

PROJECT AGREEMENT

THIS PROJECT AGREEMENT (hereinafter, the "Agreement"), made as of November 20, 2017 by and between the BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, with offices at FIVE South College Drive, Binghamton, New York 13905 (the "Agency") and 100 SAVEAROUND PARKWAY, LLC, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with an address of 31 Front Street, Binghamton, New York 13905 (the "Company").

W I T N E S S E T H:

WHEREAS, the Agency was created by Chapter 564 of the 1970 Laws of the State of New York pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Enabling Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project (the "Project") consisting of a corporate office and warehouse center with adjacent parking lots and associated utilities; and

WHEREAS, by Resolution, adopted on November 15, 2017 (the "Resolution"), the Agency has conferred on the Company, in connection with the Project, certain benefits, exemptions and other financial assistance consisting of: (a) an exemption benefit from all New York State and local sales and use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Project or used in the renovation and equipping of the Project, (b) an exemption from mortgage recording tax, and (c) a partial abatement from real property taxes through a twenty (20) year "payment in lieu of tax agreement" deviating from the Agency's Uniform Tax Exemption Policy with the Company for the benefit of each municipality and school district having taxing jurisdiction over the Project (collectively, the sales and use tax exemption, the mortgage recording tax exemption, and the partial abatement from real property taxes benefits, are hereinafter collectively referred to as the "Financial Assistance"); and

WHEREAS, it has been estimated and confirmed by the Company, as included within its Application for Financial Assistance, that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$550,000.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$45,000.00, and (ii) that real property tax abatement benefits to be provided to the Company over the twenty (20) year benefit period of the anticipated payment-in-lieu-of-tax agreement are estimated to be approximately \$1,605,716.00; and

WHEREAS, the Company proposes to lease the Project to the Agency, and the

Agency desires to rent the Project from the Company pursuant to the terms and conditions set forth in a certain Lease Agreement dated as of November 20, 2017 (the "Lease Agreement"), by and between the Company and the Agency; and

WHEREAS, the Agency proposes to lease the Project back to the Company and the Company desires to rent the Project from the Agency, pursuant to the terms and conditions set forth in a certain Leaseback Agreement dated as of November 20, 2017 (the "Leaseback Agreement"); and

WHEREAS, in order to define the obligations of the Company regarding payments-in-lieu-of-taxes for the Project, the Agency and the Company will enter into a Payment-in-Lieu-of-Tax Agreement dated as of November 20, 2017 (the "PILOT Agreement"); and

WHEREAS, in order to define the obligations of the Company regarding its ability to utilize the Agency's sales and use tax exemption benefit as agent of the Agency to renovate and equip the Project and to undertake the Project, the Agency and the Company will enter into an Agency Agreement, dated as of November 20, 2017 (the "Agency Agreement"); and

WHEREAS, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the Resolution, and as more particularly described in the Lease Agreement, Leaseback Agreement, PILOT Agreement, and Agency Agreement, that the Company provide assurances with respect to the terms and conditions herein set forth; and

WHEREAS, this Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company; and

WHEREAS, no Financial Assistance shall be provided to the Company prior to the effective date of this Agreement.

NOW, THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. PURPOSE OF PROJECT. It is understood and agreed by the parties hereto that the purpose of the Agency's provision of Financial Assistance with respect to the Project is to, and that the Agency is entering into the Lease Agreement, Leaseback Agreement, PILOT Agreement and Agency Agreement in order to, promote, develop, encourage and assist in the renovation and equipping of the Project, to advance job opportunities, health, general prosperity and economic welfare of the people of the City of Binghamton, Broome County, New York, and to otherwise accomplish the public purpose of the Act.

2. PILOT AGREEMENT. The parties hereto understand and agree that Exhibit "A" to this Agreement contains a copy of the PILOT Agreement to be entered into by and between the Company and the Agency.

