

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

AGENCY AND LEASE AGREEMENT

Accelerated Sales Tax Exemption Program

This **AGENCY AND LEASE AGREEMENT** (the "Agreement"), made and entered into April 18, 2016, by and between **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency"), 110 William Street, New York, New York 10038 and Ample Hills Holdings, Inc. (the "Lessee"), an entity or person listed as the Applicant or Operating Company and having the address set forth in the Project Application attached hereto as **Exhibit A**.

WITNESSETH:

WHEREAS, pursuant to a resolution adopted by the Agency on May 12, 2015 in order to provide incentives for industrial, retail (subject to satisfaction of certain statutory requirements for retail projects), and commercial businesses located in innovation corridors or emerging neighborhood development areas the Agency will provide assistance to such businesses pursuant to the Accelerated Sales Tax Exemption Program (the "Program");

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

1. **Definitions.** The following terms shall have the respective meanings in this Agreement:

Act shall mean, collectively, the Enabling Act and the Agency Act.

Agency Act shall mean Chapter 1082 of the 1974 Laws of New York, as amended.

Agent shall have the meaning set forth in Section 5(c) hereof.

Applicant means the Applicant that is described in the Project Application. The Applicant is the same person or entity as the Lessee.

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

Commencement Date shall mean the date of this Agreement first set forth above, on which date this Agreement was executed and delivered.

Completion Date shall mean the date of completion of the Project as evidenced by the execution and delivery by the Lessee to the Agency of the Project Completion Certificate.

Eligible Items shall mean the following items of personal property and services, but excluding any Ineligible Items (as defined herein), with respect to which the Lessee and any Agent shall be entitled to claim a Sales Tax Exemption in connection with the Project:

- (i) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Facility Realty;
- (ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more;
- (iii) with respect to the eligible items identified in (ii) above: purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs;
- (iv) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility Realty (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and
- (v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility Realty.

Enabling Act shall mean the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended.

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

Expiration Date shall mean the earliest of (i) the second anniversary of the Commencement Date; (ii) the date on which the Lessee has realized the Maximum Sales Tax Savings Amount; (iii) the Completion Date, and (iv) the date on which the Agency terminates the Sales Tax Exemption pursuant to this Agreement.

Facility Personalty shall mean those Eligible Items consisting of personal property to be acquired by the Lessee or Agent(s) on behalf of the Agency pursuant to this Agreement and incorporated into and made an integral component part of the Facility Realty as part of the Project and for use by the Lessee.

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

Form ST-123 shall mean NYSDTF Form ST-123 "IDA Agent or Project Operator Exempt Purchase Certificate" or such additional or substitute form as is adopted by NYSDTF for use in completing purchases that are exempt from Sales Taxes.

Form ST-340 shall mean NYSDTF Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority" or such additional or substitute form as is adopted by NYSDTF to report Sales Tax Savings.

Form ST-60 shall mean NYSDTF Form ST-60 “IDA Appointment of Project Operator or Agent” or such additional or substitute form as is adopted by NYSDTF to report the Agency’s appointment of project operators or agents.

Hazardous Materials shall include 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.

Improvements shall mean the real property improvements located on the Land.

Indemnified Parties shall have the meaning set forth in Section 7(a) hereof.

Ineligible Items shall mean the following items of personal property and services with respect to which the Lessee and any Agent shall not be entitled to claim a Sales Tax Exemption in connection with the Project:

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) fine art and other similar decorative items;
- (v) plants, whether potted or landscaped;
- (vi) ordinary office supplies such as pencils, paper clips and paper;
- (vii) any materials or substances that are consumed in the operation of machinery;
- (viii) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and
- (ix) maintenance of the type as shall constitute janitorial services.

Land shall mean that certain lot, piece or parcel of land identified in the “Project Location Detail” section of the Project Application.

Legal Requirements shall mean the Constitutions of the United States and the State and all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, certificates of occupancy, directions and requirements.

Lessee shall mean the entity or person so identified in the preamble to this Agreement.

Maximum Sales Tax Savings Amount shall mean the maximum dollar amount of Sales Tax Savings that the Lessee is permitted to receive under this Agreement, which shall equal \$100,000.

NYSDTF shall mean the State Department of Taxation and Finance.

Project shall mean the acquisition and/or leasing of Eligible Items to the extent authorized by this Agreement and as required to complete the renovation, construction, repair, furnishing and/or equipping of facilities located at the Facility Realty for the purpose of assisting the Lessee with the renovation, furnishing and equipping of a 15,000 square foot facility located at 133 Beard Street, Brooklyn, New York, 11231.

Project Application shall mean the application submitted to the Agency by or on behalf of the Lessee, for approval by the Agency of the Project, a copy of which application is attached as **Exhibit A**.

Project Completion Certificate shall mean a certificate of a duly authorized representative of the Lessee in substantially the form set forth in **Exhibit B** – “Form of Project Completion Certificate.”

Project Documents shall mean this Agreement and the Project Application.

Sales Taxes or Sales and Use Taxes shall mean sales and compensating use taxes and fees imposed by Article 28 or 28-A of the New York State Tax Law but excluding such taxes imposed by Section 1107 or 1108 of such Article 28, as the same may be amended from time to time (including any successor provisions to such statutory sections).

Sales Tax Agent Authorization Letter shall mean the Sales Tax Agent Authorization Letter, substantially in the form set forth in **Exhibit D** – “Form of Sales Tax Agent Authorization Letter” and to be delivered in accordance with Section 5(c) hereof.

Sales Tax Exemption shall mean an exemption from Sales and Use Taxes resulting from the Agency’s participation in the Project.

Sales Tax Registry shall mean the Sales Tax Registry in the form set forth in **Exhibit C**.

Sales Tax Savings shall mean all Sales Tax Exemption savings realized by or for the benefit of the Lessee, including any savings realized by Agents appointed by the Agency, pursuant to this Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Project.

State shall mean the State of New York.

Term shall mean the period commencing on the Commencement Date and ending on the Termination Date.

Termination Date shall mean the date which is the first anniversary of the Expiration Date.

2. REPRESENTATIONS AND WARRANTIES

The Lessee makes the following representations and warranties:

(a) The Lessee is an individual or an entity of the type, and duly organized under the laws of the state set forth in the preamble to this Agreement, is validly existing and in good standing under the laws of its state of organization, is duly qualified to do business and in good standing under the laws of the State, has the requisite 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, he or she is or shall be a party.

(b) The Project Documents (i) have been duly authorized by all necessary action on the part of the Lessee, (ii) have been duly executed and delivered by the Lessee, and (iii) constitute the legal, valid and binding obligations of the Lessee, enforceable against the Lessee in accordance with their respective terms.

(c) The Lessee is in compliance, and will continue to comply, with all applicable Legal Requirements relating to the Project.

(d) The Lessee has not used Hazardous Materials on, from, or affecting the Facility Realty 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 to the best of the Lessee's knowledge, no prior owner or occupant of the Facility Realty has used Hazardous Materials on, from, or affecting the Facility Realty in any manner that violates any applicable Legal Requirements.

(e) The information submitted by the Lessee in and accompanying its Project Application was true, correct and complete as of the date submitted to the Agency and no event has occurred or failed to occur since such date of submission which would cause any of such information to include any untrue statement of a material fact or omit to state any material fact required to be stated therein to make such statements not misleading as of the date of this Agreement.

3. THE PROJECT

(a) Appointment as Agent.

The Agency hereby appoints the Lessee its true and lawful agent, and the Lessee hereby accepts such agency for 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, including: effecting the Project; making, executing, acknowledging and delivering any contracts, orders, receipts, writings and instructions with any other persons or entities (subject in each case to the requirements of this Agreement), and in general doing all things which may be requisite or proper, all for the purposes of undertaking the Project, and the Lessee agrees to pay, all fees,

costs and expenses incurred with respect to the Project from its own funds or borrowed funds made available therefor by the Lessee.

(b) **Manner of Project Completion.**

The Lessee shall (i) commence acquisition, renovation, repair and installation of Facility Personalty at the Facility Realty (such commencement shall include applying for any necessary permits required to proceed with the Project) within twelve (12) months of the Commencement Date; (ii) notify the Agency if it has not commenced the Project work within such time frame, and (iii) complete the Project in accordance with all Legal Requirements no later than the second anniversary of the Commencement Date, in a first class workmanlike manner, free of defects in materials and workmanship.

