

## AMENDED INDUCEMENT RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on March 19, 2019 at 8:00 o'clock a.m., local time, in the Common Council Chambers, City Hall, 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:** Steven Thompson, Kenneth Kinsey, Kathleen Murphy, Rickey T. Brown, Michael Frame (via video conference at second location at NonoFab East, 257 Fuller Road, Albany, New York 12203)

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Honora Spillane, Susan Katzoff, Esq., Meghan Ryan, Esq., Judith DeLaney, John Vavonese, Debra Ramsey-Burns; Others Present: Michael Lisson, Aggie Lane, Gail Montplaisir, Anthony Dipeso, Wendy Rucelli, M. Latimer, Fred Swayze, Richelle Brown, Kevin McAuliffe, Esq., Steve Hillebrand, Norman Smith, Sharon Owens, Lauryn LaBourde, Ebony Farrow, Peter King

The following resolution was offered by Rickey T. Brown and seconded by Kenneth Kinsey:

**RESOLUTION AUTHORIZING THE UNDERTAKING,  
ACQUISITION, CONSTRUCTION, EQUIPPING AND  
COMPLETION OF A PROJECT; APPOINTING THE  
COMPANY AS AGENT OF THE AGENCY FOR THE  
PURPOSE OF THE ACQUISITION, CONSTRUCTION,  
EQUIPPING AND COMPLETION OF THE PROJECT;  
AND AUTHORIZING THE EXECUTION AND  
DELIVERY OF AN AGREEMENT BETWEEN THE  
AGENCY AND THE COMPANY**

**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, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**") to promote, develop, encourage and assist in the acquiring, constructing, 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, and to improve their recreation opportunities, prosperity and standard of living; 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**, Salina 1<sup>st</sup>, LLC, a New York limited liability company, or an entity to be formed (the “**Company**”), by application dated September 27, 2017 (the “**Original Application**”), requested the Agency undertake a certain project consisting of: (A)(i) the acquisition of an interest in approximately 82,534 square feet of vacant land located at 1029-1111 South Salina Street and 1016-18, 1020, 1028 and 1030 Montgomery Street, in the City of Syracuse, New York (the “**Land**”); (ii) the construction of a new approximately 51,000 square foot 3 story building consisting of approximately 23,400 square feet of light manufacturing space and approximately 5,000 square feet of retail space on the first floor; approximately 11,250 square feet of commercial incubator space on the second floor and approximately 11,250 square feet of mixed income residential space on the third floor; and the remaining approximately 32,000 square feet to be used as a surface parking lot and green space; all located on the Land (the “**Original Facility**”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to green roofs, bio retention areas, solar panels (the “**Equipment**” and together with the Land and the Original Facility, the “**Original Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (as limited by Section 874 of the General Municipal Law) (collectively the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, equipping and completion of the Original Project Facility; and (D) the lease or sale of the Land from the Agency to the Company pursuant to a lease or sale agreement; the lease of the Land from the Company to the Agency pursuant to a lease agreement; the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Original Project Facility back to the Company pursuant to a sublease agreement (collectively, the “**Original Project**”); and

**WHEREAS**, the Agency adopted a resolution on October 17, 2017, describing the Original Project and the proposed Financial Assistance and authorizing a public hearing with respect thereto (the “**First Public Hearing Resolution**”); and

**WHEREAS**, the Agency conducted a public hearing with respect to the project and the proposed Financial Assistance on November 21, 2017 pursuant to Section 859-a of the Act (the “**First Public Hearing**”), notice of which was published; and

**WHEREAS**, pursuant to 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**”), the Agency is required to make a determination whether the “action” (as said quoted term is defined in SEQRA) to be taken by the Agency may have a “significant impact on the environment” (as said quoted term is utilized in SEQRA), and the preliminary agreement of the Agency to undertake the Project constitutes such an action; and

**WHEREAS**, by resolution adopted November 21, 2017 (the “**SEQRA Resolution**”), the Agency determined that the Original Project will not have a significant adverse effect on the

environment; and

**WHEREAS**, by resolution adopted November 21, 2017 (the "**Original Inducement Resolution**"), the Agency authorized the undertaking, acquisition, reconstruction, renovation, conversion, equipping and completion of the Original Project and the execution and delivery of an agency agreement by and between the Company and the Agency (the "**Original Agency Agreement**"); and

