

AGENCY/COMPANY AGREEMENT

THIS AGREEMENT is between **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the "**Agency**"), with an office at 333 West Washington Street, Suite 130, Syracuse, New York 13202, and **360 WARREN ASSOCIATES, LLC** (the "**Company**"), with a business office at 125 East Jefferson Street, Suite 400, Syracuse, New York 13202.

Article 1. Preliminary Statement. Among the matters of mutual inducement which have resulted in the execution of this agreement are the following:

1.01. The Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, and Chapter 641 of the Laws of 1979 of the State (collectively, the "**Act**") to designate an agent for constructing and equipping "projects" (as defined in the Act).

1.02. The purposes of the Act are to promote, attract, encourage and develop recreation and economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration. The Act vests the Agency with all powers necessary to enable it to accomplish such purposes, including the power to acquire and dispose of interests in real property and to appoint agents for the purpose of completion of projects undertaken by the Agency.

1.03. At the request of the Company the Agency undertook a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximate 130,000 square feet of improved real property located at 125 East Jefferson Street, also known as 352-68 South Warren Street and Jefferson Street in the City of Syracuse, New York (the "**Land**"); (ii) the renovation of approximately 98,000 square feet of the existing building for use as Class A commercial office space (the "**Facility**"); (iii) the acquisition and installation in or on the Facility of furniture, fixtures and equipment, including but not limited to a new roof and HVAC system (the "**Equipment**", and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and sales and use taxation (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, improvement and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

1.04. The Company hereby represents to the Agency that the designation of the Company as the Agency's agent for the construction, renovation and equipping of the Project Facility, and the appointment by the Company of a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents

(collectively, "**Additional Agents**"): (i) will be an inducement to it to reconstruct, renovate and equip the Project Facility in the City of Syracuse (the "**City**"); (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or of any other proposed occupant of the Project Facility from one area of the State to another or in the abandonment of one or more plants or facilities of the Company or of any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) undertaking the Project will promote, create and/or preserve private sector jobs in the State.

1.05. The Agency has determined that the acquisition of a controlling interest in, and the construction, renovation and equipping of the Project Facility and the subleasing of the same to the Company will promote and further the purposes of the Act.

1.06 On May 20, 2014, the Agency adopted a resolution (the "**Resolution**") agreeing, subject to the satisfaction of all conditions precedent set forth in such Resolution, to extend the Company's designation as the Agency's agent for the construction, renovation and equipping of the Project Facility. For purposes of that designation, the Agency authorized as part of the approved Financial Assistance, State and local sales and use tax exemption benefits in an amount not exceed \$139,559.00.

1.07. In the Resolution, subject to the execution of this Agreement by the Company, and other conditions set forth in the Resolution, the Agency extended its appointment of the Company as its agent for the purposes of reconstruction, renovation and equipping the Project Facility, entering into contracts and doing all things requisite and proper for construction, renovation and equipping the Project Facility.

Article 2. Undertakings on the Part of the Agency. Based upon the statement, representations and undertakings of the Company and subject to the conditions set forth herein, the Agency agrees as follows:

2.01. The Agency confirms that it has authorized and designated the Company as the Agency's agent for construction, renovation and equipping the Project Facility.

2.02. The Agency will adopt such proceedings and authorize the execution of such Agency documents as may be necessary or advisable for designation by the Company of Additional Agents for construction and equipping of the Project Facility subject to the terms hereof.

2.03. Nothing contained in this Agreement shall require the Agency to apply its funds to Project costs.

2.04. After satisfying the conditions precedent set forth in the Sections 3.06 and 4.02 hereof and in the Resolution, the Company may proceed with the construction, renovation and equipping of the Project Facility and the appointment of Additional Agents, as necessary.

2.05. Subject to Section 4.02 hereof, the Company is appointed the true and lawful agent of the Agency: (i) for the reconstruction, renovation and equipping of the Project Facility

and (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for the construction, renovation and equipping of the Project Facility, all with the same powers and the same validity as if the Agency were acting in its own behalf.

2.06. The Agency will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof. The Agency may in accordance with Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as "**SEQRA**"), undertake supplemental review of the Project. Such review to be limited to specific significant adverse environmental impacts not addressed or inadequately addressed in the Agency's review under SEQRA that arise from changes in the proposed Project, newly discovered information or a change in the circumstances related to the Project.

Article 3. Undertakings on the Part of the Company. Based upon the statements, representations and undertakings of the Agency and subject to the conditions set forth herein the Company agrees as follows:

3.01. (a) The Company shall indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on labor, services, materials and supplies, including equipment, ordered or used in connection with the acquisition of a controlling interest in, and construction, renovation and equipping of the Project Facility (including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether such claims or liabilities arise as a result of the Company or Additional Agents acting as agent for the Agency pursuant to this Agreement or otherwise.

(b) The Company shall not permit to stand, and will, at its own expense, take all steps reasonably necessary to remove, any mechanics' or other liens against the Project Facility for labor or material furnished in connection with the acquisition, construction, renovation and equipping of the Project Facility.

