

APPROVING RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on December 16, 2014 at 8:30 a.m. in the Common Council's Chambers, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chairman and, upon the roll being duly called, the following members were:

PRESENT: William Ryan, Pamela Hunter, Steven Thompson, Catherine Richardson, Esq. Donald Schoenwald, Esq.

THE FOLLOWING PERSONS WERE ALSO PRESENT: Staff Present: Ben Walsh, Judith DeLaney, Debra Ramsey-Burns, John Vavonese, Thomas Babilon, Esq., Susan Katzoff, Esq.; Others Present: Aggie Lane, Barry Lentz, Rob Connolly, Emily Bishop, Dave Prowack, Ed Riley, Richard Engel, Esq.; Media Present: Rick Moriarty

The following Resolution was offered by Pamela Hunter and seconded by Steven Thompson:

RESOLUTION APPROVING AN EXTENSION OF THE SALES TAX APPOINTMENT AGENT STATUS OF DESTINY USA HOLDINGS, LLC THROUGH DECEMBER 31, 2015.

WHEREAS, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended (the "**Enabling Act**"), together with Section 926 of the General Municipal Law, as amended (said Section and the Enabling Act, collectively referred to as, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry 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; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, lease and sell real property and grant financial assistance in connection with one or more "projects" (as defined in the Act); and

WHEREAS, on or about July 6, 2001, the Agency passed a resolution approving the undertaking of a project, in one or more phases (the "**Project**") at the request of Pyramid Company of Onondaga (the "**PCO**") including but not limited to the construction and completion of not less than 800,000 square feet of leaseable area (the "**First Phase**"); and, among other things, appointed

Pyramid Company of Onondaga and certain of its affiliated companies, including Destiny USA Holdings, LLC (“*DUSA*” or the “*Company*”) (owner of the First Phase), as agents of the Agency for purposes of completing the Project; and

WHEREAS, DUSA undertook the construction and completion of the First Phase under certain documents executed by and between the Agency and DUSA; and

WHEREAS, DUSA obtained a certificate of occupancy from the City of Syracuse with respect to the First Phase but certain interior tenant build out of the First Phase remains undone; and

WHEREAS, pursuant to the Company’s request, on March 27, 2013 the Agency adopted a resolution approving the extension of Company’s sales tax exemption agency appointment to December 31, 2014 in order to permit DUSA to complete certain tenant build outs related to the Project; and

WHEREAS, DUSA has requested that the Agency grant an extension of the sales tax appointment agent status of DUSA through December 31, 2015 to permit DUSA to complete certain tenant build outs related to the Project; and

WHEREAS, the sales tax appointment is in furtherance of the financial assistance that was previously approved for the Project, which underwent a thorough environmental review by the Agency pursuant to the State Environmental Quality Review Act (“*SEQRA*”), and the present sales tax appointment extension request is insubstantial and does not require reconsideration or further review by the Agency under SEQRA;

NOW, THEREFORE, be it resolved by the members of the City of Syracuse Industrial Development Agency as follows:

(1) Based upon the representations made by DUSA to the Agency, the Agency hereby makes the following findings and determinations:

(a) The extension of the sales tax appointment agent status of DUSA through and including December 31, 2015 does not amount to a significant change in the Project from what was originally approved by the Agency, and therefore further review under SEQRA and amendment of the Agency’s prior SEQRA negative declaration shall not be required.

(b) The Agency authorizes the further extension of the sales tax appointment agent status of the Company through and including December 31, 2015, subject to the execution of the Agreement (as defined herein) by the Company (the “*Extension*”) and compliance with the terms of this Resolution. The Agency hereby appoints the Company the true and lawful agent of the Agency to proceed with the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf. Such extension and appointment is subject to the terms of this Resolution and the execution and delivery by the Company of an agreement with the Agency, the form and substance of which were presented at this meeting and are attached hereto as **Exhibit “A”** (the “*Agreement*”). The Chairman or Vice Chairman of the Agency are each

hereby authorized, on behalf of the Agency, to execute and deliver the Agreement, in substantially the same form as presented at this meeting and attached hereto as **Exhibit "A"**, with changes in terms and form as shall be consistent with this Resolution and as the Chairman or Vice Chairman shall approve. The execution thereof by the Chairman or Vice Chairman shall constitute conclusive evidence of such approval.