**WHEREAS**, the Company, by supplemental application dated March, 2019 (the "**Supplemental Application**" and together with the Original Application, the "**Application**"), requested minor changes to the Original Project (the "**Project**") such that the description consists of: (A)(i) the acquisition of an interest in approximately 82,534 square feet of vacant land located at 1081 South Salina Street in the City of Syracuse, New York (the "**Land**"); (ii) the construction of one or two buildings (to be determined in accordance with applicable zoning requirements), comprising an aggregate of 52,000 square feet to house: (a) approximately 23,400 sq. ft. of commercial and light manufacturing space on the first floor; and (b) approximately 11,250 sq. ft. of commercial office space (on the second and third floors) and approximately 11,250 sq. ft. of mixed income residential units (on the fourth and fifth floors) and approximately 5,700 sq. ft. of retail space (located on the first floor); and (c) the creation of approximately 55 surface parking spots and approximately 30,000 square feet of green space; all located on the Land (collectively, the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to green roofs, bio retention areas, solar panels (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, State and local sales and use tax and mortgage recording tax (as limited by Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, equipping and completion of the Project Facility; and (D) the lease or sale of the Land from the Agency to the Company pursuant to a lease or sale agreement; the lease of the Land from the Company to the Agency pursuant to a lease agreement; the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the changes to the Original Project necessitated a new public hearing. The Agency adopted a resolution on February 19, 2019 describing the Project and authorizing a new public hearing with respect thereto (the "**Second Public Hearing**"); and

**WHEREAS**, the Agency conducted a public hearing with respect to the changes to the Original Project on March 19, 2019 pursuant to Section 859-a of the Act (the "**Second Public Hearing**"), notice of which was published on March 5, 2019, in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letters dated March 4, 2019; and

**WHEREAS**, the Original Project underwent an environmental review by the Agency pursuant to SEQRA, and the proposed changes to the Original Project are not substantial and do

not require reconsideration or further review by the Agency under SEQRA; and

**WHEREAS**, the Agency is current fee owner of the Land. Pursuant to a request by the Company and pursuant to a separate resolution by the Agency, the Agency agreed to sell the Land to the Company in conjunction with the Agency undertaking the Project (the "**Land Sale**"); and

**WHEREAS**, the Agency has considered the policy, purposes and requirements of the Act in making its determinations with respect to taking official action regarding the Project; and

**WHEREAS**, the Agency has given due consideration to the Application and to representations by the Company that the provision of Financial Assistance: (i) will induce the Company to develop 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 any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) the Project will serve the purposes of the Act by advancing job opportunities and the economic welfare of the people of the State and the City and improve their standard of living.

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

**Section 1.** It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

**Section 2.** Based upon the representations and projections made by the Company to the Agency, the Agency hereby and makes the following determinations:

(A) The change proposed to the Original Project is not a substantive change for purposes of SEQRA and the Agency hereby ratifies and confirms the SEQRA Resolution with respect to the Project;

(B) The Project constitutes a "*project*" within the meaning of the Act;

(C) The acquisition of a controlling interest in the Project Facility by the Agency and the designation of the Company as the Agency's agent for completion of the Project will be an inducement to the Company to acquire, construct, equip and complete the Project Facility in the City, and will serve the purposes of the Act by, among other things, advancing job

opportunities, the standard of living and economic welfare of the inhabitants of the City;

(D) The Project will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act;

(E) The Financial Assistance approved hereby includes an exemption from State and local sales and use taxes and mortgage recording taxes and the appointment of the Company as agent of the Agency as further set forth herein.