(c) **Maintenance.**

During the term of this Agreement, the Lessee shall be solely responsible for (i) the maintenance and condition of the Facility Realty and Facility Personalty and (ii) making or causing to be made all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) necessary to ensure that the Facility Personalty and the operations of the Lessee at the Facility Realty shall not be materially impaired or diminished in any way.

The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Facility Personalty or Facility Realty, or any part thereof, to effect the replacement of any inadequate, obsolete, worn out or unsuitable parts of the Facility Personalty or Facility Realty, or to furnish any utilities or services for the Facility Personalty or Facility Realty, and the Lessee hereby assumes full responsibility therefor.

(d) **Retail Grocery Projects.** If the Project is a retail grocery store project, the Lessee covenants and agrees that the Project will consist of minimum square footage of 2,000 square feet (i.e., floor area dedicated to the retail sale of grocery items); with at least 50% of such retail space for a general line of food products intended for home preparation, consumption, and utilization; at least 10% of such retail space for fresh produce; and less than 10% of such retail space for tobacco and alcohol products.

(e) **Project Fee.** In addition to the \$500 Application Fee, Lessee shall pay a project fee of .25% of the total estimated Project costs (based on the Application) on the Commencement Date, which fee equals \$3,000.

4. LEASE OF FACILITY PERSONALTY AND RENTAL PROVISIONS

(a) **Lease of the Facility Personalty.**

The Agency hereby leases the Facility Personalty to the Lessee, and the Lessee hereby leases the Facility Personalty from the Agency, for and during the term herein and subject to the terms and conditions herein set forth.

(b) **Transfer of Facility Personalty to Lessee.**

All of the Agency's right, title and interest in Facility Personalty shall be automatically

conveyed to the Lessee immediately, without the need for execution of further documentation, upon the earlier of: (i) with respect to any specific item of Facility Personalty, the permanent installation of such item of Facility Personalty as a real property improvement to the Facility Realty and (ii) the Termination Date.

All of the Agency's right, title and interest in Eligible Items other than Facility Personalty, including but not limited to, any service, maintenance or installation contracts entered into by the Lessee as agent for the Agency in connection with the Project, shall be automatically conveyed to the Lessee immediately, without the need for execution of further documentation, upon the earlier of: (i) with respect any such Eligible Item that relates to a specific item of Facility Personalty, the permanent installation of such item of Facility Personalty as a real property improvement to the Facility Realty and (ii) the Termination Date.

To the extent that the Agency does not have an interest in any Facility Personalty or any other Eligible Item hereunder, this Agreement shall continue in full force and effect as a contractual agency agreement between the Agency and the Lessee until the Termination Date.

On the Termination Date, all of the estate, right, title and interest herein granted or vested in the Lessee shall cease and terminate, and all of the Agency's right, title and interest in the Facility Personalty and any other Eligible Item, including any installation, maintenance and service contracts, shall be conveyed to the Lessee, without the need for execution of further documentation, immediately upon such termination.

The provisions of this Section 4(b) shall survive the termination or expiration of this Agreement.

(c) **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 Termination Date.

(d) **Rental and Payment Provisions.**

The Lessee shall pay rent to the Agency, without demand or notice, on the Commencement Date in the amount of \$1.00 (receipt of which is acknowledged by the Agency), which shall constitute the entire amount of rent payable hereunder.

Throughout the term of this Agreement, the Lessee shall pay to the Agency any additional amounts required to be paid by the Lessee to or for the account of the Agency hereunder.

In the event the Lessee should fail to make or cause to be made any payment of rent or any additional amounts required to be paid by the Lessee to or for the account of the Agency hereunder, pursuant to this Section 4(d), the amount 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 twelve percent (12%) per annum, compounded daily.

(e) **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 PERSONALTY, ITS FITNESS FOR ANY PARTICULAR PURPOSE OR THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY PERSONALTY. 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 PERSONALTY OR THE USE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR MAINTENANCE THEREOF.

5. SALES TAX EXEMPTION REQUIREMENTS

(a) **Agency's Exempt Status.** 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 Sales and Use Taxes. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required.

(b) **Scope of Sales Tax Exemption.** The Agency hereby authorizes the Lessee to act as its agent in connection with the Project for the purpose of purchasing Eligible Items for installation, servicing and use by the Lessee at the Facility Realty. Subject to the terms of this Agreement, it is intended that the aggregate scope of the Sales Tax Exemption provided to the Lessee, as agent of the Agency, pursuant to this Agreement shall be limited in both duration and amount as follows:

(i) The Sales Tax Exemption shall be effective only during the period from the Commencement Date to the Expiration Date.

(ii) The Sales Tax Exemption authorization set forth herein shall automatically be suspended upon notice to the Lessee that the Lessee shall be in default under this Agreement until such default is cured to the satisfaction of the Agency.

(iii) The Sales Tax Exemption authorization shall be subject to all of the terms, conditions and provisions of this Agreement.

(iv) Any exemption from Sales Taxes resulting from or occasioned by the Agency's involvement with the Project shall be limited to Eligible Items purchased in connection with the Project.

(v) The Sales Tax Exemption shall not be used to benefit any person or entity, including any tenant or subtenant located at the Facility Realty, other than the Lessee and its Principals (as such term is defined in the Project Application), without the prior written consent of the Agency.

(vi) By execution by the Lessee of this Agreement, the Lessee agrees to accept the terms hereof and represents and warrants to the Agency that the use of the Sales Tax Exemption by the Lessee or by any Agent is strictly for the purposes stated herein.

(vii) Upon the Expiration Date, the Lessee and each Agent shall cease being agents of the Agency, and the Lessee shall immediately notify each Agent in writing of such termination and that the Sales Tax Agent Authorization Letter issued to any such

Agent is likewise terminated.

(viii) The Lessee agrees that the aggregate amount of Sales Tax Savings realized by the Lessee and by each Agent in connection with the Project shall not exceed the Maximum Sales Tax Savings Amount.

(ix) The Agency makes no representation to the Lessee or any third party that any Sales Tax Savings is available under this Agreement.

(c) **Procedures for Appointing Agents.** If the Lessee desires to seek the appointment of a contractor, subcontractor or other party to act as the Agency's agent (an "Agent") for the purpose of effecting purchases exempt from Sales Taxes pursuant to this Agreement it must complete the following steps:

(i) Section 874(9) of the Enabling Act and Form ST-60 require that within thirty (30) days of the date that the Agency appoints a project operator or other person or entity to act as agent of the Agency for purposes of extending a sales or use tax exemption to such person or entity, the Agency must file a completed Form ST-60 with respect to such person or entity. Accordingly, for each Agent, the Lessee must complete and submit Form ST-60 to the Agency. The Agency requires Form ST-60 to be submitted electronically. Please download Form ST-60 via the internet by typing http://www.tax.ny.gov/pdf/current_forms/st/st60_fill_in.pdf into the address bar of your internet browser and saving the "fill-in" PDF of the form (using adobe acrobat). The downloaded form may then be completed electronically, saved and transmitted to the Agency by emailing it to Compliance@nycedc.com.

(ii) The appointment of such Agent as an agent for the Agency shall be effective only upon execution by the Agency and the Agent of a Sales Tax Agent Authorization Letter in the form attached hereto as **Exhibit D** following receipt of the completed Form ST-60 by the Agency. The determination whether or not to approve the appointment of an Agent shall be made by the Agency, in its sole discretion. If executed, a completed copy of the Sales Tax Agent Authorization Letter shall be sent to the Lessee within five (5) Business Days following such execution. The Lessee shall provide a copy of such executed Sales Tax Agent Authorization Letter to the Agent within five (5) Business Days after receipt thereof by the Lessee.