(2) The terms and conditions of subdivision 3 of Section 875 of the Act are herein incorporated by reference and the Company shall agree to such terms as a condition precedent to receiving or benefiting from an exemption from New York State and local sales and use taxation. Notwithstanding anything herein to the contrary, the amount of State and local sales and use tax exemption benefits approved in connection with this Extension shall not exceed \$640,000.

(3) The Company may utilize, and is hereby authorized to appoint^[1], a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "**Additional Agents**") to proceed with the construction and equipping of the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf provided the Company execute, deliver and comply with the Lease Transactional Documents. The Company shall provide or cause its Additional Agents to provide, and the Agency shall maintain, records of the amount of State and local sales and use tax exemption benefits provided to the Project and the Company shall, and cause each Additional Agent, to make such records available to the State Commissioner of Taxation and Finance (the "**Commissioner**") upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for the Project, identifying the Project, along with any such other information and specificity as the Commissioner may prescribe. As a condition precedent to the Company or Project's receipt of, or benefit from, any State or local sales and use tax exemptions, the Company must acknowledge and agree to make, or cause its Additional Agents to make, all records and information regarding State and local sales and use tax exemption benefits realized by the Project available to the Agency or its designee upon request.

(4) The Agency is authorized to execute all documents necessary to effectuate an extension of the sales tax appointment agent status of the Company and/or Additional Agents (the "**Extension**") including but not limited to issuance of a Sales Tax Appointment Extension Letter and completion of the appropriate "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for each of the entities; and the Chairman and Vice Chairman of the Agency are each hereby authorized, on behalf of the Agency, to execute and deliver the documents upon the advice of counsel to the Agency. The execution thereof by the Chairman or Vice Chairman constitutes conclusive evidence of such approval.

[1] Additional Agents must be specifically appointed as an agent of the Agency in order to avail themselves of the IDA sales and use tax exemption for any and all purchases or rentals of construction materials, equipment, tools and supplies that do not become part of the Project Facility. Additional Agents who purchase construction materials, equipment and/or supplies that become part of the Project Facility need not be specifically appointed as an agent of the Agency.

(5) As a further condition of the Extension, the Company will submit to the Agency the updated contract status report, or other applicable information, requested by the Agency with respect to the extension of the sales tax appointment; and shall further submit the appropriate applicable administrative and legal fees incurred by the Agency in exchange for the Agency's grant of the sales tax appointment extension.

(6) The Company shall provide or cause its Additional Agents to provide, and the Agency shall maintain, records of the amount of State and local sales and use tax exemption benefits provided to the Project and the Company shall, and cause each Additional Agent, to make such records available to the Agency and the State Commissioner of Taxation and Finance (the "**Commissioner**") upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for the Project, identifying the Project, along with any such other information and specificity as the Commissioner may prescribe. As a condition precedent to the Company or Project's receipt of, or benefit from, any State or local sales and use tax exemptions, the Company must acknowledge and agree to make, or cause its Additional Agents to make, all records and information regarding State and local sales and use tax exemption benefits realized by the Project available to the Agency or its designee upon request.

(7) No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(8) The Secretary and/or Executive Director of the Agency is hereby authorized and may distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(9) A copy of this Resolution, together with any attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
William Ryan	X	
M. Catherine Richardson	X	
Donald Schoenwald, Esq.	X	
Pamela Hunter	X	
Steven Thompson	X	

The foregoing Resolution was thereupon declared duly adopted.

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

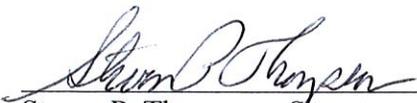
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the "**Agency**") held on December 16, 2014, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of such meeting; (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104; (iii) the meeting was in all respects duly held; and (iv) there was a quorum present throughout.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

19th **IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this day of December, 2014.