**Section 3.** As a condition of the appointment of the Company as agent of the Agency, and the conference of any approved Financial Assistance, the Company and the Agency shall first execute and deliver: (i) a project agreement in substantially the same form used by the Agency in similar transactions (the "**Project Agreement**"); (ii) an amended and restated agency/company agreement with the Agency setting forth the preliminary undertakings of the Agency and the Company with respect to the Project, the form and substance of the amended and restated agency/company agreement is attached (as set forth as on **Exhibit "A"** attached hereto) (the "**Agreement**"), which amends and restates the Agency/Company Agreement previously executed by the Agency and the Company dated as of November 21, 2017; and (iii) the Lease Documents (as defined herein). The Chairman, Vice Chairman or Executive Director of the Agency are each hereby authorized, on behalf of the Agency, to execute and deliver the Project Agreement, the Agreement and the Lease Documents, 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, Vice Chairman and/or Executive Director shall constitute conclusive evidence of such approval. Subject to the due execution and delivery by the Company of the Project Agreement, the Agreement and the Lease Documents, the satisfaction of the conditions of this Resolution, the Agreement, the Project Agreement, the Lease Documents and the payment by the Company of any attendant fees, the Company and its designees, are appointed the true and lawful agent of the Agency to proceed with the construction, equipping and completion of the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf. The amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved herein shall not exceed **\$147,200**.

**Section 4.** Subject to the terms of this Resolution and all other resolutions adopted by the Agency in conjunction with the Project, the Financial Assistance and the Land Sale, and the execution and delivery of, and the conditions set forth in, the Agreement and the Project Agreement the Agency will: (i) sell the Land to the Company and acquire an interest in the Land and Facility pursuant to a lease agreement (the "**Lease**") to be entered into between the Company and the Agency; accept an interest in the Equipment pursuant to a bill of sale from the Company (the "**Bill of Sale**"); (ii) sublease the Project Facility to the Company pursuant to a sublease agreement (the "**Sublease**" and with the Lease and the Bill of Sale, and all other documents required by the Agency for similar transactions, including but not limited to, an environmental compliance and indemnification agreement, collectively, the "**Lease Documents**") to be entered into between the Agency and the Company; (iii) grant the approved Financial Assistance; and

(iv) provided that no default shall have occurred and be continuing under the Agreement and provided the Company has executed and delivered all documents and certificates required by the Agency in conjunction with the Agency's undertaking of the Project, execute and deliver all other certificates and documents necessary or appropriate for the grant of the approved Financial Assistance, in form and substance acceptable to the Agency.

**Section 5.** 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 State and local sales and use tax exemptions benefits.

**Section 6.** The Company may utilize, and subject to the terms of this Resolution, the Agreement and the Project Agreement, is hereby authorized to appoint, a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "***Additional Agents***") to proceed with the construction, equipping and completion 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 Agreement. 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. 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.

**Section 7.** The Chairman, Vice Chairman and/or the Executive Director of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified herein and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred herein as the (Vice) Chairman deems appropriate, and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution, the Agreement and/or the Project Agreement.

**Section 8.** The obligation of the Agency to consummate any transaction contemplated herein or hereby is subject to and conditioned upon the Company's execution and

delivery of the Lease Documents and the documents required for the Land Sale and as set forth in Section 3 hereof.

**Section 9.** 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.

**Section 10.** Should the Agency's participation in the Project, or the appointments made in accordance herewith, be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursement of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under the Act to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company hereunder or otherwise.

**Section 11.** Bousquet Holstein PLLC, as counsel to the Agency, is hereby authorized to work with the Company and others to prepare for submission to the Agency, all documents necessary to effect the grant of Financial Assistance and consummate the Lease Documents.

**Section 12.** The Secretary and/or the Executive Director of the Agency are 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.

**Section 13.** This Resolution shall take effect immediately. A copy of this Resolution, together with the 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>
Michael Frame	X	
Steven Thompson	X	
Kathleen Murphy	X	
Kenneth Kinsey	X	
Rickey T. Brown	X	

The foregoing Resolution was thereupon declared duly adopted.

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

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 March 19, 2019, 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.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 19 day of April, 2019.

City of Syracuse Industrial Development Agency

  
\_\_\_\_\_  
Rickey T. Brown, Secretary

(S E A L)

## EXHIBIT "A"

### AMENDED AND RESTATED AGENCY/COMPANY AGREEMENT

**THIS AMENDED AND RESTATED AGREEMENT** is between **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the "**Agency**"), with an office at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202 and **SALINA 1<sup>st</sup>, LLC**, with a mailing address of 731 James Street, Suite 223A, Syracuse, New York (the "**Company**") and amends and restates, in its entirety, that certain agency agreement between the Agency and the Company dated as of November 21, 2017.

