

**RENSSELAER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

**Uniform Project Benefits Agreement
Project Agreement No. 3804-21-01**

This Uniform Project Benefits Agreement numbered as stated above (the "*Project Benefits Agreement*") is dated as of the Agreement Dated Date set forth below and has been written in plain English. As used herein, the term "*Agreement*" shall refer to this Project Benefits Agreement and all exhibits to this Project Benefits Agreement. The terms of each such exhibit are hereby incorporated in this Project Benefits Agreement with the same effect as if fully set forth herein. When we use the words "you" and "your" in this Agreement, we mean you, the "Project Beneficiary" listed below (hereinafter, jointly and severally, the "*Project Beneficiary*"). When we use the words "we", "us" and "our" in this Agreement, we mean the Rensselaer County Industrial Development Agency (hereinafter, the "*Agency*"), and its successors and assigns.

AGENCY

INFORMATION:

Agency Name:

**RENSSELAER COUNTY INDUSTRIAL DEVELOPMENT
AGENCY**

Agency Tax ID #:

14-1614433

Agency Address (Street, City, State and Zip):

c/o Rensselaer County Department of Economic Development and
Planning, County Office Building, 1600 Seventh Avenue, Troy, New
York 12180

Agency Phone #:

(518) 270-2914

PROJECT

**BENEFICIARY
INFORMATION:**

Project Beneficiary Name:

3 E Industrial Assoc., LLC ("Company") and
Capital City Produce LLC ("Sublessee")

Project Beneficiary Tax ID #:

84-5111865

27-2342647

Project Beneficiary Address (Street, City, State and Zip):

381 Broadway, Menands, New York 12204

Project Beneficiary Phone #:

(518) 436-0793

**AGREEMENT
DATED DATE:**

February 1, 2021

**AGREEMENT
TERM:**

Agreement Commencement Date:

February 2 2021

Agreement Termination Date:

December 31, 2031

**PROJECT
DESCRIPTION:**

The project which is the subject of this Agreement (the "*Project*") is described on Exhibit A attached hereto. The physical assets to be acquired, constructed, reconstructed, improved or installed by the Agency and/or the Project Beneficiary as part of the Project are hereinafter referred to as the "*Project Facility*".

PROJECT SITE:

The real property included in the Project Facility (the "*Land*") is generally described as follows
Street Address: 3 E Industrial Parkway, Troy, New York 12180
Real Property Tax Map ID #: 111.51-1-3

BY SIGNING THIS AGREEMENT, YOU: (1) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THE TERMS AND CONDITIONS ON THE FRONT AND SUCCEEDING PAGES HEREOF, INCLUDING, WITHOUT LIMITATION, THE CHOICE OF NEW YORK LAW AND WAIVER OF TRIAL BY JURY TERMS, (2) AGREE THAT (A) ONCE YOU EXECUTE THIS AGREEMENT, YOU CANNOT TERMINATE OR CANCEL THIS AGREEMENT, (B) YOU HAVE AN UNCONDITIONAL JOINT AND SEVERAL OBLIGATION TO MAKE ALL RECAPTURE PAYMENTS REQUIRED DUE HEREUNDER, AND (C) YOU CANNOT WITHHOLD, SET OFF OR REDUCE SUCH RECAPTURE PAYMENTS FOR ANY REASON WHATSOEVER; (3) WARRANT THAT (A) THE PERSONS SIGNING THIS AGREEMENT ON YOUR RESPECTIVE BEHALVES HAS THE AUTHORITY TO DO SO AND TO GRANT THE POWER OF ATTORNEY SET FORTH IN SECTION 21 HEREOF, AND (B) ALL INFORMATION YOU HAVE DELIVERED TO US OR OTHERWISE CONTAINED HEREIN, INCLUDING THE INFORMATION CONTAINED IN THE EXHIBITS ATTACHED HERETO, IS TRUE, ACCURATE AND COMPLETE AND YOU ACKNOWLEDGE WE ARE RELYING UPON ALL SUCH INFORMATION TO ENTER INTO THIS AGREEMENT WITH YOU AND TO GRANT THE FINANCIAL ASSISTANCE TO YOU.

3 E INDUSTRIAL ASSOC., LLC

X

Authorized Signature: John Karat, Authorized Person

CAPITAL CITY PRODUCE LLC

X

Authorized Signature: John Karat, Authorized Person

**RENSSELAER COUNTY INDUSTRIAL DEVELOPMENT
AGENCY**

X

Authorized Signature: Michael Della Rocco, Vice Chairman

**RENSSELAER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

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Project Agreement No. 3804-21-01**

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3 E INDUSTRIAL ASSOC., LLC

X

Authorized Signature: John Karat, Authorized Person
CAPITAL CITY PRODUCE LLC

X

Authorized Signature: John Karat, Authorized Person

**RENSSELAER COUNTY INDUSTRIAL DEVELOPMENT
AGENCY**

X

Michael Della Rocco
Authorized Signature: Michael Della Rocco, Vice Chairman

TERMS AND CONDITIONS

1. **PUBLIC BENEFITS SOUGHT TO BE OBTAINED; FINANCIAL ASSISTANCE EXPECTED TO BE GRANTED.** In consideration of the undertaking and completion by the Project Beneficiary of the Project, and in anticipation of and in reliance on the public benefits expected to occur as a result of the Project, as described on Exhibit B attached hereto (the "**Public Benefits**"), the Agency expects to provide the Project Beneficiary with the benefits related to the Project described on Exhibit C attached hereto (the "**Financial Assistance**"). The parties understand and agree that the Public Benefits are a material inducement to the Agency's provision of the Financial Assistance. The Project Beneficiary agrees to use its best efforts to achieve the Public Benefits during the term of this Agreement set forth above (the "**Term**").

2. **CONTINGENT NATURE OF THE FINANCIAL ASSISTANCE.** Notwithstanding the provisions of Section 1 of this Agreement, the Agency and the Project Beneficiary agree that the amount of Financial Assistance to be received by the Company with respect to the Project shall be contingent upon, and shall bear a direct relationship to, the success or lack of success of the Project in delivering the promised Public Benefits. The Project Beneficiary agrees that the Agency's Performance and Accountability Provisions, as described and set forth in Section 8 below (the "**Performance and Accountability Provisions**"), shall serve to further memorialize the Project Beneficiary's commitment to attain the Public Benefits or, upon the conditions, and as and to the extent provided therein, return all or a portion of the Financial Assistance to the Agency based on the clawback provisions set forth in the Performance and Accountability Provisions. The Project Beneficiary has no reason to believe that the Public Benefits will not be attained as contemplated in this Agreement.

3. **ANNUAL COMPLIANCE REPORTS.** The Project Beneficiary hereby agrees to provide to the Agency, at a minimum, an annual compliance report (each, a "**Compliance Report**") on the Public Benefits outlined herein and in the Performance and Accountability Provisions during the Term of this Agreement. The annual compliance report must be provided by no later than January 31 of each year, commencing with the first January 31 following the Agreement Dated Date set forth above and annually thereafter during the Term of this Agreement. The Compliance Report will include, at a minimum, the items set forth on Exhibit D attached hereto (the "**Minimum Required Annual Report Items**").

4. **DEFINITIONS.** The following words and terms used in this Agreement shall have the respective meanings set forth below, or the definitions set forth in the Project Facility Agreements, unless the context or use indicates another or different meaning or intent.

"Act" means collectively (1) Title 1 of Article 18-A of the General Municipal Law of the State enacted into law as Chapter 1030 of the Laws of 1969 of the State and (2) Chapter 128 of the Laws of 1974 of the State, as amended, constituting Section 903-d of said General Municipal Law.

"Application" means the application submitted by the Project Beneficiary to the Agency in with respect to the Project, in which the Project Beneficiary (1) described the Project, (2) requested that the Agency grant certain Financial Assistance with respect to the Project, and (3) indicated the Public Benefits that would result from approval of the Project by the Agency.

"Contract Employee" means (1) a full-time, private-sector employee (or self-employed individual) that is not on the Project Beneficiary's payroll but who has worked for the Project Beneficiary at the Project Facility for a minimum of 35 hours per week for not less than four consecutive weeks providing services that are similar to services that would otherwise be performed by a Full Time Equivalent Employee, or (2) two part-time, private-sector employees (or self-employed individuals) that are not on the Project Beneficiary's payroll but who have worked for the Project Beneficiary at the Project Facility for a combined minimum of 35 hours per week for not less than four consecutive weeks providing services that are similar to services that would otherwise be performed by a Full Time Equivalent Employee.

"Economic Development Region" means the economic development region in which the Agency is located, as defined by Section 230 of the State Economic Development Law.

"Full Time Equivalent Employee" means (1) a full-time, permanent, private-sector employee on the Project Beneficiary's payroll, who has worked at the Project Facility for a minimum of 35 hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by the Project Beneficiary to other employees with comparable rank and duties; or (2) two part-time, permanent, private-sector employees on Project Beneficiary's payroll, who have worked at the Project Facility for a combined minimum of 35 hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by the Project Beneficiary to other employees with comparable rank and duties; or (3) a Contract Employee.

"Project Facility Agreements" means, collectively, the various documents listed on Exhibit E attached hereto, as said documents may be amended or supplemented from time to time.

"Payment in Lieu of Tax Agreement" means, if the Project Facility Agreements include a payment in lieu of tax agreement, the payment in lieu of tax agreement described on Exhibit E attached hereto and attached to Exhibit J hereto, as said document may be amended or supplemented from time to time.

"Payments in Lieu of Taxes" means, if the Project Facility Agreements include a payment in lieu of tax agreement, the payments in lieu of taxes payable under the Payment in Lieu of Tax Agreement, as summarized on Exhibit J attached hereto.

"Project Benefits Agreement" means this agreement as may be amended or supplemented from time to time.

"Recapture Events" shall mean any of the events listed on Exhibit F attached hereto.

"Recapture Period" means a period ending on the Project Benefits Agreement Termination Date.

"State" means the State of New York.

5. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

(A) **Power.** The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State to enter into this Project Benefits Agreement and the other Project Facility Agreements and to carry out the transactions contemplated hereby and thereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Project Benefits Agreement and the other Project Facility Agreements.

(B) **Authorization.** The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Project Benefits Agreement and the other Project Facility Agreements and the transactions contemplated hereby and thereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Project Benefits Agreement and the other Project Facility Agreements. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Project Benefits Agreement and the other Project Facility Agreements and the consummation of the transactions herein and therein contemplated.