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Steven P. Thompson, Secretary

(S E A L)

EXHIBIT "A"

SALES TAX EXTENSION AGREEMENT

THIS SALES TAX EXTENSION 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 **DESTINY USA HOLDINGS, LLC** ("**DUSA**"), as acknowledged and consented to by **PYRAMID COMPANY OF ONONDAGA** ("**PCO**"), each with offices at 4 Clinton Square, 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. The parties hereto are parties to numerous other documents and agreements relative to the Project and the First Phase (each as defined herein). Notwithstanding anything herein to the contrary, and for purposes of clarity, the parties acknowledge and agree that it is their intent that this Agreement should **not** be construed to supercede, replace or amend any other agreements or documents between the parties; but rather, represents additional obligations of the parties, and that such additional obligations resulted from the Company's request to extend the sales and use tax exemption benefit for the First Phase and the changes in the NYS General Municipal Law.

1.04. On or about July 6, 2001, the Agency passed a resolution approving the undertaking of a project, in one or more phases (the "**Project**") at the request of Pyramid Company of Onondaga (the "**PCO**") including but not limited to the construction and completion of not less than 800,000 square feet of leaseable area (the "**First Phase**"); and, among other things, appointed Pyramid Company of Onondaga and certain of its affiliated companies, including Destiny USA Holdings, LLC ("**DUSA**" or the "**Company**") (owner of the First Phase), as agents of the Agency for purposes of completing the Project.

1.05. DUSA undertook the construction and completion of the First Phase under certain documents executed by and between the Agency and DUSA; and

1.06. By resolution dated December 16, 2014 (the "**Resolution**") the Agency approved the Extension (as defined therein) of DUSA's appointment as agent of the Agency for purposes of completing tenant improvements in the First Phase.

1.07. The Agency has determined that the granting of the Extension (as defined in the Resolution) will assist the Company in equipping the First Phase. In addition, the Resolution authorized sales and use tax exemption for the Extension in an amount not to exceed \$640,000.

1.08. In the Resolution, subject to the execution of, and compliance with, this Agreement by the Company, and other conditions set forth in the Resolution and herein, the Agency extended its appointment of the Company as its agent for the purposes of equipping the First Phase, entering into contracts and doing all things requisite and proper for equipping the First Phase.

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 the purpose of equipping the First Phase.

2.02. The Agency will adopt such proceedings and authorize the execution of such documents as may be necessary or advisable for appointment by the Company of Additional Agents for the purpose of equipping of the First Phase.

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

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 equipping of the First Phase and the utilization of and, as necessary, the appointment of, Additional Agents.

2.05. Subject to Section 4.02 hereof, the Company is appointed the true and lawful agent of the Agency: (i) for the purpose of equipping the First Phase; 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 equipping of the First Phase, all with the same powers and the same validity as if the Agency were acting in its own behalf.

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 equipping of the First Phase (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 for labor or material furnished in connection with the equipping of the First Phase.

(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 First Phase, 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 associated with, or required for, the equipping of the First Phase. 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.

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 First Phase, and equipping thereof, the operation and maintenance of the First Phase. 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.

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 or machinery or equipment, materials or supplies in connection with the First Phase, or are in any manner otherwise payable directly or indirectly in connection with the First Phase, 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 equipping of the First Phase and advance such funds as may be necessary to accomplish such purposes. The Company may utilize, and was authorized to appoint¹, Additional Agents as agents of the Agency, in furtherance thereof. Any appointment of an Additional Agent is conditioned upon the Company first obtaining and providing to the Agency the following:

(1) A written, executed agreement, in form and substance attached hereto at **Schedule "1"**, from each appointed Additional Agent; and

(2) A completed "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for each Additional Agent appointed by the Company within fifteen (15) days of the appointment of each Additional Agent such that the Agency can execute

¹ Additional Agent must be specifically appointed as an agent of the Agency in order to avail themselves of the Agency's sales and use tax exemption for any and all purchases or rentals of construction materials, equipment, tools and supplies that do not become part of the Project Facility. Additional Agents who purchase construction materials, equipment and/or supplies that become part of the Project Facility need not be specifically appointed as an agent of the Agency.

