulations at any time require that *limited liability company operating agreements contain* provisions which are not expressly set forth herein, such provisions shall be incorporated into this Agreement by reference and shall be deemed a part of this Agreement to the same extent as though they had been expressly set forth herein, and the Managing Member shall be authorized by an instrument in writing to amend the terms of this Agreement to add such provisions, and any such amendment shall be retroactive to whatever extent required to create allocations with a substantial economic effect.

## 9. Books, Records and Tax Returns

At all times during the continuance of the Limited Liability Company, the Managing Member shall keep or cause to be kept complete and accurate records and books of account in which shall be entered each transaction of the Limited Liability Company in accordance with generally accepted accounting principles.

The fiscal year of the Limited Liability Company for both accounting and income tax purposes shall be the calendar year. The Limited Liability Company shall report its operations, net income and net losses in accordance with the methods of accounting selected by the Managing Member.

The Managing Member may employ on behalf of the Limited Liability Company and at the expense of the Limited Liability Company such firm of certified public accountants as the Managing Member in its sole discretion deems appropriate to serve as the Limited Liability Company's accountants.

The Managing Member shall furnish to each Member, within sixty days after the end of each calendar quarter, an unaudited balance sheet as of the end of each quarter and a profit and loss statement of the Limited Liability Company for such quarter and such other information as may be necessary for the Members to prepare their income tax returns.

The Managing Member shall furnish to each Member, within seventy-five days after the end of each fiscal year, an annual report of the Limited Liability Company which shall include a balance sheet as of the end of such fiscal year; a profit and loss statement of the Limited Liability Company for such fiscal year; a statement of the balance in the capital account of such Member; and the amount of such Member's share of the Limited Liability Company's income, gain, losses, deductions and other relevant items for federal income tax purposes.

The Managing Member shall prepare or cause to be prepared all federal, state and local income tax and information returns for the Limited Liability Company, and shall cause such tax and information returns to be filed timely with the appropriate governmental authorities. Within seventy-five days after the end of each fiscal year, the Managing Member shall forward to each person who was a Member during the preceding fiscal year a true copy of the Limited Liability Company's information return filed with the Internal Revenue Service for the preceding fiscal year. The Managing Member shall not be liable to any Member if any taxing authority disallows or adjusts any deductions or credits in the Limited Liability Company's income tax or information returns.

All elections required or permitted to be made by the Limited Liability Company under the Internal Revenue Code, and the designation of a tax matters partner pursuant to Section 6231(a)(7) of the Internal Revenue Code for all purposes permitted or required by the Code, shall be made by the Managing Member. The tax matters partner shall take such action as may be necessary to cause each other Member to become a notice member within the meaning of Section 6223 of the Code. The tax matters partner may not take any action contemplated by Sections 6222 through 6232 of the Code without the consent of the Managing Member.

All such records, books of account, tax and information returns, and reports and statements, together with executed copies of this Agreement, shall at all times be maintained at the principal place of business of the Limited Liability Company, and shall be open to the inspection and examination of the Members or their duly authorized representatives during regular business hours. Each Member, or a duly authorized representative of such Member, may make copies of the Limited Liability Company's books of account and records at the expense of such Member. Any Member, at the expense of such Member, may conduct an audit of the Limited Liability Company's books of account and records.

The Managing Member shall furnish to each Member, promptly upon request, a current list of the names and addresses of all of the Managing Member and other Members of the Limited Liability Company, and any other persons or entities having any financial interest in the Limited Liability Company.

The cost of preparing all of the aforesaid records, books, returns and other items shall be borne by the Limited Liability Company. Upon request of the Managing Member, the Members shall pay to the Limited Liability Company, in proportion to the Members' Percentage Interests, the cost of preparing same, not to exceed in the aggregate \$2,000 for each fiscal year.

#### 10. Bank Accounts

All funds of the Limited Liability Company shall be deposited in the Limited Liability Company's name in such bank account or accounts as shall be designated by the Managing Member. Withdrawals from any such bank accounts shall be made only in the regular course of business of the Limited Liability Company and shall be made upon such signature or signatures as the Managing Member from time to time may designate.

#### 11. Management of the Limited Liability Company

The Members hereby designate Michael Oberlander, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738, and Simon Friedman, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 and Pearl Oberlander, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738, and Morris Schlager, an individual, having an address at 57-48 49th Street, Maspeth, New York 11738 to serve as Members for the Limited Liability Company.

The business and affairs of the Limited Liability Company shall be conducted and managed by the Managing Member of the Limited Liability Company in accordance with this Agreement and the laws of New York.

At any time there is more than one Managing Member, any difference arising as to any matter within the authority of Managing Members shall be decided by a majority in number of the Managing Members.

If at any time the Managing Members do not own, in the aggregate, at least 20 percent of the Members' Percentage Interests, all of the Members shall be Managing Members until such time as the Members duly elect Managing Members who do own at least 20 percent of the Members' Percentage Interests.

The Managing Member shall have responsibility for the day-to-day management of the business and affairs of the Limited Liability Company and shall devote such time and attention as the Managing Member deems necessary to the conduct and management of the business and affairs of the Limited Liability Company.

The Managing Member hereby is given sole power and authority to execute instruments on behalf of the Limited Liability Company and to otherwise bind the Limited Liability Company. Unless authorized by the Managing Member, no other person shall have the power or authority to execute instruments on behalf of the Limited Liability Company and to otherwise bind the Limited Liability Company. No person, firm or corporation dealing with the Limited Liability Company shall be required to investigate the authority of the Managing Member or to secure the approval of or confirmation by the Members of any act of the Managing Member in connection with the business or affairs of the Limited Liability Company.

No Member, other than the Managing Member or its designees, shall have the authority, or shall take any action as a Member, to bind the Limited Liability Company.

The Managing Member shall be reimbursed by the Limited Liability Company for all direct out-of-pocket expenses incurred by the Managing Member on behalf of the Limited Liability Company in connection with the performance of its duties hereunder, including without limitation amounts payable by the Managing Member for office, accounting, bookkeeping and other services, materials, facilities and professional and legal services rendered or furnished to the Limited Liability Company.

The Managing Member shall receive, as compensation for the services of the Managing Member to the Limited Liability Company, such sums as may be determined from time to time by the affirmative vote or consent of Members holding a majority of the Members' Percentage Interests.

A Managing Member's duty of care in the discharge of the Managing Member's duties to the Limited Liability Company and the Members is limited to refraining from engaging in grossly negligent conduct, intentional misconduct, or a knowing violation of law. In discharging the duties of a Managing Member, the Managing Member shall be fully protected in relying in good faith upon the records of the Limited Liability Company and upon such information, opinions, reports or statements by other Managing Members, Members, agents or other persons as to matters the Managing Member reasonably believes are within such person's professional or expert competence, including without limitation information, opinions, reports or statements as to the value or amount of the assets, liabilities, profits or losses of the Limited Liability Company or any other facts pertinent to the existence and amount of assets from which distributions to Members might properly be paid.

To the extent of the Limited Liability Company's assets, and to the extent permitted by law, the Limited Liability Company shall indemnify and hold each Managing Member harmless from and against all liability, claim, loss, damage or expense, including reasonable attorneys' fees, incurred by the Managing Member by reason of any act or omission of the Managing Member made in good faith on behalf of the Limited Liability Company.

Except as expressly provided elsewhere in this Agreement, any decisions which are to be made by the Members, rather than the Managing Member, shall be made by the affirmative vote or consent of Members holding a majority of the Members' Percentage Interests.

## 12. Meetings of Members

The annual meeting of the Members shall be held on the first Tuesday in the month of January, at 10:00 A.M., at the principal office of the Limited Liability Company, for the purpose of transacting such business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day.

The Members may by resolution prescribe the time and place for the holding of regular meetings and may provide that the adoption of such resolution shall constitute notice of such regular meetings.

Special meetings of the Members, for any purpose or purposes, may be called by the *Managing Member or by any two Members (or such other number of Members as the Members from time to time may specify)*.

Written or telephonic notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose for which the meeting is called, shall be delivered not less than three days before the date of the meeting, either personally or by mail, by or at the direction of the Managing Member, to each Member of record entitled to vote at such meeting. When all the Members of the Limited Liability Company are present at any meeting, or if those not present sign a written waiver of notice of such meeting, or subsequently ratify all the proceedings thereof, the transactions of such meeting shall be valid as if a meeting had been formally called and notice had been given.

At any meeting of the Members, the presence of Members holding a majority of the *Members' Percentage Interests*, as determined from the books of the *Limited Liability Company*, represented in person or by proxy, shall constitute a quorum for the conduct of the general business of the Limited Liability Company. However, if any particular action by the Limited Liability Company shall require the vote or consent of some other number or percentage of Members pursuant to this Agreement, a quorum for the purpose of taking such action shall require such other number or percentage of Members. If a quorum is not present, the meeting may be adjourned from time to time without further notice, and if a quorum is present at the adjourned meeting any business may be transacted which might have been transacted at the meeting as originally notified. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

At all meetings of the Members, a Member may vote by proxy executed in writing by the Member or by a duly authorized attorney-in-fact of the Member. Such proxy shall be filed

with the Managing Member of the Limited Liability Company before or at the time of the meeting. No proxy shall be valid after three months from the date of execution, unless otherwise provided in the proxy.

If at any time a Member is a corporation, partnership or limited liability company, the interest of such Member may be voted by such officer, partner, agent or proxy of such Member as the bylaws, board directors, or other organization documents of such entity may duly authorize.

The Managing Member or its designee shall preside at meetings of the Members. A record of the meetings shall be maintained by a secretary of the meetings designated by the Managing Member. The Members may adopt their own rules of procedure, which shall not be inconsistent with this Operating Agreement.

A Member of the Limited Liability Company who is present at a meeting of the Members at which action on any matter is taken shall be presumed to have assented to the action taken, unless the dissent of such Member shall be entered in the minutes of the meeting or unless such Member shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by certified mail to the Limited Liability Company within fifteen days after the adjournment of meeting. Such right to dissent shall not apply to a Member who voted in favor of such action.

Unless otherwise provided by law, any action required to be taken at a meeting of the Members, or any other action which may be taken at a meeting of the Members, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject thereof.

Members of the Limited Liability Company may participate in any meeting of the Members by means of conference telephone or similar communication if all persons participating in such meeting can hear one another for the entire discussion of the matters to be voted upon. Participation in a meeting pursuant to this paragraph shall constitute presence in person at such meeting.

### 13. Assignment of Interests

Except as otherwise provided in this Agreement, no Member or other person holding any interest in the Limited Liability Company may assign, pledge, hypothecate, transfer or otherwise dispose of all or any part of his interest in the Limited Liability Company, including without limitation the capital, profits or distributions of the Limited Liability Company without the prior written consent of the other Members in each instance.

A Member may assign all or any part of such Member's interest in the allocations and distributions of the Limited Liability Company to any of the following (collectively the "permitted



assignees"): any person, corporation, partnership or other entity as to which the Limited Liability Company has given consent to the assignment of such interest in the allocations and distributions of the Limited Liability Company by the affirmative vote or consent of Members holding a majority of the Members' Percentage Interests. An assignment to a permitted assignee shall only entitle the permitted assignee to the allocations and distributions to which the assigned interest is entitled, unless such permitted assignee applies for admission to the Limited Liability Company and is admitted to the Limited Liability Company as a Member in accordance with this Agreement.

An assignment, pledge, hypothecation, transfer or other disposition of all or any part of the interest of a Member in the Limited Liability Company or other person holding any interest in the Limited Liability Company in violation of the provisions hereof shall be null and void for all purposes.

No assignment, transfer or other disposition of all or any part of the interest of any Member permitted under this Agreement shall be binding upon the Limited Liability Company unless and until a duly executed and acknowledged counterpart of such assignment or instrument of transfer, in form and substance satisfactory to the Managing Member, has been delivered to the Limited Liability Company.

No assignment or other disposition of any interest of any Member may be made if such assignment or disposition, alone or when combined with other transactions, would result in the termination of the Limited Liability Company within the meaning of Section 708 of the Internal Revenue Code or under any other relevant section of the Code or any successor statute. No assignment or other disposition of any interest of any Member may be made without an opinion of counsel satisfactory to the Managing Member that such assignment or disposition is subject to an effective registration under, or exempt from the registration requirements of, the applicable federal and state securities laws. No interest in the Limited Liability Company may be assigned or given to any person below the age of 21 years or to a person who has been adjudged to be insane or incompetent.

Anything herein contained to the contrary, the Managing Member and the Limited Liability Company shall be entitled to treat the record holder of the interest of a Member as the absolute owner thereof, and shall incur no liability by reason of distributions made in good faith to such record holder, unless and until there has been delivered to the Managing Member the assignment or other instrument of transfer and such other evidence as may be reasonably required by the Managing Member to establish to the satisfaction of the Managing Member that an interest has been assigned or transferred in accordance with this Agreement.

#### 14. Admission of New Members

The Members may admit new Members (or transferees of any interests of existing Members) into the Limited Liability Company by the unanimous vote or consent of the Members.

As a condition to the admission of a new Member, such Member shall execute and acknowledge such instruments, in form and substance satisfactory to the Managing Member, as the Managing Member may deem necessary or desirable to effectuate such admission and to confirm the agreement of such Member to be bound by all of the terms, covenants and conditions of this Agreement, as the same may have been amended. Such new Member shall pay all reasonable expenses in connection with such admission, including without limitation reasonable attorneys' fees and the cost of the preparation, filing or publication of any amendment to this Agreement or the Articles of Organization, which the Managing Member may deem necessary or desirable in connection with such admission.

No new Member shall be entitled to any retroactive allocation of income, losses, or expense deductions of the Limited Liability Company. The Managing Member may make pro rata allocations of income, losses or expense deductions to a new Member for that portion of the tax year in which the Member was admitted in accordance with Section 706(d) or the Internal Revenue Code and regulations thereunder.

In no event shall a new Member be admitted to the Limited Liability Company if such admission would be in violation of applicable federal or state securities laws or would adversely affect the treatment of the Limited Liability Company as a partnership for income tax purposes.

#### 15. Dissolution and Liquidation

The Limited Liability Company shall terminate upon the occurrence of any of the following: the election by the Members to dissolve the Limited Liability Company made by the unanimous vote or consent of the Members; or any other event which pursuant to this Agreement, as the same may hereafter be amended, shall cause a termination of the Limited Liability Company.

The liquidation of the Limited Liability Company shall be conducted and supervised by the Managing Member or if there be none then by a person designated for such purposes by the affirmative vote or consent of Members holding a majority of the Members' Percentage Interests (the "Liquidating Agent"). The Liquidating Agent hereby is authorized and empowered to execute any and all documents and to take any and all actions necessary or desirable to effectuate the dissolution and liquidation of the Limited Liability Company in accordance with this Agreement.

Promptly after the termination of the Limited Liability Company, the Liquidating Agent shall cause to be prepared and furnished to the Members a statement setting forth the assets and liabilities of the Limited Liability Company as of the date of termination. The Liquidating Agent, to the extent practicable, shall liquidate the assets of the Limited Liability Company as promptly as possible, but in an orderly and businesslike manner so as not to involve undue sacrifice.

The proceeds of sale and all other assets of the Limited Liability Company shall be applied and distributed in the following order of priority: (a) to the payment of the expenses of

liquidation and the debts and liabilities of the Limited Liability Company, other than debts and liabilities to Members; (b) to the payment of debts and liabilities to Members; (c) to the setting up of any reserves which the Liquidating Agent may deem necessary or desirable for any contingent or unforeseen liabilities or obligations of the Limited Liability Company, which reserves shall be paid over to an attorney-at-law admitted to practice in the State of New York as escrowee, to be held for a period of two years for the purpose of payment of the aforesaid liabilities and obligations, at the expiration of which period the balance of such reserves shall be distributed as hereinafter provided; (d) to the Members in proportion to their respective capital accounts until each Member has received cash distributions equal to any positive balance in his capital account, in accordance with the rules and requirements of Treas. Reg. Section 1.704-1(b)(2)(ii)(b); and (e) to the Members in proportion to the Members' Percentage Interests.

The liquidation shall be complete within the period required by Treas. Reg. Section 1.704-1(b)(2)(ii)(b).

If the Liquidating Agent shall determine that it is not practicable to liquidate all of the assets of the Limited Liability Company, the Liquidating Agent may retain assets having a fair market value equal to the amount by which the net proceeds of liquidated assets are insufficient to satisfy the debts and liabilities referred to above. If, in the absolute judgment of the Liquidating Agent, it is not feasible to distribute to each Member his proportionate share of each asset, the Liquidating Agent may allocate and distribute specific assets to one or more Member in such manner as the Liquidating Agent shall determine to be fair and equitable, taking into consideration the basis for tax purposes of each asset.

Upon compliance with the distribution plan, the Members shall cease to be such, and the Managing Member shall execute, acknowledge and cause to be filed such certificates and other instruments as may be necessary or appropriate to evidence the dissolution and termination of the Limited Liability Company.

#### **16. Representations of Members**

Each of the Members represents, warrants and agrees that the Member is acquiring the interest in the Limited Liability Company for the Member's own account for investment purposes only and not with a view to the sale or distribution thereof; the Member, if an individual, is over the age of 21; if the Member is an organization, such organization is duly organized, validly existing and in good standing under the laws of its state of organization and that it has full power and authority to execute this Agreement and perform its obligations hereunder; the execution and performance of this Agreement by the Member does not conflict with, and will not result in any breach of, any law or any order, writ, injunction or decree of any court or governmental authority against or which binds the Member; or of any agreement or instrument to which the Member is a party; and the Member shall not dispose of such interest or any part thereof in any manner which would constitute a violation of the Securities Act of 1933, the Rules and Regulations of the Securities and Exchange

Commission, or any applicable laws, rules or regulations of any state or other governmental authorities, as the same may be amended.

#### 17. Notices

All notices, demands, requests or other communications which any of the parties to this Agreement may desire or be required to give hereunder shall be in writing and shall be deemed to have been properly given if sent by Federal Express courier or by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows: (a) if to the Limited Liability Company, to the Limited Liability Company c/o the Managing Member at its address first above written or to such other address or addresses as may be designated by the Limited Liability Company or the Managing Member by notice to the Members pursuant to this Article 17; (b) if to the Managing Member, to the Managing Member at its address first above written or to such other address or addresses as may be designated by the Managing Member by notice to the Limited Liability Company and the Members pursuant to this Article 17; and (c) if to any Member, to the address of said Member first above written, or to such other address as may be designated by said Member by notice to the Limited Liability Company and the other Members pursuant to this Article 17. Each Member shall keep the Limited Liability Company and the other Members informed of such Member's current address.

#### 18. Amendments

This Agreement may not be altered, amended, changed, supplemented, waived or modified in any respect or particular unless the same shall be in writing and agreed to by the affirmative vote or consent of Members holding two-thirds of the Members' Percentage Interests. No amendment may be made to Articles 6, 8, 13 and 15 hereof, insofar as said Articles apply to the financial interests of the Members, except by the vote or consent of all of the Members. No amendment of any provision of this Agreement relating to the voting requirements of the Members on any specific subject shall be made without the affirmative vote or consent of at least the number or percentage of Members required to vote on such subject.

#### 19. Miscellaneous

This Agreement and the rights and liabilities of the parties hereunder shall be governed by and determined in accordance with the laws of the State of New York. Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement, which shall remain in full force and effect.

The captions in this Agreement are for convenience only and are not to be considered in construing this Agreement. All pronouns shall be deemed to be the masculine, feminine, neuter,

singular or plural as the identity of the person or persons may require. References to a person or persons shall include partnerships, corporations, limited liability companies, unincorporated associations, trusts, estates and other types of entities. The Managing Member and the Members collectively are referred to herein as the Members. Any one of the Members is referred to herein as a Member. References to the Internal Revenue Code shall mean the Internal Revenue Code of 1986, as amended, and any successor or superseding federal revenue statute.