(iii) The Lessee shall ensure that each Agent shall observe and comply with the terms and conditions of each Sales Tax Agent Authorization Letter

(d) **Form ST-60 Not an Exemption Certificate.** The Lessee acknowledges that an executed Form ST-60 shall not serve as a sales or use tax exemption certificate or document. Neither the Lessee nor any Agent shall tender a copy of the executed Form ST-60 to any person required to collect Sales Taxes as a basis to make such purchases exempt from Sales Taxes. No such person required to collect Sales Taxes may accept the executed Form ST-60 in lieu of collecting any Sales Taxes required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY THE LESSEE, AN AGENT, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION

CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY EIGHT AND THIRTY SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

(e) **Form ST-123.** As agent for the Agency, the Lessee agrees that it will, and will cause each Agent to, present to each seller or vendor a completed and signed Form ST-123 for each contract, agreement, invoice, bill or purchase order entered into by the Lessee or by any Agent, as agent for the Agency for the renovation, repair and equipping of the Project. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Project on each bill and invoice and invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Lessee, as Project operator of the Agency, was the purchaser.

(f) **Agency Not Liable.** The Agency shall have no liability or performance obligations under any contract, agreement, invoice, bill or purchase order entered into by the Lessee or any Agent acting as agent for the Agency under this Agreement or any Sales Tax Agent Authorization Letter. 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 Lessee or, as applicable, any Agent, shall be the sole party liable thereunder.

(g) **Repayment for Misuse of Sales Tax Exemption.** In the event that the Lessee or any Agent shall utilize the Sales Tax Exemption authorization in violation of the terms of this Agreement, the Lessee shall promptly deliver notice of same to the Agency, and the Lessee shall, upon demand by the Agency, pay to or at the direction of the Agency a return of Sales Tax exemptions in an amount equal to all such unauthorized Sales Tax exemptions together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized Sales Tax exemption was availed of by the Lessee (less any amount of interest and penalties paid to the State). The Lessee acknowledges and agrees that the use of the Sales Tax Exemption to obtain Sales Tax Savings in excess of the Maximum Sales Tax Savings Amount is a violation of this Agreement.

(h) **Inspection and Audit of Records.** Upon request by the Agency with reasonable notice to the Lessee, the Lessee shall make available at reasonable times to the Agency all such books, records, contracts, agreements, invoices, bills or purchase orders of the Lessee, and require all appropriate officers and employees of the Lessee to respond to reasonable inquiries by the Agency, as shall be necessary (i) to indicate in reasonable detail those costs for which the Lessee shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (ii) to permit the Agency to determine amounts owed, if any, by the Lessee under this Section 5.

(i) **Form ST-340 Filing Requirement.** 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 Form ST-340 with NYSDTF, in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of NYSDTF, of the value of all Sales Tax Savings claimed by the Lessee and each Agent in connection with the Project. 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 without any further action of the Agency and shall immediately and without demand notify each Agent appointed by the Agency in connection with the Project of such termination. .

(j) **Sales Tax Registry Filing Requirement.** No later than August 1, 2016, and each August 1st thereafter until the Expiration Date, the Lessee shall file with the Agency a completed Sales Tax Registry in the form attached hereto as Exhibit E which accounts for all Sales Tax Savings realized by the Lessee and each Agent during the annual period ending on the preceding June 30th. Within ten (10) days after the Expiration Date, the Lessee shall file with the Agency a completed Sales Tax Registry which accounts for all Sales Tax Savings realized by the Lessee and each Agent during the period from the preceding July 1st to the Expiration Date.

(k) **Special Provisions Relating to State Sales Tax Savings.**

(i) The Lessee covenants and agrees to comply, and to cause each of its contractors, subcontractors, Agents, persons or entities to comply, with the terms and conditions of subdivisions (1) and (3) of Section 875 of the Enabling Act (the "Special Provisions"), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Agreement and the Special Provisions, the Special Provisions shall control.

(ii) The Lessee acknowledges and agrees that the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Lessee State Sales Tax Exemption benefits taken or purported to be taken by the Lessee or any other person or entity acting on behalf of the Lessee to which Lessee is not entitled or which are in excess of the Maximum Sales Tax Exemption Amount or which are for property or services not authorized or taken in cases where the Lessee or any other person or entity acting on behalf of the Lessee failed to comply with a material term or condition to use property or services in the manner required by this Agreement. The Lessee shall, and shall require and any other person or entity acting on behalf of the Lessee, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such State Sales Tax Exemption benefits and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of the New York State Department of Taxation and Finance (the "Commissioner") to assess and determine State Sales and Use Taxes due from the Lessee under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

(iii) The Lessee is hereby notified (provided that such notification is not a covenant or obligation and does not create a duty on the part of the Agency to the Lessee or any other party) that the Agency is subject to certain requirements under Section 875 of the Enabling Act, including the following:

1. if the Agency recovers, recaptures, receives, or otherwise obtains, any amount of State Sales Tax Exemption benefits from the Lessee, the Agency shall, within thirty days of coming into possession of such amount, remit it to the Commissioner, together with such information and report that the Commissioner deems necessary to administer payment over of such amount. The Agency shall join the Commissioner as a party in any action or proceeding that the Agency commences to recover, recapture, obtain, or otherwise seek the return of, State Sales Tax Exemption benefits from an agent, project operator or other person or entity.

2. The Agency shall prepare an annual compliance report detailing its terms and conditions described in this Section and its activities and efforts to recover, recapture, receive, or otherwise obtain State Sales Tax Exemption benefits described in subdivision (e)(ii) above, together with such other information as the Commissioner and the New York State Commissioner of Economic Development may require. The report shall be filed with the Commissioner, the Director of the Division of the Budget of The State of New York, the New York State Commissioner of economic development, the New York State Comptroller, the Council of the City of New York, and may be included with the Annual financial statement required by subdivision (1)(b) of Section 859 of the Enabling Act. Such report required by this subdivision shall be filed regardless of whether the Agency is required to file such financial statement described by such subdivision (1)(b) of Section 859 of the Enabling Act. The failure to file or substantially complete the report required by subdivision (1)(d) of Section 859 of the Enabling Act shall be deemed to be the failure to file or substantially complete the statement required by such subdivision, and the consequences shall be the same as provided in subdivision (1)(E) of Section 859 of the Enabling Act.

3. The foregoing requirements shall apply to any amounts of State Sales Tax Exemption benefits that the Agency recovers, recaptures, receives, or otherwise obtains, regardless of whether the Agency or the Lessee or other person or entity acting on behalf of the Lessee characterizes such benefits recovered, recaptured, received, or otherwise obtained, as a penalty or liquidated or contract damages or otherwise. The foregoing requirements shall also apply to any interest or penalty that the Agency imposes on any such amounts or that are imposed on such amounts by operation of law or by judicial order or otherwise. Any such amounts or payments that the Agency recovers, recaptures, receives, or otherwise obtains, together with any interest or penalties thereon, shall be deemed to be State Sales Taxes and the Agency shall receive any such amounts or payments, whether as a result of court action or otherwise, as trustee for and on account of the State.

(l) Survival. The obligations set forth in the Section 5 shall survive the termination of this Agreement.

6. **INSURANCE.**

(a) Required Insurance. Throughout the term of this Agreement, the Lessee shall obtain and maintain for itself as a primary insured the following insurance:

- (i) Commercial General Liability (“CGL”) with \$1,000,000 minimum per occurrence and \$2,000,000 minimum in the aggregate, per-location aggregate, and on a per occurrence basis. This policy shall contain coverage for contractual liability, premises operations, and products and completed operations.
- (ii) Workers’ Compensation, disability and employer liability insurance satisfying State statutory limits. Coverage for employer liability shall be

in respect of any work or operations in, on or about the Facility Realty.