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 First Phase 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 First Phase.

Article 4. General Provisions.

4.01. This Agreement shall take effect on the date of the execution hereof by the Agency and the Company and, subject to Section 4.04 hereof, shall remain in effect until December 31, 2015 unless otherwise provided herein.

4.02. (a) It is understood and agreed by the Agency and the Company that the granting of the Extension is 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 equipping of the First Phase; and (iii) 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, whether appointed as an agent of the Agency in accordance with Section 3.06 hereof or not, to make, all records and information regarding State and local sales and use tax exemption benefits given to the First Phase as part of the Financial Assistance available to the Agency upon request, including but not limited to the Form ST-340 for itself and each Additional Agent; (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 Additional 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 and local sales tax exemption to which the Company was not entitled, which is in excess of the amount of the State and local sales tax exemption authorized by the Agency or which is for property or services not authorized by the Agency in accordance with the terms of the Resolution; or (b) the full amount of such State and local 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: (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 Extension, 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, including but not limited to, any obligations related to Additional Agents.

4.04. This Agreement, and the Extension, shall terminate on **December 31, 2015** and the provisions of this Agreement (other than the provisions of Articles 3.01, 3.02, 3.03, 3.05, 3.06, 4.02, 4.04, 4.05 and 4.06, which shall survive) shall unless extended by agreement of the Agency and the Company, terminate and be of no further force or effect, and following such termination neither party shall have any rights against the other party except:

(a) The Company shall pay the Agency for all expenses incurred by the Agency in connection with the equipping of the First Phase;

(b) The Company shall assume and be responsible for any contracts for the purchase of equipment entered into by the Agency at the request of or as agent for the Company or its Additional Agents in connection with the Project; 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 First Phase and will pay the fees of counsel for the Agency for legal services relating to the Project and Additional Agents.

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 First Phase, 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 First Phase 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 First Phase, 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.

4.06. That every controversy, dispute or claim arising out of or relating to this Agreement shall be governed by the laws of the State of New York, without regard to its conflict-of-laws provisions that if applied might require the application of the laws of another jurisdiction; and that the Company irrevocably and expressly submits to the exclusive personal jurisdiction of the Supreme Court of the State of New York and the United States District Court for the Northern District of New York, to the exclusion of all other courts, for the purposes of litigating every controversy, dispute or claim arising out of or relating to this Agreement.

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

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT
AGENCY**

By: _____
William M. Ryan, Chairman

DESTINY USA HOLDINGS, LLC, a New York limited liability
company

By: **CAROUSEL DESTINY HOLDINGS LLC**, a Delaware
limited liability company, its managing member

By: _____
Bruce A. Kenan, Managing Member

ACKNOWLEDGED AND AGREED TO BY:

PYRAMID COMPANY OF ONONDAGA,
a New York general partnership

By: _____
Bruce A. Kenan, Partner

SCHEDULE "1"

FORM OF SUB-AGENT APPOINTMENT AGREEMENT

THIS SUB-AGENT APPOINTMENT AGREEMENT (the "*Agreement*"), dated as of _____, 20__, is by and between PYRAMID COMPANY OF ONONDAGA (the "*PCO*") and DESTINY USA HOLDINGS, LLC ("*DUSA*" or the "*Company*") with offices at 4 Clinton Square, Syracuse, New York 13202 and [NAME OF SUB-AGENT], a _____ of the State of New York, having an office for the transaction of business at _____ (the "*Sub-Agent*").