(C) **Conflicts.** The Agency is not prohibited from entering into this Project Benefits Agreement and the other Project Facility Agreements and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Project Benefits Agreement and the other Project Facility Agreements by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

6. REPRESENTATIONS OF AND WARRANTIES BY THE PROJECT BENEFICIARY. The Project Beneficiary each does hereby represent, warrant and covenant for itself as follows:

(A) **Power.** The Project Beneficiary is duly authorized to do business in the State and has the power to enter into this Project Benefits Agreement and the other Project Facility Agreements and to perform and carry out the transactions contemplated hereby and thereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Project Benefits Agreement and the other Project Facility Agreements, and by proper action of its governing body has been duly authorized to execute, deliver and perform this Project Benefits Agreement and the other Project Facility Agreements.

(B) **Authorization.** The Project Beneficiary is authorized and has the power to enter into this Project Benefits Agreement and the other Project Facility Agreements and the transactions contemplated hereby and thereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Project Benefits Agreement and the other Project Facility Agreements. The Project Beneficiary has duly authorized the execution, delivery and performance of this Project Benefits Agreement and the other Project Facility Agreements and the consummation of the transactions herein and therein contemplated.

(C) **Conflicts.** The Project Beneficiary is not prohibited from entering into this Project Benefits Agreement and the other Project Facility Agreements and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Project Benefits Agreement and the other Project Facility Agreements by (and the execution, delivery and performance of this Project Benefits Agreement and the other Project Facility Agreements, the consummation of the transactions contemplated hereby and thereby and the fulfillment of and compliance with the provisions of this Project Benefits Agreement and the other Project Facility Agreements will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its organization and operation documents

or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Project Beneficiary is a party or by which it or any of its property is bound, and neither the Project Beneficiary's entering into this Project Benefits Agreement and the other Project Facility Agreements nor the Project Beneficiary's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Project Benefits Agreement and the other Project Facility Agreements will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Project Beneficiary under the terms of any of the foregoing, and this Project Benefits Agreement and the other Project Facility Agreements are legal, valid and binding obligations of the Project Beneficiary enforceable in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) **Governmental Consent.** No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Project Beneficiary is required as a condition to the execution, delivery or performance of this Project Benefits Agreement and the other Project Facility Agreements by the Project Beneficiary or as a condition to the validity of this Project Benefits Agreement and the other Project Facility Agreements.

7. **CONTINGENT NATURE OF THE FINANCIAL ASSISTANCE.** The Agency and the Project Beneficiary agree that the purpose of the Project is to renovate an existing commercial industrial building for the operation of a wholesale distribution and produce processing business in the City of Troy as part of the greater revitalization efforts within the City of Troy and Rensselaer County and to create or retain permanent private sector jobs in Rensselaer County, New York in the form of direct employees at the Project Facility. Accordingly, the Agency and the Project Beneficiary agree that the amount of Financial Assistance to be received by the Project Beneficiary with respect to the Project shall be contingent upon, and shall bear a direct relationship to the success or lack of success of the Project in achieving these goals.

8. **AGREEMENTS ON THE PART OF THE PROJECT BENEFICIARY.** The Project Beneficiary hereby jointly and severally agree as follows:

(A) **Filing – Closing Date.** If **Exhibit B** attached hereto contains any employment projections, to file with the Agency, on or prior to the dated date of this Agreement, an employment plan, based on the employment projections contained in **Exhibit B** attached hereto, containing the information described on **Exhibit D** attached hereto and any additional information described in the Project Facility Agreements.

(B) **Filing – Annual.** To file with the Agency, on an annual basis, by January 31 of each year, commencing with the first January 31 following the Agreement Dated Date set forth above, an annual report containing the information described on **Exhibit D** attached hereto and any additional information described in the Project Facility Agreements.

(C) **Employment Level.** If **Exhibit B** attached hereto contains any employment projections, to submit to the Agency the following reports for the purpose of verifying that the Project Beneficiary is achieving the Employment Level: (a) by the 15th day of the first calendar month of each new quarter, a form NYS-45 (the "Quarterly Report," a copy of the current form of which is attached hereto on **Exhibit G**) or some other form of reporting that is explicitly approved by the Agency, and (b) by February 1 of each year during the term of this Project Benefits Agreement, a project and employment plan status report (the "Status Report," a copy of which is attached hereto on **Exhibit H** and, together with the Annual Report described in Section 5(B) above, being collectively referred to as the "Employment Affidavits") or some other form that is explicitly approved by the Agency. Full Time Equivalent Employees for each calendar year during the term of this Project Benefits Agreement shall be determined by calculating the average number of Full Time Equivalent Employees for the prior calendar year, computed by adding the number of Full Time Equivalent Employees as of the Project Beneficiary's last payroll date in the months of March, June, September and December and dividing that sum by four.

(D) **Non-Discrimination.** (1) To not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Project Beneficiary shall use its best efforts to ensure that employees and applicants for employment with the Project Beneficiary or any subtenant of the Project Facility are treated without regard to their race, color, creed, age, sex, or national origin. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(2) To state in substance, in all solicitations or advertisements for employees placed by or on behalf of the Project Beneficiary during the term of this Project Benefit Agreement, that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.

9. **RECAPTURE OF FINANCIAL ASSISTANCE.** (A) General. Upon the occurrence of a Recapture Event that occurs during the Recapture Period, the Agency may require that the Project Beneficiary jointly and severally pay to the Agency all or a portion of the Financial Assistance, in an amount determined by the Agency (the "**Recapture Amount**"), all in accordance with the terms of this Section 9 and Exhibit I attached hereto. Upon the occurrence of a Recapture Event that occurs during the Recapture Period, you hereby jointly and severally agree, if requested by the Agency, to pay to the Agency the Recapture Amount.

(B) Project Financial Assistance. The Recapture Amount to be paid jointly and severally by you to the Agency upon the occurrence of a Recapture Event during a Recapture Period shall be an amount equal to a percentage (as provided on Exhibit I attached hereto) multiplied by the sum of the following:

(1) if Exhibit C attached hereto indicates that the Financial Assistance includes sales and use tax abatements, the portion of the amount of sales and use taxes determined by the Agency to be the amount of such taxes that the Project Beneficiary would have paid in connection with the undertaking of the Project if the Project Facility was privately owned by the Project Beneficiary and not deemed owned or under the jurisdiction, supervision or control of the Agency;

(2) if Exhibit C attached hereto indicates that the Financial Assistance includes mortgage recording tax abatements, the amount determined by the Agency to be the amount of any mortgage recording tax exemption provided by the Agency to the Project Beneficiary in connection with the undertaking of the Project; and

(3) if Exhibit C attached hereto indicates that the Financial Assistance includes real property tax abatements, the amount determined by the Agency to be the difference between the amount of the payment in lieu of tax payments paid by the Project Beneficiary under the Payment in Lieu of Tax Agreement and the amount of the general real property ad valorem taxes that would have been payable by the Project Beneficiary to the Taxing Entities if the Project Facility was privately owned by the Project Beneficiary and not deemed owned or under the jurisdiction and control of the Agency.

(C) Amount of Project Financial Assistance to be Recaptured. Upon the occurrence of a Recapture Event, the Project Beneficiary shall jointly and severally pay to the Agency the Recapture Amount determined by the Agency pursuant to this Agreement.

(D) Redistribution of Project Financial Assistance to be Recaptured. Upon the receipt by the Agency of any Recapture Amount, the Agency shall redistribute such amount within thirty (30) days of such receipt to the respective taxing entity or entities that would have received such amount but for the granting by the Agency of the Financial Assistance.

(E) Survival of Obligations. The Project Beneficiary acknowledges that the obligations of the Project Beneficiary in this Section 9 shall survive any conveyance of the Project Facility to the Project Beneficiary and/or the termination of any Project Facility Agreement.

(F) Agency Review of Recapture Determination. If the Agency determines that a Recapture Event has occurred, it shall give notice of such determination to the Project Beneficiary. The Project Beneficiary shall have fourteen (14) days from the date the notice is deemed given to submit a written response to the Agency's determination and to request a written and/or oral presentation to the Agency why the proposed recapture amount should not be paid to the Agency. The Project Beneficiary may make its presentation at a meeting of the Agency. The Agency shall then vote on a resolution recommending (1) a termination of Financial Assistance, (2) a recapture of Financial Assistance, (3) both a termination and a recapture of Financial Assistance, (4) a modification of Financial Assistance or (5) no action.

10. **LATE PAYMENTS.** (A) One Month. If you shall fail to make any payment required by this Agreement within thirty days of the date that written notice of such payment is sent from the Agency to the Project Beneficiary at the address provided above, the Project Beneficiary shall jointly and severally pay the amount specified in such notice together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter. If the Project Beneficiary shall fail to make any payment required by this Project Benefits Agreement when due and such delinquency shall continue beyond the thirty days after such notice, the Project Beneficiary's obligation to make the payment so in default shall continue as a joint and several obligation of the Project Beneficiary to the Agency until such payment in default shall have been made in full, and the Project Beneficiary shall jointly and severally pay the same to the Agency together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest

thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

11. EVENTS OF DEFAULT. The following shall be "Events of Default" under this Project Benefits Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Project Benefits Agreement, any one or more of the following events:

(A) A default in the performance or observance of any of the covenants, conditions or agreements on the part of the Project Beneficiary in this Project Benefits Agreement and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Agency to the Project Beneficiary, provided that, if such default is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Project Beneficiary to commence to cure within such thirty (30) day period and to prosecute the same with due diligence.

(B) The occurrence of an "Event of Default" under any other Basic Document.

(C) Any representation or warranty made by the Project Beneficiary herein or in any other Basic Document proves to have been false at the time it was made.

12. REMEDIES ON DEFAULT. (A) Whenever any Event of Default hereunder shall have occurred, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

(1) we may cancel or terminate this Agreement or any or all other agreements that we have entered into with you;

(2) we may terminate the granting of any of the Financial Assistance that has not already been delivered to you;

(3) we may, by written notice to you, declare to be immediately due and payable, whereupon the same shall become immediately due and payable, all amounts payable to us pursuant to this Agreement or any of the Project Facility Agreements;

(4) terminate the Project Facility Agreements, and convey to you all our right, title and interest in and to the Project Facility (you hereby agree to pay all expenses and taxes, if any, applicable to or arising from any such transfer of title); or

(5) take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due or thereafter to become due hereunder and to enforce the obligations, agreements or covenants of the Project Beneficiary under this Project Benefits Agreement.

(B) Interest will accrue on all amounts due under this Section 12 at the rate of one and one-half percent (1 ½%) per month or the maximum rate permitted by law, whichever is less. None of our rights or remedies under this Agreement are intended to be exclusive of, but each shall be cumulative and in addition to, any other right or remedy referred to hereunder or otherwise available to us under applicable law. If we delay or fail to enforce any of our rights under this Agreement, we will still be entitled to enforce those rights at a later time.

(C) No action taken pursuant to this Section 12 shall relieve you from your joint and several obligations to make any payments required by this Agreement and the other Project Facility Agreements.

13. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. (A) You agree jointly and severally to pay to us all costs and expenses, including reasonable attorneys' fees and legal expenses, incurred by us to enforce any terms or conditions of this Agreement or collect any amounts due hereunder, whether or not a lawsuit is filed, including reasonable attorneys' fees and costs incurred at trial, on appeal and in any arbitration or bankruptcy proceeding.

(B) If the Project Beneficiary should default in performing any of its obligations, covenants or agreements under this Project Benefits Agreement and the Agency should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Project Beneficiary herein contained, the Project Beneficiary jointly and severally agrees that it will, on demand therefor, pay to the Agency not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

14. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Project Benefits Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of a Recapture Event or an Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required. In order to entitle the Agency to exercise any remedy reserved to it in this Project Benefits Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Project Benefits Agreement.

(D) No Waiver. In the event any provision contained in this Project Benefits Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Project Benefits Agreement shall be established by conduct, custom or course of dealing.

15. **TERM**. This Project Benefits Agreement shall become effective and the obligations of the Project Beneficiary shall arise absolutely and unconditionally upon the execution and delivery of this Project Benefits Agreement by the Project Beneficiary and the Agency. Unless otherwise provided by amendment hereof, this Project Benefits Agreement shall continue to remain in effect until Project Benefits Agreement Termination Date listed above.

16. **FORM OF PAYMENTS**. The amounts payable under this Project Benefits Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

17. **PROJECT BENEFICIARY ACTS**. Where you are required to do or accomplish any act or thing hereunder, you may cause the same to be done or accomplished with the same force and effect as if done or accomplished by you.

18. **AMENDMENTS**. This Project Benefits Agreement may not be effectively amended, changed, modified, altered, or terminated except by an instrument in writing executed by the parties hereto.

19. **NOTICES**. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) delivered in person or by courier to the applicable address stated above, (2) received by telecopy or (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, property addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are the addresses provided on the first page of this Agreement.

(C) Change of Address. The Agency and you may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

20. **BINDING EFFECT**. This Project Benefits Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Project Beneficiary and their respective successors and assigns. The provisions of this Project Benefits Agreement are intended to be for the benefit of the Agency.

21. **ASSIGNMENT**. **YOU WILL NOT ASSIGN, TRANSFER, PLEDGE OR OTHERWISE DISPOSE OF THIS AGREEMENT, WITHOUT OUR PRIOR WRITTEN CONSENT. EXCEPT AS OTHERWISE PROVIDED IN THE PROJECT FACILITY AGREEMENTS, YOU WILL NOT ASSIGN, TRANSFER, PLEDGE OR OTHERWISE DISPOSE OF THE PROJECT FACILITY OR ANY INTEREST THEREIN, OR SUBLET OR LEND THE PROJECT FACILITY OR ANY INTEREST THEREIN TO, OR PERMIT THE PREMISES TO BE USED BY, ANYONE OTHER THAN YOU, IN EACH CASE WITHOUT OUR PRIOR WRITTEN CONSENT.** To the extent contemplated by the Project Facility Agreements, upon the occurrence of a Default under the Project Facility Agreements, we may, without notifying you, sell, assign, or transfer this Agreement or our rights in the Project Facility and the Project Facility Agreements. You hereby consent to such assignment and further acknowledge and agree (a) that any such assignee is entitled to enforce all rights so assigned but does not assume any of our obligations hereunder and thereunder, (b) if so directed by us, to pay all assigned payments due under this Agreement directly to such assignee, and (c) **THAT YOU HEREBY WAIVE, AND AGREE NOT TO ASSERT AGAINST ANY SUCH ASSIGNEE, ANY DEFENSE, COUNTERCLAIM OR OFFSET THAT YOU MAY HAVE AGAINST US.** You acknowledge that no such sale, transfer, assignment and/or grant will materially change your duties hereunder or under the Project Facility Agreements or materially increase your burdens or risks hereunder or under the Project Facility Agreements. You agree that upon written notice to you of any such sale, transfer, assignment and/or grant, you shall acknowledge receipt

thereof in writing and shall provide reasonable assistance to us and any such assignee in whatever manner necessary to complete any sale, transfer, assignment and/or grant contemplated by this Section 21. Upon any sale, transfer, assignment and/or grant contemplated by this Section 21, and except as may be otherwise provided in connection therewith, all references in this Agreement to "Agency" shall include the related assignee.

22. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Project Benefits Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Project Benefits Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

23. COUNTERPARTS. This Project Benefits Agreement 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.

24. APPLICABLE LAW; GOVERNING LAW; FORUM SELECTION. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF SUCH STATE), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. ANY JUDICIAL PROCEEDING BROUGHT BY OR AGAINST YOU OR US WITH RESPECT TO THIS AGREEMENT SHALL, AT OUR OPTION, BE BROUGHT IN ANY COURT OF COMPETENT JURISDICTION IN THE STATE OF NEW YORK, WITH VENUE IN RENSSELAER COUNTY, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF YOU AND WE ACCEPT, GENERALLY AND UNCONDITIONALLY CONSENT TO THE JURISDICTION OF THE AFORESAID COURTS, AND IRREVOCABLY AGREE TO BE BOUND BY ANY FINAL JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT. YOU WAIVE ANY OBJECTION TO JURISDICTION AND VENUE OF ANY ACTION INSTITUTED HEREUNDER AND SHALL NOT ASSERT ANY DEFENSE BASED ON LACK OF JURISDICTION OR VENUE OR BASED UPON *FORUM NON CONVENIENS*.

25. INDEMNIFICATION. You are responsible for any and all losses, damages, penalties, claims, suits, actions, costs, expenses and disbursements, including legal expenses (collectively "*Claims*"), whether based on a theory of strict liability or otherwise caused by or related to (a) the manufacture, installation, ownership, use, lease, possession or delivery of the Project Facility, (b) any defects in the Project Facility, including, any latent and other defects whether or not discoverable by you, and (c) patent, trademark, design or copyright infringement. You agree to reimburse us for, and indemnify us against, any and all Claims. Your obligations under this Section 25 include Claims against our agents, employees, officers and directors. You agree to give us prompt notice of any claim or liability hereby indemnified against. The indemnities contained in this Section 25 shall continue in full force and effect notwithstanding the expiration or other termination of this Agreement and shall be payable on demand.

26. MISCELLANEOUS. Time shall be of the essence of this Agreement. You agree that the terms and conditions contained in this Agreement make up the entire agreement between you and us regarding the Premises. This Agreement is not binding on us until we sign it. Any change in any of the terms and conditions of this Agreement must be in writing and signed by us. You agree, however, that we are authorized, without notice to you, to supply missing information or correct obvious errors in this Agreement. If any part of this Agreement is contrary to, prohibited by, or deemed invalid under applicable law, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder of this Agreement shall not be invalidated thereby and shall be given effect. All notices shall be given in writing by the party sending the notice and shall be effective two (2) days after being deposited in the U.S. Mail, addressed to the party receiving the notice at its address shown on the front of this Agreement (or to any other address specified by that party in writing) with postage prepaid. All of our rights and indemnities will survive the termination of this Agreement. It is the express intent of the parties not to violate any applicable usury laws. If you do not perform any of your obligations under this Agreement, we have the right, but not the obligation, to take any action or pay any amounts that we believe are necessary to protect our interests. You agree to reimburse us immediately upon our demand for any such amounts that we pay. If more than one "Beneficiary" has signed this Agreement, each of you agree that your liability is joint and several.

27. AGENCY'S LIABILITY LIMITED. The obligations and agreements of the Agency contained in this Agreement and any other instrument or document executed in connection herewith or therewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent, servant or employee of the Agency in his or her individual capacity, and the members,

officers, agents, servants and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein and therein shall not constitute or give rise to an obligation of the State of New York or Rensselaer County, New York, and neither the State of New York nor Rensselaer County, New York shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Premises (except for revenues derived by the Agency with respect to the indemnification provisions contained in this Agreement). No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (a) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten day period) or failed to respond within such notice period, (b) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (c) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents or employees shall be subject to potential liability, the party seeking such order or decree shall (x) agree to indemnify, defend and hold harmless the Agency and its members, officers, agents and employees against any liability incurred as a result of its compliance with such demand, and (y) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request.

EXHIBIT A

DESCRIPTION OF THE PROJECT

The Project that is the subject of the attached Agreement is described as follows: (1) the acquisition of an interest in approximately 2.4 acres of real estate located at 3 E Industrial Parkway (tax map no. 111.51-1-3) in the City of Troy, Rensselaer County, New York (the "Land"), the renovation of an approximately 25,700 square foot existing commercial industrial building, together with related amenities and improvements (collectively, the "Facility"), and the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property not part of the Equipment (as such term is defined herein) (collectively, the "Facility Equipment") (the Land, the Facility and the Facility Equipment being collectively referred to as the "Company Project Facility"), which Company Project Facility is to be leased and subleased by the Agency to the Company and further subleased by the Company to the Sublessee, and (2) the acquisition and installation of certain equipment and personal property (the "Equipment", and together with the Company Project Facility, the "Project Facility"), all of the foregoing Project Facility to constitute a commercial facility to be used by the Sublessee for the wholesale distribution and processing of produce and related products and associated uses and other directly and indirectly related activities.