3. TERMINATION, MODIFICATION AND/OR RECAPTURE OF ANY FINANCIAL ASSISTANCE. It is understood and agreed by the Parties hereto that the

Agency is entering into the Lease Agreement, the Leaseback Agreement, the PILOT Agreement, and the Agency Agreement in order to provide Financial Assistance to the Company for the Project and to accomplish the public purposes of the Act. The Company hereby makes the following representations and covenants in order to induce the Agency to proceed with the Project:

A. In accordance with Section 875(3) of the New York General Municipal Law, the policies of the Agency, and the Resolution, the Company covenants and agrees that it may be subject to a Recapture Event Determination (as hereinafter defined) resulting in the potential recapture of any and all Financial Assistance, as described below, if the Company receives, or any of its agents or subagents receive, any Financial Assistance from the Agency, and it is determined by the Agency that:

1. the Company, or its agents or subagents, if any, authorized to make purchases for the benefit of the Project is not entitled to the sales and use tax exemption; or

2. the sales and use tax exemption is in excess of the amounts authorized by the Agency to be taken by the Company, or its agents or subagents, if any; or

3. the sales and use tax exemption is for property or services not authorized by the Agency as part of the Project; or

4. the Company has made a material, false or misleading statement, or omitted any information which, if included, would have rendered any information in its application for Financial Assistance, or supporting documentation, false or misleading in any material respect; or

5. In order to accomplish the foregoing, the Company shall provide annually to the Agency a certified statement and documentation: (i) 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 full time, equivalent employees of independent contractors that work at the Project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial Assistance is still accurate and, 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. Exhibit "B" contains the form of annual certification as so required as discussed above as well as additional Project assessment information that the Agency requires, on an annual basis, to be submitted to the Agency by the Company.

The findings made by the Agency with respect to Sections 3(A)(1), (2), (3) and/or (4) and/or failure to provide the written confirmation as required by Section 3(A)(5) may potentially be determined by the Agency in accordance with the Agency's Policy for Termination, Modification and/or Recapture of Agency Benefits or other procedure that provides for the termination, modification or recapture of Financial Assistance or for the modification of any PILOT to require increased payments. If the Agency makes a

determination to recapture benefits, the Company agrees and covenants that it will (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company, and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s). The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine the New York State and local sales and use tax due from the Company, together with any relevant penalties and interest due on such amounts.

B. In accordance with the Resolution, the Company further: (i) covenants that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$550,000.00 and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 3(A) of this Agreement, cannot exceed \$45,000.00.

C. The Company acknowledges and understands that a Recapture Event Determination made with respect to Section 3(A) of this Agreement will, in addition, immediately result in the loss and forfeiture of the Company's right and ability to obtain any and all future Financial Assistance with respect to the Project.

4. SURVIVAL. All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Agreement to the Agency regardless of any investigation made by the Agency.

5. NOTICES. All notices, demands or communications required to be given under this Agreement shall be forwarded simultaneously by certified mail or Federal Express or other similar overnight delivery service, to the respective addresses of the Parties hereinafter set forth or to such other place(s) as any of the Parties hereto may, from time to time, designate by written notice to the other.

To the Agency.

Broome County Industrial Development Agency
Five South College Drive
Binghamton, New York 13905

Attn: Executive Director

with a copy to:

Joseph B. Meagher, Esq.
Thomas, Collison & Meagher
1201 Monroe Street
P.O. Box 329
Endicott, New York 13761-0329

To the Company

100 SaveAround Parkway LLC
31 Front Street
Binghamton, New York 13905

Attn: Raymond H. Stanton, III

with a copy to:

Lawrence C. Anderson, Esq.
Hinman, Howard & Kattell, LLP
700 Security Mutual Building
80 Exchange Street
P.O. Box 5250
Binghamton, New York 13902

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section.

6. AMENDMENTS. No amendment, change, modification, alteration or termination of this Agreement shall be made except in writing upon the written consent of the Company and the Agency.

7. SEVERABILITY. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement, or the application thereof, shall not affect the validity or enforceability of the remaining portions of this Agreement or any part thereof.

8. GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard or reference to its conflict of laws principles.

9. SECTION HEADINGS. The headings of the several Sections in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of, or be taken as an interpretation of any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

BROOME COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____

Kevin McLaughlin
Executive Director

100 SAVEAROUND PARKWAY, LLC

By: _____

Raymond H. Stanton, III
Member

STATE OF NEW YORK:

: ss.:

COUNTY OF BROOME:

On November 20, 2017, before me, the undersigned, personally appeared KEVIN McLAUGHLIN, 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

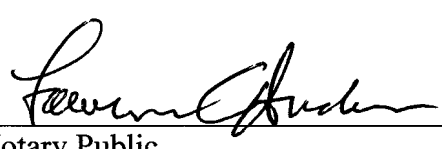
JOSEPH B. MEAGHER
Notary Public, State of New York
Broome County 02ME4974837
Commission Expires Nov. 26, 20 18

STATE OF NEW YORK:

: ss.:

COUNTY OF BROOME:

On November 20, 2017, before me, the undersigned, personally appeared RAYMOND H. STANTON, III, 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

LAWRENCE C. ANDERSON
Notary Public, State of New York
Reg. No. 9822890
Residing in Broome County
My Commission Expires Feb. 28, 20 19

EXHIBIT “A”

(SEE ATTACHED PILOT AGREEMENT)

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (the “Agreement”), dated as of November 20, 2017, by and among 100 SAVEAROUND PARKWAY, LLC, a limited liability company organized and existing under the laws of the State of New York, having an office located at 31 Front Street, Binghamton, New York 13905 (the “Company”), the CITY OF BINGHAMTON, a municipal corporation located within the County of Broome and the State of New York with offices at 38 Hawley Street, Binghamton, New York 13901 (the “City”), and the BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the “Agency”), a public-benefit corporation organized and existing under the laws of the State of New York with offices at Five South College Drive, Binghamton, New York 13905 (collectively, the “Parties”).

WITNESSETH:

1. The Company has requested that the Agency assist in the financing of the acquisition, renovation and equipping of a 38,000+/- square foot building, adjacent parking lots and associated utilities (the “Facility”) on approximately 5.13 acres of land situate at 100 Emerson Parkway in the City of Binghamton, Broome County, New York, more particularly described as Broome County Tax Map Parcel No. 144.78-2-55 (the “Land”). The Facility and the Land are hereinafter collectively referred to as the “Project”.

2. The Agency was created as a public benefit corporation pursuant to and for the purposes specified in Title 1 of Article 18-A of the General Municipal Law.

3. The Company has agreed to lease the Project to the Agency and has agreed to renovate, equip and operate the Project thereon.

4. The Agency will lease the Project to the Company for a term commencing

November 20, 2017 through February 1, 2038 with the Company agreeing herein to pay the 2018 City and County real estate taxes and the 2017/18 School taxes at the current assessment with no benefit under this Agreement. The benefits under this Agreement will commence with the 2018/19 School taxes and end with the 2038 City and County real estate taxes.

5. In that the Agency is exempt from the payment of real estate taxes and certain assessments imposed upon real property, the Company has agreed that, notwithstanding such exemption, the Company will nevertheless make payments to the City, the Binghamton City School District (the "School"), and the County of Broome (the "County") (collectively, the "Taxing Entities") during the term of the lease in lieu of general tax levies as provided herein.

6. The Parties to this Agreement acknowledge and agree that the Taxing Entities, although not all parties to this Agreement, are third party beneficiaries to this Agreement; having all the rights hereunder; including the ability and rights under law and under contract to enforce this Agreement. The Parties to this Agreement also acknowledge and agree that the Taxing Entities, collectively and individually, have all the rights and remedies available to them under New York State Law to enforce this Agreement; including but not limited, to the conversion of a delinquent PILOT payment to unpaid taxes; filing of a tax levy and tax lien; and collection of unpaid taxes using various methods under New York State Law.

NOW, THEREFORE, in consideration of the covenants herein contained, it is mutually agreed as follows:

SECTION 1. TAX-EXEMPT STATUS OF THE PROJECT

A. GENERAL ASSESSMENT OF THE PROJECT: Pursuant to General Municipal Law §874 and Real Property Tax Law §412-a, the Parties hereto understand that, upon the Company leasing the Project to the Agency in 2017, and provided the Project continues to be

leased by the Agency, the Project shall be assessed by the Taxing Entities as exempt upon the assessment rolls of the respective Taxing Entities for the term as provided below.