WITNESSETH:

WHEREAS, the City of Syracuse Industrial Development Agency (the "*Agency*") was created by Chapter 641 of the Laws of 1979 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "*Act*") as a body corporate and politic and as a public benefit corporation of the State of New York (the "*State*"); and

WHEREAS, on or about July 6, 2001, the Agency passed a resolution approving the undertaking of a project, in one or more phases (the "*Project*") at the request of Pyramid Company of Onondaga (the "*PCO*") including but not limited to the construction and completion of not less than 800,000 square feet of leaseable area (the "*First Phase*"); and, among other things, appointed Pyramid Company of Onondaga and certain of its affiliated companies, including Destiny USA Holdings, LLC ("*DUSA*" or the "*Company*") (owner of the First Phase), as agents of the Agency for purposes of completing the Project; and

WHEREAS, DUSA undertook the construction and completion of the First Phase under certain documents executed by and between the Agency and DUSA; and

WHEREAS, by resolution dated December 16, 2014 (the "*Resolution*") the Agency approved the Company's request for an extension of the sales tax appointment agent status of the Company through and including December 31, 2015, subject to the execution of the Sales Tax Appointment Agreement (hereafter defined) for purposes of completing tenant improvements in the First Phase.

WHEREAS, under the Resolution and in that certain sales tax agreement by and between the Company and the Agency dated as of December 1, 2014 (the "*Sales Tax Agreement*") the Agency appointed the Company as its agent for purposes of equipping the First Phase and delegated to the Company the authority to appoint as agents of the Agency a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (the "*Additional Agents*" or "*Sub-Agents*"), for the purpose of equipping the First Phase and benefitting from the State and local sales and use tax exemption all in accordance with the terms of the Resolution and the Sales Tax Agreement; and

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. The Company hereby appoints the Sub-Agent as an Additional Agent of the Agency for the purpose of assisting the Company and the Agency in the equipping of the First Phase and benefitting from the State and local sales and use tax exemption relative to expenditures made in furtherance thereof. The Sub-Agent is only an agent of the Agency for the aforementioned purposes. The Sub-Agent hereby agrees to limit its activities as agent for the Agency under the authority of this Agreement to acts reasonably related to the equipping of the First Phase.

2. The Sub-Agent covenants, agrees and acknowledges:

a. To make all records and information regarding State and local sales and use tax exemption benefits claimed by it in connection with the First Phase available to the Company and the Agency upon request. The Sub-Agent agrees to comply with all procedures and policies established by the State Department of Taxation and Finance, or any similar entity, regarding the documenting or reporting of any State and local sales and use tax exemption benefits, including providing to the Company all information of the Sub-Agent necessary for the Company to complete the State Department of Taxation and Finance's "Annual Report of Sales and Use Tax Exemptions" (Form ST-340).

b. To be bound by and comply with the terms and conditions of the Agency's policies and Section 875(3) of the Act (as if such section were fully set forth herein) (collectively the "**Agency Documents**"). Without limiting the scope of the foregoing, the Sub-Agent acknowledges that pursuant to Section 875(3) of the Act and the Agency policies, the Agency shall recover, recapture, receive or otherwise obtain from the Sub-Agent the portion of the Financial Assistance (the "**Recapture Amount**") consisting of: (1) (a) that portion of the State and local sales and use tax exemption claimed by the Sub-Agent to which the Sub-Agent was not entitled, which is in excess of the amount of the State and local sales and use tax exemption authorized by the Agency or which is for property or services not authorized by the Agency and/or unrelated to the First Phase; or (b) the full amount of such State and local sales and use tax exemption claimed by the Sub-Agent, if the Sub-Agent fails to comply with a material term or condition regarding the use of the property or services as represented to the Agency in the Company's application to the Agency in regard to the First Phase or otherwise; and (2) any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise.

c. That the failure of the Sub-Agent to promptly pay such Recapture Amount to the Agency will be grounds for the Agency, the State Commissioner of Taxation and Finance or such other entity, to collect sales and use taxes from the Sub-Agent under Article 28 of the Tax Law, or other applicable law, policy or contract, together with interest and penalties. In addition to the foregoing, the Sub-Agent acknowledges and agrees that for purposes of exemption from State sales and use taxation, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the Tax