Project Beneficiary:	A-1	Agency:
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EXHIBIT B

DESCRIPTION OF THE EXPECTED PUBLIC BENEFITS

In the discussions had between the Project Beneficiary and the Agency with respect to the Project Beneficiary's request for Financial Assistance from the Agency with respect to the Project, the Project Beneficiary has represented to the Agency that the Project is expected to provide the following benefits to the Agency and/or to the residents of Rensselaer County, New York (the "Public Benefits"):

Description of Benefit		Applicable to Project (indicate Yes or NO)		Expected Benefit
1.	Creation of new permanent jobs	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	40 full time equivalent new jobs at the Project Facility within 1 year of the completion date.
2.	Creation of construction employment for local labor (i.e., labor resident in the area comprised of the Capital District Region)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Average 10 full time equivalent construction jobs at the Project Facility for local labor during an estimated construction period of 4 months, commencing within 3 months of the date hereof.
3.	Private sector investment	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	\$2 million at the Project Facility within 2 years of the date hereof.
4.	Creation of new revenues for local taxing jurisdictions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	\$200,000 of new revenues for local taxing jurisdictions with respect to the Project Facility within 5 years of the date hereof.
5.	Attract customers from outside the Economic Development Region	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Quantify by (% or number of customers, or % or amount of sales): 33% Within 4 years of the date hereof.
6.	Provide infrastructure necessary to support existing businesses or proposed businesses	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Describe: Existing urban infrastructure.
7.	Other (describe): _____	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Describe: _____

EXHIBIT C

DESCRIPTION OF THE EXPECTED FINANCIAL ASSISTANCE

In the discussions had between the Project Beneficiary and the Agency with respect to the Project Beneficiary's request for Financial Assistance from the Agency with respect to the Project, the Agency has determined that the Agency intends to grant the following types and amounts of tax abatements and other benefits listed below with respect to the Project (the "Financial Assistance"):

	Type of Financial Assistance	Applicable to Project (indicate Yes or No)		Amount
1.	Sales tax abatement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	\$100,000
2.	Mortgage tax abatement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	\$31,500
3.	Real estate tax abatement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Approx. \$155,662
4.	Proceeds of revenue bonds	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	\$
5.	Other (describe):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	\$ _____

EXHIBIT D

DESCRIPTION OF THE MINIMUM REQUIRED ANNUAL REPORT ITEMS

The Project Beneficiary shall annually provide to the Agency a certified statement and documentation meeting the following minimum requirements:

(1) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the Project location;

(2) either (A) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the Application is still accurate, or (B) if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created;

(3) containing a certification under penalty of perjury from the Project Beneficiary (and each other owner, occupant or operator of the Project Facility receiving any portion of the Financial Assistance) that it is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

Project Beneficiary	D-1	Agency
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EXHIBIT E

DESCRIPTION OF THE PROJECT FACILITY AGREEMENTS

In connection with the Project and the granting of the Financial Assistance, the Agency and the Project Beneficiary intend to enter into the following documents, among others:

1.	Various conveyance documents (the "Conveyance Documents") executed by the Project Beneficiary, whereby the Project Beneficiary conveys various interests in the Land and the Project Facility to the Agency.
2.	A lease agreement (the "Lease Agreement") by and between the Agency, as landlord, and the Project Beneficiary, as tenant, and an equipment lease agreement between the Agency and the Project Beneficiary; pursuant to which, among other things, the Project Beneficiary agrees to undertake the Project and complete the Project Facility and the Agency agrees to lease the Project Facility to the Project Beneficiary.
3.	A payment in lieu of tax agreement (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Project Beneficiary, pursuant to which the Project Beneficiary agrees to make payments in lieu of taxes with respect to the Project Facility.
4.	A termination and recapture agreement (the "Sales Tax Recapture Agreement") by and between the Project Beneficiary and the Agency, as required by the Act, regarding the recovery or recapture of certain sales and use taxes constituting a part of the Financial Assistance.
5.	A mortgage and security agreement and any other security documents and related documents from the Agency and/or the Project Beneficiary to the Project Beneficiary's lender with respect to the Project (the "Bank"), which documents may grant a lien on and security interest in the Project Facility to secure a loan (the "Loan") from the Bank to the Project Beneficiary with respect to the Project.

EXHIBIT F

DESCRIPTION OF THE RECAPTURE EVENTS

In connection with the Project and the granting of the Financial Assistance, the Agency and the Project Beneficiary agree that the following shall constitute recapture events with respect to the Project and the granting of the Financial Assistance:

1.	Failure of the Project Beneficiary to document to the satisfaction of the Agency the commencement of the acquisition, construction, reconstruction, renovation, and/or installation of the Project Facility within 4 months of the date hereof.
2.	Failure of the Project Beneficiary to document to the satisfaction of the Agency the completion of the acquisition, construction, reconstruction, renovation, and/or installation of the Project Facility within 1 year of the date hereof.
3.	Failure by the Project Beneficiary to document to the satisfaction of the Agency the creation of at least 90% of the average full time equivalent local labor construction jobs at the Project Facility during the construction period described on Exhibit B attached hereto.
4.	Failure by the Project Beneficiary to document to the satisfaction of the Agency the creation of at least 90% of the full time equivalent new jobs at the Project Facility listed on Exhibit B attached hereto within 2 years of the date hereof.
5.	Failure by the Project Beneficiary to document to the satisfaction of the Agency that at least 90% of the private sector investment described on Exhibit B attached hereto occurred with respect to the Project Facility within 2 years of the date hereof.
6.	Failure by the Project Beneficiary to document to the satisfaction of the Agency that the Project provided the other Public Benefits described on Exhibit B attached hereto within the time frames assigned to such benefits.
7.	Liquidation of substantially all of the Project Beneficiary's operating assets at the Project Facility.
8.	Sale, lease or other disposition of all or substantially all of the Project Facility.
9.	Failure by the Project Beneficiary to comply with the annual reporting requirements or to provide the Agency with requested information.
10.	Sublease (other than in the ordinary course of business) or assignment of all or part of the Project Facility in violation of any Project Facility Agreement.
11.	A change in the use of the Project Facility, other than as described on Exhibit A and other directly and indirectly related uses, in violation of any Project Facility Agreement.

41329412

WT 39 41 43

Agency:

Withholding
identification number



Part D - Form NYS-1 corrections/additions

Use Part D only for corrections/additions for the quarter being reported in Part B of this return. To correct original withholding information reported on Form(s) NYS-1, complete columns a, b, c, and d. To report additional withholding information not previously submitted on Form(s) NYS-1, complete only columns c and d. Lines 12 through 15 on the front of this return must reflect these corrections/additions.

a Original last payroll date reported on Form NYS-1, line A (mmdd)	b Original total withheld reported on Form NYS-1, line 4	c Correct last payroll date (mmdd)	d Correct total withheld
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Part E - Change of business information

22. This line is not in use for this quarter.

23. If you permanently ceased paying wages, enter the date (mmddyy) of the final payroll (see Note below)

24. If you sold or transferred all or part of your business:

- Mark an X to indicate whether in whole ☐ or in part ☐
- Enter the date of transfer (mmddyy)
- Complete the information below about the acquiring entity

Legal name	EN
Address	

Note: For questions about other changes to your withholding tax account, call the Tax Department at (516) 485-6654, for your unemployment insurance account, call the Department of Labor at (516) 485-8589 or 1 888 899-8810. If you are using a paid preparer or a payroll service, the section below must be completed.

Paid preparer's use	Preparer's signature	Date	Preparer's NYTPRN	Preparer's SSN or PTIN	Mark an X if self-employed <input type="checkbox"/>
	Preparer's firm name (or yours, if self-employed)	Address		Firm's EIN	
Payroll service's name			Payroll service's EIN		

Checklist for mailing:

- File original return and keep a copy for your records.
- Complete lines 9 and 19 to ensure proper credit of payment.
- Enter your withholding ID number on your remittance.
- Make remittance payable to *NYS Employment Contributions and Taxes*.
- Enter your telephone number in boxes below your signature.
- See *Need help?* on Form NYS-45-I if you need forms or assistance.

Mail to

NYS EMPLOYMENT
CONTRIBUTIONS AND TAXES
PO BOX 4118
BINGHAMTON NY 13902-4118

NYS-45 (2/13) (back)

Project Beneficiary.	G-2	Agency:
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EXHIBIT H

ANNUAL REPORT AND DOCUMENTATION

ANNUAL STATUS REPORT

PROJECT BENEFICIARY NAME: _____

ADDRESS: _____

TYPE OF BUSINESS: _____

CONTACT PERSON: _____

TELEPHONE NUMBER: _____

RETAINED JOBS

	Professional	Skilled	Semi-Skilled	Un-Skilled	Total
Full Time					
Part Time					
Seasonal					
Independent Contractors					
Contract Employees					

CREATED JOBS

	Professional	Skilled	Semi-Skilled	Un-Skilled	Total
Full Time					
Part Time					
Seasonal					
Independent Contractors					
Contract Employees					

Officer's Certification

I, the Undersigned, duly elected and appointed _____ (Title) of _____ (Project Beneficiary Name), a _____ (State) _____ (Type of Entity) (the "Project Beneficiary") do hereby certify, pursuant to the requirements of a Project Benefit Agreement dated as of _____ by and between the Project Beneficiary and Rensselaer County Industrial Development Agency, the following:

- (A) That all information provided on this form is complete, true and accurate, and
- (B) That the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created described in the Application are still complete, true and accurate.

_____ (Officer's Signature)

_____ (Printed)

EXHIBIT I

AMOUNT OF FINANCIAL ASSISTANCE TO BE RECAPTURED

Upon the occurrence of a Recapture Event, the Project Beneficiary shall pay to the Agency the following amounts as recapture:

Year	Amount of Recapture
1	100% of the Project Financial Assistance
2	90% of the Project Financial Assistance
3	80% of the Project Financial Assistance
4	70% of the Project Financial Assistance
5	60% of the Project Financial Assistance
6	50% of the Project Financial Assistance
7	40% of the Project Financial Assistance
8	30% of the Project Financial Assistance
9	15% of the Project Financial Assistance
10	0% of the Project Financial Assistance

EXHIBIT J

SUMMARY OF PAYMENT DATES AND ESTIMATED AMOUNTS (OR FORMULA OR FORMULAS BY WHICH SUCH AMOUNTS MAY BE CALCULATED)

PILOT payments are due either 30 days after the receipt of the PILOT bill or on the date due given on the tax bill, whichever date is the latest.

In the event of a recapture event, the percentages provided in Exhibit I will be applied. These percentages will be applied to the actual sales tax benefits received by the applicant and the real property benefit savings up to the date of the recapture event notice to the applicant. The applicant will have 30 days after the receipt of the notice from the Agency to pay the outstanding amounts. If the bill is not satisfied in that 30-day period, a late fee, equal to the interest charged by the municipality for late real property taxes, will be added to the amount initially billed.

See also attached Payment in Lieu of Tax Agreement with respect to the Project.

CLOSING ITEM NO.: A-8

RENSSELAER COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

3 E INDUSTRIAL ASSOC., LLC

AND

CAPITAL CITY PRODUCE LLC

PAYMENT IN LIEU OF TAX AGREEMENT

DATED AS OF FEBRUARY 1, 2021

RELATING TO THE PREMISES LOCATED AT 3 E
INDUSTRIAL PARKWAY IN THE CITY OF TROY,
RENSSELAER COUNTY, NEW YORK.

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(This Table of Contents is not part of the Payment in Lieu of Tax Agreement
and is for convenience of reference only.)