B. WATER AND SEWER CHARGES AND SPECIAL ASSESSMENTS:

The Parties hereto understand that the tax exemption extended to the Agency by General Municipal Law §874 and Real Property Tax Law §412-a does not entitle the Agency to exemption from water and sewer charges, fire district charges, if any, or special assessments and special ad valorem levies. Commencing on the date hereof and continuing during the term of the lease, the Company will be required to pay all water and sewer charges, fire district charges, if any, special assessments and special ad valorem levies lawfully levied and/or assessed against the Project.

SECTION 2. DEFAULT, LOSS OF EXEMPTION STATUS AND TERMINATION OF LEASES

In addition to the expiration of the term of this Agreement, any of the following specified events shall constitute a default hereunder, any default shall terminate any leases between the Company and the Agency relating to the Project, and the tax exemption herein shall terminate and be of no further force or effect:

A. The failure of the Company to diligently and consistently undertake the renovation of the Project once commenced and, subject to force majeure, pursue the Project to completion with all due speed.

B. The failure of the Company to make timely payments of the sums due and payable hereunder.

C. In the event of a failure of the Company to comply with the terms of Section 2(A) or 2(B) above or the Broome County Industrial Development Agency Policy for

Termination, Modification and/or Recapture of Agency Benefits as set forth in Exhibit "B" attached hereto, the Agency, or one or more of the Taxing Entities, may deliver written notice of such failure to the Company and any Mortgagee or Lender of record and the Company (or the Mortgagee or Lender of record), shall have sixty (60) days to cure any monetary failure and, in the event of a non-monetary failure, sixty (60) days to cure or commence to diligently proceed to cure such failure, if it cannot be reasonably cured within such sixty (60) day period, subject to force majeure. Only upon the passage of such sixty (60) day period, if the Company or any Mortgagee or Lender of record has not cured such failure or default, shall the Agency or any of the Taxing Entities be entitled to the remedies described herein.

D. The Taxing Entities, collectively and individually, have all the rights and remedies available to them at law, under this Agreement and under New York State Real Property Tax Law and any other relevant laws, statutes and codes to enforce payment of any unpaid monies due under this Agreement. As this Agreement is not meant to be a complete substitution for real property taxes and assessments, the act of a default and/or nonpayment under this Agreement allows the Taxing Entities to convert any nonpayment into a tax levy or tax lien and shall entitle the Taxing Entities to employ the remedies and procedures enumerated in the New York State Real Property Tax Law and any other relevant laws, statutes and codes to enforce payment of the monies due and owing. In addition, the Company agrees to pay all costs of collection, including reasonable attorney fees.

E. Any nonpayment shall survive bankruptcy, as the Parties agree that a default converts those unpaid monies into unpaid taxes and, as such, protects and empowers the Taxing Entities to proceed as such.

SECTION 3. AMOUNT OF PAYMENTS IN LIEU OF TAXES

A. Commencing with the September 2018/19 School tax bill, the Company agrees to pay to the Taxing Entities the amounts set forth in Exhibit "A" annexed hereto and made a part hereof. The amounts to be paid in Exhibit "A" provide a total to be paid and the amount to be paid to each of the Taxing Entities. Each year of the PILOT schedule shall begin on March 1st and end on February 28th of the following year. The final payment under this Agreement will be in lieu of the 2038 City and County real estate taxes. Thereafter, the Project shall be returned to the taxable roll.

B. The payments in lieu of taxes set forth in Exhibit "A" are based upon an agreed assessment of \$1,450,000.00 for the Project during the entire term of this Agreement. The payment schedule is not subject to challenge or adjustment by the Company, the Agency, or the Taxing Entities, even if the City or County conducts a City wide reassessment of all commercial properties.

C. The County, acting as collecting agent for all the Taxing Entities, shall bill the Company on or about January 1 of each year for the payment due hereunder for the City and County payments and on September 1 of each year for the payment due hereunder for the School payment. The Company shall pay the City and County payments on or before January 31 of each year and shall pay the School payment on or before September 30 of each year.