**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, renovating 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 Company, by application dated September 27, 2017 as supplemented in March 2019 (the "**Application**"), requested the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 82,534 square feet of vacant land located at 1081 South Salina Street in the City of Syracuse, New York (the "**Land**"); (ii) the construction of one or two buildings (to be determined in accordance with applicable zoning requirements), comprising an aggregate of 52,000 square feet to house: (a) approximately 23,400 sq. ft. of commercial and light manufacturing space on the first floor; and (b) approximately 11,250 sq. ft. of commercial office space (on the second and third floors) and approximately 11,250 sq. ft. of mixed income residential units (on the fourth and fifth floors) and approximately 5,700 sq. ft. of retail space (located on the first floor); and (c) the creation of approximately 55 surface parking spots and approximately 30,000 square feet of green space; all located on the Land (collectively, the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment, including but not limited to green roofs, bio retention areas, solar panels (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, State and local sales and use tax and mortgage recording tax (as limited by Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the

acquisition, construction, equipping and completion of the Project Facility; and (D) the lease or sale of the Land from the Agency to the Company pursuant to a lease or sale agreement; the lease of the Land from the Company to the Agency pursuant to a lease agreement; the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

1.04 In conjunction with the Project, the Company submitted a purchase offer dated October 9, 2017 with respect to the Land which is owned by the Agency. The parties negotiated the terms of the purchase offer and on December 30, 2017 entered into a purchase agreement (the "***Sale of the Land***"); and

1.05 All documents necessary to effectuate the Agency's undertaking of the Project, the Sale of the Land and the granting of the Financial Assistance between the Agency and the Company, including but not limited to, a project agreement, a company lease, an agency lease, a bill of sale and an environmental compliance and indemnification agreement, shall be collectively referred to herein as the "***Lease Documents***".

1.06 The Company hereby represents to the Agency that undertaking the Project, the designation of the Company as the Agency's agent for the construction, equipping and completion of the Project Facility, and the use and appointment, as necessary, 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 construct 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 Facility will promote, create and/or preserve private sector jobs in the State. The Company hereby further represents to the Agency that the Project Facility is not primarily used in making retail sales to customers who personally visit the Facility.

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

1.08 On November 21, 2017 and March 19, 2019, the Agency adopted resolutions (collectively, the "***Inducement Resolution***") agreeing, subject to the satisfaction of all conditions precedent set forth in such Inducement Resolution, to designate the Company as the Agency's agent for the acquisition, construction and equipping of the Project Facility and determining that the leasing of the same to the Company will promote further purposes of the Act. 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 **\$147,200**.

1.09 In the Inducement Resolution, subject to the execution of, and compliance with, this Agreement by the Company, the execution and delivery of a project agreement by the Company, and other conditions set forth in the Inducement Resolution and herein, the Agency appointed the Company as its agent for the purposes of construction and equipping the Project

Facility, entering into contracts and doing all things requisite and proper for construction and equipping the Project Facility. For the avoidance of doubt, the parties agree that the Agency's appointment of the Company as its agent shall be effective on the date that all of the following conditions are satisfied (the "*Agency Effective Date*"):

- (a) The Company has purchased the Land from the Agency; and
- (b) The Company and the Agency have executed and delivered the Lease Documents.

**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, pursuant to the terms hereof, the Company as the Agency's agent for constructing and equipping the Project Facility. Notwithstanding anything herein to the contrary, the Company shall not be agent of the Agency for any purpose until the Agency Effective Date.

2.02 The Agency will adopt such proceedings and authorize the execution of such Agency documents as may be necessary or advisable for: (i) acquisition of a controlling interest in the Project Facility; (ii) designation by the Company of Additional Agents for construction and equipping of the Project Facility subject to the terms hereof; and (iii) the leasing or subleasing of the Project Facility to the Company, all as shall be authorized by law and be mutually satisfactory to the Agency and the Company.

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 2.05, 3.06 and 4.02 hereof and in the Inducement Resolution, the Company may proceed with the construction and equipping of the Project Facility and the utilization of and, as necessary the appointment of, Additional Agents.