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PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT dated as of February 1, 2021 (the "Payment in Lieu of Tax Agreement" or the "Agreement") by and among the RENSSELAER COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 1600 Seventh Avenue, Troy, New York 12180 (the "Agency"), 3 E INDUSTRIAL ASSOC., LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 381 Broadway, Menands, New York 12204 (the "Company") and CAPITAL CITY PRODUCE LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 381 Broadway, Menands, New York 12204 (the "Sublessee");

W I T N E S S E T H:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

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

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 128 of the Laws of 1974 of the State, as amended (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, the Agency received an application (the "Original Application") from the Company and Capital City Produce LLC (the "Sublessee"), on behalf of themselves and/or entities formed or to be formed on behalf of the foregoing, for financial assistance in connection with a project (the "Project") consisting of the following: (A)(1) the acquisition of an interest in approximately 2.4 acres of real estate located at 3 E Industrial Parkway (tax map no. 111.51-1-3) in the City of Troy, Rensselaer County, New York (the "Land"), the renovation of an

approximately 25,700 square foot existing commercial industrial building, together with related amenities and improvements (collectively, the "Facility"), and the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property not part of the Equipment (as such term is defined herein) (collectively, the "Facility Equipment") (the Land, the Facility and the Facility Equipment being collectively referred to as the "Company Project Facility"), which Company Project Facility is to be leased and subleased by the Agency to the Company and further subleased by the Company to the Sublessee, and (2) the acquisition and installation of certain equipment and personal property (the "Equipment", and together with the Company Project Facility, the "Project Facility"), all of the foregoing Project Facility to constitute a commercial facility to be used by the Sublessee for the wholesale distribution and processing of produce and related products and associated uses and other directly and indirectly related activities; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, mortgage recording taxes (subject to statutory limitations), real property taxes and real estate transfer taxes (collectively, the "Original Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Company Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency and the lease (with an obligation to purchase) or sale of the Equipment to the Sublessee or such other person as may be designated by the Sublessee and agreed upon by the Agency; and

WHEREAS, the Agency adopted a Uniform Tax Exemption Policy (the "Policy") to provide guidelines for the claiming of real property, sales and use tax and mortgage recording tax abatements (except to the extent limited by Section 874 of the Act); and

WHEREAS, the Policy provides a standardized method for the determination of payments in lieu of taxes for a facility similar to the Project Facility; and

WHEREAS, in connection with the Original Application, the Company and the Sublessee made a request to the Agency (the "Original PILOT Request") that the Agency deviate from the Policy with respect to real property tax payments; and

WHEREAS, on May 14, 2020, the members of the Agency duly adopted a resolution (the "Original Public Hearing/Deviation Process Resolution") authorizing the Executive Director of the Agency, after consultation with the members of the Agency and the Agency's Counsel, to (A) establish the time, date and place for a public hearing of the Agency to hear all persons interested in the Project; (B) cause the public hearing to be held in a city, town or village where the Project Facility is or is to be located, and cause notice of such public hearing to be given to the public by publishing a notice or notices of such public hearing in a newspaper of general circulation available to the residents of the governmental units where the Project Facility is or is to be located, such notice or notices to comply with the requirements of Section 859-a of the Act; (C) cause notice of the public hearing to be given to the chief executive officer of Rensselaer County (the "County") and of each city, town, village and school district in which the Project Facility is or is to be located, such notice or notices to comply with the requirements of Section 859-a of the Act; and (D) conduct such public hearing; and

WHEREAS, pursuant to the Public Hearing/Deviation Process Resolution, the members of the Agency authorized the Executive Director of the Agency, after consultation with the members of the Agency and the Agency's Counsel, to send a notice to the chief executive officers of the "Affected Tax Jurisdictions" (as defined in the Act) pursuant to Section 874(4) of the Act, informing said individuals that the Agency received the PILOT Request and that the members of the Agency would consider said request at a meeting of the members of the Agency scheduled to be held on July 9, 2020 and the reasons for said deviation; and

WHEREAS, pursuant to the authorization contained in the Public Hearing/Deviation Process Resolution, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency (the "Original Public Hearing") pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on June 24, 2020 to the chief executive officers of the County and of each city, town, village and school district in which the Project Facility is or is to be located, (B) caused notice of the Original Public Hearing to be posted on June 23, 2020 on the Agency's website, (C) caused notice of the Original Public Hearing to be published on June 26, 2020 in The Record, a newspaper of general circulation available to the residents of the City of Troy, Rensselaer County, New York, (D) conducted the Original Public Hearing on July 6, 2020 at 11:00 a.m., local time by telephone conference pursuant to Executive Order 202.1 (as amended and extended), (E) prepared a report of the Original Public Hearing (the "Original Public Hearing Report") fairly summarizing the views presented at such Public Hearing, and (F) caused copies of said Original Public Hearing Report to be made available to the members of the Agency; and

WHEREAS, the Agency caused to be mailed on June 23, 2020 a letter to the chief executive officers of Village of Menands, the Town of Colonie and Albany County (the "Current Municipalities") notifying the Current Municipalities that the Sublessee leases space at 381 Broadway, Menands, New York 12204 (the "Current Facility") and that the Sublessee has informed the Agency that the Sublessee will "abandon" (as such term is used in Section 859-a(5)(d) of the Act) the Current Facility upon completion of the Project; and

WHEREAS, the Executive Director of the Agency caused a letter dated June 25, 2020 (the "Original PILOT Deviation Letter") to be mailed to the chief executive officers of the Affected Tax Jurisdictions, informing said individuals that the Agency would, at its meeting on July 9, 2020, consider a proposed deviation from the Policy with respect to the payment in lieu of tax agreement to be entered into by the Agency with respect to the Project Facility and the reasons for said deviation; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Agency on July 9, 2020 (the "SEQR Resolution"), the Agency determined (A) that the Project is an "Unlisted", (B) to conduct an uncoordinated review of the Project, (C) that the Project will not have a significant effect on the environment and, therefore, that an environmental impact statement is not required to be prepared with respect to the Project, and (D) as a consequence of the foregoing, prepared a negative declaration with respect to the Project; and

WHEREAS, by a resolution adopted by the members of the Agency on July 9, 2020, as amended and restated by a resolution adopted by the members of the Agency on August 13, 2020 (collectively, the "Original Approving Resolution"), the members of the Agency authorized the Project, the granting of the Original Financial Assistance to the Real Estate Holding Company and the Operating Company and the execution and delivery of documentation with respect thereto; and

WHEREAS, by resolution adopted by the members of the Agency on August 13, 2020 (the "Agent Resolution"), the Agency appointed Tralongo Builders, Inc. (the "Contractor"), as sub-agent of the Agency to undertake and complete the Project; and

WHEREAS, subsequent to the adoption of the Original Approving Resolution, the Real Estate Holding Company and the Operating Company requested that, due to increased project costs, the Agency consider an amendment to the Original Application (the Original Application as so amended, the "Application"), that contemplated additional financial assistance to the Real Estate Holding Company and the Operating Company in the form of increased real property tax exemption benefits (the "Additional Financial Assistance" and together with the Original Financial Assistance, the "Financial Assistance"), as more specifically set forth in the Application; and

WHEREAS, in connection with the Application, the Company and the Sublessee made a request to the Agency (the "PILOT Request") that the Agency deviate from the Policy with respect to real property tax payments; and

WHEREAS, on October 8, 2020, the members of the Agency duly adopted a resolution (the "Second Public Hearing/Deviation Process Resolution") authorizing the Executive Director of the Agency, after consultation with the members of the Agency and the Agency's Counsel, to (A) establish the time, date and place for a public hearing of the Agency to hear all persons interested in the Additional Financial Assistance; (B) cause the public hearing to be held in a city, town or village where the Project Facility is or is to be located, and cause notice of such public hearing to be given to the public by publishing a notice or notices of such public hearing in a newspaper of general circulation available to the residents of the governmental units where the Project Facility is or is to be located, such notice or notices to comply with the requirements of Section 859-a of the Act; (C) cause notice of the public hearing to be given to the chief executive officer of Rensselaer County (the "County") and of each city, town, village and school district in which the Project Facility is or is to be located, such notice or notices to comply with the requirements of Section 859-a of the Act; and (D) conduct such public hearing; and

WHEREAS, pursuant to the Second Public Hearing/Deviation Process Resolution, the members of the Agency authorized the Executive Director of the Agency, after consultation with the members of the Agency and the Agency's Counsel, to send a notice to the chief executive officers of the "Affected Tax Jurisdictions" (as defined in the Act) pursuant to Section 874(4) of the Act, informing said individuals that the Agency received the PILOT Request and that the members of the Agency would consider said request at a meeting of the members of the Agency scheduled to be held on December 10, 2020 and the reasons for said deviation; and

WHEREAS, pursuant to the authorization contained in the Second Public Hearing/Deviation Process Resolution, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency (the "Additional Public Hearing" and together with the Original Public Hearing, the "Public Hearing") pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the Additional Financial Assistance to be emailed on November 30, 2020, with additional copies mailed thereafter, to the chief executive officers of the County and of each city, town, village and school district in which the Project Facility is or is to be located, (B) caused notice of the Additional Public Hearing to be posted on November 30, 2020 on the Agency's website, (C) caused notice of the Additional Public Hearing to be published on December 1, 2020 in The Record, a newspaper of general circulation available to the residents of the City of Troy, Rensselaer County, New York, (D) conducted the Additional Public Hearing on December 10, 2020 at 10:00 a.m., local time by telephone conference pursuant to Executive Order 202.1 (as amended and extended), (E) prepared a report of the Additional Public Hearing (the "Additional Public Hearing Report" and together with the Original Public Hearing Report, the "Public Hearing Report") fairly summarizing the views presented at such Public Hearing, and (F) caused copies of said Additional Public Hearing Report to be made available to the members of the Agency; and

WHEREAS, the Executive Director of the Agency caused a letter dated November 24, 2020 (the "PILOT Deviation Letter") to be mailed to the chief executive officers of the Affected Tax Jurisdictions, informing said individuals that the Agency would, at its meeting on December 10, 2020, consider a proposed deviation from the Policy with respect to the payment in lieu of tax agreement to be entered into by the Agency with respect to the Project Facility and the reasons for said deviation; and

WHEREAS, by a second amended and restated approving resolution, which amends and restates the Original Approving Resolution, adopted by the members of the Agency on December 10, 2020, (as so amended and restated, the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into a lease agreement (the "Lease Agreement") by and between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"); and

WHEREAS, pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project; and (B) the Agency will lease the Company Project Facility to the Company, which Lease Agreement grants to the Company certain options to acquire the Company Project Facility from the Agency; and