D. The County will pay the City and School their respective payments within the same time allowed to pay over taxes collected during the same time period, i.e., the City will be paid on or before February 10 of each year.

E. Pursuant to Section 874(5) of the General Municipal Law, if the Company shall fail to make any payment required by this PILOT Agreement when due, the Company shall

pay the same, together with a late payment penalty equal to five percent (5%) of the amount due. If the Company shall remain in default beyond the first month after such payment is due, the Company shall hereafter pay 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 interest thereon to the extent permitted by law at the greater of (1) one percent (1%) per month, or, (2) the rate per annum which would have been payable if such amount were delinquent taxes, until so paid in full.

F. Pursuant to Section 874(6) of the General Municipal Law, if the Company should default in performing any of its obligations, covenants or agreements under this PILOT Agreement, beyond any applicable notice and cure period, and the Agency or any taxing jurisdiction should employ attorneys or incur other expense for the collection of any amounts payable hereunder, or for the enforcement or performance or observation of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefore, pay to the Agency or such taxing jurisdiction, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also reasonable fees and disbursements of such attorneys and all other reasonable expenses, costs and disbursements so incurred whether or not an action is commenced.

G. Notwithstanding the foregoing, the Agency reserves the right to terminate, modify, or recapture any benefits provided to the Company pursuant to this PILOT Agreement, as well as any other benefit provided to the Company, in accordance with the policy of the Agency set forth in Exhibit "B" attached hereto.

H. No remedy herein conferred upon or reserved to the Agency or any taxing jurisdiction is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this PILOT Agreement or now and hereafter existing at law or in equity or by statute. No delay or admission in exercising any such right or power accruing upon a default hereunder shall impair any such right or power or be construed as a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

SECTION 4. ADDITIONS TO PROJECT

Should the Company, during the term of this Agreement, cause to be constructed on the Land any addition to the Project, then such addition shall be assessed and real estate taxes imposed in the same manner as all other non-tax-exempt real property is then being assessed and taxed by the City, County, and School, unless otherwise agreed by all of the Parties hereto.

SECTION 5. TERM OF AGREEMENT

This Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon (A) the execution of this Agreement by the Agency and the Company, and (B) the execution and filing of Real Property Tax Form RP-412-a with the Assessor of the City of Binghamton, and (C) the delivery of a copy of this Agreement and the Real Property Tax Form RP-412-a to the City, the School and the County. This Agreement shall continue to remain in effect through February 1, 2038, or the date upon which the leasehold interest to the Project is no longer held by the Agency, including a change of title due to foreclosure, whichever shall be sooner, with the Company agreeing herein to pay the September 2038/39 School tax at the then current assessment with no benefit under this Agreement. In addition, the City, School and County shall have the same rights afforded by the New York State

Real Property Tax Law regarding the collection and enforcement of unpaid taxes.

SECTION 6. PRIORITY

The Parties agree that payments due hereunder shall be accorded a lien priority equivalent to the lien of unpaid real property taxes as provided in the Real Property Tax Law of the State of New York and, as such, shall have priority over any mortgages or other liens filed against the Project. The Parties do hereby further agree that a Memorandum of this Agreement shall be recorded in the office of the Broome County Clerk.

SECTION 7. REPRESENTATIONS OF THE COMPANY

The Company warrants that:

- A. It is duly organized as a limited liability company in good standing in accordance with the laws of the State of New York and is authorized to do business in the State of New York.
- B. It has full power and authority to execute and deliver this Agreement and to perform its obligations.
- C. This Agreement constitutes a legal, valid, and binding obligation of it enforceable in accordance with its terms.
- D. To the best of its knowledge, the execution and delivery of this Agreement does not, and the performance of this Agreement will not, violate any law, regulation, ordinance, judicial order, judicial decree, or any agreement, indenture, note, or other instrument to which it is a party.
- E. To the best of its knowledge, there is no claim, action, arbitration, or administrative proceeding pending, threatened against, or involving the Company which if adversely determined, would question the validity of this Agreement or would have a material

adverse effect on its financial condition.

SECTION 8. AMENDMENT OF AGREEMENT

This Agreement may not be amended, changed, modified, altered or terminated unless such amendment, change, modification, alteration or termination is in writing intended for such purpose and executed and delivered by each of the Parties hereto.