- (b) **Required Policy Attributes.** The Lessee shall cause the CGL Policy to:
- (i) name the Agency as an additional insured on a primary and non-contributory basis as more particularly required in Section 6(a);
 - (ii) be written on ISO Form CG-0001, or on such other equivalent form as same may be reasonably acceptable to the Agency but only if the substitute form being proposed as equivalent is provided to the Agency sixty (60) days prior to the intended effective date;
 - (iii) not limit (whether by exception, exclusion, endorsement, script or other modification) any of the following coverage attributes: (x) contractual liability coverage insuring the contractual obligations of the insureds; (y) the right of the insureds to name additional insureds including the Agency; (z) the applicability of CGL coverage to the Agency as an additional insured in respect of liability arising out of any of the following claims: (A) claims against the Agency by employees of an insured, or (B) claims against the Agency by any contractor, architect or engineer or by the employees of any of the foregoing, or (C) claims against the Agency arising out of any work performed by a contractor, architect or engineer;
 - (iv) provide primary insurance and the issuing insurer shall not have a right of contribution from any other insurance policy insuring the Agency;
 - (v) to include a waiver by the insurer, as against any person or entity insured under such Policy including any additional insured, the following: (x) any right of subrogation, (y) any right to set-off or counterclaim against liability incurred by a primary insured or any additional insured, and (z) any other deduction, whether by attachment or otherwise, in respect of any liability incurred by any primary insured or additional insured; and
 - (vi) the Agency shall not be liable for any insurance premium, commission or assessment under or in connection with the CGL policy.

(c) **Required Insurer Attributes.** The CGL policy must be issued by an insurer satisfying the following requirements:

- (i) the insurer must have a minimum AM Best rating of A minus; and
- (ii) the insurer must be an authorized insurer in accordance with Section 107(a) of the New York State Insurance Law.

(d) **Required Evidence of Compliance.** The Lessee shall deliver or cause to be delivered, throughout the term of this Agreement, upon the Agency's request, evidence of all policies required hereunder as set forth in this Section 6.

(e) **CGL Policy.** The Lessee shall deliver to the Agency an Acord Certificate for the CGL policy required by Section 6(a). Such Acord Certificate shall name the Agency as an

additional insured in the following manner:

New York City Industrial Development Agency is an additional insured on a primary and non-contributory basis for both CGL and Umbrella/Excess. The referenced CGL is written on ISO Form CG-0001 without modification to the contractual liability, employer's liability or waiver-of-subrogation provisions thereof, and contains no endorsement limiting or excluding coverage for claims arising under New York Labor Law, covering the following premises: 133 Beard Street, Brooklyn, NY 11231;*

(f) **Required Notices.** The Lessee shall immediately give the Agency notice of each occurrence that is reasonably probable to give rise to a claim under the insurance required to be maintained by Section 6(a). The Lessee shall in writing immediately notify the Agency of the cancellation of any Policy.

THE AGENCY DOES NOT REPRESENT THAT THE INSURANCE REQUIRED IN SECTION 6(a), WHETHER AS TO SCOPE OR COVERAGE OR LIMIT, IS ADEQUATE OR SUFFICIENT TO PROTECT THE INSUREDS AND THEIR OPERATIONS AGAINST CLAIMS AND LIABILITY.

7. COVENANTS OF LESSEE.

(a) **Indemnity.**

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 or affiliated individuals or entities) thereof and persons under the Agency's control or supervision (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, including attorney and consultant fees, investigation and laboratory fees, court costs, and litigation 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 on the Commencement Date, and continuing throughout the term of this Agreement, arising upon, about, or in any way connected with the Facility Realty, the Facility Personalty, the Project, the use of the Sales Tax Exemption or any of the transactions with respect thereto.

The Lessee releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable to the Lessee for any Claim 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 this Section 7(a) including any Claim or Liability arising from or incurred as a result of the negligence or willful misconduct of such Indemnified Party, or at the direction of the Lessee with respect to any of such matters above referred to.

* Insert address of Facility Realty, or, if consented to by the Agency, all New York locations.

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 7(a); 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 7(a).

Anything to the contrary in this Agreement notwithstanding, the covenants of the Lessee contained in this Section 7(a) 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.

The obligations of the Lessee set forth in this Section 7(a) shall survive the termination of this Agreement.

(b) **Employment Matters.**

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 (29 U.S.C. §2801) 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, persons eligible to participate in the Workforce Investment Act of 1998 (29 U.S.C. §2801) 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.

Upon the request of the Agency, the Lessee shall cooperate with the Agency in the development of programs for the employment and/or training of members of minority groups in connection with performing work at the Facility Realty.

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

(c) **Non-Discrimination.**

The Lessee shall not 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 any subtenant of the Facility Realty are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term "treated" shall mean and include 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. The Lessee shall, in all solicitations or

advertisements for employees placed by or on behalf of the Lessee state that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex. 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) **No Assignment.**

The Lessee shall not at any time mortgage, pledge, assign or transfer this Agreement.

(e) **Automatically Deliverable Documents.**

- (i) 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 this Agreement. Any notice required to be given pursuant to this subsection shall be signed by a duly 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.
- (ii) The Lessee shall deliver all insurance-related documents required by Section 6.
- (iii) Prior to the appointment of an agent in connection with the use of the Sales Tax Exemption as provided in Section 5(e), the Lessee shall submit Form ST-60 electronically to the Agency as provided therein.
- (iv) By February 28th of each year (for each year in which the filing of Form ST-340 is required by law), the Lessee shall furnish a copy of the executed Form ST-340 to the Agency at the time of filing of such form with NYSDTF.
- (v) No later than August 1, 2016, and each August 1st thereafter until the Expiration Date, the Lessee shall file with the Agency a completed Sales Tax Registry which accounts for all Sales Tax Savings realized by the Lessee during the annual period ending on the preceding June 30th.
- (vi) Within ten (10) days after the Expiration Date, the Lessee shall file with the Agency a completed Sales Tax Registry which accounts for all Sales Tax Savings realized by the Lessee during the period from the preceding July 1st to the Expiration Date.
- (vii) Within ten (10) days after the Completion Date, the Lessee shall deliver to the Agency evidence of completion of the Project by delivering to the Agency the Project Completion Certificate, together with all attachments required thereunder.

The obligations of the Lessee set forth in this Section 7(e) shall survive the termination of this Agreement.

(f) **Requested Documents.** Upon request of the Agency, the Lessee shall deliver or cause to be delivered to the Agency within ten (10) days of the date so requested:

- (i) a certificate of the Lessee that the insurance the Lessee maintains complies with the provisions of Section 6, that such insurance has been in full force and effect at all times during the term of this Agreement, and that duplicate copies of all policies or certificates thereof have been filed with the Agency and are in full force and effect and the evidence required by Section 6;
- (ii) copies of any (a) bills, invoices or other evidences of cost as shall have been incurred in connection with the Project, and (b) permits, authorizations and licenses from appropriate authorities relative to the occupancy, operation and use of the Facility Realty and Facility Personalty;
- (iii) upon twenty (20) days prior request by the Agency, a certificate of the Lessee either stating that to the knowledge of the Lessee 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 the Lessee has knowledge;
- (iv) employment information requested by the Agency pursuant to Section 7(b); and
- (v) information regarding non-discrimination requested by the Agency pursuant to Section 7(c).

(g) **Taxes, Assessments and Charges.** The Lessee shall pay when the same shall become due all taxes and assessments, general and specific, if any, levied and assessed upon or against the Facility Realty, this Agreement, any ownership estate or interest of the Lessee in the Facility Realty 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 Realty. The Lessee acknowledges and agrees that the Facility Realty is not exempt from such impositions due to the Agency's ownership of, or interest in, the Facility Personalty.

(h) **Compliance with Legal Requirements.** Throughout the term of this Agreement and at its sole cost and expense, the Lessee shall promptly observe and comply with all applicable Legal Requirements applicable to the Project, the Facility Personalty and the Facility Realty.

(i) **Restrictions on Dissolution and Merger.** The Lessee covenants and agrees that at all times during the term of this Agreement, it will (i) maintain its existence as the type of entity set forth in the preamble of this Agreement, (ii) continue to be subject to service of process in the State, (iii) continue to be organized under the laws of, or qualified to do business in, the

State, and (iv) not merge, consolidate, acquire, liquidate, wind-up, dissolve, transfer or otherwise dispose of to another entity or person all or substantially all of its property, business or assets remaining after the Commencement Date

(j) **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, at the sole cost and expense of the Lessee, as the Agency deems reasonably necessary or advisable for the implementation, effectuation, correction or confirmation of this Agreement and any rights of the Agency hereunder and under any other Project Document.

8. REMEDIES AND EVENTS OF DEFAULT

(a) **Events of Default.** Failure of the Lessee to observe and perform any covenant or agreement on its part to be performed under this Agreement and continuance of such failure for a period of ten (10) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency shall constitute an "Event of Default" hereunder.