This Agreement, and any amendments hereto may be executed in counterparts all of which taken together shall constitute one agreement.

This Agreement sets forth the entire agreement of the parties hereto with respect to the subject matter hereof. It is the intention of the Members that this Agreement shall be the sole source of agreement of the parties, and, except to the extent a provision of this Agreement provides for the incorporation of federal income tax rules or is expressly prohibited or ineffective under the New York Limited Liability Company Act, this Agreement shall govern even when inconsistent with, or different from, the provisions of any applicable law or rule. To the extent any provision of this Agreement is prohibited or otherwise ineffective under the New York Limited Liability Company Act, such provision shall be considered to be ineffective to the smallest degree possible in order to make this Agreement effective under the New York Limited Liability Company Act. If the New York Limited Liability Company Act is subsequently amended or interpreted in such a way to make any provision of this Agreement that was formerly invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment.

Subject to the limitations on transferability contained herein, this Agreement shall be binding upon and inure to the benefit of the parties hereto and to their respective heirs, executors, administrators, successors and assigns.

No provision of this Agreement is intended to be for the benefit of or enforceable by any third party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

J & J Farms Creamery Company, Inc.

  
By: Michael Oberlander

J & J Farms Creamery Company, Inc.

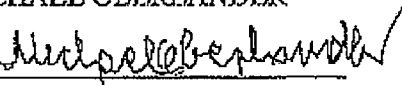


By: Secretary

The foregoing is approved by all shareholders of J & J Farms Creamery Company, Inc.

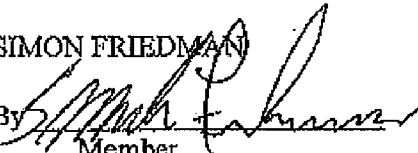
In the presence of:

MICHAEL OBERLANDER

By   
Member

In the presence of:

SIMON FRIEDMAN

By   
Member

In the presence of:

PEARL OBERLANDER

By Pearl Oberlander  
Member

\_\_\_\_\_

\_\_\_\_\_

**In the presence of:**

MORRIS SCHLAGER

By Morris Schlager  
Member


\_\_\_\_\_

\_\_\_\_\_

Acknowledgment for J&J Farms Creamery Company, Inc.:

STATE OF NEW YORK, COUNTY OF Kings, ss.


On the 15<sup>th</sup> day of December, 2005, before me, the undersigned notary public, personally appeared Michael Oberlander, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
JUDY GOTTESMAN  
Notary Public, State of New York  
No. 24-4754174  
Qualified in Kings County  
Commission Expires March 30, 06  
Notary Public  
My commission expires on

Acknowledgment for J&J Farms Creamery Company, Inc.:

STATE OF NEW YORK, COUNTY OF Kings, ss.

On the 15<sup>th</sup> day of December, 2005, before me, the undersigned notary public, personally appeared Simon Friedman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
JUDY GOTTESMAN  
Notary Public, State of New York  
No. 24-4754174  
Qualified in Kings County  
Commission Expires March 30, 06  
Notary Public  
My commission expires on




Acknowledgment for Michael Oberlander:

STATE OF NEW YORK, COUNTY OF Kings, ss.

On the 15<sup>th</sup> day of December, 2005, before me, the undersigned notary public, personally appeared

, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
JUDY GOTTESMAN  
Notary Public, State of New York  
No. 24-4754174  
Qualified in Kings County  
Commission Expires March 30, 06

Notary Public


My commission expires on

Acknowledgment for Simon Friedman:

STATE OF NEW YORK, COUNTY OF Kings, ss.

On the 15<sup>th</sup> day of December, 2005, before me, the undersigned notary public, personally appeared

, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
JUDY GOTTESMAN  
Notary Public, State of New York  
No. 24-4754174  
Qualified in Kings County  
Commission Expires March 30, 06

Notary Public

My commission expires on

Acknowledgment for Pearl Oberlander:

STATE OF NEW YORK, COUNTY OF *Kings* , ss.

On the *15<sup>th</sup>* day of December, 2005, before me, the undersigned notary public, personally appeared

, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

*Judy Gottesman*  
JUDY GOTTESMAN  
Notary Public, State of New York  
No. 24-4754174  
Qualified in Kings County  
Commission Expires March 30, *06*

Notary Public

My commission expires on

Acknowledgment for Morris Schlagor:

STATE OF NEW YORK, COUNTY OF *Kings* , ss.

On the *15<sup>th</sup>* day of December, 2005, before me, the undersigned notary public; personally appeared

, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

*Judy Gottesman*  
JUDY GOTTESMAN  
Notary Public, State of New York  
No. 24-4754174  
Qualified in Kings County  
Commission Expires March 30, *06*

Notary Public

My commission expires on

AMENDMENT #1 TO OPERATING AGREEMENT  
Of  
J & J FARMS CREAMERY COMPANY REAL ESTATE, LLC

Date of this Amendment: November 20, 2006

Date of Operating Agreement: December 1, 2005

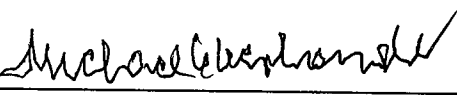
The Operating Agreement is amended as follows:

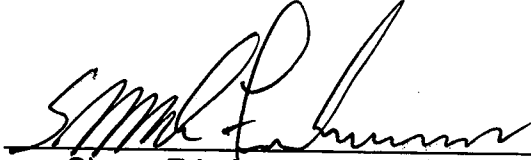
1. Any reference in the Operating Agreement to "J & J Farms Creamery Company, Inc." shall mean the New York corporation "J & J Farms Creamery, Inc." The former name utilized in the Operating Agreement is acknowledged to be a scrivener's error.

IN WITNESS WHEREOF, the Parties to the Operating Agreement have duly executed this Amendment #1 as of the date first above written.

**J & J FARMS CREAMERY, INC.,**

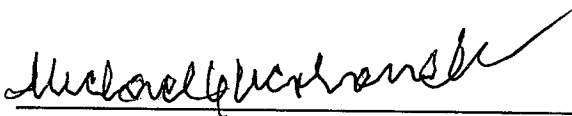
Attest:

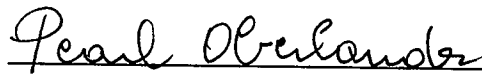
By:   
\_\_\_\_\_  
Michael Oberlander  
President

  
\_\_\_\_\_  
Simon Friedman, Secretary

**MICHAEL OBERLANDER**

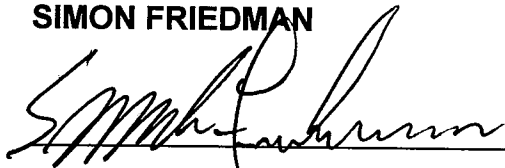
**PEARL OBERLANDER**

  
\_\_\_\_\_

  
\_\_\_\_\_

**SIMON FRIEDMAN**

**MORRIS SCHLAGER**

  
\_\_\_\_\_

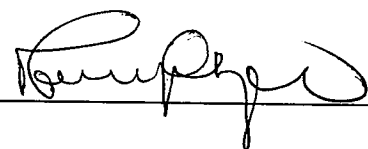
  
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Exhibit D



## EXHIBIT D

### **Resolutions of J & J Farms Creamery Company Real Estate, LLC**

EXTRACT from the minutes of a meeting of the Members of J & J Farms Creamery Company Real Estate, LLC (this "Company") held on November 1, 2006.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

"RESOLVED, that this Company authorizes and approves the straight-lease transaction with the New York City Industrial Development Agency (the "Agency") and J & J Farms Creamery, Inc. and Fisher Foods of Queens Corp. (collectively, the "Sublessees") and J & J Farms Realty Joint Venture (the "Lessee") in connection with the improvement of a commercial facility (the "Facility"), consisting of the renovation of an approximately 77,420 square foot parcel of land and an approximately 57,430 square foot building thereon (including but not limited to the improvement of the staging area, loading dock, new offices, refrigeration and security systems), located at 57-48 49th Street, Maspeth, New York 11378, all for use in the distribution of assorted food products (the "Project"); and further

RESOLVED, that each of the following documents, substantially in the form of the drafts on file with the Members of this Company, is hereby authorized, and any Member of the Company is directed to execute and deliver each such documents in the name and on behalf of this Company and the Lessee with such additions, deletions or modifications in or affecting each such documents thereof, or the effectiveness thereof, as such executing officer may determine, with advice of counsel, as conclusively evidenced by such officer's execution thereof, to be advisable and in the best interests of this Company:

1. Company Lease Agreement between the Lessee and the Agency;
2. Lease Agreement between the Agency and the Lessee;
3. Sublease Agreement between the Lessee and the Sublessees;
4. Guaranty Agreement from the Lessee, the Sublessees, and Michael Oberlander, Pearl Oberlander, Simon Friedman and Morris Schlager, as individual guarantors (collectively, the "Individual Guarantors"), to the Agency;
5. Sales Tax Letter from the Agency to the Lessee;
6. Letter of Representation from the Lessee, the Sublessees and the Individual Guarantors to the Agency; and

RESOLVED, that there is hereby approved the execution and delivery of any and all documents, certificates and agreements to effect the Project and all matters related thereto; and further

RESOLVED, that all action taken and all instruments executed by any Member of this Company prior to the adoption of this resolution with respect to the Project, and all matters related thereto, are hereby ratified, confirmed and approved; and further

RESOLVED, that in addition to and without limiting the generality of the foregoing resolutions with respect to the Project, any Member of this Company be, and each of them hereby is, authorized and directed to take such further action in connection with the Project and to execute and deliver such instruments and documents as such officers with advice of counsel may deem appropriate to carry out the foregoing resolutions; and the taking of such action or execution of such instruments shall be deemed conclusive evidence of the determination of such executing officer that such action or execution was appropriate and in the best interests of this Company.”



**State of New York**  
**Department of State** } **ss:**

I hereby certify, that J & J FARMS CREAMERY COMPANY REAL ESTATE, LLC a NEW YORK Limited Liability Company filed Articles of Organization pursuant to the Limited Liability Company Law on 12/02/2005, and that the Limited Liability Company is existing so far as shown by the records of the Department.

\*\*\*

*WITNESS my hand and the official seal  
of the Department of State at the City of  
Albany, this 08th day of November two  
thousand and six.*

A handwritten signature in black ink, appearing to read "Neil A. ...". The signature is written in a cursive style with a large initial "N".

*Special Deputy Secretary of State*

200611090396 63





**SECRETARY'S CERTIFICATE OF J & J FARMS CREAMERY, INC.**

The undersigned Secretary of J & J Farms Creamery, Inc., a New York corporation ("J & J"), HEREBY CERTIFIES THAT:

1. This certificate is furnished in connection with the straight-lease transaction with the New York City Industrial Development Agency (the "Agency"), J & J Farms Realty Joint Venture (the "Lessee"), Fisher Foods of Queens Corp. and J & J in connection with the financing of the improvement of a commercial facility (the "Facility"), consisting of the renovation of an approximately 77,420 square foot parcel of land and an approximately 57,430 square foot building thereon (including but not limited to the improvement of the staging area, loading dock, new offices, refrigeration and security systems), located at 57-48 49th Street, Maspeth, New York 11378, all for use in the distribution of assorted food products (the "Project").

2. Attached hereto as Exhibit A is a true, correct and complete copy of the certificate of incorporation of J & J, certified by the Secretary of State of the State of New York, together with amendments thereto as in effect on the date hereof.

3. Attached hereto as Exhibit B is a true, correct and complete copy of the bylaws of J & J, together with all amendments thereto as in effect on the date hereof.

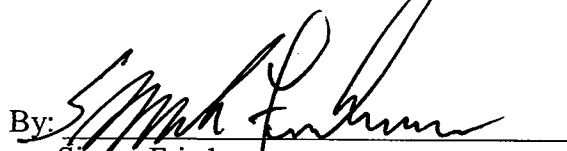
4. Attached hereto as Exhibit C is a true, correct and complete copy of resolutions duly adopted by the Board of Directors of J & J, which resolutions have not been revoked, modified, amended or rescinded and are still in full force and effect, and authorize the obligations of J & J with respect to the Project, and which further authorize the execution and delivery of all necessary documents by the officer of J & J named below.

5. Each document relating to the Project required to be executed by J & J has been executed on behalf of J & J by the person named below, who is duly authorized and empowered to execute such documents. The below-named person is the duly elected and qualified officer of J & J holding the office set forth opposite his name, and the signature below set forth opposite his name is his genuine signature:

<u>Name</u>	<u>Office</u>	<u>Signature</u>
Michael Oberlander	President	

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this November 20, 2006.

J & J FARMS CREAMERY, INC.

By:   
Simon Friedman  
Secretary

2011

State of New York /  
Department of State } ss:

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on

June 20, 2006



A handwritten signature in black ink, appearing to read "R. J. ...", is written over the signature line.

Special Deputy Secretary of State

## Certificate of Incorporation of

**ALISTAR KNITTING MILLS, INC.**

Pursuant to Article Two of the Stock Corporation Law

**Mr. the undersigned**, desiring to form a corporation pursuant to Article Two of the Stock Corporation Law of the State of New York, do hereby make, subscribe and acknowledge this certificate for that purpose, as follows:

FIRST: The name of the proposed corporation is

**ALISTAR KNITTING MILLS, INC.**

SECOND: The purposes for which this corporation is formed, are as follows, to wit:

The manufacture and sale of sweaters, knickerbockers, underwear and other goods for men, boys, women, girls, silk or any other material that can be spun like thread and the manufacture and sale of garments or cloth of any descriptions.

To take, buy, exchange, lease or otherwise acquire real estate and any interest or right therein, and to hold, own, operate, control, maintain, manage and develop the same and to construct, maintain, alter, manage and control directly or through ownership of stock in any other corporation any and all kinds of buildings, stores, offices, warehouses, mills, shops, factories, machinery and plants, and any and all other structures and erections which may at any time be necessary, useful or advantageous for the purposes of this corporation.

To sell, assign and transfer, convey, lease or otherwise dispose or dispose of, and to mortgage or otherwise encumber the lands, buildings, real and personal property of the corporation wherever situated, and any and all legal and equitable interests therein.

To purchase, sell, lease, manufacture, deal in and deal with every kind of goods, wares and merchandise and every kind of personal property, including patents and patent rights, chattels, easements, privileges and franchises which may lawfully be purchased, sold, produced or dealt in by corporations formed under Article 2 of the Stock Corporation Law of the State of New York.

To purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and to issue in exchange therefor its stocks, bonds or other obligations, and to exercise in respect thereof all the rights, powers and privileges of individual owners, including the right to vote thereon, and to aid in any manner permitted by law any corporation of which any bonds or other securities or evidences of indebtedness or stocks are held by this corporation, and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds or other securities or evidence of indebtedness or stock.

The foregoing and following clauses shall be construed as objects and powers in furtherance and not in limitation of the general powers conferred by the laws of the State of New York; and it is hereby expressly provided that the foregoing and following enumeration of specific powers shall not be held to limit or restrict in any manner the powers of this corporation, and that this corporation may do all and everything necessary, suitable or proper for the accomplishment of any of the purposes or objects hereinbefore enumerated, either alone or in association with other corporations, firms or individuals, to the same extent and as fully as individuals might or could do as principals, agents, contractors or otherwise.

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To do any or all of the foregoing in all parts of the world and either as principal or agent; to do every thing necessary, suitable or proper for the accomplishment of any of the purposes or the attainment of any of the objects or the furtherance of any of the powers hereinbefore set forth, either alone or in association with other corporations, firms or individuals, and to do every other act or thing incidental or appurtenant to or growing out of or connected with the aforesaid business or powers or any part thereof.

This corporation shall have the power to conduct its business in all branches in the State of New York or any other State of the United States and in all foreign countries and generally to do all acts and things and to exercise all the powers, now or hereafter authorized by law, necessary to carry on the business of this corporation or to promote any of the objects for which this corporation is formed.

and

Nothing in this certificate contained, however, shall authorize the corporation to carry on any business or exercise any powers in any state or country which a similar corporation organized under the laws of such state or country could not carry on or exercise, or to engage within or without the State of New York in the business of a banking or a transportation corporation, or to issue bills, notes or other evidences of debt for circulation as money.

stock

The total number of shares that may be issued is Two Hundred (200).

PER

All of which are to be without par value.

JOHN

JULI

and a

**THIRD: Capital:** The capital of the corporation shall be at least equal to the sum of the aggregate par value of all issued shares having par value, plus the aggregate amount of consideration received by the corporation for the issuance of shares without par value, plus such amounts as, from time to time, by resolution of the Board of Directors, may be transferred thereto.

PER

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JULI

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FOURTH: The office of the corporation is to be located in the City of New York  
County of Kings State of New York. The address to which the Secretary of State shall  
mail a copy of any process against the corporation which may be served upon here pursuant to Section 11

s/o JULIUS L. SAMUEL, 116 Nassau Street, New York 38, New York

FIFTH: The duration of said corporation shall be perpetual.

SIXTH: The number of directors shall be not less than three nor more than five,  
and it is provided that directors are not required to be stockholders.

SEVENTH: The names and the post office addresses of the directors and the first annual meeting of the  
stockholders, are as follows:

NAMES	POST OFFICE ADDRESSES
PETER DE ROSA	116 Nassau Street, New York 38, New York
JOSEPH J. TRAMUTOLO, Jr.,	116 Nassau Street, New York 38, New York
JULIUS L. SAMUEL	116 Nassau Street, New York 38, New York

EIGHTH: The names and the post office addresses of the subscribers of this certificate of incorporation  
and a statement of the number of shares which each agrees to take in the corporation, are as follows:

NAMES	POST OFFICE ADDRESSES	NUMBER OF SHARES
PETER DE ROSA	116 Nassau Street, New York 38, N.Y.	(1)
JOSEPH J. TRAMUTOLO, Jr.,	116 Nassau Street, New York 38, N.Y.	(1)
JULIUS L. SAMUEL	116 Nassau Street, New York 38, N.Y.	(1)

NINTH: The Secretary of State is designated as the agent of the corporation upon whom process in any  
action or proceeding against it may be served within the State of New York.

TENTH: All of the subscribers of this certificate are of full age, and that at least two-thirds of them are  
citizens of the United States; and that at least one of them is a resident of the State of New York and at least one  
of the persons named as a director is a citizen of the United States and a resident of the State of New York.

IN WITNESS WHEREOF, we have made, subscribed and acknowledged this certificate  
this \_\_\_\_\_ day of August 1961

*Peter De Rosa* (U.S.)  
*Joseph J. Trantolo, Jr.* (U.S.)  
*Julius L. Samuel* (U.S.)

STATE OF NEW YORK  
COUNTY OF NEW YORK

On this 10th day of August 1961 before me personally came

PETER DE ROSA, JOSEPH J. TRANTOLO, JR., and JULIUS L. SAMUEL

to me known to be the persons described in and who executed the foregoing certificate of incorporation and they thereupon severally duly acknowledged to me that they executed the same.

SAUL ROSENSTEIN  
Notary Public, State of New York  
Qualified in Kings County  
No. 24-3356200  
Certificate Issued by State of New York  
Commission Expires March 10, 1963

*Saul Rosenstein*  
SAUL ROSENSTEIN  
Notary Public, State of New York  
Qualified in Kings County



*cl*

*File 9* *2/1/50*

CERTIFICATE OF INCORPORATION

-of-

ALLSTATE KNITTING MILLS, INC.

Pursuant to Article Two of the Stock Corporation Law

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED AUG 14 1951

282629

TAX \$ 10  
FILING FEE \$ 50

*Caroline R. Simon*  
Secretary of State

*Shell*

*Delivered*  
MAILED BY  
INTERNATIONAL ALBANY SERVICE  
277 BROADWAY  
NEW YORK 7, N. Y.