SECTION 9. BINDING EFFECT

This Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns, regardless of the tax exempt status of any successor or assign.

SECTION 10. NOTICES

All notices, demands or communications required to be given under this Agreement shall be forwarded simultaneously by certified mail or Federal Express or other similar overnight delivery service, to the respective addresses of the Parties hereinafter set forth or to such other place(s) as any of the Parties hereto may, from time to time, designate by written notice to the other.

To the Company: 100 SaveAround Parkway, LLC
31 Front Street
Binghamton, New York 13905

Attn: Raymond H. Stanton, III

To the City: City of Binghamton
38 Hawley Street
Binghamton, New York 13901

Attn: Mayor

To the School: Binghamton City School District
164 Hawley Street
Binghamton, New York 13901

Attn: District Superintendent

To the County: Broome County
60 Hawley Street
Binghamton, New York 13901

Attn: County Executive

To the Agency: Broome County Industrial Development Agency
Five South College Drive
Binghamton, New York 13905

Attn: Executive Director

A duplicate copy of each notice, certificate or other communication given hereunder shall be given to each party. Any person entitled to notice may, by written notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent. Notices shall be deemed delivered upon actual receipt or refusal of delivery.

SECTION 11. SEVERABILITY

If any article, section, 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, 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 12. 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 13. APPLICABLE LAW

This Agreement shall be construed in accordance with the laws of the State of New York. Venue for any action or proceeding shall be in Broome County, New York.

SECTION 14. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the Parties and shall not be modified unless in writing and signed by all of the Parties hereto in the same manner as this Agreement is executed.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be duly executed the date set forth herein.

100 SAVEAROUND PARKWAY, LLC

By: _____
Raymond H. Stanton, III, Member

CITY OF BINGHAMTON

By: _____
Richard C. David, Mayor

BROOME COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Kevin McLaughlin, Executive Director

STATE OF NEW YORK:

: ss.

COUNTY OF BROOME:

On this 20th day of November, in the year 2017, before me, the undersigned, a notary public in and for said state, personally appeared RAYMOND H. STANTON, III, 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 on behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK:

: ss.

COUNTY OF BROOME:

On this 20th day of November, in the year 2017, before me, the undersigned, a notary public in and for said state, personally appeared RICHARD C. DAVID, 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 on behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK:

: ss.

COUNTY OF BROOME:

On this 20th day of November, in the year 2017, before me, the undersigned, a notary public in and for said state, personally appeared KEVIN McLAUGHLIN, 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 on behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT “A”

(SEE ATTACHED PILOT PAYMENT SCHEDULE)