(b) **Remedies on Default.** Whenever any Event of Default referred to in Section 8(a) shall have occurred and be continuing, the Agency may take any one or more of the following remedial steps:

- (i) The Agency may terminate 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 all of the Agency's right, title and interest in the Facility Personalty and other Eligible Items, including installation, maintenance and service contracts, shall be conveyed to the Lessee, without the need for execution of further documentation, immediately upon such termination;
- (ii) The Agency may bring an action for damages, injunction or specific performance;
- (iii) The Agency may take whatever action at law or in equity as may appear necessary or desirable to enforce performance or observance of any obligations, agreements or covenants of the Lessee under this Agreement; or
- (iv) The Agency may suspend or terminate the Sales Tax Exemption.

No action taken pursuant to this Section 8(b) (including termination of this Agreement pursuant to this Section 8(b) or by operation of law or otherwise) shall, except as expressly provided herein, relieve the Lessee from the Lessee's obligations hereunder.

(c) **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.

(d) **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.

(e) **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.

(f) **Agreement to Pay Fees and Expenses of Attorneys and Other Consultants.** In the event the Lessee should default under any of the provisions of this Agreement and the Agency should employ outside attorneys or other consultants or incur other out of pocket expenses for the enforcement of performance or observance of any obligation or agreement on the part of the Lessee herein contained or contained in any other Project Document, the Lessee agrees that it will on demand therefor pay to the Agency the reasonable fees and disbursements of such attorneys or other consultants and such other expenses so incurred.

9. MISCELLANEOUS

(a) **Amendments.** This Agreement may only be amended by a written instrument executed and delivered by the parties hereto.

(b) **Service of Process.** The Lessee represents that it is subject to service of process in the State and covenants that it will remain so subject until all obligations, covenants and agreements of the Lessee under this Agreement shall be satisfied and met. If for any reason the Lessee should cease to be so subject to service of process in the State, the Lessee hereby irrevocably consents to the service of all process, pleadings, notices or other papers in any judicial proceeding or action by designating and appointing the first person listed as a Principal of the Applicant in the Project Application, at the address of the Applicant listed in the Project Application as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Lessee as a result of any of its obligations under this Agreement. If such appointed agent shall cease to act or otherwise cease to be subject to service of process in the State, the Lessee 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 the Lessee as a result of any of its obligations under this Agreement; provided, however, that the service of such process, pleadings, notices or other papers shall not constitute a condition to the Lessee's obligations hereunder.

For such time as any of the obligations, covenants and agreements of the Lessee under this Agreement remain unsatisfied, the Lessee's agent(s) designated in this Section 9(b) shall accept and acknowledge on the Lessee's behalf each service of process in any such suit, action or proceeding brought in any such court. The Lessee agrees and consents that each such service of process upon such agents and written notice of such service to the Lessee in the manner set forth in this Section 9(b) shall be taken and held to be valid personal service upon the Lessee whether or not the Lessee shall then be doing, or at any time shall have done, business within the State and that each such service of process shall be of the same force and validity as if service were made upon the Lessee according to the laws governing the validity and

requirements of such service in the State, and waives 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 Lessee or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Lessee.

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

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

if to the Lessee, to the address provided by the Applicant in the Project Application.

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 for overnight delivery by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder.

(d) **Consent to Jurisdiction.** The Lessee irrevocably and unconditionally (i) agrees that any suit, action or other legal proceeding arising out of this Agreement or any other Project Document, the Facility Personalty, the Facility Realty, the Project, the relationship between the Agency and the Lessee, the Lessee's ownership, interest, use or occupancy of the Facility Personalty and the Facility Realty and/or any claim for injury or damages may be brought in the courts of record of the State in New York County or the United States District Court for the Southern District of New York; (ii) consents to the jurisdiction of each such court in any such suit, action or proceeding; (iii) waives any objection which it may have to the venue of any such suit, action or proceeding in such courts; and (iv) waives and relinquishes any rights it might otherwise have (w) to move to dismiss on grounds of forum non conveniens, (x) to remove to any federal court other than the United States District Court for the Southern District of New York, and (y) to move for a change of venue to a New York State Court outside New York County. If the Lessee commences any action against the Agency in a court other than the courts of record of the State in New York County or the United States District Court for the Southern District of New York, the Lessee shall, upon request from the Agency, either consent to a

transfer of the action or proceeding to a court of record of the State in New York County or the United States District Court for the Southern District of New York, or, if the court where the action or proceeding is initially brought will not or cannot transfer the action, the Lessee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of record of the State in New York County or the United States District Court for the Southern District of New York.

(e) **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 repair, construction, equipping and furnishing of the Facility Realty other than any other Project Document and any agreements between the Agency and Lessee or its affiliates executed and delivered prior to May 12, 2015.

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

(g) **Effective Date; Counterparts.** This Agreement was delivered on the Commencement Date. 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.

(h) **Binding Effect.** This Agreement shall inure to the benefit of the Agency, the Lessee and the Indemnified Parties, and shall be binding upon the Agency and the Lessee and their respective successors and assigns.

(i) **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 and the Indemnified Parties.

(j) **Law Governing.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without regard or giving effect to the principles of conflicts of laws thereof.

(k) **Waiver of Trial by Jury.** The Lessee does 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 Agreement or any matters whatsoever arising out of or in any way connected with this Agreement, the Lessee's obligations hereunder, the Facility Personalty, the Facility Realty, the Project, the relationship between the Agency and the Lessee, the Lessee's ownership, use or occupancy of the Facility Personalty or the Facility Realty and/or any claim for injury or damages. The provision of this Agreement relating to waiver of a jury trial shall survive the termination or expiration of this Agreement.

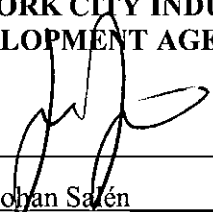
(l) **Construction.** In this Agreement, unless the context otherwise requires: The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms refer to this Agreement. Words importing the singular number shall mean and include the plural number and vice versa. Words importing persons 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. Any headings preceding the texts of the several Sections of this Agreement 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. Unless the content indicates otherwise, references to designated "Exhibits", "Sections", "Subsections" and other subdivisions are to the designated Exhibits, Sections, Subsections and other subdivisions of or to this Agreement. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Any definition of or reference to any agreement, instrument or other document herein shall be construed to refer to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein).

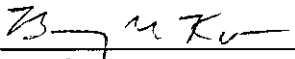
(m) **Recourse Under This Agreement.** All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency or any natural person executing this Agreement on behalf 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, the obligations of the Agency shall neither subject the Agency to any pecuniary or other liability nor create a debt of the State or the City.

IN WITNESS WHEREOF, by signing below each of the Agency and the Lessee has caused this Agreement to be executed by a duly authorized representative as of the year and day first above written.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: Johan Salén
Title: Executive Director

AMPLE HILLS HOLDINGS, INC.