Julius L. Samuel  
116 Nassau Street  
New York City

*59*

State of New York )  
Department of State ) ss:

*I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.*

*Witness my hand and seal of the Department of State on*

**June 20, 2006**



A handwritten signature in black ink, appearing to read "D. J. ...", is written over the seal area.

*Special Deputy Secretary of State*

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF

INFO.

K 1980-72

ALLSTATE KNITTING MILLS, INC.

UNDER SECTION 805 OF THE BUSINESS CORPORATION LAW

4822792

The undersigned, being the president and the secretary of Allstate Knitting Mills, Inc., do hereby certify and set forth:

(1) The name under which the corporation was formed is Allstate Knitting Mills, Inc. ("Corporation").

(2) The certificate of incorporation of the Corporation was filed by the Department of State of the State of New York on the 14 day of August, 1961.

(3) The Corporation's certificate of incorporation is hereby amended to effect a change in the corporate name pursuant to Section 801(6)(1) of the Business Corporation Law.

(4) Paragraph (1) of the certificate of incorporation is hereby amended as follows:

(1) The name of the corporation is

ATLANTIC FARMS CREAMERY, INC.

(5) The manner in which this amendment to the Corporation's certificate of incorporation was authorized was by the affirmative vote of the holders of a majority of all outstanding shares entitled to vote thereon at a meeting of the shareholders of said corporation duly called and held on the 15th day of July, 1981, a quorum being present.

IN WITNESS WHEREOF, the undersigned have signed and affixed their signatures to this Certificate of Amendment this 18th day of August, 1981, and affirm the contents hereof under the penalties of perjury.

  
MICHAEL OBERLANDER, President

  
HERMAN EISENBENDER, Secretary

VERIFICATION

STATE OF NEW YORK

COUNTY OF KINGS

MICHAEL OBERLANDER, being duly sworn, deposes and says:

1. I am the president of All-State Knitting Mills, Inc.

2. I have read the annexed Certificate of Amendment of the Certificate of Incorporation of All-State Knitting Mills, Inc. under Section 405 of the Business Corporation Law and know the contents thereof. The same is true to my own knowledge, except for those matters stated upon information and belief, and as to those I believe them to be true.

*Michael Oberlander*

Michael Oberlander

Sworn to before me this

10<sup>th</sup> day of August, 1981.

*[Signature]*

NOTARY PUBLIC  
STATE OF NEW YORK  
My Commission Expires 12/31/83

VERIFICATION

STATE OF NEW YORK )

COUNTY OF KINGS )

ss.

HERMAN EISENBERGER, being duly sworn, deposes  
and says:

1. I am the secretary of All-State Knitting  
Mills, Inc.

2. I have read the annexed Certificate  
of Amendment of the Certificate of Incorporation of All-  
State Knitting Mills, Inc. under Section 805 of the  
Business Corporation Law and know the contents thereof;  
and to my own knowledge, except for those  
matters stated upon information and belief, and as to  
those matters I believe them to be true.

*Herman Eisenberger*  
Secretary

Sworn to before me this  
10<sup>th</sup> day of August, 1981.

*[Signature]*  
Notary Public

NOTARY PUBLIC  
Herman Eisenberger  
Secretary  
All-State Knitting Mills, Inc.  
1000 Avenue of the Americas  
New York, N.Y. 10018

4827782

4827702

# GILLES

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION

*Article* OF  
KNITTING MILLS, INC.

UNDER SECTION 605 OF THE BUSINESS CORPORATION LAW

*(Handwritten mark)*

*8/14/01  
K...  
48277...*

**INF**

STATE OF NEW YORK  
DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS

*(Handwritten signatures and stamps)*

FRANCIS S. MARTIN  
110 Nassau Street  
NEW YORK, N.Y. 10038

State of New York )  
Department of State ) ss:

*I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.*

*Witness my hand and seal of the Department of State on*

**June 20, 2006**



A handwritten signature in black ink, appearing to read "D. J. ...", is written over the printed title.

*Special Deputy Secretary of State*



INFO.

K 204299

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION

OF  
~~ATLANTIC FARMS CREAMERY, INC.~~

UNDER SECTION 805 OF THE BUSINESS CORPORATION LAW.

1840704

The undersigned, being the president and the  
secretary of Atlantic Farms Creamery, Inc. do hereby  
certify and set forth:

(1) The name under which the corporation was

~~formed in the State of New York as Atlantic Farms Creamery, Inc.~~

1840704

(2) The certificate of incorporation of the  
corporation was filed by the Department of State of the  
State of New York on the 14th day of August, 1961.

(3) The Corporation's certificate of  
incorporation was amended to effect a change in the  
corporate name pursuant to Section 801(b)(1) of the  
Business Corporation Law.

(4) Paragraph (1) of the certificate of  
incorporation was amended as follows on December 29, 1961:

1840704

(1) The name of the corporation is Atlantic Farms Creamery, Inc.

(5) The Corporation's Certificate of Incorporation is hereby amended to effect a change in the corporate name pursuant to section 804(b)(1) of the Business Corporation Law.

(6) Paragraph (1) of the Certificate of Incorporation is hereby amended as follows:

(1) The name of the Corporation is J. G. I. Farms Creamery, Inc.

(7) The manner in which this amendment to the Corporation's certificate of incorporation was authorized was by the affirmative vote of the holders of a majority of all outstanding shares entitled to vote thereon at a meeting of the shareholders of said corporation duly called and held on the 15th day of January, 1982, a quorum being present.

IN WITNESS WHEREOF, the undersigned have executed  
and signed this Certificate of Amendment this 18th day of  
January, 1962 and affirm the contents hereof under the  
penalties of perjury.

*Michael Oberlander*  
MICHAEL OBERLANDER, President

*Herman Eisenberger*  
HERMAN EISENBERGER, Secretary

VERIFICATION

STATE OF NEW YORK )

SS.:

COUNTY OF KINGS )

HERMAN EISENBERGER, being duly sworn, deposes and

1. I am the secretary of All-State Knitting Mills, Inc.

2. I have read the annexed Certificate of Amendment of the Certificate of Incorporation of Atlantic Knitting Mills, Inc. under Section 905 of the Business Corporation Law and know the contents thereof; the same is true to my own knowledge, except for those matters stated upon information and belief, and as to those matters I believe them to be true.

*Herman Eisenberger*  
Herman Eisenberger

Sworn to before me this  
22nd day of January, 1982

*[Signature]*  
Notary Public

VERIFICATION

STATE OF NEW YORK )

COUNTY OF KINGS )

MICHAEL OBERLANDER, being duly sworn, deposes and says:

1. I am the president of Atlantic Farms Creamery, Inc.

I have read the annexed Certificate of Amendment of the Certificate of Incorporation of Atlantic Farms Creamery, Inc. under Section 905 of the Business Corporation Law and know the contents thereof; the same is true to my own knowledge, except for those matters stated upon information and belief, and as to this I believe them

*Michael Oberlander*  
Michael Oberlander

Sworn to before me this  
14 day of January, 1982  
*[Signature]*  
Notary Public

1840704

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION

ATLANTIC FARM CREAMERY, INC.  
UNDER SECTION 835 OF THE  
BUSINESS CORPORATION LAW

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED FEB 11 1962

AMT. OF CHECK \$ 70  
FILING FEE \$ 60  
TAX \$ \_\_\_\_\_  
COUNTY FEE \$ \_\_\_\_\_  
CERT. FEE \$ \_\_\_\_\_  
REC'D \$ \_\_\_\_\_  
SPEC. NUMBER \$ \_\_\_\_\_

*[Signature]*

**BILLED**

24 JAN 1962  
FILED

KENNETH S. MARTIN  
CLERK

**INFO.**

State of New York }  
Department of State } ss:

*I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.*

*Witness my hand and seal of the Department of State on*

**June 20, 2006**



A handwritten signature in black ink, appearing to be "D. J. [unclear]", written over a faint circular stamp.

*Special Deputy Secretary of State*

Certificate of Change of

J & L FARMS CREAMERY, INC.

under Section 805-A of the Business Corporation Law

IT IS HEREBY CERTIFIED THAT:

(a) The name of the corporation is J & L FARMS CREAMERY, INC.

and the corporation was formed under the (old) name

ALLSTATE KNITTING MILLS, INC.

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The certificate of incorporation was filed by the department of state on the 14 day of August 1961.

The certificate of incorporation is changed to specify or change the location of the corporation's office to

Oswego County

to specify or change the post office address to which the secretary of state shall mail a copy of any process against the corporation served upon him to

57-48 19th Street, Massena, N.Y. 11378

to make, revoke or change the designation of the registered agent of the corporation or to specify or change the address of the registered agent of the corporation as follows:

Michael Oberlander  
57-48 19th Street  
Massena, N.Y. 11378

The change of the certificate of incorporation was approved by or pursuant to authorization of the board of directors

IN WITNESS WHEREOF, this certificate has been subscribed this 27 day of November 1969 by the undersigned who affirm(s) that the statements made herein are true under the penalties of perjury.

Executives  
MICHAEL OBERLANDER  
PERRY OBERLANDER

Capacity in which signed  
President  
Secretary

Signature  
*Michael Oberlander*  
*Perry Oberlander*



STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED FEB 10 - 1982

AMT. OF CHECK \$ 28  
FILING FEE \$ 28  
TAX \$ \_\_\_\_\_  
GRUITY FEE \$ \_\_\_\_\_  
COPY \$ \_\_\_\_\_  
CERT \$ \_\_\_\_\_  
REFUND \$ \_\_\_\_\_  
SPEC HANDLE \$ \_\_\_\_\_

*JK*  
*King to Jones*

Certificate of Change

AS TO

J&J FARMS CREAMERY, INC.

under Section 301-A of the Business Corporation Law

6104825

1265

Filed

NEWFIELD & BRESS

*used 3/11/82*  
*1784070*  
*Albion Knitting Mills, Inc.*  
*282629*  
*ms n/a*  
*Julius L. Samuel*  
*116 Madison St.*  
*NY 10038*

Office and Post Office Address  
60 E. 42nd Street  
New York, N.Y. 10165  
(212) 661-1344

State of New York }  
Department of State ) SS:

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on

June 20, 2006



A handwritten signature in black ink, appearing to read "D. J. [unclear]", is written over the seal.

Special Deputy Secretary of State

VANGUARD-52

F-020625008026

CERTIFICATE OF AMENDMENT OF  
THE CERTIFICATE OF INCORPORATION OF  
J & J FARMS CREAMERY, INC.

[Under Section 803 of the Business Corporation Law]

The undersigned, being the president and the secretary of J & J Farms Creamery, Inc. (the "Corporation") do hereby certify and set forth:

1. The name of the Corporation is J & J Farms Creamery, Inc. The name under which the corporation was originally formed is Allstate Knitting Mills, Inc.

2. The certificate of incorporation of the Corporation was filed by the Department of State of the State of New York on August 14, 1961.

3. (A) Section "Second" of the certificate of incorporation of the Corporation, which sets forth, in its last paragraph, the aggregate number of shares of one class only, and without par value, which the Corporation shall have authority to issue, is hereby amended to read as follows:

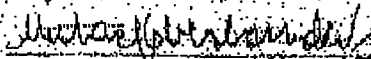
"The aggregate number of shares which this corporation shall have authority to issue is 1,200 shares of one class only, which shares are without par value"

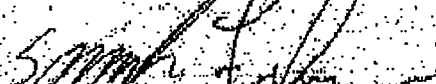
(B)(i) Issued shares are not changed

(ii) This amendment provides for an increase in the number of shares which the Corporation is authorized to issue from 200 to 1,200, all of which are without par value and of one class.

4. This amendment to the certificate of incorporation of the Corporation was authorized pursuant to section 803(a) of the Business Corporation Law, by vote of the board, followed by the affirmative vote of the holders of a majority of all outstanding shares entitled to vote thereon at a meeting of the shareholders of the Corporation duly called and held, at which a quorum being present and acting throughout.

IN WITNESS WHEREOF, the undersigned have executed and signed this Certificate of Amendment this 31<sup>st</sup> day of May, 2002, and affirm the contents hereof under the penalties of perjury.

  
Michael Overlander, President

  
Simon Friedman, Secretary

F020625000026

VANGUARD-52

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
J. & J. FARMS CREAMERY, INC.

[Under Section 805 of the Business Corporation Law]

*SAC #50*

Filer:

J. & J. Farms Creamery, Inc.  
57-48 49<sup>th</sup> Street  
Maspeth, New York 11378

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUN 25 2002

TAX \$

BY:

*50*  
*JAC*  
*Queno*

DRAWDOWN ACCOUNT #52

Vanguard Corporate Services, Ltd.

Customer Reference: 82261

*2*

2002 JUN 24 PM 2:17

RECEIVED

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**Exhibit B**

BY-LAWS  
OF  
J&J FARMS CREAMERY, INC.

A New York Corporation

ARTICLE I - OFFICES [Section 202(9)]\*

The registered office of the Corporation in the State of New York shall be located in the City and State designated in the Certificate of Incorporation. The Corporation may also maintain offices at such other places within or without the State of New York as the Board of Directors may, from time to time, determine.

ARTICLE II- MEETING OF SHAREHOLDERS

Section 1- Annual Meetings: (Section 602 and 603)

The annual meeting of the shareholders of the Corporation shall be held on the date fixed, by the Directors, and each successive annual meeting shall be held within thirteen months after the date of the preceding annual meeting, for the purpose of electing Directors, and transacting such other business as may properly come before the meeting.

Section 2- Special Meetings: (Section 602 and 603)

(a) Special meetings of the shareholders may be called by the Board of Directors or such person or persons authorized by the Certificate of Incorporation, these Bylaws or the Board of Directors. Such meeting shall be held within or without the State of New York.

(b) If, for a period of thirteen months after the formation of the Corporation or the last annual meeting, there is a failure to elect a sufficient number of Directors to conduct the business of the Corporation, the Board of Directors shall call a special meeting for the election of Directors.

(c) If such special meeting as referred to in subsection (b) of this Section of these Bylaws is not called by the Board of Directors within two weeks after the expiration of such period or if it is called, but there is a failure to elect such Directors for a period of two months after the expiration of such period, holders of ten percent of the shares entitled to vote in an election of Directors may, make a written demand to the Corporation to call a special meeting for the election of Directors specifying the date and month of such meeting, which shall not be less than sixty nor more than ninety days from the date of such written demand.

Section 3- Place of Meetings: (Section 602)

Meetings of shareholders shall be held at the registered office of the Corporation in this State, or at such other places, within or without the State of New York as the Directors may from time to time fix. If no designation is made, the meeting shall be held at the Corporation's registered office in the state of New York.

Section 4 - Notice of Meetings: (Section 605)

(a) Written or printed notice of each meeting of shareholders, whether annual or special, stating the time when and place where it is to be held, shall be served either personally or by first class mail, by or at the direction of the president, the secretary, or the officer or the person calling the meeting, not less than ten or more than sixty days before the date of the meeting, unless the lapse of the prescribed time shall have been waived before or after the taking of such action, upon each shareholder of record entitled to vote at such meeting, and to any other shareholder to whom the giving of notice may be required by law. Notice of a special meeting shall also state the business to be transacted or the purpose or purposes for which the meeting is called, and shall indicate that it is being issued by, or at the direction of, the person or persons calling the meeting. If, at any meeting, action is proposed to be taken that would, if taken, entitle shareholders to dissent and receive payment for their shares pursuant to the New York Business Corporation Law, the notice of such meeting shall include a statement of that purpose and to that effect. If mailed, such notice shall be deemed to be given when deposited in the United States mail addressed to the shareholder as it appears on the share transfer records of the Corporation.

(b) It shall not be necessary to give notice of an adjourned meeting to the shareholders of record if the time and place to which the meeting is adjourned is announced at the meeting at which the adjournment is taken, and at the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. However, if after the adjournment the Board of Directors fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record on the new record date.

Section 5 - Shareholders' List: (Section 607 & 624)

After fixing a record date for a meeting, the officer who has charge of the stock ledger of the Corporation, shall prepare an alphabetical list of the names of all its shareholders entitled to notice of the meeting, arranged by voting group with the address of, and the number, class, and series, if any, of shares held by each shareholder. The shareholders' list must be produced at any shareholders' meeting upon the request thereof of any shareholder or prior to the commencement of such meeting of any shareholder of the Corporation entitled to inspect such list under the Business Corporation Law of New York.

Section 6- Quorum: (Section 608)

(a) Except as otherwise provided herein, or by law, or in the Certificate of Incorporation (such Certificate and any amendments thereof being hereinafter collectively referred to as the "Certificate of Incorporation"), a quorum shall be present at all meetings of shareholders of the Corporation, if the holders of a majority of the shares entitled to vote on that matter are represented at the meeting in person or by proxy.

(b) The subsequent withdrawal of any shareholder from the meeting, after the commencement of a meeting, or the refusal of any shareholder represented in person or by proxy to vote, shall have no effect on the existence of a quorum, after a quorum has been established at such meeting.

(c) Despite the absence of a quorum at any meeting of shareholders, the shareholders present may adjourn the meeting.

Section 7 - Voting: (Section 612 & 614)

(a) Except as otherwise provided by law, the Certificate of Incorporation, or these Bylaws, any corporate action, (excluding the election of Directors which requires the affirmative vote of a plurality of shares entitled to vote), receiving the affirmative vote of a majority of shares entitled to vote on that matter, represented either in person or by proxy at a meeting of shareholders at which a quorum is present shall be the act of the shareholders of the Corporation.

(b) Except as otherwise provided by statute, the Certificate of Incorporation, or these Bylaws, at each meeting of shareholders, each shareholder of the Corporation entitled to vote thereat, shall be entitled to one vote for each share registered in his name on the books of the Corporation.

Section 8- Proxies: (Section 609)

(a) Each shareholder entitled to vote or to express consent or dissent without a meeting, may do so either in person or by proxy, so long as such proxy is executed in writing by the shareholder himself, by his attorney-in-fact thereunto duly authorized in writing, by the shareholder, by another person or persons duly authorized by the shareholder or by the shareholder's authorized officer, director, employee or agent, signing such writing or causing the shareholder's signature to be affixed thereto to such writing by any reasonable means, including, but not limited to facsimile signature, to act as the shareholder's proxy.

(b) The writing necessary for a valid proxy may be a written document, or a telegram, cablegram, or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be reasonably determined that the telegram, cablegram or other electronic transmission was authorized by the shareholder.

(c) Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to subsection (b) above, may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.



Section 9 - Action Without a Meeting: (Section 615)

Unless otherwise provided for in the Certificate of Incorporation of the Corporation, any action to be taken at any annual or special shareholders' meeting, may be taken without a meeting on the majority written and signed consent of all the shareholders of the Corporation entitled to vote at such meeting, setting forth the action so taken.

Section 10- Action Without a Meeting: (Section 610)

There shall be one or more Inspectors at any shareholder's meeting, appointed by the Board of Directors, to act at any such meeting or any adjournment and make a written report thereof. The Board of Directors may appoint an alternate inspector or inspectors to replace any inspector who fails to perform his job in a satisfactory way. If no alternate inspector has been appointed and the person or persons appointed as inspector is unable to act at a shareholders' meeting, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting.

Section 11 - Opening and Closing of Polls: Section (609)

The date and time of the opening and the closing of the polls for each matter upon which the shareholders will vote at a shareholders' meeting shall be announced by the person presiding at the meeting at the beginning of the meeting and, if no such opening and closing date and time is announced, the polls shall close at the end of the meeting, including any adjournment thereof. No ballot, proxies or consents, nor any revocation thereof or changes thereto shall be accepted by the inspectors after the closing of the polls unless the New York Supreme Court at a special term held within the judicial district where the Corporation's office is located upon application by a shareholder of the Corporation, shall determine otherwise.