PILOT year	100 Emerson PILOT assessment	PILOT Assessment		Annual PILOT PAYMENT TOTAL plus 1.5% annually	Annual PILOT		Annual PILOT	
		percentage to be paid	PAID TO CITY		PAID TO COUNTY	PAID TO SCHOOL		
1: (2018/2019 School and 2019 City/County)	\$1,450,000.00	0.200	\$27,103.75	\$12,386.41	\$2,601.96	\$12,115.38		
2: (2019/2020 School and 2020 City/County)	\$1,450,000.00	0.225	\$30,491.72	\$13,934.71	\$2,927.20	\$13,629.80		
3: (2020/2021 School and 2021 City/County)	\$1,450,000.00	0.250	\$33,879.69	\$15,483.02	\$3,252.45	\$15,144.22		
4: (2021/2022 School and 2022 City/County)	\$1,450,000.00	0.275	\$37,267.65	\$17,031.32	\$3,577.69	\$16,658.64		
5: (2022/2023 School and 2023 City/County)	\$1,450,000.00	0.300	\$40,655.62	\$18,579.62	\$3,902.94	\$18,173.06		
6: (2023/2024 School and 2024 City/County)	\$1,450,000.00	0.325	\$44,043.59	\$20,127.92	\$4,228.18	\$19,687.48		
7: (2024/2025 School and 2025 City/County)	\$1,450,000.00	0.375	\$50,819.53	\$23,224.52	\$4,878.67	\$22,716.33		
8: (2025/2026 School and 2026 City/County)	\$1,450,000.00	0.500	\$67,759.37	\$30,966.03	\$6,504.90	\$30,288.44		
9: (2026/2027 School and 2027 City/County)	\$1,450,000.00	0.550	\$74,535.31	\$34,062.64	\$7,155.39	\$33,317.28		
10: (2027/2028 School and 2028 City/County)	\$1,450,000.00	0.650	\$88,087.18	\$40,255.84	\$8,456.37	\$39,374.97		
11: (2028/2029 School and 2029 City/County)	\$1,450,000.00	0.700	\$94,863.12	\$43,352.44	\$9,106.86	\$42,403.81		
12: (2029/2030 School and 2030 City/County)	\$1,450,000.00	0.700	\$94,863.12	\$43,352.44	\$9,106.86	\$42,403.81		
13: (2030/2031 School and 2031 City/County)	\$1,450,000.00	0.725	\$98,251.09	\$44,900.75	\$9,432.10	\$43,918.24		
14: (2031/2032 School and 2032 City/County)	\$1,450,000.00	0.750	\$101,639.06	\$46,449.05	\$9,757.35	\$45,432.66		
15: (2032/2033 School and 2033 City/County)	\$1,450,000.00	0.750	\$101,639.06	\$46,449.05	\$9,757.35	\$45,432.66		
16: (2033/2034 School and 2034 City/County)	\$1,450,000.00	0.775	\$105,027.02	\$47,997.35	\$10,082.59	\$46,947.08		
17: (2034/2035 School and 2035 City/County)	\$1,450,000.00	0.775	\$105,027.02	\$47,997.35	\$10,082.59	\$46,947.08		
18: (2035/2036 School and 2036 City/County)	\$1,450,000.00	0.800	\$108,414.99	\$49,545.65	\$10,407.84	\$48,461.50		
19: (2036/2037 School and 2037 City/County)	\$1,450,000.00	0.825	\$111,802.96	\$51,093.95	\$10,733.08	\$49,975.92		
20: (2037/2038 School and 2038 City/County)	\$1,450,000.00	0.825	\$111,802.96	\$51,093.95	\$10,733.08	\$49,975.92		
TOTALS			\$1,527,973.79	\$698,284.02	\$146,685.48	\$683,004.29		

Regular payments resume with the 2038/2039 School tax and 2039 City/County tax

EXHIBIT "B"

(SEE ATTACHED POLICY FOR TERMINATION, MODIFICATION AND/OR
RECAPTURE OF AGENCY BENEFITS)

**BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY
POLICY FOR TERMINATION, MODIFICATION
AND/OR RECAPTURE OF AGENCY BENEFITS**

The goal of this Policy is to establish and provide a procedure as required by Section 875 of the New York State General Municipal Law for the termination, modification and/or recapture of Broome County Industrial Development Agency (the “Agency”) benefits provided to an applicant in order to induce such applicant to undertake a project in Broome County. For purposes of this policy, Agency benefits shall include any or all of the following:

- (i) exemptions from New York State and local sales and use tax;
- (ii) an exemption from the New York State mortgage recording tax; and/or
- (iii) an abatement from real property taxes provided through a payment-in-lieu-of-tax (“PILOT”) Agreement.

The Agency reserves the right to terminate, modify, or recapture Agency benefits if :

- (i) an applicant or its sub-agency (if any) authorized to make purchases for the benefit of the project is not entitled to the sales and use tax exemption benefits;
- (ii) sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the applicant or its sub-agents;
- (iii) sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the project;
- (iv) the applicant has made material, false, or misleading statements in its application for financial assistance;
- (v) the applicant has committed a material violation of the terms and conditions of a Project Agreement; and/or
- (vi) there is a material shortfall in job creation and retention projections as set forth in its application.