By: 
Name: Barry M. Korn
Title: CEO

2016

STATE OF NEW YORK)
COUNTY OF NEW YORK)
SWORN TO BEFORE ME THIS
16 DAY OF 9 2016

Nathaniel T. Harris
Notary Public State of New York
NO. 01HA627271
Qualified in New York County
Commission expires on November 26, 2016

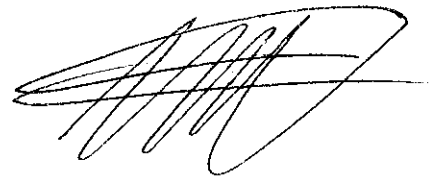


Exhibit A

PROJECT APPLICATION



Accelerated Sales Tax Exemption Program (A-STEP) Application

Applicant Name: Ample Hills Holdings, Inc.	
Name of operating company (if different from Applicant):	
Phone Number: 347-725-4061	
Address: 305 Nevins Street, Brooklyn, NY 11215	
Borough/Block/Lot: Brooklyn / 440 / 9	Website Address: www.amplehills.com
EIN #: 47-3932347	NAICS Code: 311
State and date of incorporation or formation: DE, 4/6/2015	Qualified to conduct business in NY? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Nature of the business: <input checked="" type="checkbox"/> Industrial/Manufacturing <input type="checkbox"/> Advanced Manufacturing <input checked="" type="checkbox"/> Retail <input type="checkbox"/> Office/Professional Services <input type="checkbox"/> Other, please explain:	
Company (including affiliated companies) has received NYCIDA benefits within the past 5 years? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, please provide affiliate name:	
Applicant is (check one of the following, as applicable):	
<input type="checkbox"/> General Partnership	<input type="checkbox"/> Limited Partnership
<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Natural Person
<input checked="" type="checkbox"/> C Corporation	<input type="checkbox"/> S Corporation
<input type="checkbox"/> Other: _____	

Principals of Applicant (Note: Please include all "Principals" as such term is defined in the Certifications Section below)

Name of Principal	Title or State of Formation	Address	Voting Interest in Applicant	Ownership Interest in Applicant	Date of Birth or Formation	SS# or EIN#
Brian Smith	President	231 Dean Street, Brooklyn, NY 11217	62.7%	62.7%	1/27/1970	263-45-0622
Jackie Cuscuna	CMO	231 Dean Street, Brooklyn, NY 11217	Brian's spouse	Brian's spouse	8/15/1969	088-68-4802
Barry Korn	CFO	175 Sullivan Street, 3A, NY, NY 10012	3.0%	3.0%	8/20/1968	033-44-7932

Project Location Detail

Borough/Block/Lot: Brooklyn, Block 612, Lot 1	Street address and zip code: 133 Beard Street, 11231
Square footage of existing building: 15,000 sq ft (our leased part)	Square footage of land:
<input type="checkbox"/> Applicant or a Principal is the fee simple owner of the Project Location	
<input checked="" type="checkbox"/> Applicant or a Principal leases the Project Location	
Intended use(s) of site (check all that apply):	
<input checked="" type="checkbox"/> Retail <input type="checkbox"/> Grocery Retail <input checked="" type="checkbox"/> Manufacturing/Industrial <input type="checkbox"/> Commercial/Other (please explain)	
Is there any improved space which is currently occupied by existing subtenant(s) (whether a Principal or otherwise)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Will any improved space be occupied by subtenant(s) (whether a Principal or otherwise)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If yes to either, please attach a separate page and provide details such as (1) name of subtenant business(es) (whether Principals or otherwise), (2) square footage of subtenant operations, (3) subtenant lease commencement and termination dates, and (4) copies of leases.	

Applicant Contact Information

	Name/Title	Company	Address	Email	Phone
Applicant Contact	Barry Korn	Ample Hills	305 Nevins St, Brooklyn, NY 11215	barry@amplehills.com	917-699-4491
Attorney	Christopher Poe	Wyrick Robbins	401 Lake Boone Trail, Suite 300, Raleigh, NC 27607	cope@wyrick.com	919-571-0913
Accountant	Joe del Prete	Del Prete & Chang	111 Atlantic Ave, Brooklyn, NY 11021	Del_prete_cpa@msn.com	718-875-3535
Consultant/Other					

Project Description

1. Please describe your equipment purchase, renovation or construction project, including details on project activities (i.e. excavation, HVAC, window replacement, etc.). Please describe why benefits are needed to proceed with the project and how the project will be of value to the neighborhood. If needed, attach a separate sheet of paper.

We are building an ice cream production factory in order to increase our production capacity and provide product for growth. We are a Brooklyn based company, founded by a husband and wife. We are doing a complete build out of the project space into a plant to produce ice cream as well as all of the various mix-in items to the ice creams (cake, cookies, etc.). We will be installing completely new systems for our portion of the building including HVAC, electrical, plumbing and other systems. The space will be primarily devoted to a baking area for baking the mix-ins and an ice cream plant for producing the ice cream. We currently produce in our Gowanus shop but given the opportunities we have to take advantage of, we likely continue producing in our Gowanus location and adding the factory capacity as incremental. In addition to the jobs that will be produced at the factory, increasing our production will allow us to open additional locations in the NY Metropolitan area and create more jobs at those locations. We are targeting to have the plant open in late September. We raised money from an investor group in order to fund the factory as well as provide some additional growth capital. However, as we have continued to plan for the factory, we have determined a significant funding gap. As such, we are beginning the process of trying to get a bank loan in order to bridge the gap. However, given that a bank will only be willing to loan on existing business and not take our growth potential into account, we are not sure we can obtain a loan in the amount needed. The support of the city that this application would provide will help reduce the funding gap and provide some relief to the business. While the vast majority of the space will be dedicated to the factory (including some office space for production supervisory staff) we will include a retail location at the site. Our retail locations are primarily ice cream shops but also provide space for child birthday parties and other events such as ice cream making classes. Our main retail locations are designed so that the patrons can see the ice cream being made. We plan to have a large glass wall between the retail and production space so that patrons will be able to see the ice cream being made while at the location.

2. Using the table below, please provide an estimated budget in connection with your equipment purchase, construction or renovation project.

Type of Expense	Estimated Cost (\$)	Financing Sources and Amount/Source
New construction or improvements	\$800,000	
Rehabilitation or repair	250,000	
Machinery, Furnishings and/or Equipment		We may apply for equipment tax exemption under a different program
Fees (explain): architect, engineer and design	150,000	
Other (explain)		
Total Costs	\$1,200,000	Recently raised equity plus proceeds from yet to be obtained bank loan.

Contractor Information (if applicable)

Do you anticipate using a contractor to make purchases of material or equipment for your project rather than you making those purchases directly? If so, please provide the following information.	
Contractor: Action Construction	
Contractor Office Address: 448 79 th Street, Brooklyn, NY 11209	
Contractor EIN #: 112993182	
Contractor Contact Person: Greg Toledo	Contractor Contact Phone Number: 917-560-4271

Financial History

- Has **Applicant**, or any **Principal**, or any existing or proposed occupant at the **Project Location(s)**, obtained within the last five (5) years, or is any such person or entity in the process of obtaining, or contemplating obtaining, other assistance from the New York City Industrial Development Agency (the "Agency") and/or other **Public Entities**?

Yes No If Yes, please provide details on an attached sheet.
- Has **Applicant**, or any **Principal**, ever defaulted on a loan or other obligation to a **Public Entity**?

Yes No If Yes, please provide details on an attached sheet.
- Has **Applicant**, or any **Principal**, failed to file any required tax returns as and when required with appropriate governmental authorities?

Yes No If Yes, please provide details on an attached sheet.

Employment Information

For all responses below, please note that part-time employees work an average of between 17.5 and 35 hours per week, and full-time employees work 35 hours or more per week. Hourly wages should represent the pay rate and are exclusive of overtime. For any salaried employees, please divide the annual salary by 1,820 (working hours per year) to produce an hourly wage. Wage information should exclude principals

1. Number of Employees Applicant employed throughout New York City as of the last pay period (used average given seasonality):
Part-time (working between 17.5 and 35 hours per week): Full-time (working 35 or more hours per week):
2. If Applicant currently occupies and operates at the Project Location, how many Full- and Part-time Employees are employed at Project Location? Part-time (working between 17.5 and 35 hours per week): Full-time (working 35 or more hours per week):
3. How many Full- and Part-time Employees will be employed at Project Location upon project completion?
Part-time (working between 17.5 and 35 hours per week): Full-time (working 35 or more hours per week):

Wage Information

The questions in this section apply only to **Permanent Employees** employed or to be employed at the Project Location. Please note this information is required to be provided to the Agency on an annual basis.

1. Regarding employment if Applicant currently occupies and operates at the Project Location N/A
Average hourly wage per part-time employee: _____ Average hourly wage per full-time employee: _____
Hourly wage of highest compensated part-time employee: _____ Hourly wage of highest compensated full-time employee: _____
Hourly wage of lowest compensated part-time employee: _____ Hourly wage of lowest compensated full-time employee: _____
2. Regarding employment at the Project Location upon completion of the proposed project
Average hourly wage per part-time employee: \$12.00 Average hourly wage per full-time employee: \$24.00
Hourly wage of highest compensated part-time employee: \$18.00 Hourly wage of highest compensated full-time employee: \$33.00
Hourly wage of lowest compensated part-time employee: \$10.00 Hourly wage of lowest compensated full-time employee: 10.00
3. Generally describe all other forms of compensation and benefits that Permanent Employees will receive. Examples: healthcare, employer-contributions for retirement plans, on-the-job training, reimbursement for educational expenses, etc.
We offer health insurance under the ACA. In addition, we reimburse for education as needed for the company (such as Health Department related courses). Training is also part of our regular employee on-boarding.