Law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

d. That all purchases made by the Sub-Agent in connection with the First Phase shall be made using Form ST-123 (IDA Agent or Project Operator Exempt Purchase Certificate), a copy of which is attached hereto as **Exhibit "A"**). It shall be the responsibility of the Sub-Agent (and not the Company or the Agency) to complete Form ST-123. The failure to furnish a completed Form ST-123 with each purchase will result in loss of the exemption for that purchase.

e. The Sub-Agent acknowledges and agrees that it shall identify the First Phase on each bill and invoice for such purchases and further indicate on such bills or invoices that the Sub-Agent is making purchases of tangible personal property or services for use in the First Phase as agent of the Agency. For purposes of indicating who the purchaser is, the Sub-Agent acknowledges and agrees that the bill of invoice should state, "I, [NAME OF SUB-AGENT], certify that I am a duly appointed agent of the City of Syracuse Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the following Agency project and that such purchases qualify as exempt from sales and use taxes under my Sub-Agent Appointment Agreement." The Sub-Agent further acknowledges and agrees that the following information shall be used by the Sub-Agent to identify the First Phase on each bill and invoice: [FILL IN THE NAME OF THE PROJECT, THE STREET ADDRESS OF THE PROJECT SITE, AND IDA PROJECT NUMBER].

f. That the Sub-Agent 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 First Phase (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), for such claims or liabilities that arise as a result of the Sub-Agent acting as agent for the Agency pursuant to this Agreement or otherwise. The Sub-Agent 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 only to Sub-Agent's work on or for the First Phase, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

The foregoing defenses and indemnities 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.

g. That as agent for the Agency or otherwise, the Sub-Agent will comply at the Sub-Agent'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 Sub-Agent with respect to the First Phase.

h. That Section 875(7) of the Act requires the Agency to post on its website all resolutions and agreements relating to the Sub-Agent's appointment as an agent of the Agency or otherwise related to the First Phase, including this Agreement, and that Public Officers Law Article 6 declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the Sub-Agent feels that there is information about the Sub-Agent 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 Sub-Agent's competitive position, the Sub-Agent must identify such elements in writing, supply same to the Agency prior to or contemporaneously with the execution hereof and request that such elements be kept confidential in accordance with Public Officers Law Article 6. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the Act.

i. That the Sub-Agent must 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 First Phase on an annual basis.

j. That the failure to comply with the foregoing will result in the loss of the exemption.

k. That if the Sub-Agent is the general contractor for the First Phase, then at all times following the execution of this Agreement, and during the term thereof, the Sub-Agent shall: (A) maintain or cause to be maintained the following insurance policies with an insurance company licensed in the State that has an A.M. Best rating of not less than A-: (i) "All Risk" (excluding terrorism coverage if unavailable at commercially reasonable rates as determined by the Company) builder's risk insurance, including collapse coverage and coverage for material in storage and while in transit, for one hundred percent (100%) of the insurable replacement value of the First Phase on a replacement cost basis on all materials, equipment and supplies which are to become a permanent part of the First Phase, while awaiting erection and until completion; (ii) worker's compensation insurance including employer's liability to provide statutory benefits as required by applicable Legal Requirements; (iii) commercial general liability insurance for hazard of operation, independent contractors, products and completed operations, such liability insurance to include broad form property damage and afford coverage for explosion, collapse and underground hazards and personal injury liability insurance, and contractual liability coverage for the Company's indemnification obligations hereunder, all with limits of not less than Five Million Dollars (\$5,000,000) per occurrence on an "occurrence" basis and Ten Million Dollars (\$10,000,000) in the aggregate; and (iv) comprehensive automobile liability covering owned, non-owned and hired vehicles used in connection with the construction of the First Phase

with limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage. The Company shall deliver to the Agency any policies (or certificates thereof) with respect to insurance required hereunder prior to the commencement of construction or related work on the First Phase, and shall deliver renewal policies (or certificates thereof) at least thirty (30) days before the expiration date of any policy maintained in connection with the First Phase. All policies evidencing such insurance except the Workers' Compensation policy shall name the Company as insured and the Agency as an additional insured, as its interests may appear, and all policies shall provide that the coverage with respect to the Agency be primary and non-contributory and require at least thirty (30) days' prior written notice to the Agency of cancellation, reduction in policy limits, or material change in coverage thereof; and (B) 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.