2.05 Subject to the execution of the Lease Documents and Section 4.02 hereof, the Company is appointed the true and lawful agent of the Agency: (i) for the construction 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 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 Commencing on the Agency Effective Date:

(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 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 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 Agency Effective Date 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, other than intentional wrongdoing, 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, endorsements, binders 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 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 a Contractor Status Report to be obtained from the City of Syracuse Industrial Development Agency and agrees to utilize, and cause its Additional Agents to utilize, local contractors and suppliers for the construction, equipping and completion of the Project unless a waiver is received from the Agency in writing. For purposes of this Agency Agreement, the term "*Local*" shall mean Onondaga, Oswego, Oneida, Madison, Cayuga and Cortland 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, commencing on the Agency Effective Date, 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, construction 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), commencing on the Agency Effective Date, 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 After the Agency Effective Date, the Company shall proceed with the acquisition, construction, equipping and completion of the Project Facility and advance such funds as may be necessary to accomplish such purposes. The Company may appoint 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 the Agency the following:

(1) A written, executed agreement, in form and substance acceptable to the Agency, from each Additional Agent which provides for the assumption by the Additional Agent, for itself, certain of the obligations under 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 ("local" being defined in Section 3.01(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 Agency and 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 appointed 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.

**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 the Lease Documents become effective. It is the intent of the Agency and the Company that, except as to those provisions that survive, this Agreement be superseded in its entirety by the Lease Documents.

4.02 (a) It is understood and agreed by the Agency and the Company that the grant of Financial Assistance and the execution of the Lease Documents and 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, 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, and in accordance with the Agency's Recapture of Benefits Policy, the Agency shall, and in some instances may, recover, recapture, receive or otherwise obtain from the Company some or all of the Financial Assistance (the "**Recapture Amount**") including, but not limited to: (1) (a) that portion of the State and local sales and use tax exemption to which the Company 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; or (b) the full amount of such State and local sales and use 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; or (c) the full amount of such State and local sales and use tax exemption in the event the Company fails to execute and deliver the Lease Documents in accordance herewith or fails to complete the Project; 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. In addition to the foregoing, the Agency may recapture other benefits comprising the Financial Assistance in accordance with the Agency's Recapture Policy (a copy of which is on the Agency's website).

4.03 (a) The Company agrees that it will, within thirty (30) days of a written request for same, regardless of whether or not this matter closes or 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 in connection with the Agency's approval of its Financial Assistance for, or undertaking of, 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 in connection with the Agency's approval of its Financial Assistance for, or the undertaking of, the Project; and (ii) indemnify the Agency from all losses, claims, damages and liabilities, in each case which the Agency may incur as a consequence of performing its obligations hereunder (except with respect to the Sale of the Land) and in connection with the Agency's approval of its Financial Assistance for, and the undertaking of, the Project.

(b) Notwithstanding anything herein to the contrary, the Company shall have no responsibility or obligation to indemnify the Agency for any losses, claims, damages or liabilities arising out of or relating to the Land, or the Agency's ownership thereof, that are paid, incurred or accrued prior to the date the Company purchases the Land, except with respect to the Agency's approval of its Financial Assistance for the Project. The Agency shall be responsible for all such costs, including but not limited to third-party claims, environmental matters (including costs relating to the preparation and submission of an application for acceptance of the Land into the Brownfield Cleanup Program (the "*BCP*"), except any such services contracted for or requested by the Company which fall outside the scope of services for which the Agency has contracted with the C&S Companies to provide relative to the preparation and submission of an application for acceptance of the Land into the BCP, which costs shall be borne entirely by the Company), and costs allocated to the Agency under the purchase agreement relating to the Sale of the Land.

4.04 If for any reason the Lease Documents are not executed and delivered by the Company and the Agency on or before **December 31, 2019**, the provisions of this Agreement (other than the provisions of Articles 1.06, 2.02, 2.04, 3.01, 3.02, 3.03, 3.05, 3.06, 4.02, 4.03, 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 Agency's approval of its Financial Assistance for, and the undertaking of, the Project;

(b) The Company shall assume and be responsible for any contracts for the construction or purchase of equipment entered into by the Agency, after the Agency Effective Date, 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 Agency's approval of its Financial Assistance, and the undertaking of, for the Project and will pay the fees of counsel for the Agency for legal services relating to the Agency's approval of its Financial Assistance for, and the undertaking of, the Project.

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.

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 19<sup>th</sup> day of March, 2019.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Michael Frame, Chairman

**SALINA 1<sup>ST</sup>, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_