ARTICLE III- BOARD OF DIRECTORS

Section 1 – Number, Term, Election and Qualifications: (Section 701, 702 & 703)

(a) The first Board of Directors and all subsequent Boards of the Corporation shall consist of three Directors, unless the number of shareholders shall be less than three, in which event the number of Directors shall be equal to the number of shareholders. The Board of Directors or shareholders all have the power, in the interim between annual and special meetings of the shareholders, to increase or decrease the number of Directors of the Corporation. No decrease shall shorten the term of the incumbent Director. A Director must be at least eighteen years of age, but need not be a shareholder of the Corporation unless the Certificate of Incorporation of the Corporation or these Bylaws so require.

(b) Except as may otherwise be provided herein or in the Certificate of Incorporation, the members of the Board of Directors of the Corporation shall be elected at the first annual shareholders' meeting and at each annual meeting thereafter, unless their terms are staggered in the Certificate of Incorporation of the Corporation or these Bylaws, by a majority of the votes cast at a meeting of shareholders, by the holders of shares entitled to vote in the election.

(c) The first Board of Directors shall hold office until the first annual meeting of shareholders and until their successors have been duly elected and qualified or until there is a decrease in the number of Directors. Thereinafter, Directors will be elected at the annual meeting of shareholders and shall hold office until the annual meeting of the shareholders next succeeding his election, unless their terms are staggered in the Certificate of Incorporation or these Bylaws, or until his prior death, resignation or removal.

Section 2 - Duties and Powers: (Section 701)

The Board of Directors shall be responsible for the control and management of the business and affairs, property and interests of the Corporation, and may exercise all powers of the Corporation, except such as those stated under New York state law, are in the Certificate of Incorporation or by these Bylaws, expressly conferred upon or reserved to the shareholders or any other person or persons named therein.

Section 3 - Regular Meetings: Notice: (Section 710 & 711)

(a) A regular meeting of the Board of Directors shall be held either within or without the State of New York at such time and at such place as the Board of Directors shall fix.

(b) No notice shall be required of any regular meeting of the Board of Directors and, if given, need not specify the purpose of the meeting; provided, however, that in case the Board of Directors shall fix or change the time or place of any regular meeting when such time and place was fixed before such change, notice of such action shall be given to each Director who shall not have been present at the meeting at which such action was taken within the time limited, and in the manner set forth in these Bylaws with respect to special meetings, unless such notice shall be waived in the manner set forth in these Bylaws.

Section 4 - Special Meetings: Notice: (Section 710 & 711)

(a) Special meetings of the Board of Directors shall be held at such time and place as may be specified in the respective notices or waivers of notice thereof

(b) Except as otherwise required statute, written notice of special meetings shall be mailed directly to each Director, addressed to him at his residence or usual place of business, or delivered orally, at least two days before the day on which the meeting is held, or shall be sent to him at such place by telegram, radio or cable, or shall be delivered to him personally or given to him orally, not later than the day before the day on which the meeting is to be held.

(c) Notice of any special meeting shall not be required to be given to any Director who shall attend such meeting without protesting prior thereto or at its commencement, the lack of notice to him, or who submits a signed waiver of notice, whether before or after the meeting. Notice of any adjourned meeting shall not be required to be given.

Section 5 - Chairperson:

The Chairperson of the Board, if any and if present, shall preside at all meetings of the Board of Directors. If there shall be no Chairperson, or he or she shall be absent, then the President shall preside, and in his absence, any other Director chosen by the Board of Directors shall preside.

Section 6 - Quorum: (Section 707)

(a) At all meetings of the Board of Directors, or any committee thereof, the presence of a majority of the entire Board, or such committee thereof, shall constitute a quorum for the transaction of business, except as otherwise provided by law, by the Certificate of Incorporation, or these Bylaws.

(b) A majority of the directors present at the time and place of any regular or special meeting, although less than a quorum, may adjourn the same from time to time without notice, whether or not a quorum exists.

Section 7 - Manner of Acting: (Section 708)

(a) At all meetings of the Board of Directors, each Director present shall have one vote, irrespective of the number of shares of stock, if any, which he may hold.

(b) Except as otherwise provided by law, by the Certificate of Incorporation, or these Bylaws, action approved by a majority of the votes of the Directors present at any meeting of the Board or any committee thereof, at which a quorum is present, shall be the act of the Board of Directors or any committee thereof

(c) Any action authorized in writing made prior or subsequent to such action, by all of the Directors entitled to vote thereon and filed with the minutes of the Corporation shall be the act of the Board of Directors, or any committee thereof, and have the same force and effect as if the same had been passed by unanimous vote at a duly called meeting of the Board or committee for all purposes and may be stated as such in any document filed with the minutes of the proceedings of the Board of Directors or committee thereof.

(d) Where appropriate communications facilities are reasonably available, any or all directors shall have the right to participate in any Board of Directors meeting, or a committee of the Board of Directors meeting, by means of conference telephone or any means of communications by which all persons participating in the meeting are able to hear each other.

Section 8 - Vacancies: (Section 705)

(a) Any vacancy in the Board of Directors occurring by reason of an increase in the number of Directors, or by reason of the death, resignation, disqualification, removal or inability to act of any director, or other cause, shall be filled by an affirmative vote of a majority of the remaining directors, though less than a quorum of the Board or by a sole remaining Director, at any regular

meeting or special meeting of the Board of Directors called for that purpose except whenever the shareholders of any class or classes or series thereof are entitled to elect one or more Directors by the Certificate of Incorporation of the Corporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the Directors elected by such class or classes or series thereof then in office, or by a sole remaining Director so elected.

(b) The shareholders, not the Board of Directors, may fill vacancies in the Board of Directors occurring in the Board by reason of removal of the Directors without cause, unless the Certificate of Incorporation of the Corporation provides that Directors of the Corporation may also fill such vacancies resulting from removal without cause.

(c) Unless otherwise provided for by statute, the Certificate of Incorporation or these Bylaws, when one or more Directors shall resign from the board and such resignation is effective at a future date, a majority of the Directors, then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote otherwise to take effect when such resignation or resignations shall become effective.

Section 9 - Resignation: (Section 705) A Director may resign at any time upon his written resignation being submitted to the Corporation. Such resignation need not be accepted by the Corporation to be effective, unless otherwise stated in the resignation.

Section 10 - Removal: (Section 706)

One or more or all the Directors of the Corporation may be removed with or without cause at any time by the shareholders, at a special meeting of the shareholders called for that purpose, provided however, such Director shall not be removed if the Corporation's Certificate of Incorporation states that its Directors shall be elected by cumulative voting and there are a sufficient number of shares cast against his or her removal, which if cumulatively voted at an election of Directors would be sufficient to elect him or her. If a Director was elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that Director.

Section 11 - Compensation: [Section 202(a)(13) and 713]

The Board of Directors may authorize and establish reasonable compensation of the Directors for services to the Corporation as Directors, including, but not limited to attendance at any annual or special meeting of the Board.

Section 12 - Committees: (Section 712)

The Board of Directors, by resolution adopted by a majority of the entire Board, may from time to time designate from among its members one or more committees, and alternate members thereof, as they deem desirable, each consisting of three or more members, with such powers and authority (to the extent permitted by law and these Bylaws) as may be provided in such resolution. Each such committee shall serve at the pleasure of the Board and, unless otherwise

stated by law, the Certificate of Incorporation of the Corporation or these Bylaws, shall be governed by the rules and regulations stated herein regarding the Board of Directors.

#### ARTICLE IV - OFFICERS

##### Section 1 – Number, Qualifications, Election and Term of Office: (Section 715)

(a) The Corporation's officers shall have such titles and duties as shall be stated in these Bylaws or in a resolution of the Board of Directors which is not inconsistent with these Bylaws. The officers of the Corporation may consist of a president, one or more vice-presidents, a secretary and a treasurer, and such other officers as the Board of Directors may determine from time to time. Any two or more offices may be held by the same person, except for the offices of president and secretary which must be held by separate people, unless all of the issued and outstanding stock of the Corporation is owned by one person; then such person may hold all or any combination of offices of the Corporation.

(b) The officers of the Corporation shall be elected by the Board of Directors at the regular annual meeting of the Board following the annual meeting of shareholders.

(c) Each officer shall hold office until the annual meeting of the Board of Directors next succeeding his election, and until his successor shall have been duly elected and qualified, subject to earlier termination by his or her death, resignation or removal.

##### Section 2 - Resignation: (Section 716)

Any officer may resign at any time by giving written notice of such resignation to the Corporation. The validity of such resignation is effective when given to the Corporation; regardless of whether or not the Board of Directors has accepted such resignation or if a successor has been appointed.

##### Section 3 - Removal: (Section 716)

Any officer elected by the Board of Directors may be removed, either with or without cause, and a successor elected by the Board at any time.

##### Section 4 - Vacancies: (Section 715)

(a) A vacancy, however caused, occurring in the Board and any newly created Directorships resulting from an increase in the authorized number of Directors may be filled by the Board of Directors.

##### Section 5 - Bonds: [Section 202(a)(t3)]

The Corporation may require any or all of its officers to post a bond, or otherwise, to the Corporation for the faithful performance of their positions or duties.

Section 6-Compensation: (Section 715)

The compensation of the officers of the Corporation shall be fixed from time to time by the Board of Directors.

ARTICLE V - SHARES OF STOCK

Section 1 - Certificate of Stock: (Section 508)

(a) The shares of the Corporation shall be represented by certificates or shall be uncertificated shares.

(b) Certificates shall state upon the face thereof:

- (i) that the Corporation is formed under the laws of the State of New York;
- (ii) the name of the person or persons to whom such shares are issued;
- (iii) the number and class of shares, and the designation, if any of the series which such certificate represents; and

(iv) that such shares are transferable in the manner proved by law and in these Bylaws; and

(c) Certificates shall be signed, (either manually or by facsimile), by the Chairperson, Vice-Chairperson, President or Vice-President and Secretary or an Assistant Secretary or the Treasurer or Assistant Treasurer, and may be sealed with the corporate seal of the Corporation or a facsimile thereof. The signatures of the officers designated herein may be facsimiles if:

(i) the certificate is countersigned by a transfer agent or registered by a registrar other than the Corporation itself or its employee, or

(ii) the shares are listed on a registered national security exchange.

(d) In case any officer who has signed or whose facsimile signature has been placed upon such certificate, shall have ceased to be such officer before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer at the date of its issue.

(e) Certificates shall be issued in such form not inconsistent with the Certificate of Incorporation and as shall be approved by the Board of Directors. Such certificates shall be numbered and registered on the books of the Corporation, in the order in which they were issued.

(f) Except as otherwise provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing shares of the same class and series shall be identical.

Section 2 - Lost or Destroyed Certificates: (Section 508)

The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost. The Board of Directors may require the owner of such lost or destroyed certificate, or his legal representative, to give the Corporation a bond sufficient to indemnify, the Corporation against any claim that may be made against it on account of the alleged loss or destruction of any such certificate or the issuance of any such new certificate before issuing a new certificate or certificates in place of any certificate or certificates issued by the Corporation allegedly lost or destroyed.

Section 3 - Transfers of Shares: (Section 508)

(a) Transfers or registration of transfers of shares of the Corporation shall be made on the stock transfer books of the Corporation by the registered holder thereof, or by his attorney duly authorized by a written power of attorney; and in the case of shares represented by certificates, only after the surrender to the Corporation of the certificates representing such shares with such shares properly endorsed, with such evidence of the authenticity of such endorsement, transfer, authorization and other mailers as the Corporation may reasonably require, and the payment of all stock transfer taxes due thereon.

(b) The Corporation shall be entitled to treat the holder of record of any share or shares as the absolute owner thereof for all purposes and, accordingly, shall not be bound to recognize any legal, equitable or other claim to, or interest in, such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise expressly provided by law.

Section 4- Record Date: (Section 604)

(a) The Board of Directors may fix, in advance, which shall not be more than fifty, nor less than ten days before the meeting or action requiring a determination of shareholders, as the record date for the determination of shareholders entitled to receive notice of, or to vote at, any meeting of shareholders, or to consent to any proposal without a meeting, or for the purpose of determining shareholders entitled to receive payment of any dividends, or allotment of any rights, or for the purpose of any other action. If no record date is fixed, the record date for shareholders entitled to notice of meeting shall be at the close of business on the day preceding the day on which notice is given, or, if no notice is given, the day on which the meeting is held; the record date for determining shareholders of record for any other purpose shall be at the close of business on the date on which the resolution of the Directors relating thereto is adopted.

(b) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the Board of Directors fixes a new record date for the adjourned meeting.

ARTICLE VI - DIVIDENDS (Section 510)

Subject to applicable law and the Certificate of Incorporation, dividends may be declared and paid out of earned surplus only, in such amounts, and at such time or times as the Board of Directors may determine, so long as the Corporation is not insolvent when such dividend is paid or rendered insolvent by the payment of such dividend.

ARTICLE VII - FISCAL YEAR [202(a)(16)]

The fiscal year of the Corporation shall be fixed, and shall be subject to changed by the Board of Directors from time to time, subject to applicable law.

ARTICLE VIII - CORPORATE SEAL [Section 202(a)(3)]

The corporate seal, if any, shall be in such form as shall be prescribed and altered, from time to time, by the Board of Directors.

ARTICLE IX - AMENDMENTS (Section 601)

Section 1 - Initial Bylaws:

The initial Bylaws of the Corporation shall be adopted by the Incorporator or Incorporators at its organizational meeting.

Section 2 - By Shareholders:

All Bylaws of the Corporation shall be subject to alteration or repeal, and new Bylaws may be made, by a majority vote of the shareholders at the time entitled to vote in the election of Directors even though these Bylaws may also be altered, amended or repealed by the Board of Directors.

Section 3 - By Directors:

The Board of Directors shall have power to make, adopt, alter, amend and repeal, from time to time, Bylaws of the Corporation.

ARTICLE X - WAIVER OF NOTICE

(a) Shareholders: (Section 606)

Whenever any notice is required to be given by law, the Certificate of Incorporation or these Bylaws to the shareholders of the Corporation of a meeting of shareholders, a written waiver of notice submitted to the Corporation before or after the meeting or the attendance at the meeting by any shareholder, shall constitute a waiver of notice of such meeting, except when the person attends the meeting for the express purpose of objecting to the lack of notice thereof, prior to the conclusion of the meeting.

(b) Directors: (Section 711)



Whenever any notice is required to be given by law, the Certificate of Incorporation or these Bylaws to the Directors of the Corporation of a special meeting of the Board of Directors, a written waiver of notice submitted to the Corporation before or after the meeting or the attendance at the meeting by any shareholder, shall constitute a waiver of notice of such meeting, except when the person attends the meeting for the express purpose of objecting to the lack of notice thereof prior to the commencement of the meeting.

ARTICLE XI - INTERESTED DIRECTORS: (Section 713)

(a) No contract or transaction shall be void or voidable if such contract or transaction is between the corporation and one or more of its Directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers, are directors or officers, or have a financial interest, when such Director or officer is present at or participates in the meeting of the Board of committee which authorizes the contract or transaction or his, her or their votes are counted for such purpose, if:

(i) the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; or

(ii) the material facts as to his, her or their relationship or relationships or interest or interests and as to the contract or transaction are disclosed or are known to the shareholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the shareholders.

(b) Such interested Directors may be counted when determining the presence of a quorum at the Board of Directors', committee or shareholders' meeting authorizing the contract or transaction.

[end of by-laws]

Exhibit C



## EXHIBIT C

### Authorizing Resolutions of J & J

EXTRACT from the minutes of a meeting of the Board of Directors of J & J Farms Creamery, Inc. (this "Corporation") held on November 1, 2006.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

"RESOLVED, that this Corporation authorizes and approves the straight-lease transaction with the New York City Industrial Development Agency (the "Agency") Fisher Foods of Queens Corp. ("Fisher Foods") and J & J Farms Realty Joint Venture (the "Lessee") in connection with the financing of the improvement of a commercial facility (the "Facility"), consisting of the renovation of an approximately 77,420 square foot parcel of land and an approximately 57,430 square foot building thereon (including but not limited to the improvement of the staging area, loading dock, new offices, refrigeration and security systems), located at 57-48 49th Street, Maspeth, New York 11378, all for use in the distribution of assorted food products (the "Project").

RESOLVED, that each of the following documents, substantially in the form of the drafts on file with the Board of Directors of this Corporation, is hereby authorized and the President or any officer is directed to execute and deliver each such documents in the name and on behalf of this Corporation with such additions, deletions or modifications in or affecting each such documents thereof, or the effectiveness thereof, as such executing officer may determine, with advice of counsel, as conclusively evidenced by such officer's execution thereof, to be advisable and in the best interests of this Corporation:

1. Sublease Agreement among this Corporation, Fisher Foods and the Lessee;
2. Guaranty Agreement from this Corporation, Fisher Foods, the Lessee, and Michael Oberlander, Pearl Oberlander, Simon Friedman, and Morris Schlager, as individual guarantors (collectively, the "Individual Guarantors"), to the Agency; and
3. Letter of Representation from this Corporation, Fisher Foods, the Lessee and the Individual Guarantors to the Agency; and further

RESOLVED, that there is hereby approved the Lease Agreement between the Agency and the Lessee and there is hereby approved the execution and delivery of any and all documents, certificates and agreements to effect the Project and all matters related thereto; and further

RESOLVED, that all action taken and all instruments executed by authorized officers of this Corporation prior to the adoption of this resolution with respect to the Project, and all matters related thereto, are hereby ratified, confirmed and approved; and further

RESOLVED, that in addition to and without limiting the generality of the foregoing resolutions with respect to the Project, any officer or officers of this Corporation be, and each of them hereby is, authorized and directed to take such further action in connection with the Project and to execute and deliver such instruments and documents as such officers with advice of counsel may deem appropriate to carry out the foregoing resolutions; and the taking of such action or execution of such instruments shall be deemed conclusive evidence of the determination of such executing officer that such action or execution was appropriate and in the best interests of this Corporation.”



**State of New York**  
**Department of State** } **ss:**

I hereby certify, that the Certificate of Incorporation of J & J FARMS CREAMERY, INC. was filed on 08/14/1961, under the name of ALLSTATE KNITTING MILLS, INC., fixing the duration as perpetual, and that a diligent examination has been made of the Corporate index for documents filed with this Department for a certificate, order, or record of a dissolution, and upon such examination, no such certificate, order or record has been found, and that so far as indicated by the records of this Department, such corporation is an existing corporation.

A Certificate of Amendment ALLSTATE KNITTING MILLS, INC., changing its name to ATLANTIC FARMS CREAMERY, INC., was filed 12/29/1981.

A Certificate of Amendment ATLANTIC FARMS CREAMERY, INC., changing its name to J & J FARMS CREAMERY, INC., was filed 02/11/1982.

\*\*\*

*WITNESS my hand and the official seal  
of the Department of State at the City of  
Albany, this 08th day of November two  
thousand and six.*



*Special Deputy Secretary of State*

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New York State Department of  
**Taxation and Finance**  
 Taxpayer Services and Revenue Division  
 W A Harriman Campus  
 Albany NY 12227

Tuesday, November 14, 2006

SN: 130139

RN: 50-C

## Corporate Tax Search

### VANGUARD CORPORATE SERVICES

307 HAMILTON ST  
 ALBANY NY 12210  
 Attention:

Articles 9, 9-A, 13,  
 13A, 32, and 33.

Reference ID  
 104401RK

Corporation name: **J & J FARMS CREAMERY, INC.**

<u>Incorp Date</u>	<u>Filing period</u>	<u>Termination date</u>	<u>Termination type</u>
08/14/1961	June		

According to our records, tax liens exist for the periods below.