WHEREAS, the Company has agreed to sub-sublease the Company Project Facility pursuant to the terms of a certain sublease agreement, dated February 2, 2021 (the "Sublease Agreement"), by and between the Company, as sublessor, and the Sublessee, as sublessee; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) (A) the Company will execute and deliver to the Agency an underlying lease dated as of February 1, 2021 (the "Underlying Lease") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency the Land and all improvements now or hereafter located on the Land (collectively, the "Premises")

for a lease term ending on the date of termination of the Payment in Lieu of Tax Agreement; (B) the Company will execute and deliver to the Agency a bill of sale dated as of February 1, 2021 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Facility Equipment; (C) the Sublessee will execute and deliver to the Agency a bill of sale dated as of February 1, 2021 (the "Equipment Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Sublessee in the Equipment; (D) the Agency and the Sublessee will execute and deliver an equipment lease agreement dated as of February 1, 2021 (the "Equipment Lease Agreement") pursuant to which the Agency will lease the Equipment to the Sublessee; (E) the Company, the Sublessee and the Agency will execute and deliver (1) a payment in lieu of tax agreement (the "Payment in Lieu of Tax Agreement") pursuant to which the Company and the Sublessee will agree to pay certain payments in lieu of taxes with respect to the Project Facility, (2) a uniform project benefits agreement (the "Uniform Project Benefits Agreement") regarding the granting of the financial assistance and the potential recapture of such assistance, which Uniform Project Benefits Agreement complies with the requirements of Section 859-a(6) of the Act, and (3) a recapture agreement (the "Section 875 GML Recapture Agreement"), required by the Act, regarding the recovery or recapture of certain sales and use taxes; (F) the Agency will execute and file New York State Department of Taxation and Finance forms entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report"); (G) (1) the Agency and the Contractor will enter into (a) a contractor agency and indemnification agreement dated as of February 1, 2021 (the "Contractor Agency Indemnification Agreement"), and (b) a contractor recapture agreement dated as of February 1, 2021 (the "Contractor Section 875 GML Recapture Agreement"), and (2) the Agency will file a Thirty Day Sales Tax Report (the "Contractor Thirty Day Sales Tax Report") and any additional report to the Commissioner of the State Department of Taxation and Finance concerning the amount of sales and use tax exemption benefit for the Project (the "Additional Thirty-Day Project Report"); and (H) the Agency will file with the assessor and mail to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement; and

WHEREAS, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York (the "Real Property Tax Law"), the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or control; and

WHEREAS, pursuant to the provisions of Section 6.6 of the Lease Agreement, the Company has agreed to make payments in lieu of taxes with respect to the Project Facility in an amount equivalent to normal taxes, provided that, so long as this Agreement shall be in effect, the Company and the Sublessee shall during the term of this Agreement make payments in lieu of taxes in the amounts and in the manner provided in this Agreement, and during such period the provisions of Section 6.6 of the Lease Agreement shall not control the amounts due as payment in lieu of taxes with respect to that portion of the Project Facility which is covered by this Agreement; and

WHEREAS, all things necessary to constitute this Agreement a valid and binding agreement by and among the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Agreement have in all respects been duly authorized by the Agency, the Company and the Sublessee:

NOW, THEREFORE, in consideration of the matters above recited, for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereto formally covenant, agree and bind themselves as follows to wit:

ARTICLE I

REPRESENTATIONS AND WARRANTIES

SECTION 1.01. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

(A) Power. The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into the transactions contemplated by this Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement hereunder.

(B) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Agency is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

SECTION 1.02. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant and covenant as follows:

(A) Power. The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, is duly authorized to do business in the State of New York and has the power under the laws of the State to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement, and by proper action of its sole member has been duly authorized to execute, deliver and perform this Agreement.

(B) Authorization. The Company is authorized and has the power under its articles of organization, operating agreement and the laws of the State to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement. By proper action of its sole member, the Company has duly authorized the execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Company is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by (and the execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance

with the provisions of this Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its articles of organization or operating agreement or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consent. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Agreement by the Company or as a condition to the validity of this Agreement.

SECTION 1.03. REPRESENTATIONS OF AND WARRANTIES BY THE SUBLESSEE. The Sublessee does hereby represent, warrant and covenant as follows:

(A) Power. The Sublessee is a limited liability company duly organized and validly existing under the laws of the State of New York, is duly authorized to do business in the State of New York and has the power under the laws of the State to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement, and by proper action of its members has been duly authorized to execute, deliver and perform this Agreement.

(B) Authorization. The Sublessee is authorized and has the power under its articles of organization, operating agreement and the laws of the State to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement. By proper action of its sole member, the Sublessee has duly authorized the execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Sublessee is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by (and the execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its articles of organization or operating agreement or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed

of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Sublessee is a party or by which it or any of its property is bound, and neither the Sublessee's entering into this Agreement nor the Sublessee's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Sublessee under the terms of any of the foregoing, and this Agreement is the legal, valid and binding obligation of the Sublessee enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consent. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Sublessee is required as a condition to the execution, delivery or performance of this Agreement by the Sublessee or as a condition to the validity of this Agreement.

ARTICLE II

COVENANTS AND AGREEMENTS

SECTION 2.01. TAX-EXEMPT STATUS OF THE PROJECT FACILITY. (A) Assessment of the Project Facility. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of a leasehold interest in the Project Facility by the Agency and the filing by the Agency of a New York State Board of Real Property Services Form RP-412-a (a "Real Property Tax Exemption Form") with respect to the Project Facility, and for so long thereafter as the Agency shall have a leasehold interest in the Project Facility, the Project Facility shall be assessed by the various taxing entities having jurisdiction over the Project Facility, including, without limitation, any county, city, school district, town, village or other political unit or units wherein the Project Facility is located (such taxing entities being sometimes collectively hereinafter referred to as the "Taxing Entities", and each of such Taxing Entities being sometimes individually hereinafter referred to as a "Taxing Entity") as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the acquisition by the Agency of the leasehold interest in the Project Facility created by the Underlying Lease and the filing of the Real Property Tax Exemption Form. The Company and the Sublessee shall, promptly following acquisition by the Agency of the leasehold interest in the Project Facility created by the Underlying Lease, take such action as may be necessary to ensure that the Project Facility shall be assessed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to such acquisition by the Agency, including ensuring that a Real Property Tax Exemption Form shall be filed with the appropriate officer or officers of each respective Taxing Entity responsible for assessing properties on behalf of each such Taxing Entity (each such officer being hereinafter referred to as an "Assessor"). For so long thereafter as the Agency shall have a leasehold interest in the Project Facility, the Company and the Sublessee shall take such further action as may be necessary to maintain such exempt assessment with respect to each Taxing Entity. The parties hereto understand that the Project Facility shall not be entitled to such tax-exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the tax status date of such Taxing Entity occurring subsequent to the date upon which the Agency obtains of record a leasehold interest in the Project Facility and the Real Property Tax Exemption Form is filed with the Assessor. Pursuant to the provisions of the Lease Agreement and the Equipment Lease Agreement, the Company and the Sublessee, jointly and severally, will be required to pay all taxes and assessments lawfully levied and/or assessed against the Project Facility, including taxes and assessments levied for the current tax year and all subsequent tax years, until the Project Facility shall be entitled to exempt status on the tax rolls of the respective Taxing Entities. The Agency will cooperate with the Company and the Sublessee to obtain and preserve the tax-exempt status of the Project Facility and to achieve the purposes and effect of this Agreement.

(B) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease Agreement and the Equipment Lease Agreement, the Company and the Sublessee, jointly and severally, shall pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project Facility.

SECTION 2.02. PAYMENTS IN LIEU OF TAXES. (A) Agreement to Make Payments. The Company and the Sublessee agree that they shall make annual payments in lieu of property taxes in the amounts hereinafter provided to the respective Taxing Entities entitled to receive same pursuant to the provisions hereof. The Company and the Sublessee also agree to give the Assessor a copy of this Agreement. Unless otherwise specified in the annual statement sent to the Company, the payments due hereunder shall be paid by the Company and the Sublessee to the respective appropriate officer or officers of the respective Taxing Entities charged with receiving payments of taxes for such Taxing Entities (such officers being collectively hereinafter referred to as the "Receivers of Taxes") for distribution by the Receivers of Taxes to the appropriate Taxing Entities entitled to receive same pursuant to the provisions hereof. The Company and the Sublessee, jointly and severally, shall pay interest and late charges as required by Section 874 of the Act.

(B) RESERVED.

(C) (C) Amount of Payments in Lieu of Taxes. Notwithstanding anything to the contrary set forth in this Agreement, in each tax year during the term of this Agreement through December 31, 2031, the amount payable by the Company and the Sublessee, jointly and severally, to the Agency on behalf of all of the Taxing Entities as an aggregate payment in lieu of property tax pursuant to this Agreement with respect to the Project Facility shall be the fixed amount as shown in the following table:

Tax Year	PILOT Payment
1	\$30,759.80
2	\$30,759.80
3	\$30,759.80
4	\$30,759.80
5	\$30,759.80
6	\$30,759.80
7	\$30,759.80
8	\$30,759.80
9	\$30,759.80
10	\$30,759.80
11 and thereafter	100% of Normal Taxes

(2) In each tax year following termination of this Agreement, commencing on January 1, 2032, if the Underlying Lease and the Lease Agreement are still in effect, then the amount payable by the Company and the Sublessee to the Agency on behalf of all Taxing Entities as a payment in lieu of tax pursuant to this Agreement with respect to the Project Facility shall be an amount equal to 100% of the amounts as would result from real estate taxes being levied on the Project Facility by the Taxing Entities if the Project Facility were privately owned by the Company and not deemed owned by or under the jurisdiction, control or supervision of the Agency ("Normal Taxes"). The Company and the Sublessee shall pay or cause to be paid to the Taxing Entities when due all such payments in lieu of real estate taxes with respect to the Project Facility required by this Section 2.02(C)(2).

(D) Additional Amounts in Lieu of Taxes. Commencing on the first tax year following the date on which any material modification or any structural addition shall be made to the Project Facility or any portion thereof or any additional building or other structure shall be constructed on the Land that is not included in the definition of "Project Facility" (such structural additions and additional buildings and other structures being hereinafter referred to as "Additional Facilities") the Company and the Sublessee agree, jointly and severally, to make additional annual payments in lieu of property taxes with respect to such Additional Facilities (such additional payments being hereinafter collectively referred to as "Additional Payments") to the Receivers of Taxes with respect to such Additional Facilities, such Additional Payments to be computed separately for each Taxing Entity as follows:

(1) Determine the amount of general taxes and general assessments (hereinafter referred to as the "Additional Normal Tax") which would be payable to each Taxing Entity with respect to such Additional Facilities if such Additional Facilities were owned by the Company and the Agency did not have a leasehold interest therein as follows: (a) multiply the Additional Assessed Value (as hereinafter defined) of such Additional Facilities determined pursuant to subsection (E) of this Section 2.02 by (b) the tax rate or rates of such Taxing Entity that would be applicable to such Additional Facilities if such Additional Facilities were owned by the Company and the Agency did not have a leasehold interest therein, and (c) reduce the amount so determined by the amounts of any tax exemptions that would be afforded to the Company by such Taxing Entity if such Additional Facilities were owned by the Company and the Agency did not have a leasehold interest therein.