1. That every controversy, dispute or claim arising out of or relating to this Agreement shall be governed by the laws of the State of New York, without regard to its conflicts-of-laws provisions that if applied might require the application of the laws of another jurisdiction; and that the Sub-Agent irrevocably and expressly submits to the exclusive personal jurisdiction of the Supreme Court of the State of New York and the United States District Court for the Northern District of New York, to the exclusion of all other courts, for the purposes of litigating every controversy, dispute or claim arising out of or relating to this Agreement.

3. Failure of the Sub-Agent to comply with any of the provisions of this Agreement shall result in the immediate nullification of the appointment of the Sub-Agent and the immediate termination of this Agreement and may result in the loss of the Company's State and local sales and use tax exemption with respect to the First Phase at the sole discretion of the Agency. In addition, such failure may result in the recapture of the State and local sales and use taxes avoided.

4. The Company acknowledges that the assumption of certain obligations by the Sub-Agent in accordance with this Agreement does not relieve the Company of its obligations under any provisions of the Agency Lease or of any other agreement entered into by the Company in connection with the First Phase.

5. The Company and the Sub-Agent agree that the Agency is a third-party beneficiary of this Agreement.

6. This Agreement shall be in effect until the earlier of: (i) December 31, 2015; or (ii) the Sub-Agent's loss of status as an agent of the Agency as set forth herein. Notwithstanding the foregoing, the provisions of Sections 2(b), 2(c), 2(g), 2(j), and 2(l) shall survive the termination of this Agreement.

IN WITNESS WHEREOF, Pyramid Company of Onondaga, Destiny USA Holdings, LLC and the Sub-Agent have caused this Agreement to be executed in their respective names by their respective duty authorized officers, all as of the day and year first above written.

DESTINY USA HOLDINGS, LLC, a New York limited liability company

By: **CAROUSEL DESTINY HOLDINGS LLC**, a Delaware limited liability company, its managing member

By: _____
Bruce A. Kenan, Managing Member

[NAME OF SUB-AGENT]

By: _____
Name:
Title:

ACKNOWLEDGED AND CONSENTED TO:

PYRAMID COMPANY OF ONONDAGA,
a New York general partnership

By: _____
Bruce A. Kenan, Partner

EXHIBIT "A"
to Form of Sub-Agent Appointment Agreement

FORM ST-123



New York State Department of Taxation and Finance

New York State Sales and Use Tax

IDA Agent or Project Operator

Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

ST-123

(2/14)

This certificate is not valid unless all entries have been completed.

Note: To be completed by the purchaser and given to the seller. See TSB-M-14(1.1)S, *Sales Tax Reporting and Recordkeeping Requirements for Industrial Development Agencies and Authorities*, for more information.

Name of seller	Name of agent or project operator
Street address	Street address
City, town, or village State ZIP code	City, town, or village State ZIP code
Agent or project operator sales tax ID number (see instructions)	

Mark an **X** in one: Single-purchase certificate Blanket-purchase certificate (valid only for the project listed below)

To the seller:

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA		
Name of project	IDA project number (use OSC number)	
Street address of project site		
City, town, or village	State	ZIP code
Enter the date that you were appointed agent or project operator (mm/dd/yy)	/	/
Enter the date that agent or project operator status ends (mm/dd/yy)	/	/

Exempt purchases

(Mark an **X** in boxes that apply)

- A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
- B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
- C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and relationship)	Date
Type or print the name, title, and relationship that appear in the signature box	

Instructions

To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

Agent or project operator sales tax ID number — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter *N/A*.

Industrial development agencies and authorities (IDAs) are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.

Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120 1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1095, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

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

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

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

This information is maintained by the Manager of Document Management, NYS Tax Department, WA Harman Campus, Albany NY 12227; telephone (518) 457-5161.

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(for persons with hearing and
speech disabilities using a TTY) (518) 485-5082