Labor

If none of the following questions apply to the Applicant or any Principal which is an entity, answer "NO"; but, for any question that does apply, be sure to specify to which of the Applicant or Principal(s) the answer is relevant.

1. Has the Applicant or any of its Principals during the current calendar year or any of the five preceding calendar years experienced labor unrest situations, or received federal and/or state unfair labor practices complaints, or any other complaints alleging discrimination in the general treatment of employees?
 Yes No If Yes, please explain on an attached sheet
2. Are all employees of the Applicant and each of its Principals permitted to work in the United States?
 Yes No If No, please provide details on an attached sheet.
3. Has any local, state or federal department, agency or commission having regulatory or oversight responsibility with respect to workers and/or their working conditions and/or their wages, inspected the premises of the Applicant or any of its Principals or audited the payroll records of the Applicant or any of its Principals during the current or preceding three year calendar years?
 Yes No If "Yes," please use an attached sheet to briefly elaborate upon such inspection or audit.

Environmental Issues

An essential component of this Application is the Environmental Assessment Form, the form of which has been provided to you. Please complete the appropriate sections of the Environmental Assessment Form and return to the Agency along with the rest of your application materials.

Certifications

I, the undersigned officer/member/partner of Applicant, on behalf of Applicant, hereby request, represent, certify, understand, acknowledge and agree as follows:

The Applicant and the Principals of the Applicant ("Principals" as such term is used in this Application is defined as the most senior three officers of Applicant, any person or entity with a ten percent (10%) or greater ownership interest in the Applicant, and any person or entity as shall have the power to control, whether through ownership, voting control or otherwise, the Applicant, or any person or entity that directly or indirectly controls, is controlled by, or is under common control with the Applicant):

1. are not in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency, New York City Economic Development Corporation ("NYCEDC") or the City, unless such default or breach has been waived in writing by the Agency, NYCEDC or the City, as the case may be;
2. have not been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;
3. have not been convicted of a felony in the past ten (10) years;
4. have not received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or
5. have not received written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in court or other appropriate forum.

I request that this Application, together with all materials and data submitted in support of this Application (collectively, these "Application Materials"), be submitted for review to the Agency, in order to obtain from the Agency an approval to provide the benefits requested herein for the Project. I represent that I have the authority to sign these Application Materials on behalf of, and to bind, Applicant.

I certify to the best of my knowledge and belief, after due investigation, the information contained in these Application Materials is accurate, true and correct and does not contain a misstatement of a material fact or omit to state a material fact necessary to make the statements contained herein not misleading. I understand that an intentional misstatement of fact, or, whether intentional or not, a material misstatement of fact, or the providing of materially misleading information, or the omission of a material fact, may cause the Agency to reject the request made in the Application Materials. I understand and consent to the following: that Applicant and Principals will be subject to a background check (including an Experian credit check) and actual or proposed subtenants may be subject to a background check, and if such background check performed by the Agency with respect to Applicant or any Principals reveals negative information, Applicant consents to any actions that the Agency or NYCEDC may take to investigate and verify such information; that under the New York State Freedom of Information Law ("FOIL"), the Agency may be required to disclose the Application Materials and the information contained therein.

I further understand and agree as follows:

That notwithstanding submission of this Application, the Agency shall be under no obligation to approve the requested benefits.

That preparation of this Application and any other actions taken in connection with the proposed Project shall be entirely at Applicant's sole cost and expense.

That the Applicant hereby releases the Agency, NYCEDC, and the directors, officers, employees and agents of each (collectively, the "Indemnitees") from all claims that Applicant has or could assert and which arise out of this Application or out of any actions taken in connection with this Application or out of any other actions taken in connection with the proposed Project (collectively, the "Actions"). Applicant hereby indemnifies and holds harmless each of the Indemnitees against any claims and damages brought or asserted by third parties, including reasonable attorneys' fees, arising from or in connection with the Actions. As referred to herein, "third parties" shall include but not be limited to Principals.

That the Applicant DOES HEREBY CERTIFY to the Agency that the proposed project will not involve moving business operations from elsewhere in New York State (outside of New York City) to New York City.

That in the event the Agency or NYCEDC discloses the Application Materials in response to a request made pursuant to FOIL, Applicant hereby authorizes the Agency and NYCEDC to make such disclosure and hereby releases the Agency and NYCEDC from any claim or action that Applicant may have or might bring against the Agency or NYCEDC, their directors, officers, agents, employees and attorneys, by reason of such disclosure; and that Applicant agrees to defend, indemnify and hold the Agency and the NYCEDC and their respective directors, officers, agents, employees and attorneys harmless (including without limitation for the cost of reasonable attorneys fees) against claims arising out of such disclosure as such claims may be made by any party including the Applicant, or any Principal, or by the officers, directors, employees and agents thereof.

I acknowledge and agree that the Agency reserves its right in its sole and absolute discretion to request additional information, waive any requirements set forth herein, and/or amend the form of this Application, to the full extent permitted by applicable law.

Requested, Represented, Certified, Acknowledged, Understood and Agreed by Applicant,

I certify that, using due care, I know of no misstatement of material fact in these Application Materials and know of no material fact required to be stated in these Application Materials to make the statements made therein not misleading.

Certified by Preparer,

This 11 day of March, 2016.
Name of Applicant: Ample Hills Holdings, Inc.
Signatory: Brian Smith
Title of Signatory: President
Signature: [Handwritten Signature]

This 11 day of March 2016.
Name of Preparer: Barry Korn
Signatory: [Handwritten Signature]
Title of Signatory: CEO
Signature: [Handwritten Signature]

Exhibit B

FORM OF PROJECT COMPLETION CERTIFICATE

The undersigned, a duly authorized representative of _____, a _____ organized and existing under the laws of the State of _____ (the "Lessee"), HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 3 of that certain Agency and Lease Agreement, dated as of _____ 1, 20__ (the "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 Agreement):

(i) the Project was commenced within one year of the Commencement Date and has been completed. The date of completion of the Project and final installation of Project Personalty at the Facility Realty was _____, ___, 201_ ; and

(ii) attached hereto is one of the following (check only one and attach the indicated document):

- certificate of occupancy, or
- temporary certificate of occupancy, or
- amended certificate of occupancy, or
- letter of no objection; or
- not applicable to Project (Explain: _____)

(iii) in accordance with all applicable laws, regulations, ordinances and guidelines, the Facility is ready for occupancy, use and operation for its intended purpose under the Agreement and such occupancy, use and operation has in fact commenced; and

(iv) Attached is a completed Sales Tax Registry which accounts for all Sales Tax Savings realized by the Lessee during (a) the period from the July 1st immediately precceding the Expiration Date to the Expiration Date, or (b) if the Expiration Date occurred less than one year after the Commencement Date, the period from the Commencement Date to the Expiration Date.

(v) As of the Completion Date, the Lessee employed ___ full-time employees (working at least 35 hours per work, subject to customary leave); and ___ part-time employees (working at least 17.5 hours per week, subject to customary leave).

(vi) For the period from the Commencement Date to the Completion Date, the Project generated on average per month approximately ___ full-time equivalent construction employee jobs.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this _____
day of _____, ____.

AMPLE HILLS HOLDINGS, INC.

By: _____

Name: _____

Title: _____

Exhibit D

SALES TAX AGENT AUTHORIZATION LETTER

EXPIRATION DATE: April 18, 2018

**ELIGIBLE LOCATION:
133 Beard Street, Brooklyn, New York 11231**

April 18, 2016

DIPIERO ACTION CONSTRUCTION CORP. D/B/A ACTION CONSTRUCTION
448 79TH STREET
BROOKLYN, NEW YORK 11209

Re: New York City Industrial Development Agency
(2016 Ample Hills Holdings, Inc. Project)

Ladies and Gentlemen:

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

1. Pursuant to a certain Agency and Lease Agreement, dated as of April 18, 2016 (the "Agreement"), between the Agency and Ample Hills Holdings, Inc. (the "Lessee"), the Agency has authorized the Lessee to act as its agent in connection with the Project described therein. Certain capitalized terms used herein and not defined shall have the respective meanings given to such terms in the Agreement.