Franchise tax returns are missing for the period(s) ended:

**None**

Franchise tax payments are past due for period(s) ended:

**None**

License fee (Article 9, section 181):	Other fees due	Maintenance fee for period (s) ended:
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### Lien Provision

The tax shall become a lien on the date the return is required to be filed (without regard to any extension of time for filing the return), except that such tax shall become a lien not later than the date the taxpayer ceases to be subject to the tax or to exercise its franchise or to do business in New York State in a corporate or organized capacity. A dissolved corporation that continues to conduct business shall also be subject to the tax imposed by this article.

### Need help?

Telephone assistance is available from 8:00 a.m. to 5:00 p.m. (eastern time), Monday through Friday.

Business Tax information: 1 800 972-1233

Forms and Publications: 1 800 462-8100

From outside the U.S. and outside Canada: (518) 485-6800

Fax-on-demand forms: 1 800 748-3676

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110 (8:30 a.m. to 4:25 p.m., eastern time)

Internet access: [www.nystax.gov](http://www.nystax.gov)

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 225-5829.

If you need to write, address your letter to: NYS Tax Department, Taxpayer Contact Center, W.A. Harriman Campus, Albany, NY 12227





**SECRETARY'S CERTIFICATE OF FISHER FOODS OF QUEENS CORP.**

The undersigned President of Fisher Foods of Queens Corp., a New York corporation ("Fisher Foods"), HEREBY CERTIFIES THAT:

1. This certificate is furnished in connection with the straight-lease transaction with the New York City Industrial Development Agency (the "Agency"), J & J Farms Realty Joint Venture (the "Lessee"), J & J Farms Creamery, Inc. and Fisher Foods in connection with the financing of the acquisition, consisting of the renovation of an approximately 77,420 square foot parcel of land and an approximately 57,430 square foot building thereon (including but not limited to the improvement of the staging area, loading dock, new offices, refrigeration and security systems), located at 57-48 49th Street, Maspeth, New York 11378, all for use in the distribution of assorted food products (the "Project").

2. Attached hereto as Exhibit A is a true, correct and complete copy of the certificate of incorporation of Fisher Foods, certified by the Secretary of State of the State of New York, together with amendments thereto as in effect on the date hereof.

3. Attached hereto as Exhibit B is a true, correct and complete copy of the bylaws of Fisher Foods, together with all amendments thereto as in effect on the date hereof.

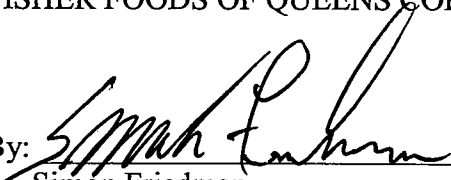
4. Attached hereto as Exhibit C is a true, correct and complete copy of resolutions duly adopted by the Board of Directors of Fisher Foods, which resolutions have not been revoked, modified, amended or rescinded and are still in full force and effect, and authorize the obligations of Fisher Foods with respect to the Project, and which further authorize the execution and delivery of all necessary documents by the officer of Fisher Foods named below.

5. Each document relating to the Project required to be executed by Fisher Foods has been executed on behalf of Fisher Foods by the person named below, who is duly authorized and empowered to execute such documents. The below-named person is the duly elected and qualified officer of Fisher Foods holding the office set forth opposite his name, and the signature below set forth opposite his name is his genuine signature:

<u>Name</u>	<u>Office</u>	<u>Signature</u>
Michael Oberlander	President	

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this November 20, 2006.

FISHER FOODS OF QUEENS CORP.

By:   
Simon Friedman  
Secretary

Faint, illegible text running vertically along the right edge of the page, possibly bleed-through from the reverse side.



State of New York }  
Department of State } ss:

*I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.*

*Witness my hand and seal of the Department of State on*

**June 20, 2006**



A handwritten signature in black ink, appearing to read "D. J. ...", is written over the printed name.

*Special Deputy Secretary of State*

INFO.

CERTIFICATE OF INCORPORATION OF  
OF THE  
YONGE CORPORATION

Under Section 805 of the Business Corporation Law

IT IS HEREBY CERTIFIED THAT:

33495

(1) The name of the corporation is:

YONGE CORPORATION

(2) The certificate of incorporation was filed at the Department

of State of the State of New York on the 24th day of May, 1993.

823495

(3) The Certificate of Incorporation is hereby amended to effect  
the following changes:

Paragraph One (1) of the Certificate of Incorporation is hereby  
amended to read:

The name of the corporation is:

FRANK FOODS OF QUEENS CORP.

Paragraph Three (3) of the Certificate of Incorporation is hereby  
amended to reflect the following changes:

The office of the corporation is to be located in the City of New  
York County of Queens State of New York.

Paragraph Five (5) of the Certificate of Incorporation is hereby amended  
to reflect the following changes:

Whenever any suit or action is brought against the corporation in  
any court with process against it and is served, the same shall be deemed to have  
been served on the Secretary of State and a copy of the process against the

corporation covered upon his [illegible]

c/o Roy Martin, Esq.

900 3rd Ave., 16th Fl.

New York, NY 10022

(4) The amendment to the Certificate of Incorporation was authorized by a vote of the Board of Director(s), followed by a vote of the holder(s) of a majority of all outstanding shares entitled to vote thereon at a meeting of shareholders.

IN WITNESS WHEREOF, this certificate has been subscribed this 3<sup>rd</sup> day of [illegible] 1981, by the undersigned, who affirm that the statements made herein are true under the penalties of perjury.

Simon Friedman, President

/s/Simon Friedman

Morris Schlarger, Secretary

/s/Morris Schlarger

**Exhibit B**



BY-LAWS  
OF  
FISHER FOODS OF QUEENS CORP.  
A New York Corporation  
ARTICLE I - OFFICES [Section 202(9)]\*

The registered office of the Corporation in the State of New York shall be located in the City and State designated in the Certificate of Incorporation. The Corporation may also maintain offices at such other places within or without the State of New York as the Board of Directors may, from time to time, determine.

ARTICLE II- MEETING OF SHAREHOLDERS

Section 1- Annual Meetings: (Section 602 and 603)

The annual meeting of the shareholders of the Corporation shall be held on the date fixed, by the Directors, and each successive annual meeting shall be held within thirteen months after the date of the preceding annual meeting, for the purpose of electing Directors, and transacting such other business as may properly come before the meeting.

Section 2- Special Meetings: (Section 602 and 603)

(a) Special meetings of the shareholders may be called by the Board of Directors or such person or persons authorized by the Certificate of Incorporation, these Bylaws or the Board of Directors. Such meeting shall be held within or without the State of New York.

(b) If, for a period of thirteen months after the formation of the Corporation or the last annual meeting, there is a failure to elect a sufficient number of Directors to conduct the business of the Corporation, the Board of Directors shall call a special meeting for the election of Directors.

(c) If such special meeting as referred to in subsection (b) of this Section of these Bylaws is not called by the Board of Directors within two weeks after the expiration of such period or if it is called, but there is a failure to elect such Directors for a period of two months after the expiration of such period, holders of ten percent of the shares entitled to vote in an election of Directors may, make a written demand to the Corporation to call a special meeting for the election of Directors specifying the date and month of such meeting, which shall not be less than sixty nor more than ninety days from the date of such written demand.

Section 3- Place of Meetings: (Section 602)

Meetings of shareholders shall be held at the registered office of the Corporation in this State, or at such other places, within or without the State of New York as the Directors may from time to time fix. If no designation is made, the meeting shall be held at the Corporation's registered office in the state of New York.



Section 4 - Notice of Meetings: (Section 605)

(a) Written or printed notice of each meeting of shareholders, whether annual or special, stating the time when and place where it is to be held, shall be served either personally or by first class mail, by or at the direction of the president, the secretary, or the officer or the person calling the meeting, not less than ten or more than sixty days before the date of the meeting, unless the lapse of the prescribed time shall have been waived before or after the taking of such action, upon each shareholder of record entitled to vote at such meeting, and to any other shareholder to whom the giving of notice may be required by law. Notice of a special meeting shall also state the business to be transacted or the purpose or purposes for which the meeting is called, and shall indicate that it is being issued by, or at the direction of, the person or persons calling the meeting. If, at any meeting, action is proposed to be taken that would, if taken, entitle shareholders to dissent and receive payment for their shares pursuant to the New York Business Corporation Law, the notice of such meeting shall include a statement of that purpose and to that effect. If mailed, such notice shall be deemed to be given when deposited in the United States mail addressed to the shareholder as it appears on the share transfer records of the Corporation.

(b) It shall not be necessary to give notice of an adjourned meeting to the shareholders of record if the time and place to which the meeting is adjourned is announced at the meeting at which the adjournment is taken, and at the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. However, if after the adjournment the Board of Directors fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record on the new record date.

Section 5 - Shareholders' List: (Section 607 & 624)

After fixing a record date for a meeting, the officer who has charge of the stock ledger of the Corporation, shall prepare an alphabetical list of the names of all its shareholders entitled to notice of the meeting, arranged by voting group with the address of, and the number, class, and series, if any, of shares held by each shareholder. The shareholders' list must be produced at any shareholders' meeting upon the request thereof of any shareholder or prior to the commencement of such meeting of any shareholder of the Corporation entitled to inspect such list under the Business Corporation Law of New York.

Section 6- Quorum: (Section 608)

(a) Except as otherwise provided herein, or by law, or in the Certificate of Incorporation (such Certificate and any amendments thereof being hereinafter collectively referred to as the "Certificate of Incorporation"), a quorum shall be present at all meetings of shareholders of the Corporation, if the holders of a majority of the shares entitled to vote on that matter are represented at the meeting in person or by proxy.

(b) The subsequent withdrawal of any shareholder from the meeting, after the commencement of a meeting, or the refusal of any shareholder represented in person or by proxy to vote, shall have no effect on the existence of a quorum, after a quorum has been established at such meeting.

(c) Despite the absence of a quorum at any meeting of shareholders, the shareholders present may adjourn the meeting.

Section 7 - Voting: (Section 612 & 614)

(a) Except as otherwise provided by law, the Certificate of Incorporation, or these Bylaws, any corporate action, (excluding the election of Directors which requires the affirmative vote of a plurality of shares entitled to vote), receiving the affirmative vote of a majority of shares entitled to vote on that matter, represented either in person or by proxy at a meeting of shareholders at which a quorum is present shall be the act of the shareholders of the Corporation.

(b) Except as otherwise provided by statute, the Certificate of Incorporation, or these Bylaws, at each meeting of shareholders, each shareholder of the Corporation entitled to vote thereat, shall be entitled to one vote for each share registered in his name on the books of the Corporation.

Section 8- Proxies: (Section 609)

(a) Each shareholder entitled to vote or to express consent or dissent without a meeting, may do so either in person or by proxy, so long as such proxy is executed in writing by the shareholder himself, by his attorney-in-fact thereunto duly authorized in writing, by the shareholder, by another person or persons duly authorized by the shareholder or by the shareholder's authorized officer, director, employee or agent, signing such writing or causing the shareholder's signature to be affixed thereto to such writing by any reasonable means, including, but not limited to facsimile signature, to act as the shareholder's proxy.

(b) The writing necessary for a valid proxy may be a written document, or a telegram, cablegram, or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be reasonably determined that the telegram, cablegram or other electronic transmission was authorized by the shareholder.

(c) Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to subsection (b) above, may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 9 - Action Without a Meeting: (Section 615)

Unless otherwise provided for in the Certificate of Incorporation of the Corporation, any action to be taken at any annual or special shareholders' meeting, may be taken without a meeting on the majority written and signed consent of all the shareholders of the Corporation entitled to vote at such meeting, setting forth the action so taken.

Section 10- Action Without a Meeting: (Section 610)

There shall be one or more Inspectors at any shareholder's meeting, appointed by the Board of Directors, to act at any such meeting or any adjournment and make a written report thereof. The Board of Directors may appoint an alternate inspector or inspectors to replace any inspector who fails to perform his job in a satisfactory way. If no alternate inspector has been appointed and the person or persons appointed as inspector is unable to act at a shareholders' meeting, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting.

Section 11 - Opening and Closing of Polls: Section (609)

The date and time of the opening and the closing of the polls for each matter upon which the shareholders will vote at a shareholders' meeting shall be announced by the person presiding at the meeting at the beginning of the meeting and, if no such opening and closing date and time is announced, the polls shall close at the end of the meeting, including any adjournment thereof. No ballot, proxies or consents, nor any revocation thereof or changes thereto shall be accepted by the inspectors after the closing of the polls unless the New York Supreme Court at a special term held within the judicial district where the Corporation's office is located upon application by a shareholder of the Corporation, shall determine otherwise.

ARTICLE III- BOARD OF DIRECTORS

Section 1 – Number, Term, Election and Qualifications: (Section 701, 702 & 703)

(a) The first Board of Directors and all subsequent Boards of the Corporation shall consist of three Directors, unless the number of shareholders shall be less than three, in which event the number of Directors shall be equal to the number of shareholders. The Board of Directors or shareholders all have the power, in the interim between annual and special meetings of the shareholders, to increase or decrease the number of Directors of the Corporation. No decrease shall shorten the term of the incumbent Director. A Director must be at least eighteen years of age, but need not be a shareholder of the Corporation unless the Certificate of Incorporation of the Corporation or these Bylaws so require.

(b) Except as may otherwise be provided herein or in the Certificate of Incorporation, the members of the Board of Directors of the Corporation shall be elected at the first annual shareholders' meeting and at each annual meeting thereafter, unless their terms are staggered in the Certificate of Incorporation of the Corporation or these Bylaws, by a majority of the votes cast at a meeting of shareholders, by the holders of shares entitled to vote in the election.

(c) The first Board of Directors shall hold office until the first annual meeting of shareholders and until their successors have been duly elected and qualified or until there is a decrease in the number of Directors. Thereinafter, Directors will be elected at the annual meeting of shareholders and shall hold office until the annual meeting of the shareholders next succeeding his election, unless their terms are staggered in the Certificate of Incorporation or these Bylaws, or until his prior death, resignation or removal.

Section 2 - Duties and Powers: (Section 701)

The Board of Directors shall be responsible for the control and management of the business and affairs, property and interests of the Corporation, and may exercise all powers of the Corporation, except such as those stated under New York state law, are in the Certificate of Incorporation or by these Bylaws, expressly conferred upon or reserved to the shareholders or any other person or persons named therein.

Section 3 - Regular Meetings: Notice: (Section 710 & 711)

(a) A regular meeting of the Board of Directors shall be held either within or without the State of New York at such time and at such place as the Board of Directors shall fix.

(b) No notice shall be required of any regular meeting of the Board of Directors and, if given, need not specify the purpose of the meeting; provided, however, that in case the Board of Directors shall fix or change the time or place of any regular meeting when such time and place was fixed before such change, notice of such action shall be given to each Director who shall not have been present at the meeting at which such action was taken within the time limited, and in the manner set forth in these Bylaws with respect to special meetings, unless such notice shall be waived in the manner set forth in these Bylaws.

Section 4 - Special Meetings: Notice: (Section 710 & 711)

(a) Special meetings of the Board of Directors shall be held at such time and place as may be specified in the respective notices or waivers of notice thereof

(b) Except as otherwise required statute, written notice of special meetings shall be mailed directly to each Director, addressed to him at his residence or usual place of business, or delivered orally, at least two days before the day on which the meeting is held, or shall be sent to him at such place by telegram, radio or cable, or shall be delivered to him personally or given to him orally, not later than the day before the day on which the meeting is to be held.

(c) Notice of any special meeting shall not be required to be given to any Director who shall attend such meeting without protesting prior thereto or at its commencement, the lack of notice to him, or who submits a signed waiver of notice, whether before or after the meeting. Notice of any adjourned meeting shall not be required to be given.

Section 5 - Chairperson:

The Chairperson of the Board, if any and if present, shall preside at all meetings of the Board of Directors. If there shall be no Chairperson, or he or she shall be absent, then the President shall preside, and in his absence, any other Director chosen by the Board of Directors shall preside.

Section 6 - Quorum: (Section 707)

(a) At all meetings of the Board of Directors, or any committee thereof, the presence of a majority of the entire Board, or such committee thereof, shall constitute a quorum for the transaction of business, except as otherwise provided by law, by the Certificate of Incorporation, or these Bylaws.

(b) A majority of the directors present at the time and place of any regular or special meeting, although less than a quorum, may adjourn the same from time to time without notice, whether or not a quorum exists.

Section 7 - Manner of Acting: (Section 708)

(a) At all meetings of the Board of Directors, each Director present shall have one vote, irrespective of the number of shares of stock, if any, which he may hold.

(b) Except as otherwise provided by law, by the Certificate of Incorporation, or these Bylaws, action approved by a majority of the votes of the Directors present at any meeting of the Board or any committee thereof, at which a quorum is present, shall be the act of the Board of Directors or any committee thereof

(c) Any action authorized in writing made prior or subsequent to such action, by all of the Directors entitled to vote thereon and filed with the minutes of the Corporation shall be the act of the Board of Directors, or any committee thereof, and have the same force and effect as if the same had been passed by unanimous vote at a duly called meeting of the Board or committee for all purposes and may be stated as such in any document filed with the minutes of the proceedings of the Board of Directors or committee thereof.

(d) Where appropriate communications facilities are reasonably available, any or all directors shall have the right to participate in any Board of Directors meeting, or a committee of the Board of Directors meeting, by means of conference telephone or any means of communications by which all persons participating in the meeting are able to hear each other.

Section 8 - Vacancies: (Section 705)

(a) Any vacancy in the Board of Directors occurring by reason of an increase in the number of Directors, or by reason of the death, resignation, disqualification, removal or inability to act of any director, or other cause, shall be filled by an affirmative vote of a majority of the remaining directors, though less than a quorum of the Board or by a sole remaining Director, at any regular

meeting or special meeting of the Board of Directors called for that purpose except whenever the shareholders of any class or classes or series thereof are entitled to elect one or more Directors by the Certificate of Incorporation of the Corporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the Directors elected by such class or classes or series thereof then in office, or by a sole remaining Director so elected.

(b) The shareholders, not the Board of Directors, may fill vacancies in the Board of Directors occurring in the Board by reason of removal of the Directors without cause, unless the Certificate of Incorporation of the Corporation provides that Directors of the Corporation may also fill such vacancies resulting from removal without cause.

(c) Unless otherwise provided for by statute, the Certificate of Incorporation or these Bylaws, when one or more Directors shall resign from the board and such resignation is effective at a future date, a majority of the Directors, then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote otherwise to take effect when such resignation or resignations shall become effective.

Section 9 - Resignation: (Section 705) A Director may resign at any time upon his written resignation being submitted to the Corporation. Such resignation need not be accepted by the Corporation to be effective, unless otherwise stated in the resignation.

Section 10 - Removal: (Section 706)

One or more or all the Directors of the Corporation may be removed with or without cause at any time by the shareholders, at a special meeting of the shareholders called for that purpose, provided however, such Director shall not be removed if the Corporation's Certificate of Incorporation states that its Directors shall be elected by cumulative voting and there are a sufficient number of shares cast against his or her removal, which if cumulatively voted at an election of Directors would be sufficient to elect him or her. If a Director was elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that Director.

Section 11 - Compensation: [Section 202(a)(13) and 713]

The Board of Directors may authorize and establish reasonable compensation of the Directors for services to the Corporation as Directors, including, but not limited to attendance at any annual or special meeting of the Board.

Section 12 - Committees: (Section 712)

The Board of Directors, by resolution adopted by a majority of the entire Board, may from time to time designate from among its members one or more committees, and alternate members thereof, as they deem desirable, each consisting of three or more members, with such powers and authority (to the extent permitted by law and these Bylaws) as may be provided in such resolution. Each such committee shall serve at the pleasure of the Board and, unless otherwise

stated by law, the Certificate of Incorporation of the Corporation or these Bylaws, shall be governed by the rules and regulations stated herein regarding the Board of Directors.