(2) In each fiscal tax year during the term of this Agreement (commencing in the fiscal tax year when such Additional Facilities would first appear on the assessment roll of any Taxing Entity, as if such Additional Facilities were owned by the Company and the Agency did not have a leasehold interest therein), the amount payable by the Company and the Sublessee to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax with respect to such Additional Facilities pursuant to this Agreement shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to such Additional Facilities for such fiscal tax year (unless the Agency, the Company and the Sublessee shall enter into a separate written agreement regarding payments in lieu of property taxes with respect to such Additional Facilities, in which case the provisions of such separate written agreement shall control).

(E) Valuation of Additional Facilities. (1) The value of Additional Facilities for purposes of determining payments in lieu of taxes due under Section 2.02(D) hereof shall be determined by the Assessors of each respective Taxing Entity. The parties hereto agree that the Assessors shall (a) appraise the Additional Facilities in the same manner as other similar properties in the general area of the Project Facility, and (b) place a value for assessment purposes (hereinafter referred to as the "Additional Assessed Value") upon the Additional Facilities, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company and the Sublessee shall be entitled to written notice of the initial establishment of such Additional Assessed Value and of any change in such Additional Assessed Value.

(2) If the Company and the Sublessee are dissatisfied with the amount of the Additional Assessed Value of the Additional Facilities as initially established or as changed, and if the Company and the Sublessee shall have given written notice of such dissatisfaction to the appropriate Assessor and the Agency within thirty (30) days of receipt by the Company and/or the Sublessee of written notice of the initial establishment of such Additional Assessed Value, or of a change in such Additional Assessed Value, then the Company and/or the Sublessee shall be entitled to protest before, and to be heard by, the appropriate Assessor and the Agency. If the Agency, the Company, the Sublessee and any Assessor shall fail to reach agreement as to the proper Additional Assessed Value of the Additional Facilities for purposes of determining payments in lieu of taxes due under this Agreement, then such Assessor, the Company and/or the Sublessee and the Agency shall each select one arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall be a qualified real estate appraiser, experienced in valuation for the purposes of tax assessment in the general area of the Project Facility, which arbitrators shall, at the sole cost and expense of the Company and/or the Sublessee, determine whether the Additional Assessed Value of the Additional Facilities has been properly established by the Assessor. It is understood that the arbitrators are empowered to confirm the Additional Assessed Value or to determine a higher or lower Additional Assessed Value. Any payments in lieu of taxes due upon such Additional Facilities pursuant to Section 2.02(D) hereof may not be withheld by the Company and/or the Sublessee pending determination of the Additional Assessed Value by the arbitrators.

(F) Statements. Pursuant to Section 858(15) of the Act, the Agency agrees to give each Taxing Entity a copy of this Agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy hereof be given to the appropriate officer or officers of the respective Taxing Entities responsible for preparing the tax rolls for said Tax Entities (each, a "Tax Billing Officer") and a request that said Tax Billing Officers submit to the Company and to the appropriate Receiver of Taxes periodic statements (each a "Statement") specifying the amount and due date or dates of the payments due each Taxing Entity hereunder, such periodic statements to be submitted to the Company and the Sublessee at approximately the times that tax bills are mailed by such Taxing Entities.

(G) Time of Payments. The Company and the Sublessee agree to pay the amounts due hereunder to the Receivers of Taxes (unless otherwise specified in a Statement) received for the benefit of each particular Taxing Entity in any fiscal tax year to the appropriate Receiver of Taxes within the period that such Taxing Entity allows payment of taxes levied in such fiscal tax year without penalty. The Company and the Sublessee shall be entitled to receive receipts for such payments.

(H) Method of Payment. All payments by the Company and/or the Sublessee hereunder shall be paid to the Receivers of Taxes in lawful money of the United States of America. The Receivers of Taxes shall in turn distribute the amounts so paid to the various Taxing Entities entitled to same.

SECTION 2.03. CREDIT FOR TAXES PAID. (A) Amount of Credit. The parties hereto acknowledge and agree that the obligation of the Company and the Sublessee jointly and

severally to make the payments provided in Section 2.02 of this Agreement shall be in addition to any and all other taxes and governmental charges of any kind whatsoever which the Company and/or the Sublessee may be required to pay under the Lease Agreement and the Equipment Lease Agreement, respectively. It is understood and agreed, however, that, should the Company or the Sublessee pay in any fiscal tax year to any Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Project Facility or the interest therein of the Company or the Sublessee or the occupancy thereof by the Company or the Sublessee (but not including, by way of example, (1) sales and use taxes, and (2) special assessments, special ad valorem levies or governmental charges in the nature of utility charges, including but not limited to water, solid waste, sewage treatment or sewer or other rents, rates or charges), then the Company's and the Sublessee's obligation to make payments in lieu of property taxes attributed to such fiscal tax year to such Taxing Entity hereunder shall be reduced by the amounts which the Company and the Sublessee shall have so paid to such Taxing Entity in such fiscal tax year, but there shall be no cumulative or retroactive credit as to any payment in lieu of property taxes due to any other Taxing Entity or as to any payment in lieu of property taxes due to such Taxing Entity in any other fiscal tax year.

(B) Method of Claiming Credits. If the Company or the Sublessee desires to claim a credit against any particular payment in lieu of tax due hereunder, the Company or the Sublessee (as applicable) shall give the governing body of the affected Taxing Entity and the Agency prior written notice of its intention to claim any credit pursuant to the provisions of this Section 2.03, said notice to be given by the Company or the Sublessee (as applicable) at least thirty (30) days prior to the date on which such payment in lieu of tax is due pursuant to the provisions of Section 2.02(G) hereof. In the event that the governing body of the appropriate Taxing Entity desires to contest the Company's or the Sublessee's (as applicable) right to claim such credit, then said governing body, the Agency and the Company or the Sublessee (as applicable) shall each select an arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall be a qualified real estate appraiser, experienced in valuation for the purposes of tax assessment in the general area of the Project Facility, which arbitrators shall, at the sole cost and expense of the Company or the Sublessee (as applicable), determine whether the Company or the Sublessee (as applicable) is entitled to claim any credit pursuant to the provisions of this Section 2.03 and, if so, the amount of the credit to which the Company or the Sublessee (as applicable) is entitled. It is understood that the arbitrators are empowered to confirm the amount of the credit claimed by the Company or the Sublessee (as applicable) or to determine a lower or higher credit. When the Company or the Sublessee (as applicable) shall have given notice, as provided herein, that it claims a credit, the amount of any payment in lieu of property taxes due hereunder against which the credit may be claimed may be withheld (to the extent of the credit claimed by the Company or the Sublessee (as applicable), but only to the extent that such credit may be claimed against said payment in lieu of taxes pursuant to the provisions of this Section 2.03) until the decision of the arbitrators is rendered. After the decision of the arbitrators is rendered, the payment in lieu of taxes due with respect to any reduction or disallowance by the arbitrators in the amount of the credit claimed by the Company or the Sublessee (as applicable) shall, to the extent withheld as aforesaid, be immediately due and payable and shall be paid by the Company or the Sublessee (as applicable) within thirty (30) days of said decision.

SECTION 2.04. LATE PAYMENTS. (A) First Month. Pursuant to Section 874(5) of the Act, if the Company and the Sublessee shall fail to make any payment required by this Agreement when due, the Company and the Sublessee shall pay the same, together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter. If the Company and the Sublessee shall fail to make any payment required by this Agreement when due and such delinquency shall continue beyond the first month, the Company's and the Sublessee's joint and several obligation to make the payment so in default shall continue as a joint and several obligation of the Company and the Sublessee to the affected Taxing Entity until such payment in default shall have been made in full, and the Company or the Sublessee (as applicable) shall pay the same to the affected Taxing Entity together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

ARTICLE III

LIMITED OBLIGATION OF THE AGENCY

SECTION 3.01. NO RECOURSE; LIMITED OBLIGATION OF THE AGENCY. (A) No Recourse. 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, officer, agent, servant or employee of the Agency in his or her individual capacity, and no recourse under or upon any obligation, covenants or agreements contained in this Agreement, or otherwise based upon or in respect of this Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent (other than the Company and the Sublessee), servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Agreement, it being expressly understood that this Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company and the Sublessee), servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Agreement under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent (other than the Company and the Sublessee), servant or employee under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement by the Agency.

(B) Limited Obligation. The obligations, covenants and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or Rensselaer County, New York, and neither the State of New York nor Rensselaer County, New York shall be liable thereon, and further such obligations, covenants and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Lease Agreement).

(C) Further Limitation. Notwithstanding any provision of this Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (1) the Agency shall have been requested to do so in writing by the Company and/or the Sublessee, and (2) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses (including, without limitation, attorneys' fees and expenses) or other costs, the Agency shall have received from the Company and the Sublessee security or indemnity and an agreement from the Company and the Sublessee to defend and hold harmless the Agency

satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

ARTICLE IV
EVENTS OF DEFAULT

SECTION 4.01. EVENTS OF DEFAULT. Any one or more of the following events shall constitute an event of default under this Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

(A) Failure of the Company or the Sublessee to pay when due any amount due and payable by the Company and the Sublessee pursuant to this Agreement and continuance of said failure for a period of fifteen (15) days after written notice to the Company and the Sublessee stating that such payment is due and payable;

(B) Failure of the Company or the Sublessee to observe and perform any other covenant, condition or agreement on its part to be observed and performed hereunder (other than as referred to in subsection (A) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company and the Sublessee specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Company or the Sublessee shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company or the Sublessee shall require in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days in the aggregate from the date of default; or

(C) Any warranty, representation or other statement by or on behalf of the Company or the Sublessee contained in this Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Agreement and (1) shall be materially adverse to the Agency at the time when the notice referred to below shall have been given to the Company and/or the Sublessee and (2) if curable, shall not have been cured within thirty (30) days after written notice of such incorrectness shall have been given to a responsible officer of the Company and/or the Sublessee, provided that if such incorrectness cannot reasonably be cured within said thirty-day period and the Company and/or the Sublessee shall have commenced action to cure the incorrectness within said thirty-day period and, thereafter, diligently and expeditiously proceeds to cure the same, such thirty-day period shall be extended for so long as the Company and/or the Sublessee shall require, in the exercise of due diligence, to cure such default.

SECTION 4.02. REMEDIES ON DEFAULT. (A) General. Whenever any Event of Default shall have occurred with respect to this Agreement, the Agency (or if such Event of Default concerns a payment required to be made hereunder to any Taxing Entity, then with respect to such Event of Default such Taxing Entity) may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company and the Sublessee under this Agreement.