2. At the Lessee's request, the Agency appoints DIPIERO ACTION CONSTRUCTION CORP. D/B/A ACTION CONSTRUCTION (the "Agent") as an agent of the Agency, pursuant to this Sales Tax Agent Authorization Letter for the purpose of effecting purchases of Eligible Items exempt from Sales and Use Taxes in accordance with the terms, provisions of this Sales Tax Agent Authorization Letter and the Agreement. **The Agent should review the definitions of Eligible Items and Ineligible Items in the Agreement in order to determine the scope of Sales Tax Exemption provided under the Agreement and hereunder.**

3. On the date hereof, the Agency has executed and will file within thirty days of the date hereof, Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60") with the State the New York State Department of Taxation and Finance, in order to evidence that the Agency has appointed you as its agent. Pursuant to the Sales Tax Exemption hereby made available to you, the Agent shall avail itself of such Sales Tax Exemption for Eligible Items acquired at the direction of the Lessee in connection with the Project and shall not include such Sales Taxes in its contract price, bid or reimbursable costs, as the case may be.

4. The Agent acknowledges that the executed Form ST-60 shall not serve as a sales or use tax exemption certificate or document. The Agent shall not tender a copy of the executed Form ST-60 to any person required to collect Sales Taxes as a basis to make such purchases exempt from such Sales Taxes. No such person required to collect Sales Taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY AN AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY EIGHT AND THIRTY SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

5. The Agent hereby agrees to present to each seller or vendor a completed and signed NYSDTF Form ST-123 "IDA Agent or Project Operator Exempt Purchase Certificate" or such additional or substitute form as is adopted by NYSDTF for use in completing purchases that are exempt from Sales Taxes ("Form ST-123") for each contract, agreement, invoice, bill or purchase order entered into by you as agent for the Agency, in connection with the Project.

6. The Agent agrees to ensure that each seller or vendor accepting Form ST-123 in connection with purchases exempt from Sales Taxes identify the name of the Lessee and the address of the Project on each bill and invoice and indicate on the bill or invoice that the Agency; or you, as Agent; or the Lessee, as Project operator of the Agency, was the purchaser.

7. The Agent hereby agrees to comply with the terms and conditions of the Agreement. Agent agrees to retain for at least six (6) years from the date of expiration of its Contract copies of (a) its contract with the Lessee to provide services in connection with the Project, (b) all contracts, agreements, invoices, bills or purchases entered into or made by such Agent using the Letter of Authorization for Sales Tax Exemption, and (c) the executed Form ST-60 appointing the Agent as an agent of the Agency, and shall make such records available to the Agency upon reasonable notice. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

8. In order to assist the Lessee in complying with its obligation to file New York State Department of Taxation and Finance Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority" ("Form ST-340"), the Agent agrees that it shall file semi-annually with the Lessee (no later than January 15th and July 15th of each calendar year in which it has claimed sales and use tax exemptions in connection with the Project) a written statement of all sales and use tax exemptions claimed by such Agent for the preceding six-month period (ending on June 30th or December 31st, as applicable) in connection with the Project by completing and submitting to the Lessee the **Sales Tax Registry** attached hereto as **Exhibit A**. If the Agent fails to comply with the foregoing requirement, the Agent 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 Agent shall be deemed to have automatically lost its authority to make purchases as agent for the Agency, and shall desist immediately from all such activity.

9. The Agent agrees that if it fails to comply with the requirements for Sales Tax Exemptions, as described in this Sales Tax Agent Authorization Letter and the Agreement, it shall pay any and all applicable Sales Taxes exempted in violation thereof, together with any interest and penalties applicable hereunder or by law or judicial order. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

10. Special Provisions Relating to State Sales Tax Savings.

(a) The Agent covenants and agrees to comply with the terms and conditions of subdivisions (1) and (3) of Section 875 (the "Special Provisions") of the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act"), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Letter or the Agreement and the Special Provisions, the Special Provisions shall control.

(b) The Agent acknowledges and agrees that the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Agent State Sales Tax Exemption benefits taken or purported to be taken by the Agent or any other person or entity acting on behalf of the Agent to which Agent is not entitled or which are for property or services not authorized or taken in cases where the Agent or any other person or entity acting on behalf of the Agent failed to comply with a material term or condition to use property or services in the manner required by this Agreement. The Agent shall, and shall require and any other person or entity acting on behalf of the Agent to, cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such State Sales Tax Exemption benefits and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of the New York State Department of Taxation and Finance to assess and determine State Sales and Use Taxes due from the Agent under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

(c) The Agent is hereby notified (provided that such notification is not a covenant or obligation and does not create a duty on the part of the Agency to the Agent or any other party) that the Agency is subject to certain requirements under Section 875 of the Enabling Act, including the following:

(i) if the Agency recovers, recaptures, receives, or otherwise obtains, any amount of State Sales Tax Exemption benefits from the Lessee, the Agency shall, within thirty days of coming into possession of such amount, remit it to the Commissioner, together with such information and report that the Commissioner deems necessary to administer payment over of such amount. The Agency shall join the Commissioner as a party in any action or proceeding that the Agency commences to recover, recapture, obtain, or otherwise seek the return of, State Sales Tax Exemption benefits from an agent, project operator or other person or entity.

(ii) The Agency shall prepare an annual compliance report detailing its terms and conditions described in this Section and its activities and efforts to recover, recapture, receive, or otherwise obtain State Sales Tax Exemption benefits described in subdivision (e)(ii) above, together with such other information as the Commissioner and the New York State Commissioner of Economic Development may require. The report shall be

filed with the Commissioner, the Director of the Division of the Budget of The State of New York, the New York State Commissioner of economic development, the New York State Comptroller, the Council of the City of New York, and may be included with the Annual financial statement required by subdivision (1)(b) of Section 859 of the Enabling Act. Such report required by this subdivision shall be filed regardless of whether the Agency is required to file such financial statement described by subdivision (1)(b) of Section 859 of the Enabling Act. The failure to file or substantially complete the report required by subdivision (1)(d) of Section 859 of the Enabling Act shall be deemed to be the failure to file or substantially complete the statement required by such subdivision, and the consequences shall be the same as provided in subdivision (1)(e) of Section 859 of the Enabling Act.

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

11. The Agent represents and warrants that, except as otherwise disclosed to the Agency, none of the Agent, the Principals of the Agent, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with the Agent:

(a) 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;

(b) has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;

(c) has been convicted of a felony in the past ten (10) years;

(d) has received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or

(e) has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in a court or other appropriate forum.

As used herein, the following capitalized terms shall have the respective meanings set forth below:

“City” shall mean The City of New York.

“Control” or “Controls” shall mean the power to direct the management and policies of a Person (x) through the ownership, directly or indirectly, of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

“Entity” shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

“Governing Body” shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

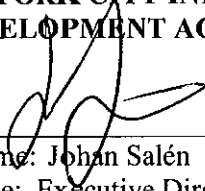
“Person” shall mean an individual or any Entity.

12. By execution of this Sales Tax Agent Authorization Letter, the Agent agrees to accept the terms hereof and represent and warrant to the Agency that the use of this Sales Tax Agent Authorization Letter by the Agent is strictly for the purposes stated herein.

13. The Agent acknowledges that this Sales Tax Agent Authorization Letter will expire on the date that is the earlier of (i) the Expiration Date referred to above, and (ii) the Expiration Date as defined in the Agreement. Upon such date, the agency relationship between the Agency and the Agent shall terminate.


The signature of a representative of the Agent where indicated below will indicate that the Agent accepted the terms hereof.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: Johan Salén
Title: Executive Director

ACCEPTED AND AGREED TO BY:

DIPIERO ACTION CONSTRUCTION CORP. D/B/A ACTION CONSTRUCTION

By: 
Name: Gregory Toledo
Title: President Action
Construction