#### ARTICLE IV - OFFICERS

##### Section 1 – Number, Qualifications, Election and Term of Office: (Section 715)

(a) The Corporation's officers shall have such titles and duties as shall be stated in these Bylaws or in a resolution of the Board of Directors which is not inconsistent with these Bylaws. The officers of the Corporation may consist of a president, one or more vice-presidents, a secretary and a treasurer, and such other officers as the Board of Directors may determine from time to time. Any two or more offices may be held by the same person, except for the offices of president and secretary which must be held by separate people, unless all of the issued and outstanding stock of the Corporation is owned by one person; then such person may hold all or any combination of offices of the Corporation.

(b) The officers of the Corporation shall be elected by the Board of Directors at the regular annual meeting of the Board following the annual meeting of shareholders.

(c) Each officer shall hold office until the annual meeting of the Board of Directors next succeeding his election, and until his successor shall have been duly elected and qualified, subject to earlier termination by his or her death, resignation or removal.

##### Section 2 - Resignation: (Section 716)

Any officer may resign at any time by giving written notice of such resignation to the Corporation. The validity of such resignation is effective when given to the Corporation; regardless of whether or not the Board of Directors has accepted such resignation or if a successor has been appointed.

##### Section 3 - Removal: (Section 716)

Any officer elected by the Board of Directors may be removed, either with or without cause, and a successor elected by the Board at any time.

##### Section 4 - Vacancies: (Section 715)

(a) A vacancy, however caused, occurring in the Board and any newly created Directorships resulting from an increase in the authorized number of Directors may be filled by the Board of Directors.

##### Section 5 - Bonds: [Section 202(a)(t3)]

The Corporation may require any or all of its officers to post a bond, or otherwise, to the Corporation for the faithful performance of their positions or duties.

Section 6-Compensation: (Section 715)

The compensation of the officers of the Corporation shall be fixed from time to time by the Board of Directors.

ARTICLE V - SHARES OF STOCK

Section 1 - Certificate of Stock: (Section 508)

(a) The shares of the Corporation shall be represented by certificates or shall be uncertificated shares.

(b) Certificates shall state upon the face thereof:

(i) that the Corporation is formed under the laws of the State of New York;

(ii) the name of the person or persons to whom such shares are issued;

(iii) the number and class of shares, and the designation, if any of the series which such certificate represents; and

(iv) that such shares are transferable in the manner proved by law and in these Bylaws; and

(c) Certificates shall be signed, (either manually or by facsimile), by the Chairperson, Vice-Chairperson, President or Vice-President and Secretary or an Assistant Secretary or the Treasurer or Assistant Treasurer, and may be sealed with the corporate seal of the Corporation or a facsimile thereof. The signatures of the officers designated herein may be facsimiles if:

(i) the certificate is countersigned by a transfer agent or registered by a registrar other than the Corporation itself or its employee, or

(ii) the shares are listed on a registered national security exchange.

(d) In case any officer who has signed or whose facsimile signature has been placed upon such certificate, shall have ceased to be such officer before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer at the date of its issue.

(e) Certificates shall be issued in such form not inconsistent with the Certificate of Incorporation and as shall be approved by the Board of Directors. Such certificates shall be numbered and registered on the books of the Corporation, in the order in which they were issued.

(f) Except as otherwise provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing shares of the same class and series shall be identical.



Section 2 - Lost or Destroyed Certificates: (Section 508)

The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost. The Board of Directors may require the owner of such lost or destroyed certificate, or his legal representative, to give the Corporation a bond sufficient to indemnify, the Corporation against any claim that may be made against it on account of the alleged loss or destruction of any such certificate or the issuance of any such new certificate before issuing a new certificate or certificates in place of any certificate or certificates issued by the Corporation allegedly lost or destroyed.

Section 3 - Transfers of Shares: (Section 508)

(a) Transfers or registration of transfers of shares of the Corporation shall be made on the stock transfer books of the Corporation by the registered holder thereof, or by his attorney duly authorized by a written power of attorney; and in the case of shares represented by certificates, only after the surrender to the Corporation of the certificates representing such shares with such shares properly endorsed, with such evidence of the authenticity of such endorsement, transfer, authorization and other mailers as the Corporation may reasonably require, and the payment of all stock transfer taxes due thereon.

(b) The Corporation shall be entitled to treat the holder of record of any share or shares as the absolute owner thereof for all purposes and, accordingly, shall not be bound to recognize any legal, equitable or other claim to, or interest in, such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise expressly provided by law.

Section 4- Record Date: (Section 604)

(a) The Board of Directors may fix, in advance, which shall not be more than fifty, nor less than ten days before the meeting or action requiring a determination of shareholders, as the record date for the determination of shareholders entitled to receive notice of, or to vote at, any meeting of shareholders, or to consent to any proposal without a meeting, or for the purpose of determining shareholders entitled to receive payment of any dividends, or allotment of any rights, or for the purpose of any other action. If no record date is fixed, the record date for shareholders entitled to notice of meeting shall be at the close of business on the day preceding the day on which notice is given, or, if no notice is given, the day on which the meeting is held; the record date for determining shareholders of record for any other purpose shall be at the close of business on the date on which the resolution of the Directors relating thereto is adopted.

(b) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the Board of Directors fixes a new record date for the adjourned meeting.

ARTICLE VI - DIVIDENDS (Section 510)

Subject to applicable law and the Certificate of Incorporation, dividends may be declared and paid out of earned surplus only, in such amounts, and at such time or times as the Board of Directors may determine, so long as the Corporation is not insolvent when such dividend is paid or rendered insolvent by the payment of such dividend.

ARTICLE VII - FISCAL YEAR [202(a)(16)]

The fiscal year of the Corporation shall be fixed, and shall be subject to changed by the Board of Directors from time to time, subject to applicable law.

ARTICLE VIII - CORPORATE SEAL [Section 202(a)(3)]

The corporate seal, if any, shall be in such form as shall be prescribed and altered, from time to time, by the Board of Directors.

ARTICLE IX - AMENDMENTS (Section 601)

Section 1 - Initial Bylaws:

The initial Bylaws of the Corporation shall be adopted by the Incorporator or Incorporators at its organizational meeting.

Section 2 - By Shareholders:

All Bylaws of the Corporation shall be subject to alteration or repeal, and new Bylaws may be made, by a majority vote of the shareholders at the time entitled to vote in the election of Directors even though these Bylaws may also be altered, amended or repealed by the Board of Directors.

Section 3 - By Directors:

The Board of Directors shall have power to make, adopt, alter, amend and repeal, from time to time, Bylaws of the Corporation.

ARTICLE X - WAIVER OF NOTICE

(a) Shareholders: (Section 606)

Whenever any notice is required to be given by law, the Certificate of Incorporation or these Bylaws to the shareholders of the Corporation of a meeting of shareholders, a written waiver of notice submitted to the Corporation before or after the meeting or the attendance at the meeting by any shareholder, shall constitute a waiver of notice of such meeting, except when the person attends the meeting for the express purpose of objecting to the lack of notice thereof, prior to the conclusion of the meeting.

(b) Directors: (Section 711)

Whenever any notice is required to be given by law, the Certificate of Incorporation or these Bylaws to the Directors of the Corporation of a special meeting of the Board of Directors, a written waiver of notice submitted to the Corporation before or after the meeting or the attendance at the meeting by any shareholder, shall constitute a waiver of notice of such meeting, except when the person attends the meeting for the express purpose of objecting to the lack of notice thereof prior to the commencement of the meeting.

ARTICLE XI - INTERESTED DIRECTORS: (Section 713)

(a) No contract or transaction shall be void or voidable if such contract or transaction is between the corporation and one or more of its Directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers, are directors or officers, or have a financial interest, when such Director or officer is present at or participates in the meeting of the Board of committee which authorizes the contract or transaction or his, her or their votes are counted for such purpose, if:

(i) the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; or

(ii) the material facts as to his, her or their relationship or relationships or interest or interests and as to the contract or transaction are disclosed or are known to the shareholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the shareholders.

(b) Such interested Directors may be counted when determining the presence of a quorum at the Board of Directors', committee or shareholders' meeting authorizing the contract or transaction.

[end of by-laws]



## EXHIBIT C

### Authorizing Resolutions of Fisher Foods

EXTRACT from the minutes of a meeting of the Board of Directors of Fisher Foods of Queens Corp. (this "Corporation") held on November 1, 2006.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

"RESOLVED, that this Corporation authorizes and approves the straight-lease transaction with the New York City Industrial Development Agency (the "Agency"), J & J Farms Creamery, Inc. ("J & J") and J & J Farms Realty Joint Venture (the "Lessee") in connection with the financing of the improvement of a commercial facility (the "Facility"), consisting of the renovation of an approximately 77,420 square foot parcel of land and an approximately 57,430 square foot building thereon (including but not limited to the improvement of the staging area, loading dock, new offices, refrigeration and security systems), located at 57-48 49th Street, Maspeth, New York 11378, all for use in the distribution of assorted food products (the "Project").

RESOLVED, that each of the following documents, substantially in the form of the drafts on file with the Board of Directors of this Corporation, is hereby authorized and the President or any officer is directed to execute and deliver each such documents in the name and on behalf of this Corporation with such additions, deletions or modifications in or affecting each such documents thereof, or the effectiveness thereof, as such executing officer may determine, with advice of counsel, as conclusively evidenced by such officer's execution thereof, to be advisable and in the best interests of this Corporation:

1. Sublease Agreement among this Corporation, J & J and the Lessee;
2. Guaranty Agreement from this Corporation, J & J, the Lessee, and Michael Oberlander, Pearl Oberlander, Simon Friedman, and Morris Schlager, as individual guarantors (collectively, the "Individual Guarantors"), to the Agency; and
3. Letter of Representation from this Corporation, J & J, the Lessee and the Individual Guarantors to the Agency; and further

RESOLVED, that there is hereby approved the Lease Agreement between the Agency and the Lessee and there is hereby approved the execution and delivery of any and all documents, certificates and agreements to effect the Project and all matters related thereto; and further

RESOLVED, that all action taken and all instruments executed by authorized officers of this Corporation prior to the adoption of this resolution with respect to the Project, and all matters related thereto, are hereby ratified, confirmed and approved; and further

RESOLVED, that in addition to and without limiting the generality of the foregoing resolutions with respect to the Project, any officer or officers of this Corporation be, and each of them hereby is, authorized and directed to take such further action in connection with the Project and to execute and deliver such instruments and documents as such officers with advice of counsel may deem appropriate to carry out the foregoing resolutions; and the taking of such action or execution of such instruments shall be deemed conclusive evidence of the determination of such executing officer that such action or execution was appropriate and in the best interests of this Corporation.”



**State of New York**  
**Department of State** } **ss:**

I hereby certify, that the Certificate of Incorporation of FISHER FOODS OF QUEENS CORP. was filed on 05/24/1985, under the name of FOXONE CORPORATION, with perpetual duration, and that a diligent examination has been made of the Corporate index for documents filed with this Department for a certificate, order, or record of a dissolution, and upon such examination, no such certificate, order or record has been found, and that so far as indicated by the records of this Department, such corporation is an existing corporation.

A Certificate of Amendment FOXONE CORPORATION, changing its name to FISHER FOODS OF QUEENS CORP., was filed 06/05/1985.

\*\*\*

*WITNESS my hand and the official seal  
of the Department of State at the City of  
Albany, this 08th day of November two  
thousand and six.*

*Special Deputy Secretary of State*



Vertical text or markings along the right edge of the page, possibly bleed-through or scanning artifacts.





## Corporate Tax Search

**VANGUARD CORPORATE SERVICES**

**307 HAMILTON ST  
 ALBANY NY 12210  
 Attention:**

Articles 9, 9-A, 13,  
 13A, 32, and 33.

**Reference ID**  
 104401RK

Corporation name: **FISHER FOODS OF QUEENS CORP.**

<u>Incorp Date</u>	<u>Filing period</u>	<u>Termination date</u>	<u>Termination type</u>
<b>05/24/1985</b>	<b>June</b>		

According to our records, tax liens exist for the periods below.

Franchise tax returns are missing for the period(s) ended:

**None**

Franchise tax payments are past due for period(s) ended:

**None**

License fee (Article 9, section 181): Other fees due Maintenance fee for period (s) ended:

### Lien Provision

The tax shall become a lien on the date the return is required to be filed (without regard to any extension of time for filing the return), except that such tax shall become a lien not later than the date the taxpayer ceases to be subject to the tax or to exercise its franchise or to do business in New York State in a corporate or organized capacity. A dissolved corporation that continues to conduct business shall also be subject to the tax imposed by this article.

### Need help?

Telephone assistance is available from 8:00 a.m. to 5:00 p.m. (eastern time), Monday through Friday.

Business Tax information: 1 800 972-1233

Forms and Publications: 1 800 462-8100

From outside the U.S. and outside Canada: (518) 485-6800

Fax-on-demand forms: 1 800 748-3676

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110 (8:30 a.m. to 4:25 p.m., eastern time)

Internet access: [www.nystax.gov](http://www.nystax.gov)

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 225-5829.

If you need to write, address your letter to: NYS Tax Department, Taxpayer Contact Center, W.A. Harriman Campus, Albany, NY 12227





# Owner's Policy of Title Insurance

**Fidelity National Title Insurance Company**

A Stock Company

Policy Number 1312- 572832

## OWNER'S POLICY OF TITLE INSURANCE

*SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, FIDELITY NATIONAL TITLE INSURANCE COMPANY, a California corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:*

1. *Title to the estate or interest described in Schedule A being vested other than as stated therein;*
2. *Any defect in or lien or encumbrance on the title;*
3. *Unmarketability of the title;*
4. *Lack of a right of access to and from the land.*

*The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.*

*IN WITNESS WHEREOF, FIDELITY NATIONAL TITLE INSURANCE COMPANY has caused this policy to be signed and sealed by its duly authorized officers as of Date of Policy shown in Schedule A.*

**Fidelity National Title Insurance Company**

By:

President

ATTEST

Secretary



Countersigned: \_\_\_\_\_

Authorized Signature

(Please print name below)

## EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy
4. Any claim which arises out of the transaction vesting in the Insured the estate or interest by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (a) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
  - (b) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (i) to timely record the instrument of transfer; or
    - (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

## CONDITIONS AND STIPULATIONS

### 1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

### 2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the lands or an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

### 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

### 4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the term of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action

# Fidelity National Title Insurance

## Schedule A - Owner's Policy

**Amount of Insurance:** \$500,000.00

**Policy No.:** 1312572832

**File No.:** 82509FI-Q

**Date of Policy:** November 20, 2006

1. **Name of Insured:** NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY
2. **The estate or interest in the land which is covered by this policy is:** LeaseHold
3. **Title to the estate or interest in the land is vested in:**

**FEE:** J&J FARMS REALTY JOINT VENTURE by means of a Deed dated November 20, 2006 from J&J Farms Creamery, Inc. to be recorded in the Office of the City Register of the City of New York, Queens County.

**LEASEHOLD:** Leasehold interest is vested in the insured by means of a Lease made by NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY to J&J FARMS REALTY JOINT VENTURE dated November 20, 2006.

4. **The land referred to in this policy is described as follows:**

See Schedule A attached hereto

**Countersigned:**



Authorized Officer or Agent

**914-381-6700**  
**THE JUDICIAL TITLE INSURANCE AGENCY LLC**

# THE JUDICIAL TITLE INSURANCE AGENCY LLC

Title No. 82509FI-Q

## SCHEDULE A

ALL that certain plot, piece or parcel of land, situate, lying and being in Maspeth in the Second Ward of the Borough and County of Queens, City and State of New York, more particularly bounded and described as follows:

BEGINNING at a point on the westerly side of 49th Place, distant 590.50 feet northerly from the corner formed by the intersection of the northerly side of Grand Avenue (80 feet wide) with the westerly side of 49th Place;

RUNNING THENCE westerly parallel with Grand Avenue, 99.93 feet;

THENCE northwesterly along a line which forms an interior angle of 144 degrees 08 minutes 25 seconds with the last mentioned course and part of the distance through a proposed party wall, 239.73 feet;

THENCE northeasterly along a line which forms an interior angle of 89 degrees 59 minutes 05 seconds with the last mentioned course and part of the distance through a proposed party wall, 247.31 feet;

THENCE southeasterly along a line which forms an interior angle of 90 degrees 02 minutes 22.6 seconds with the last mentioned course and part of the distance through a proposed party wall, 245.21 feet to the northwesterly side of 49th Place;

THENCE southwesterly along the northwesterly side of 49th Place, 83.64 feet to a point;

THENCE southerly along the westerly side of 49th Place, 129.86 feet to the point or place of BEGINNING.

TOGETHER with an easement and right of way for ingress and egress to and from Grand Avenue over the following described parcel;

BEGINNING at a point on the northerly side of Grand Avenue (80 feet wide), distant 595 feet easterly from the corner formed by the intersection of the northerly side of Grand Avenue and the easterly side of 47th Street;

RUNNING THENCE northerly at right angles to the northerly side of Grand Avenue, 720.36 feet;

THENCE northeasterly on a line forming an interior angle of 143 degrees 42 minutes 33 seconds with the preceding course, 84.89 feet;

THENCE southeasterly on a line forming an interior angle of 90 degrees 27 minutes 18

# THE JUDICIAL TITLE INSURANCE AGENCY LLC

Title No. 82509FI-Q

## SCHEDULE A (continued)

seconds with the preceding course, 60 feet;

THENCE southwesterly along a line forming an interior angle of 89 degrees 32 minutes 42 seconds with the preceding course, 65.70 feet;

THENCE southerly along a line forming an exterior angle of 143 degrees 42 minutes 33 seconds with the preceding course, 493.16 feet;

THENCE southwesterly on a line forming an interior angle of 144 degrees 09 minutes 51 seconds with the preceding course, 0.55 feet;

THENCE southeasterly on a line at right angles with the preceding course, 0.39 feet;

THENCE southerly at right angles to the northerly side of Grand Avenue, 206.86 feet to the northerly side of Grand Avenue;

THENCE westerly along the northerly side of Grand Avenue, 60 feet to the point or place of BEGINNING.

SUBJECT to the rights of others over said easement and right of way.

FOR  
CO-FINANCING  
ONLY

The policy to be issued under this report will insure the title to such buildings and improvements erected on the premises which by law constitute real property.

TOGETHER with all the right, title and interest of the party of the first part, of, in and to the land lying in the street in front of and adjoining said premises.



**Fidelity National Title Insurance**  
**Schedule B - Owner's Policy**  
**Exceptions from Coverage**

Policy No.: 1312572832  
File No.: 82509

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Survey exceptions set forth herein.
2. Policy excepts covenants, conditions, easements, leases, agreements of record, etc., set forth in schedule herein.
3. This policy **does not** insure against any charges due to the City of New York for charges issued by the Department of Rents and Housing Maintenance for the Department of Environmental Protection, for water tap closing, the Department of Housing Preservation and Development for Emergency Repair liens, the Department of Health or any other City agency unless said liens are listed in the records of the Department of Finance or the County Clerk's office prior to closing. This is required due to the inability to search for these liens because of New York City's failure to properly file notices of these charges.

**NOTE: Closers are, under no circumstances, permitted to omit this exception from the owner's policy.**

4. Title company excepts all water and sewer charges from date of last actual meter reading to date of closing.
5. The right to maintain vaults in streets is not insured and charges therefore, if any, are excepted.
6. As the premises herein is benefited by a tax exemption, policy will except the lien which may attach by reason of any restoration of real property taxes after the transfer of title by the owner entitled to the tax exemption.

# THE JUDICIAL TITLE INSURANCE AGENCY LLC

Title No. 82509FI-Q

## SURVEY READING

Survey made by Montrose Surveying dated July 17, 1997 shows an attached high one story concrete block and brick structure with one story concrete block and roof over concrete platform on easterly side.