(c) The Company shall indemnify and hold the Agency, its members, officers, employees and agents and anyone for whose acts or omissions the Agency or any one of them may be liable, harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation to the Project Facility, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

(d) The Company shall defend, indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on the non-disclosure of information, if any, requested by the Company in accordance with Section 4.05 hereof.

(e) The defense and indemnities provided for in this Article 3 shall survive

expiration or termination of this Agreement and shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

(f) The Company shall provide and carry: (i) worker's compensation and disability insurance as required by law; and (ii) comprehensive liability and property insurance with such coverages (including without limitation, owner's protective coverage for the benefit of the Agency, naming the Agency as an additional insured on all policies of coverage regarding the Project; providing the coverage with respect to the Agency be primary and non-contributory; and contractual coverage covering the indemnities herein provided for), with such limits and which such companies as may be approved by the Agency. Upon the request of the Agency, the Company shall provide certificates and/or policies of insurance in form satisfactory to the Agency evidencing such insurance.

(g) The Company shall apply and diligently pursue all approvals, permits and consents from the State of New York, the City, the City Planning Commission and any other governmental authority which approvals, permits and consents are required under applicable law for the development, construction, renovation and equipping of the Project and any related site improvements. The Company acknowledges and agrees that the Agency's findings and determinations under SEQRA do not and shall not in and of themselves (except as specifically set forth in SEQRA) satisfy or be deemed to satisfy applicable laws, regulations, rules and procedural requirements applicable to such approvals, permits and consents.

(h) The Company shall complete the Local Access Agreement contained at Appendix I of the City of Syracuse Industrial Development Agency Financial Assistance Application and agrees that to the extent practicable utilize, and cause its Additional Agents to utilize, local contractors and suppliers for the renovation and equipping of the Project Facility. For purposes of this Agency Agreement, the term "**Local**" shall mean Onondaga, Oswego, Madison, Cayuga, Cortland and Oneida Counties. The Company agrees that such Local contractors shall be provided the opportunity to bid on contracts related to the Project Facility.

3.02. The Company agrees that, as agent for the Agency or otherwise, it will comply at the Company's sole cost and expense with all the requirements of all federal, state and local laws, rules and regulations of whatever kind and howsoever denominated applicable to the Agency and/or Company with respect to the Project Facility, the acquisition of a controlling interest therein, renovation and equipping thereof, the operation and maintenance of the Project Facility, supplemental review of adverse environmental impacts in accordance with SEQRA and the financing of the Project. Every provision required by law to be inserted herein shall be deemed to be set forth herein as if set forth in full, including, but not limited to, Section 875 of the Act; and upon the request of either party, this Agreement shall be amended to specifically set forth any such provision or provisions.

3.03. The Company agrees that, as agent for the Agency or otherwise, to the extent that such provisions of law are in fact applicable (without creating an obligation by contract beyond that which is created by statute) it will comply with the requirements of Section 220 of the Labor Law of the State of New York, as amended.

3.04. The Company will take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

3.05. If it should be determined that any State or local sales or compensatory use taxes are payable with respect to the acquisition, purchase or rental of machinery or equipment, materials or supplies in connection with the Project Facility, or are in any manner otherwise payable directly or indirectly in connection with the Project Facility, the Company shall pay the same and defend and indemnify the Agency from and against any liability, expenses and penalties arising out of, directly or indirectly, the imposition of any such taxes.

3.06 The Company shall proceed with the granting of the Additional Financial Assistance and advance such funds as may be necessary to accomplish such purposes. The Company may appoint Additional Agents in furtherance thereof, if and only if, prior to such appointment the Company obtains and provides the Agency with the following:

(1) A written, executed agreement, in form and substance acceptable to the Agency, from each Additional Agent which provides for: (i) the assumption by the Additional Agent, for itself, of obligations under Sections 3.01 (except (b), (d), (f), (g) and (h)), 3.02, 3.04, 3.08, 4.02(b) and (c) and 4.05 of this Agreement relative to the appointment, work and purchases done and made by each Additional Agent; (ii) a commitment to utilize local contractors and suppliers for the construction and equipping of the Project to the extent practicable ("local" being defined in Section 3.02(h) hereof); (iii) an acknowledgement that the Additional Agent is obligated, to timely provide the Company with the necessary information to permit the Company, pursuant to General Municipal Law §874(8), to timely file an Annual Statement with the New York State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (Form ST-340) regarding the value of sales and use tax exemptions the Additional Agent claimed pursuant to the agency conferred on it by the Company with respect to this Project; (iv) an acknowledgment by the Additional Agent that the failure to comply with the foregoing will result in the loss of the exemption; and (v) such other terms and conditions as the Agency deems necessary; and

(2) A completed "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for each Additional Agent within fifteen (15) days of the appointment of each Additional Agent such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment of each such Additional Agent.

Failure of the Company to comply with the foregoing shall nullify the appointment of any Additional Agent and may result in the loss of the Company's exemption with respect to the Project at the sole discretion of the Agency.