Upon the occurrence of any of the above conditions, the Agency Board may, upon

recommendation of the Executive Director, terminate, modify and/or recapture the Agency benefits provided to a specific project. Prior to undertaking such action, the Agency shall give written notice of its intention to terminate, modify and/or recapture Agency benefits to the applicant specifying the reasons why the Agency is considering such action. The applicant shall have twenty (20) days to respond to the Agency, either in writing or in person, providing such information and documentation as it deems appropriate for the Board to consider prior to making its decision. All such recaptured Agency benefits shall be redistributed to the appropriately affected taxing jurisdictions unless agreed to otherwise by such jurisdictions.

Notwithstanding the foregoing, the Agency retains the right to terminate Agency benefits as otherwise provided in project transaction documents including, but not limited to, failure of the applicant to make timely PILOT payments, to provide required reports, or to cooperate with Agency personnel in providing data regarding project progress.

EXHIBIT "B"

FORM OF ANNUAL EMPLOYMENT AND SALARY AND FRINGE BENEFITS AND
RELATED PROJECT INFORMATION CERTIFICATION LETTER

_____, _____

Re: New Project Verification Dear _____:

The Broome County Industrial Development Agency (the "Agency") is currently providing assistance in connection with the your project in the (municipality)

The Agency is required to file an annual report with the New York State Comptroller providing information on its activities, and the activities of projects that are assisted by the Agency. In order for the Agency to compile that report, it is necessary that we obtain information relating to assistance provided and benefits derived from all entities that receive such assistance. Failure by the Agency to file the report information required by New York State could result in the Agency losing its ability to provide future assistance or the entity suffering claw-back provisions and forfeiting benefits previously received. Therefore, it is important that this information be provided in an accurate and timely manner.

Attached please find a questionnaire to be completed and returned to the IDA by _____. If you have any questions regarding the required information, please do not hesitate to call our office.

We appreciate your assistance in this matter. A self-addressed stamped envelope is enclosed for your convenience.

Very truly yours,

Company name and address: Project Name:

Company contact: Contact phone number:
(Please correct any information above)

Financing Information

Has the Agency provided project financing assistance through issuance of a bond or note)

Yes No

If financing assistance was provided, please provide:

- Original principal balance of bond or note issued _____
- Outstanding principal balance of such bond or note at _____
- Principal paid during _____
- Outstanding principal balance of such bond or note at _____

Interest rate on mortgage as of _____ Final maturity date of the bond or note

Is the Company a not-for-profit? _____

Sales Tax Abatement Information

Did your company receive Sales Tax Abatement on your Project during _____

Yes No

If so, please provide the amount of sales tax savings received _____

(A copy of the ST-340 sales tax report submitted to New York State for the reporting period is required to be attached with this report)

Mortgage Recording Tax Information

Did your company receive Mortgage Tax Abatement on your Project during _____

Yes No

(NOTE: Only be applicable the year that a mortgage was placed upon the project)

The amount of the mortgage recording tax that was abated during _____

Job Information

Number of full time equivalent employees ("FTE") existing jobs by category and average Hourly wage for each **before IDA status**

Category	FTE	Average Hourly Wage
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____

Current number of FTE employees for _____ by category and average hourly wage.

Category	FTE	Average Hourly Wage
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____

Number of FTE jobs created during _____ as a result of the assistance received through the IDA by category and average hourly wage.

Category		
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____
FTE		Average Hourly Wage

Number of FTE jobs retained during _____ by category and average hourly wage.

Category	FTE	Average Hourly Wage
Management	_____	_____
Professional	_____	_____
Administrativ	_____	_____
e Production	_____	_____
Other	_____	_____

Total annual payroll for _____

A copy of the NYS 45 form for the project location is required to be submitted with this report. If the NYS 45 form is not available for the specific project location or the form does not accurately reflect the full time jobs created an internal report verifying the total jobs by employment category as outlined above at the location is required with this submission.

Number of FTE construction jobs created during _____ Number of FTE construction jobs during _____

_____ Capital Investment Real Estate Construction

Machinery and Equipment Other Taxable Expenses

Other Non-Taxable Expenses _____ Total Capital Investment

I certify that to the best of my knowledge and belief all of the information on this form is correct. I also understand that failure to report completely and accurately may result in enforcement of provisions of my agreement, including but not limited to voidance of the agreement and potential claw back of benefits.

Signed: _____ (authorized company representative)

Date: _____