Fences encroach 2 feet 0 inches more or less onto 49th Place.

Northerly and southerly property lines pass part of the distance through party walls.

Proposed party wall along westerly property line.

Variations between fences, walls and record lines of title.

Visual examination made by Fehringer Surveying dated June 2, 2006 shows:

Loading docks and one story metal garage on easterly side.

Chain link and metal fences along southerly property line.

High one story concrete block structure and asphalt along adjoining property to the south.

**THE JUDICIAL TITLE INSURANCE AGENCY LLC**

**Title No. 82509FI-Q**

**SCHEDULE OF COVENANTS, CONDITIONS, EASEMENTS, LEASES,  
AGREEMENTS OF RECORD, ETC.**

Easement Agreement in Reel 2631 p. 1701.

Easements in deeds in Reel 1307 p. 1132, Reel 1900 p. 1238, Reel 2380 p. 1829 and  
Reel 2631 p. 1709.

Right of Way in Liber 7547 p. 59. (Affects streets only)

**ATTACHED ARE THE BEST COPIES AVAILABLE**

# Fidelity National Title Insurance

## STANDARD NEW YORK ENDORSEMENT

### (OWNER'S POLICY)

1. The following is added to the insuring provisions on the face page of this policy:

"5. Any statutory lien for services, labor or materials furnished prior to the date hereof, and which has now gained or which may hereafter gain priority over the estate or interest of the insured as shown in Schedule A of this policy."

2. The following is added to Paragraph 7 of the Conditions and Stipulations of this policy:


"(d) If the recording date of the instruments creating the insured interest is later than the policy date, such policy shall also cover intervening liens or incumbrances, except real estate taxes, assessments, water charges and sewer rents."

Nothing herein contained shall be construed as extending or changing the effective date of the policy unless otherwise expressly stated.

This endorsement, when countersigned below by a validating signatory, is made part of this policy and is subject to the Exclusions from Coverage, Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

DATED: 11-20-2006  
Title No. 82509FI-Q

Countersigned

By   
\_\_\_\_\_  
Authorized Officer or Agent

STANDARD NEW YORK ENDORSEMENT (9/1/93)  
FOR USE WITH ALTA OWNER'S POLICY (10-17-92)



**Fidelity National Title Insurance  
LEASEHOLD ENDORSEMENT  
(OWNER'S POLICY)**

Attached to and made part of Policy No. 1312572832 of Fidelity National Title Insurance.  
Title No. 82509

**1. As used in this endorsement, the following terms shall mean:**

a. "Evicted" or "Eviction": (a) the lawful deprivation, in whole or in part, of the right of possession insured by the Policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case, as a result of a matter covered by the Policy.

b. "Lease": the lease agreement described in Schedule A.

c. "Leasehold Estate": the right of possession for the Lease Term.

d. "Lease Term": the duration of the Leasehold Estate, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

e. "Personal Property": chattels located on the land and property which, because of their character and manner of fixation to the land, can be severed from the land without causing appreciable damage to such chattels and property or to the land to which they are affixed.

f. "Remaining Lease Term": the portion of the Lease Term remaining after the insured has been Evicted as a result of a matter covered by the Policy.

g. "Tenant Leasehold Improvements": those improvements, including landscaping, required or permitted to be built on the land by the Lease that have been built at the insured's expense or in which the insured has an interest greater than the right to possession during the Lease Term.

**2. The provisions of subsection (b) of Section 7 of the Conditions and Stipulations shall not apply to any Leasehold Estate covered by the Policy.**

**3. Valuation of Estate or Interest Insured**

If, in computing loss or damage, it becomes necessary to value the estates or interests insured of the insured as the result of a covered matter that results in an Eviction, then that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The insured claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.

**4. Additional items of loss covered by this endorsement:**

If the insured is Evicted, the following items of loss, if applicable, shall be included in computing loss or damage incurred by the insured, but not to the extent that the same are included in the valuation of the estates or interests insured by the Policy.

a. The reasonable cost of removing and relocating any Personal Property that the insured has the right to remove and relocate, situated on the Land at the time of Eviction, the cost of transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, and the reasonable cost of repairing the Personal Property damaged by reason of the removal and relocation.

b. Rent or damages for use and occupancy of the land prior to the Eviction which the insured as owner of the Leasehold Estate is obligated to pay to any person having paramount title to that of the lessor in the Lease.

# THE JUDICIAL TITLE INSURANCE AGENCY LLC

Title No. 82509FI-Q

## Leasehold Endorsement (Owner's Policy) (continued)

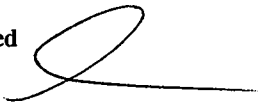
- c. The amount of rent that, by the terms of the Lease, the insured must continue to pay the lessor after E portion of the Leasehold Estate and Tenant Leasehold Improvements from which the insured has been Evicted.
- d. The fair market value, at the time of the Eviction, of the estate or interest of the insured in any lease or sublease made by the insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.
- e. Damages that the insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease made by the Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements caused by the Eviction.
- f. Reasonable costs incurred by the insured to secure a replacement leasehold equivalent to the Leasehold Estate.
- g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering fees, construction management fees, costs of environmental testing and reviews, and landscaping costs, and fees, costs and interest on loans for the acquisition and construction.

This endorsement is made a part of the Policy and is subject to all of the terms and provisions thereof and of any other endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any other endorsements, nor does it increase the face amount thereof.

DATED: 11-20-2006

Countersigned

By



Authorized Officer or Agent

TIRSA LEASEHOLD ENDORSEMENT (OWNER'S POLICY) (2/11/02)



**First American Title Insurance Company of New York  
LAND SAME AS SURVEY ENDORSEMENT**

Attached to and made part of Policy No. 1312572832 of First American Title Insurance Company of New York.  
Title No. 82509

The Company hereby assures the Insured that said land is the same as that delineated on the plat of a survey made by Montrose Surveying dated July 17, 1997 and updated by Fehringer Surveying dated June 2, 2006 designated Job No. 82509

The Company hereby insures said Assured against loss which said Assured shall sustain in the event said assurances herein shall prove to be incorrect.

The total liability of the Company under said policy and any endorsement therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

IN WITNESS WHEREOF, the Company has caused this Endorsement to be signed and sealed on its date of issue set forth herein.

DATED: 11-20-2006

Countersigned



By \_\_\_\_\_  
Authorized Officer or Agent

TIRSA LAND SAME AS SURVEY ENDORSEMENT (9/1/93)



or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, or (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest, as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

#### **5. PROOF OF LOSS OR DAMAGE**

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

#### **6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY**

In case of a claim under this policy, the Company shall have the following additional options:

##### **(a) To Pay or Tender Payment of the Amount of Insurance.**

(i) To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

(ii) Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

##### **(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.**

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

On the exercise by the Company of either of the options provided for in paragraphs b(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

#### **7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

#### **8. APPORTIONMENT**

If the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

#### **9. LIMITATION OF LIABILITY**

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

#### **10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY**

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

#### **11. LIABILITY NONCUMULATIVE**

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.



**12. PAYMENT OF LOSS**

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

**13. ROGATION UPON PAYMENT OR SETTLEMENT**

**(a) The Company's Right of Subrogation.**

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

**(b) The Company's Rights Against Non-Insured Obligors.**

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

**14. ARBITRATION**

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to,

any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

**15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT**

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

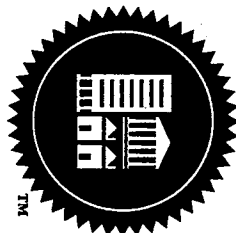
**16. SEVERABILITY**

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

**17. NOTICES, WHERE SENT**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at 17911 Von Karman Avenue, Suite 300, Irvine, CA 92614-6253

**FIDELITY  
NATIONAL  
TITLE  
INSURANCE  
COMPANY**



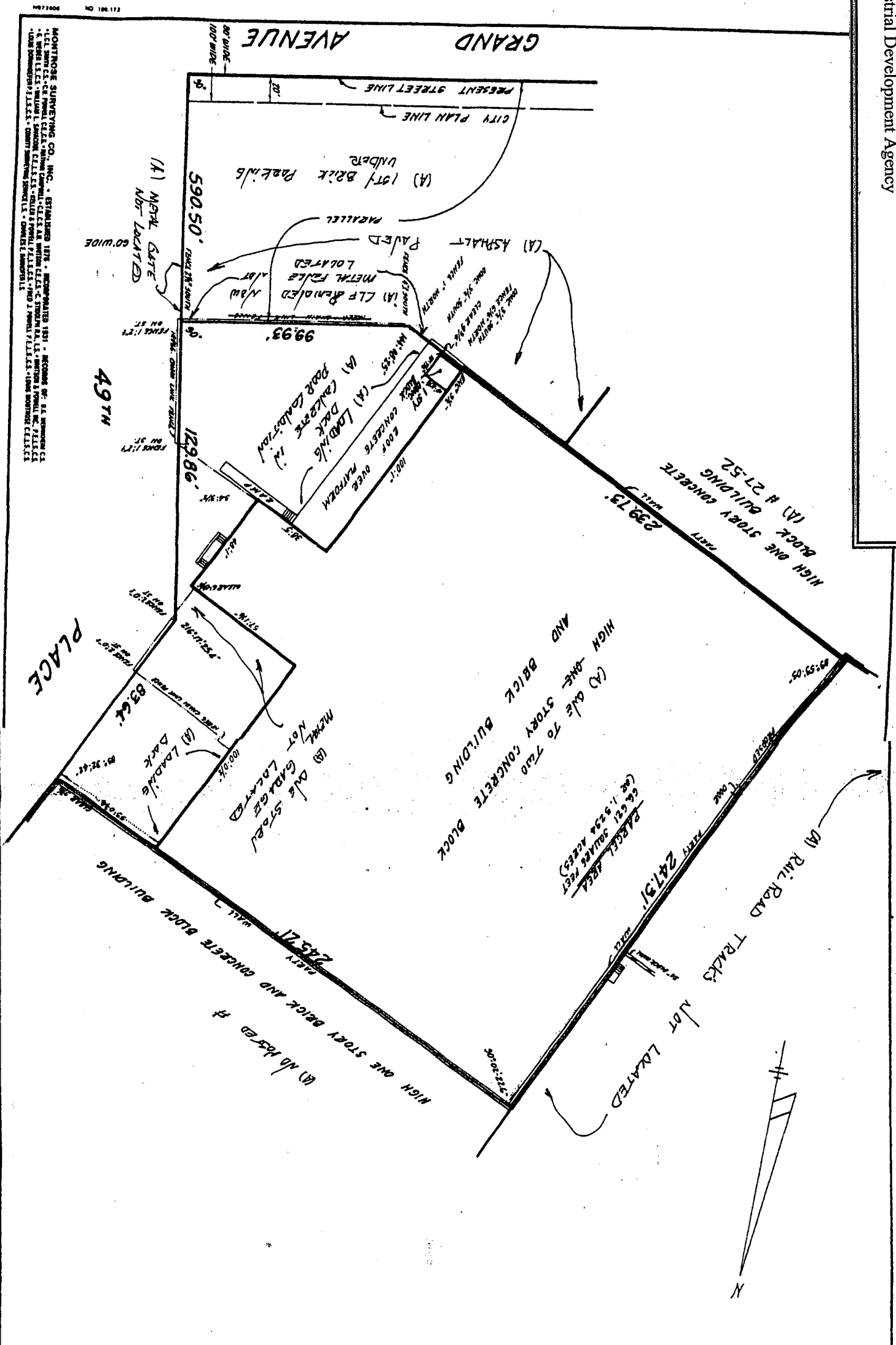
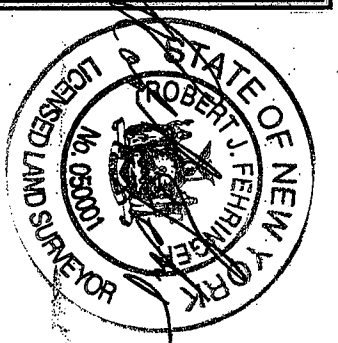
*Fidelity National Title Insurance Company*  
17911 Von Karman Avenue, Suite 300  
Irvine, CA 92614-6253



TITLE NO. 82509 THIS SURVEY WAS ALTERED BY VISUAL EXAMINATION OF PREMISES ON June 2, 2006 BY FEHRINGER SURVEYING, P.C. 148 N. Park Avenue, Rockville Centre, NY 11570 (516) 763-5515 FAX (516) 763-5525 SEE ( 2 ) ITEMS MARKED ( 1 )

SURVEY ALTERED BY VISUAL EXAMINATION IS CERTIFIED TO:

1. First American Title Insurance Company of New York
2. The Judicial Title Insurance Agency LLC
3. J & J Farms Creamery Co., Inc.
4. New York City Industrial Development Agency



REV.	DATE	DESCRIPTION	CK	DM
1	7-17-97	TITLE SURVEY		

SURVEY NO. 47816-12

CERTIFIED TO:  
J. J. FENKUS

COUNTY QUEEN'S  
TAX BLOCK NO. 262f  
SCALE: 50' = 1" NO.  
STANDARD U.S. LAND BLOCK NO.

DRAWN BY: L.S.C.

**MONTROSE SURVEYING CO., INC.** CITY & LAND SURVEYORS

148 N. PARK AVENUE, ROCKVILLE CENTRE, NY 11570  
 (516) 763-5515 FAX (516) 763-5525



LAW OFFICES OF  
**ROY P. KOZUPSKY & ASSOCIATES, LLP**

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**New Jersey Office**

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Secaucus, New Jersey 07096

Telephone: 201-592-9390

Facsimile: 201-592-9392

November 20, 2006

New York City Industrial  
Development Agency  
New York, New York

Re: New York City Industrial Development Agency  
Industrial Incentive Program  
(2006 J & J Farms Creamery, Inc. and Fisher Foods of Queens  
Corp. Project)

Dear Sir/Madam:

This opinion is being furnished to you in connection with the entering into of a straight-lease transaction by the New York City Industrial Development Agency (the "Agency") for the benefit of J & J Farms Creamery, Inc. ("J & J") and Fisher Foods of Queens Corp. ("Fisher Foods", together with J & J, the "Sublessees"), each of which is a corporation organized and existing under the laws of the State of New York, and J & J Farms Realty Joint Venture (the "Lessee"), which is a joint venture partnership of businesses organized and existing under the laws of the State of New York, pursuant to which the Agency will enter into a Lease Agreement, dated as of November 1, 2006 (the "Lease Agreement"), between the Agency and the Lessee. Terms defined in the Lease Agreement have the same meanings herein except as the context otherwise requires.

We have acted as counsel for the Lessee, the Sublessees, and Michael Oberlander, Pearl Oberlander, Simon Friedman and Morris Schlager (collectively, the "Individual Guarantors"), and in that capacity, we have examined the following:

- (A) The business certificate of partnership of the Lessee;
- (B) The Joint Venture Agreement of the Lessee, date December 15, 2005;

- (C) The articles of organization for J & J Farms Redevelopment Company, LLC (“Redevelopment Company”), certified by the Secretary of State of the State of New York;
- (D) A copy of the operating agreement of Redevelopment Company, certified by a member of Redevelopment Company;
- (E) The certificate of good standing of Redevelopment Company, issued by the Secretary of State of the State of New York;
- (F) The articles of organization for J & J Farms Creamery Company Real Estate, LLC (the “Real Estate”), certified by the Secretary of State of the State of New York;
- (G) A copy of the operating agreement of Real Estate, as amended, certified by a member of Real Estate;
- (H) The certificate of good standing of Real Estate, issued by the Secretary of State of the State of New York;
- (I) The certificate of incorporation of J & J, certified by the Secretary of State of the State of New York;
- (J) A copy of the bylaws of J & J, certified by an officer of the Sublessee;
- (K) The certificate of good standing of J & J, issued by the Secretary of State of the State of New York;
- (L) The certificate issued by the Department of Taxation and Finance of the State of New York relative to the tax status of J & J;
- (M) The certificate of incorporation of Fisher Foods, certified by the Secretary of State of the State of New York;
- (N) A copy of the bylaws of Fisher Foods, certified by an officer of the Sublessee;
- (O) The certificate of good standing of Fisher Foods, issued by the Secretary of State of the State of New York;
- (P) The certificate issued by the Department of Taxation and Finance of the State of New York relative to the tax status of Fisher Foods;
- (Q) The authorizations of the each of Redevelopment Company and Real Estate (each, a “Partner”) authorizing, among other things, the Company Lease Agreement, dated as of November 1, 2006, between the Lessee and the Agency (the “Company Lease”), the Lease Agreement, the Sublease Agreement, dated as of November 1, 2006, between the Lessee and the Sublessees (the “Sublease Agreement”), the Guaranty Agreement, dated as of November

1, 2006, from the Lessee, the Sublessees and the Individual Guarantors to the Agency (the "Guaranty Agreement"), a certain Letter of Authorization For Sales Tax Exemption, dated the date hereof, from the Agency to the Lessee, and the Letter of Representation, dated the date hereof, executed and delivered by the Lessee, the Sublessees and the Individual Guarantors to the Agency (the "Letter of Representation") (the documents referenced in this paragraph being referred to collectively as the "Lessee Documents");

(R) The authorizations the board of directors of each of the Sublessees authorizing, among other things, the Sublease Agreement, the Guaranty Agreement and the Letter of Representation (the documents referenced in this paragraph being referred to collectively as the "Sublessees Documents");

(S) The Lessee Documents;

(T) The Sublessees Documents;

(U) Title insurance policy numbered \_\_\_\_\_ and issued on the date hereof by First American Title Insurance Company of New York (the "Title Company") to the Agency with respect to the Agency's leasehold interest in the Facility Realty located at 57-48 49th Street, Maspeth, New York;

(V) A survey of the Facility Realty as certified to the Agency and the Title Company; and

(W) The Certificate of Completion for the Facility issued by the New York City Department of Marine and Aviation.

In addition, we have reviewed our office files pertaining to the Lessee, the Sublessees and the Individual Guarantors and have discussed the Project and the transactions contemplated with the appropriate individuals and corporate officials.

Based upon the foregoing and upon such other information and documents and such investigation of fact and law as we believe necessary to enable us to render this opinion, we are of the opinion that:

1) The Lessee is a joint venture partnership of businesses organized and validly existing and in good standing under the laws of the State of New York, and is comprised of the two Partners and has the power and authority to own its property and assets and to carry on its business as now being conducted by it.

2) Each Partner is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, has the authority to own its property and assets, to carry on its business as now being conducted by it and to execute and deliver and each of the Lessee Documents on behalf of the Lessee.

3) Each of the Sublessees is a corporation organized and validly existing and in good standing under the laws of the State of New York, and has the corporate power and authority to own its property and assets and to carry on its business as now being conducted by it.