The Company acknowledges that the assumption by the Additional Agent in accordance with Section 3.06(1) above, does not relieve the Company of its obligations under those provisions or any other provisions of this Agreement with respect to the Project.

3.07 The Company ratifies and confirms its obligations to pay an annual administrative reporting fee in accordance with the Agency's fee schedule to cover administrative and reporting requirements to comply with New York State reporting regulations on Agency assisted projects.

3.08 Whenever practicable, the Company and/or its Additional Agents and employees agree to hire from the local labor pool during the construction and renovation period of the Project Facility.

Article 4. General Provisions.

4.01. This Agreement shall take effect on the date of the execution hereof by the Agency and the Company.

4.02. (a) It is understood and agreed by the Agency and the Company that the grant of the Additional Financial Assistance and the execution of related documents are subject to (i) payment by the Company of the Agency's fee and Agency's counsel fees; (ii) obtaining all necessary governmental approvals, permits and consents of any kind required in connection with the Project Facility; (iii) approval by the members of the Agency; (iv) approval by the Company; and (v) the condition that there are no changes in New York State Law, including regulations, which prohibit or limit the Agency from fulfilling its obligations hereunder; (b) The Company, by executing this agreement, acknowledges and agrees to make, or cause its Additional Agents to make, all records and information regarding State and local sales and use tax exemption benefits given to the Project as part of the Financial Assistance available to the Agency upon request; (c) The Company, by executing this Agreement, acknowledges and agrees to the terms and conditions of Section 875(3) of the Act as if such section were fully set forth herein and further agrees to cause all of its agents to acknowledge, agree and consent to same. Without limiting the scope of the foregoing the Company acknowledges that pursuant to Section 875(3) of the Act, the Agency shall recover, recapture, receive or otherwise obtain from the Company the portion of the Financial Assistance (the "**Recapture Amount**") consisting of: (1) (a) that portion of the State sales tax exemption to which the Company was not entitled, which is in excess of the amount of the State sales tax exemption authorized by the Agency or which is for property or services not authorized by the Agency; or (b) the full amount of such State sales tax exemption, if the Company fails to comply with a material term or condition regarding the use of the property or services as represented to the Agency in its Application or otherwise; and (2) any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise; and (d) The failure of the Company to promptly pay such Recapture Amount to the Agency will be grounds for the Commissioner to collect sales and use taxes from the Company under Article 28 of the State Tax Law, together with interest and penalties. In addition to the foregoing, the Company acknowledges and agrees that for purposes of exemption from New York State (the "**State**") sales and use taxation as part of the Financial Assistance requested, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article

twenty-eight or twenty-eight-A of the New York State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

4.03. The Company agrees that it will, within thirty (30) days of a written request for same, regardless of whether the Project Facility is completed: (i) reimburse the Agency for all reasonable and necessary expenses, including without limitation the fees and expenses of counsel to the Agency arising from, out of or in connection with the Project, and/or any documents executed in connection therewith, including, but not limited to any claims or actions taken by the Agency against the Company, Additional Agents or third parties; and (ii) indemnify the Agency from all losses, claims, damages and liabilities, in each case which the Agency may incur as a consequence of executing this Agreement or performing its obligations hereunder.

4.04. This Agreement shall remain in effect until completion of the Project Facility, notwithstanding the foregoing, Articles 1.04, 2.02, 2.04, 3.01, 3.02, 3.03, 3.05, 3.06, 4.02, 4.03, 4.04 and 4.05 shall survive the expiration of this Agreement.

(a) The Company shall pay the Agency for all expenses incurred by the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility;

(b) The Company shall assume and be responsible for any contracts for the construction, renovation or purchase of equipment entered into by the Agency at the request of or as agent for the Company in connection with the Project Facility; and

(c) The Company will pay the out-of-pocket expenses of members of the Agency and counsel for the Agency incurred in connection with the Project Facility and will pay the fees of counsel for the Agency for legal services relating to the Project Facility, Additional Agents or the proposed financing thereof.

4.05. The Company acknowledges that Section 875(7) of the New York General Municipal Law (“GML”) requires the Agency to post on its website all resolutions and agreements relating to the Company’s appointment as an agent of the Agency or otherwise related to the Project, including this Agreement; and Article 6 of the New York Public Officers Law declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the Company feels that there are elements of the Project or information about the Company in the Agency’s possession which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the Company’s competitive position, the Company must identify such elements in writing, supply same to the Agency: (i) with respect to this Agreement, prior to or contemporaneously with the execution hereof; and (ii) with respect to all other agreements executed in connection with the Project, on or before the Closing Date, and request that such elements be kept confidential in accordance with Article 6 of the Public Officers Law. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the GML.

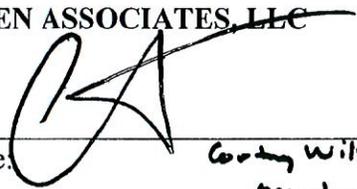
IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the 20 day of May, 2014.

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: 

William M. Ryan, Chairman

360 WARREN ASSOCIATES, LLC

By: 

Name: Coody Wilson
Title: Member