(B) Cross-Default. In addition, an Event of Default hereunder shall constitute an event of default under Article X of the Lease Agreement. Upon the occurrence of an Event of Default hereunder resulting from a failure of the Company or the Sublessee to make any payment required hereunder, the Agency shall have, as a remedy therefor under the Lease Agreement, among other remedies, the right to terminate the Lease Agreement and convey the Project Facility to the Company, thus subjecting the Project Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State.

(C) Separate Suits. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.

(D) Venue. The Company and the Sublessee irrevocably agree that any suit, action or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State, consent to the jurisdiction of each such court in any such suit, action or proceeding, and waive any objection which they may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

SECTION 4.03. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. Pursuant to Section 874(6) of the Act, if the Company or the Sublessee should default in performing any of their obligations, covenants or agreements under this Agreement and the Agency or any Taxing Entity should employ attorneys or incur other reasonable expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company or the Sublessee herein contained, the Company and the Sublessee agree that they will, on demand therefor and jointly and severally, pay to the Agency or such Taxing Entity, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other reasonable expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.04. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or any Taxing Entity is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required. In order to entitle the Agency or any Taxing Entity to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Agreement or the Act.

(D) No Waiver. In the event any provision contained in this Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver

of any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

ARTICLE V

MISCELLANEOUS

SECTION 5.01. TERM. (A) General. This Agreement shall become effective and the obligations of the Company and the Sublessee shall arise absolutely and unconditionally upon the approval of this Agreement by resolution of the Agency and the execution and delivery of this Agreement by the Company and the Agency. Unless otherwise provided by amendment hercof, this Agreement shall continue to remain in effect until the earlier to occur of (1) December 31, 2031 or (2) the date on which the Project Facility is reconveyed by the Agency to the Company pursuant to Article X or Article XI of the Lease Agreement.

(B) Extended Term. In the event that (1) the Project Facility shall be reconveyed to the Company, (2) on the date on which the Company obtains the Agency's interest in the Project Facility, the Project Facility shall be assessed as exempt upon the assessment roll of any one or more of the Taxing Entities, and (3) the fact of obtaining title to the Agency's interest in the Project Facility shall not immediately obligate the Company or the Sublessee to make pro-rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of the State (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), this Agreement shall remain in full force and effect and the Company and the Sublessee shall be obligated to make payments to the Receiver of Taxes in amounts equal to those amounts which would be due from the Company and the Sublessee to the respective Taxing Entities if the Project Facility were owned by the Company and the Agency did not have a leasehold interest therein until the first tax year in which the Company shall appear on the tax rolls of the various Taxing Entities having jurisdiction over the Project Facility as the legal owner of record of the Project Facility.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY AND SUBLESSEE ACTS. Where the Company or the Sublessee are required to do or accomplish any act or thing hereunder, the Company or the Sublessee may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company or the Sublessee.

SECTION 5.04. AMENDMENTS. This Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy, (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, properly addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is

refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Notices Given by Taxing Entities. Notwithstanding the foregoing, notices of assessment or reassessment of the Project Facility and other notices given by a Taxing Entity under Article II hereof shall be sufficiently given and shall be deemed given when given by the Taxing Entity in the same manner in which similar notices are given to owners of taxable properties by such Taxing Entity.

(C) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

3 E Industrial Assoc., LLC
381 Broadway
Menands, New York 12204
Attention: John Karrat

IF TO THE SUBLESSEE:

Capital City Produce LLC
381 Broadway
Menands, New York 12204
Attention: John Karrat

WITH A COPY TO:

Sciocchetti & Abbott, PLLC
800 Troy Schenectady Road, Suite 102
Latham, New York 12110
Attention: Paul V. Sciocchetti, Esq.

TO THE AGENCY:

Rensselaer County Industrial Development Agency
c/o Rensselaer County Department of Economic Development and Planning
County Office Building
1600 Seventh Avenue
Troy, New York 12180
Attention: Chairman

WITH A COPY TO:

Rensselaer County Attorney's Office
1600 Seventh Avenue, 4th Floor
Troy, New York 12180

Attention: John Sweeney, Esq.

and

Barclay Damon LLP
80 State Street
Albany, New York 12207
Attention: Melissa C. Bennett, Esq.

(D) Copies. A copy of any notice given hereunder by the Company and/or the Sublessee which affects in any way a Taxing Entity shall also be given to the chief executive officer of such Taxing Entity.

(E) Change of Address. The Agency, the Company and the Sublessee may, with notice given hereunder to each of the others, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 5.06. BINDING EFFECT. This Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company, the Sublessee and their respective successors and assigns. The provisions of this Agreement are intended to be for the benefit of the Agency and the respective Taxing Entities.

SECTION 5.07. SEVERABILITY. If any article, section, subsection, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subsection, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION 5.08. COUNTERPARTS. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.09. APPLICABLE LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Agency, the Company and the Sublessee have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first written above.

RENSSELAER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

BY Michael Della Rocco
Vice Chairman

STATE OF NEW YORK)
) SS.:
COUNTY OF RENSSELAER)

On the 21st day of December in the year 2020 before me, the undersigned, a notary public in and for the State of New York, personally appeared Michael Della Rocco, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Robin L. LaBrake
Notary Public


Signature Page to PILOT Agreement
Page 1 of 3

3 E INDUSTRIAL ASSOC., LLC

By: 
John Karrat
Member

STATE OF NEW YORK)
) SS.:
COUNTY OF ALBANY)

On the 29 day of January in the year 2021 before me, the undersigned, a notary public in and for the State of New York, personally appeared John Karrat, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

LISA NEWKIRK
Notary Public, State of New York
No. 01966277629
Office in Albany County
Commission Expires March 11, 2021

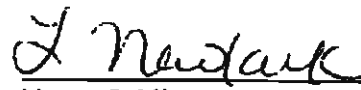
Signature Page to PILOT Agreement
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CAPITAL CITY PRODUCE LLC

By: 
John Karrat
Member

STATE OF NEW YORK)
) SS.:
COUNTY OF ALBANY)

On the 29 day of January in the year 2021 before me, the undersigned, a notary public in and for the State of New York, personally appeared John Karrat, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

1657103-00000000
Notary Public, State of New York
No. 001480370000
Qualified in Albany County
Commission Expires January 11, 2021

Signature Page to PILOT Agreement
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EXHIBIT A

DESCRIPTION OF THE LAND

ALL THAT CERTAIN PIECE OR PARCEL OF LAND situate in the City of Troy, County of Rensselaer, State of New York, being bounded and described as follows:

BEGINNING at a point in the westerly line of lands now or formerly of Troy and Greenbush Railroad Association (New York Central Railroad Company, Lessee) at its intersection with the division line between lands conveyed to Hudson-Mohawk Industrial Gateway by deed dated October 9, 1974 and recorded in the Rensselaer County Clerk's Office in Book 1265 of Deeds at Page 1016 on the south and lands conveyed to Rensselaer County Industrial Development Agency by deed dated May 31, 1990 and recorded in the Rensselaer County Clerk's Office in Book 1578 of Deeds at Page 198 on the north; thence, westerly along said division line N 84°22'24" W, 240.00 feet to a point in the easterly right-of-way of a proposed street known as East Industrial Parkway; thence, through aforesaid lands of Rensselaer County Industrial Development Agency, the following two (2) courses:

1. N 05°38'01" E along aforesaid right-of-way, 424.38 feet to a point; and
2. S 84°27'40" E. 240.00 feet to a point in the westerly line of aforesaid lands of Troy and Greenbush Railroad Association;

thence along said westerly line of Troy and Greenbush Railroad Association S 05°38'01" W, 424.75 feet to the point and place of beginning.

The above described parcel is known as Lot No. 1 as shown on a map entitled: "RENSSELAER COUNTY INDUSTRIAL DEVELOPMENT AGENCY, TROY, NEW YORK, SOUTH TROY INDUSTRIAL PARK PHASE I DEVELOPMENT" prepared by J. Kenneth Fraser and Associates, PE, LS, LA, PC, dated October 30, 1995 and filed in the Rensselaer County Clerk's Office on November 28, 1995, as Map No. 156

EXCEPTING THEREFROM ALL that piece or parcel of property situate in the City of Troy, County of Rensselaer, State of New York and described as follows:

Beginning at a point on the easterly boundary line of East Industrial Parkway at its intersection with the division line between ACN Companies, LLC (reputed owner) on the north and the property of Hudson-Mohawk Industrial Gateway (reputed owner) on the south, said point being 28± feet distant easterly measured at right angles from Station 17+44± of the hereinafter of the hereinafter described survey baseline for the East Industrial Parkway Extension Project; thence northerly along said easterly boundary line of East Industrial Parkway 424± feet to a point on the division line between the property of ACN Companies, LLC (reputed owner) on the south and the property of Rensselaer County Industrial Development Agency (reputed owner) on the north, said point being 38± feet distant easterly measured at right angles from Station 21+73± of said baseline; thence easterly along said division line 5± feet to a point 43± feet distant easterly measured at right angles from Station 21+73± of said baseline; thence southerly S 05°08'07" W through the property of ACN Companies, LLC (reputed owner) 424± feet to a point on the division line between the property of Hudson-Mohawk Industrial Gateway (reputed owner) on the south and the property of ACN Companies, LLC (reputed owner) on the north, said point being 31± feet distant easterly measured at right angles from Station 17+43± of said baseline; thence westerly along said division line 5± feet to the point of beginning, being 2,122 square feet or 0.049 acre of land, more or less.

The above mentioned survey baseline is a portion of the 2017 survey baseline for the East Industrial Parkway Extension Project and is described as follows:

Beginning at Station 16+01.74; thence North 03°23'38" West to Station 18+30.01, thence North 05°14'20" East to Station 22+32.98.

The above premises is more modernly described as follows.

All that piece or parcel of land situate in the City of Troy, County of Rensselaer and the State of New York, bounded and described as follows:

Beginning at a point located along the easterly line of East Industrial Parkway (as appropriated by the State of New York (Map 3, Parcel 3), said point being the intersection formed by said easterly line of East Industrial Parkway with the lands now or formerly of the Rensselaer County Industrial Development Agency (Book 1781, Page 242) on the south and the lands now or formerly of 3 E Industrial Assoc., LLC (Book 8808, Page 40) on the north; thence along the aforesaid East Industrial Parkway (as appropriated), North 05°38'01" East, 424.37 feet to a point; thence along the lands now or formerly of Hudson-Mohawk Industrial Gateway (Book 1265, Page 1016), South 84°27'40" East, 235.00 feet to a point; thence along the lands now or formerly New York Central Lines LLC (Book 161, Page 1401), South 05°38'01" West, 424.75 feet to a point; thence along the first mentioned division line, North 84°22'24" West, 235 00 feet to the point or place of beginning

FOR INFORMATION ONLY: Containing in all 2.29 acres of land being more or less.