4) The Lessee has the requisite power and authority to execute and deliver the Lessee Documents; and each of the Lessee Documents has been duly authorized, executed and delivered by the Lessee, and each is a legal, valid and binding obligation of the Lessee enforceable against it in accordance with its terms. The foregoing opinion is qualified only to the extent that the enforceability of each of the Lessee Documents may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors' rights generally and each is subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

5) Each Partner has the power and authority to execute and deliver the Lessees Documents; and each of the Lessees Documents has been duly authorized, executed and delivered by each Partner, and each is a legal, valid and binding joint and several obligation of each Partner enforceable against each Partner in accordance with its terms. The foregoing opinion is qualified only to the extent that the enforceability of each of the Lessees Documents may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors' rights generally and each is subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

6) Each of the Sublessees has the corporate power and authority to execute and deliver the Sublessees Documents; and each of the Sublessees Documents has been duly authorized, executed and delivered by the Sublessees, and each is a legal, valid and binding joint and several obligation of each Sublessee enforceable against each Sublessee in accordance with its terms. The foregoing opinion is qualified only to the extent that the enforceability of each of the Sublessees Documents may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors' rights generally and each is subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

7) Each of the Individual Guarantors has executed and delivered the Guaranty Agreement and the Letter of Representation (the "Individual Guarantors Documents"), each of which is the legal, valid and binding joint and several obligation of the Individual Guarantors enforceable against the Individual Guarantors in accordance with its terms. The foregoing opinion is qualified only to the extent that the enforceability of each of the Individual Guarantors Documents may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors' rights generally and each is subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

8) The execution and delivery by the Lessee of the Lessee Documents do not, and the performance by the Lessee of its obligations thereunder will not, (i) constitute a violation of any provision of law, order, regulation or decree of any court or agency of government, the partnership agreement of the Lessee or its business certificate, any joint venture agreement of the Lessee, or of any indenture, mortgage, deed, trust agreement or other instrument to which the Lessee is a party or any of its property is subject or by which it or any of its property is bound, or (ii) conflict with or result in a breach of or constitute (with due



notice and/or lapse of time) a default under its organizational documents or any such indenture, agreement or other such instrument of the Lessee.

9) The execution and delivery by each Partner of the Lessees Documents do not, and the performance by each Partner of its respective obligations thereunder will not, (i) constitute a violation of any provision of law, order, regulation or decree of any court or agency of government, the articles of organization of either Partner or its operating agreement, or of any indenture, mortgage, deed, trust agreement or other instrument to which either Partner is a party or to which any of its property is subject or by which it or any of its property is bound, or (ii) conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under its articles of organization or operating agreement or any such indenture, agreement or other such instrument.

10) The execution and delivery by the Sublessees of the Sublessees Documents do not, and the performance by each of the Sublessees of its respective obligations thereunder will not, (i) constitute a violation of any provision of law, order, regulation or decree of any court or agency of government, the certificate of incorporation of either of the Sublessees or its bylaws, or of any indenture, mortgage, deed, trust agreement or other instrument to which either of the Sublessees is a party or to which any of its property is subject or by which it or any of its property is bound, or (ii) conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under its certificate of incorporation or bylaws or any such indenture, agreement or other such instrument.

11) The execution and delivery by the Individual Guarantors of the Individual Guarantors Documents do not, and the performance by each of the Individual Guarantors of its respective obligations thereunder will not, (i) constitute a violation of any provision of law, order, regulation or decree of any court or agency of government, or of any indenture, mortgage, deed, trust agreement or other instrument to which any of the Individual Guarantors is a party or any of their respective property is subject or by which any of the Individual Guarantors or any of their respective property is bound, or (ii) conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other such instrument.

12) The exceptions set forth in the Title Insurance Policy issued to the Agency with respect to the Facility Realty do not impair good and marketable title to the property affected thereby or the use of the Facility for the purpose for which it is to be leased by the Agency to the Lessee as set forth in the Lease Agreement.

13) The Lessee has duly authorized the taking of any and all action necessary at the date hereof to carry out and give effect to the transactions contemplated to be performed on its part by the Lessee Documents.

14) Each Partner has duly authorized the taking of any and all action necessary at the date hereof to carry out and give effect to the transactions contemplated to be performed on its part by the Lessee Documents.

15) Each of the Sublessees has duly authorized the taking of any and all action necessary at the date hereof to carry out and give effect to the transactions contemplated to be performed on its part by the Sublessees Documents.

16) There is no action, suit, proceeding or investigation at law or in equity with respect to the Lessee by or before any court, public board or body, pending or threatened against or affecting the Lessee, nor do we know of any basis for any such pending or threatened action, suit, proceeding or investigation, wherein an unfavorable decision, ruling or finding on an issue raised by a party thereto would materially adversely affect the financial condition of the Lessee or the transactions contemplated by, or the validity or enforceability of, any of the Lessee Documents.

17) There is no action, suit, proceeding or investigation at law or in equity with respect to either Partner by or before any court, public board or body, pending or threatened against or affecting either Partner, nor do we know of any basis for any such pending or threatened action, suit, proceeding or investigation, wherein an unfavorable decision, ruling or finding on an issue raised by a party thereto would materially adversely affect the financial condition of either Partner or the transactions contemplated by, or the validity or enforceability of, any of the Lessees Documents.

18) There is no action, suit, proceeding or investigation at law or in equity with respect to either of the Sublessees by or before any court, public board or body, pending or threatened against or affecting either of the Sublessees, nor do we know of any basis for any such pending or threatened action, suit, proceeding or investigation, wherein an unfavorable decision, ruling or finding on an issue raised by a party thereto would materially adversely affect the financial condition of either of the Sublessees or the transactions contemplated by, or the validity or enforceability of, any of the Sublessees Documents.

19) There is no action, suit, proceeding or investigation at law or in equity with respect to any of the Individual Guarantors by or before any court, public board or body, pending or threatened against or affecting any of the Individual Guarantors, nor do we know of any basis for any such pending or threatened action, suit, proceeding or investigation, wherein an unfavorable decision, ruling or finding on an issue raised by a party thereto would materially adversely affect the financial condition of any of the Individual Guarantors or the transactions contemplated by, or the validity or enforceability of, any of the Individual Guarantors Documents.

20) To the best of my knowledge, after due inquiry, the operation of the Facility by the Lessee and Sublessees in the manner currently contemplated and as described in the Lease Agreement will not conflict with the Certificate of Completion for the Facility.

21) The operation of the Facility by the Lessee and Sublessees in the manner presently contemplated and as described in the Lease Agreement will not conflict with any order, consent decree or other remediation plan issued or approved by a court, administrative or regulatory body under any federal, state or local environmental laws, rules or regulation. Additionally, the Lessee and the Sublessees have identified or will timely identify and obtain any and all necessary approval, licenses, permits, rights, releases and/or clearances that may be necessary for the repair and/or renovations contemplated in the Lease Agreement.

22) No environmental licenses and permits are necessary for the Lessee and Sublessees to operate the Facility in the manner presently contemplated and as described in the Lease Agreement.

23) All consents, approvals and authorizations, if any, of any governmental authority, agency, quasi-governmental agency or private corporation required on the part of the Lessee in connection with the execution and delivery of the Lessee Documents have been duly obtained, and the Lessee has complied with all applicable provisions of law, if any requiring any designation, declaration, filing, registration and/or qualification with any governmental authority in connection with such execution and delivery.

24) All consents, approvals and authorizations, if any, of any governmental authority, agency, quasi-governmental agency or private corporation required on the part of each Partner in connection with the execution and delivery of the Lessees Documents have been duly obtained, and each Partner has complied with all applicable provisions of law, if any, requiring any designation, declaration, filing, registration and/or qualification with any governmental authority in connection with such execution and delivery.

25) All consents, approvals and authorizations, if any, of any governmental authority, agency, quasi-governmental agency or private corporation required on the part of each Sublessee in connection with the execution and delivery of the Sublessees Documents have been duly obtained, and each Sublessee has complied with all applicable provisions of law, if any, requiring any designation, declaration, filing, registration and/or qualification with any governmental authority in connection with such execution and delivery.

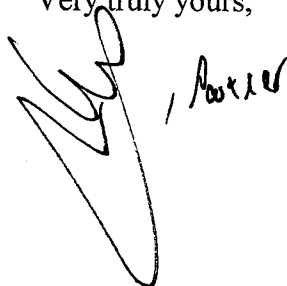
26) All consents, approvals and authorizations, if any, of any governmental authority required on the part of the Individual Guarantors in connection with the execution and delivery of the Individual Guarantors Documents have been duly obtained, and the Individual Guarantors have complied with all applicable provisions of law, if any, requiring any designation, declaration, filing, registration and/or qualification with any governmental authority in connection with such execution and delivery.

27) Pursuant to the Company Lease, the Agency has been vested with a valid leasehold estate in the Facility.

28) The Sublessees have, pursuant to the Sublease Agreement, assumed in writing and agreed to keep and perform all of the terms of the Lease Agreement on the part of the Lessee to be kept and performed, and the Sublease Agreement does not legally impair in any respect the obligations of the Lessee under the Lease Agreement for the payment of all rents nor for the full performance of all of the terms, covenants and conditions of the Lease Agreement.

All counsel to any of the parties to this transaction may rely on this letter as if it were addressed specifically to them.

Very truly yours,

A handwritten signature in black ink, appearing to be "A. B. ...", written over the typed name "A. B. ...". The signature is stylized and somewhat illegible.



**LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION****EXPIRATION DATE: March 31, 2007**

November 20, 2006

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency  
(2006 J & J Creamery Inc. and Fisher Foods of Queens Corp.)

Ladies and Gentlemen:

The New York City Industrial Development Agency (the "Agency"), by this notice, hereby advises you as follows:

1. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, is exempt from the imposition of any New York State or New York City sales and use tax. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency and is one required.

2. Pursuant to resolutions adopted by the Agency on August 9, 2005 and April 11, 2006, and a certain Lease Agreement, dated as of November 1, 2006 (the "Lease Agreement"), between the Agency and J & J Farms Realty Joint Venture, a New York joint venture partnership of businesses (the "Company"), the Agency has authorized the Company to act as its agent for the improvement of a commercial facility (the "Facility") the renovation of an approximately 77,420 square foot parcel of land and an approximately 57,430 square foot building thereon (including but not limited to the improvement of the staging area, loading dock, new offices, refrigeration and security systems), located at 57-48 49th Street, Maspeth, New York 11378, all for use in the distribution of assorted food products (the "Project"), for use and occupancy by the Company and its permitted sublessees, J & J Farms Creamery, Inc., a New York corporation, and Fisher Foods of Queens Corp., a New York corporation (collectively, the "Sublessees").

3. In connection with such resolution, the Lease Agreement and this Sales Tax Letter and pursuant to the authority therein granted, the Agency authorizes the Company to act as its agent in connection with the renovation of the Project and authorizes the Company to use this Sales Tax Letter as its agent only for the payment of the costs of building materials and building fixtures, as described in Exhibit A attached hereto, for such renovation of the Project.

4. As agent for the Agency, the Company agrees that each contract, agreement, invoice, bill or purchase order entered into by the Company as agent for the Agency for the renovation of the Project shall include language in substantially the following form:

“This [contract, agreement, invoice, bill or purchase order] is being entered into by J & J Farms Realty Joint Venture, a New York joint venture partnership of businesses (the “Agent”), as agent for and on behalf of the New York City Industrial Development Agency (the “Agency”) in connection with a certain project of the Agency for the Agent being the improvement of a commercial facility (the “Facility”), consisting of the renovation of an approximately 77,420 square foot parcel of land and an approximately 57,430 square foot building thereon (including but not limited to the improvement of the staging area, loading dock, new offices, refrigeration and security systems), located at 57-48 49th Street, Maspeth, New York 11378, all for use in the distribution of assorted food products (the “Project”). The building materials and fixtures (excluding trade fixtures) and capital improvements to be used for the Project which are the subject of this [contract, agreement, invoice, bill or purchase order] shall be exempt from the sales and use tax levied by the State of New York and The City of New York if purchased and used in accordance with the terms and conditions set forth in the attached Sales Tax Letter of the Agency, and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase order] is in compliance with the terms of the Sales Tax Letter. This [contract, agreement, invoice, bill or purchase order] is nonrecourse to the Agency, and the Agency shall not be directly or indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever, and the Agent shall be the sole party liable hereunder. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the [vendor or contractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.”

5. The acquisition of building materials and building fixtures constituting a part of the Project shall be exempt from the sales and use tax levied by the State of New York and The City of New York on the condition that (i) such building materials and building fixtures are separately identifiable property of the Agency, and (ii) any such property shall have a useful life of one year or more, and shall solely be for the use of the Company and the Sublessees at the Facility, and for no other entity and at no other location, and be effected by and at the sole cost of the Company.

6. The Agency shall have no liability or performance obligations under any contract, agreement, invoice, bill or purchase order entered into by the Company as agent for the

Agency hereunder. The Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever, and the Company shall be the sole party liable thereunder.

7. By execution by the Company of its acceptance of the terms of this Sales Tax Letter, the Company agrees to accept the terms hereof and warrants to the Agency that the use of this Sales Tax Letter by the Company is strictly for the purposes above stated.

8. Accordingly, until the earlier of (i) the Expiration Date referred to above, (ii) the completion of the Project as provided in Section 2.2 of the Lease Agreement, (iii) the termination of the Lease Agreement, or (iv) the receipt by the Company of notice from the Agency of the termination of this Sales Tax Letter (in each case as so terminated, the "Termination Date"), all vendors, contractors and subcontractors are hereby authorized to rely on this Sales Tax Letter (or on a photocopy or fax of this Sales Tax Letter) as evidence that purchases of the Project property, to the extent effected by the Company (or by a contractor or subcontractor engaged by the Company) as agent for the Agency, are exempt from all New York State and New York City sales and use taxes.

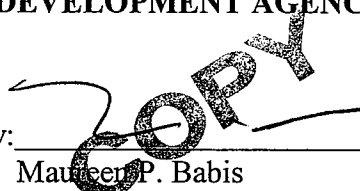
9. Notwithstanding any contrary provisions in the Lease Agreement, ten (10) days prior to the expiration of this letter, the Lessee shall surrender this letter to the Agency for annual renewal. The Lessee may continue to use a facsimile copy of this Authorization for Sales Tax Exemption until its stated expiration date. Within ten (10) days of receipt of this letter, the Agency, if required, shall provide such annual renewal of the letter to the Lessee as provided in the Lease Agreement.

10. The Agency further appoints the Sublessees its agents for purposes of using the Facility.

[Intentionally Left Blank]

The signature of a representative of the Company and the Sublessees where indicated below will indicate that the Company and the Sublessees have accepted the terms hereof.

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**


By:   
Maureen P. Babis  
Deputy Executive Director

ACCEPTED AND AGREED TO BY:

**J & J FARMS REALTY JOINT VENTURE**

By Its Joint Venture Partners

J & J Farms Redevelopment Company, LLC

By:   
Michael Oberlander  
Member

J & J Farms Creamery Company Real Estate, LLC  
By J & J Farms Creamery, Inc., Member

By:   
Michael Oberlander  
President

**J & J FARMS CREAMERY, INC.**

By:   
Michael Oberlander  
President

**FISHER FOODS OF QUEENS CORP.**

By:   
Michael Oberlander  
President



**Exhibit A**

Exemptions from sales or use tax relating to the acquisition of building materials and building fixtures for incorporation within the Facility Realty.

**COPY**



J&J FARMS REALTY JOINT VENTURE

November 20, 2006

New York City Industrial Development Agency  
110 William Street  
New York, New York 10038  
Attn: Executive Director

Ladies/Gentlemen:

Reference is hereby made to that certain Lease Agreement (the "Lease Agreement"), dated as of November 1, 2006, between J&J Farms Realty Joint Venture, a joint venture partnership of businesses organized under the laws of the State of New York ("Lessee"), and New York City Industrial Development Agency (the "Agency"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Lease Agreement.

In order to induce the Agency to enter into the Lease Agreement, the Lessee hereby undertakes, covenants and warrants to use its best efforts to procure the endorsement on form CG T4 91 11 88 (attached hereto as **Exhibit A**) to its commercial general liability policy (policy # Y-630-773X4827-TIA-06) wherein the Agency is listed as an additional insured prior to the initiation of any renovations and/or construction at the subject premises. The Lessee shall provide to the Agency prompt written evidence of the aforementioned endorsement taking effect.

The Lessee hereby acknowledges and agrees that its failure to perform the obligations set forth above within the time period provided shall be deemed to constitute a material breach under the Lease Agreement, and if not cured shall constitute an Event of Default thereunder and the Agency shall have the right to exercise the remedies set forth therein.

The Lessee hereby affirms that this agreement does not constitute a waiver of any of the Agency's rights or remedies under the Lease Agreement.

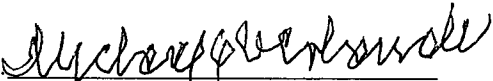
The Lessee agrees to indemnify the Agency for any and all claims, damages, losses, liabilities, obligations, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (including, but not limited to, reasonable attorneys' fees) which the Agency may incur or be subject to, directly, or indirectly, (or which may be claimed against the Agency by any person whatsoever) by reason of or in connection with the failure to procure the aforementioned endorsement.

Very truly yours,

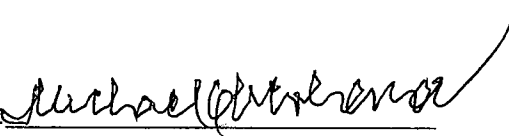
**J & J FARMS REALTY JOINT  
VENTURE**

By its Joint Venture Partners

J & J Farms Redevelopment Company, LLC

By   
Michael Oberlander  
Member

J & J Farms Creamery Company Real Estate, LLC  
By J & J Farms Creamery, Inc., Member

By   
Michael Oberlander  
President

**EXHIBIT A**

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY  
ISSUE DATE: - -

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED-DESIGNATED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

**Name of person or organization:**

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule as an insured but only with respect to liability arising out of your acts or omissions.



**MEMORANDUM OF CLOSING**

(2006 J & J Farms Creamery, Inc. and Fisher Foods of Queens Corp. Project)

of

New York City Industrial Development Agency  
New York, New York

November 20, 2006

The pre-closing of the above captioned straight lease project took place at the offices of Hawkins Delafield & Wood LLP, One Chase Manhattan Plaza, New York, New York at ten o'clock a.m. on November 20, 2006

All terms used herein shall have the same meaning as those used in the Lease Agreement, dated as of November 1, 2006, between New York City Industrial Development Agency (the "Agency") and J & J Farms Realty Joint Venture, as lessee (the "Lessee").

I. Prior to the closing the following had occurred:

- (A) J & J Farms Creamery, Inc. and Fisher Foods of Queens Corp. (collectively, the "Sublessees") submitted its application to the Agency requesting the Agency to provide financial assistance through its Industrial Incentive Program for the improvement of a commercial facility (the "Facility"), consisting of the renovation of an approximately 77,420 square foot parcel of land and an approximately 57,430 square foot building thereon (including but not limited to the improvement of the staging area, loading dock, new offices, refrigeration and security systems), located at 57-48 49th Street, Maspeth, New York 11378, all for use in the distribution of assorted food products (the "Project").
- (B) On April 11, 2006, the Agency adopted a resolution (i) authorizing the Project and undertaking to permit the financial assistance for the Project and to sublease the Facility Realty to the Lessee, (ii) authorizing the execution and delivery of the Lease Agreement and the taking of other action in connection therewith, and (iii) authorizing and approving matters related to the Project.

II. There were represented at the closing the following parties:

- (A) New York City Industrial Development Agency  
By: Paul Reilly, Esq.
- (B) Hawkins Delafield & Wood LLP  
By: J. Sarah Kim, Esq.



- (C) J & J Farms Realty Joint Venture  
By: Michael Oberlander
- (D) J & J Farms Creamery, Inc.  
By: Michael Oberlander
- (E) Fisher Foods of Queens Corp.  
By: Michael Oberlander
- (F) Michael Oberlander
- (G) Pearl Oberlander
- (H) Simon Friedman
- (I) Morris Schlager
- (J) Moshe Urbach
- (K) Law Offices of Roy P. Kozupsky & Associates LLP  
By: William P. Walzer, Esq.
- (L) Cityone Real Estate & Financing  
By: Robert Morel
- (M) The Judicial Title Insurance Agency LLC on behalf of First American  
Title Insurance Company of New York  
By: Kevin Regan

III. The Closing - All transactions at the Closing were deemed to have taken place simultaneously, and no transactions were deemed to have been completed and no document was deemed to have been delivered unless and until all transactions were completed and all documents delivered.

IV. At the Closing all of the documents specified in the Table of Contents to the Record of Proceeding were delivered.