

JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AMENDMENT RESOLUTION NUMBER 01.09.2020.02

for MDD, LLC

WHEREAS, by Authorizing Resolution adopted by the governing body of the Jefferson County Industrial Agency (the "Agency") on December 5, 2019, the Agency was authorized to provide certain financial assistance to Oswego Beverage Company LLC (the "Company") in the form of exemption from sales taxes, mortgage recording taxes, and real property taxes, and

WHEREAS, subsequent to the adoption of the Authorizing Resolution, this Board has been informed that although Oswego Beverage Company LLC was the applicant for the Financial Assistance, title to the real and personal property for which the Financial Assistance will be provided has and will be taken in the name of an entity related to Oswego Beverage Company LLC, to wit: MDD LLC, and that Oswego Beverage Company LLC will be not own but will operate the facility at which the Financial Assistance will be provided, and

WHEREAS, it is now necessary to amend the Authorizing Resolution in order for the Agency to provide the requested Financial Assistance to MDD LLC.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The foregoing recitations are incorporated herein and made a part hereof as if fully set forth hereafter.
2. The Authorizing Resolution adopted by the governing board of the Agency on December 5, 2019 is hereby amended by replacing Oswego Beverage Company LLC with MDD LLC as the defined Company.
3. Except as amended by this resolution the Authorizing Resolution adopted on December 5, 2019, is hereby ratified and affirmed.

AUTHORIZING RESOLUTION

A meeting of Jefferson County Industrial Development Agency (the "**Agency**") was convened in public session at the offices of the Agency at 800 Starbuck Avenue, in the City of Watertown, Jefferson County, New York on December 5, 2019 at 8:30 a.m., local time.

The meeting was called to order by the Chairperson and, upon being called, the following members of the Agency were:

PRESENT: John Jennings, Robert E. Aliasso, Jr., W. Edward Walldroff, Paul Warneck, William Johnson

ABSENT: David Converse, Lisa L'Huillier

FOLLOWING PERSONS WERE ALSO PRESENT: Donald Alexander, David Zembiec, Lyle Eaton, Peggy Sampson, Marshall Weir, Kent Burto, Marcus Wolf and Craig Fox from the Watertown Daily Times

The following resolution was offered by Mr. Aliasso, seconded by Mr. Walldroff, to wit;

Resolution No.:12.05.2019.01

RESOLUTION OF THE JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY TAKING OFFICIAL ACTION TOWARD THE LEASE-LEASEBACK TRANSACTION WITH OSWEGO BEVERAGE COMPANY LLC HAVING AN ADDRESS OF 113 GARDENIER ROAD, OSWEGO, NEW YORK 13216 FOR THE PURPOSE OF THE CONSTRUCTION OF A 8,050 SQUARE FOOT BUILDING AND THE EQUIPPING THEREOF WITH CERTAIN MACHINERY AND EQUIPMENT TO CONSTITUTE A WAREHOUSE, DISTRIBUTION AND REDEMPTION FACILITY.

WHEREAS, Jefferson County Industrial Development Agency (the "**Agency**") is authorized and empowered by the provisions of Chapter 1030 of Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "**Enabling Act**") and Chapter 77 of the 1974 Laws of New York, as amended, constituting Section 902 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "**Act**") to promote, develop, encourage and assist in the acquiring, constructing, renovating, improving, maintaining, equipping and furnishing of commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to

advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their 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, construct, reconstruct and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, pursuant to an application, including a cost benefits analysis (the “**Application**”), submitted to the Agency by Oswego Beverage Company LLC (the “**Company**”), wherein the Agency has been requested to consider undertaking a project (the “**Project**”), consisting of the following:

(A) (1) The acquisition of an interest in that certain property located at NYS Route 3, in the Town of Watertown, County of Jefferson, New York (the “**Land**”), as more particularly described in the PILOT Agreement, and

(2) The construction on the Land of a new 8,050 square foot building and the equipping thereof with certain machinery and equipment to constitute a warehouse, distribution and redemption facility (the “**Project**”) (the Land and the Project being collectively referred to as the “**Project Facility**”); and

(B) The granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including exemption from certain sales taxes, mortgage recording taxes and real property taxes (collectively, the “**Financial Assistance**”); and

(C) The lease or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to a preliminary Inducement Resolution adopted by the members of the Agency on November 7, 2019, the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project (the “**Public Hearing**”) to be mailed on November 14, 2019 to the chief executive officer of the County, Town, and School District in which the Project is to be located, (B) caused notice of the Public Hearing to be published on November 16, 2019, in the Watertown Daily Times, a newspaper of general circulation available to residents of the County of Jefferson, (C) conducted the Public Hearing on December 3, 2019 at 10:00 o’clock a.m., local time at the Town of Watertown Town Offices, 22867 County Route 67, Watertown, New York, (D) prepared a report of the Public Hearing which fairly summarized the views presented at said Public Hearing and distributed same to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), the members of the Agency adopted a resolution on November 7, 2019, (the "SEQR Resolution") in which the Agency determined (A) that the Project constitutes an "Unlisted Action", (B) therefore that the coordinated review procedures outlined in the Regulations are strictly optional, (C) that the Project will not have a "significant effect on the environment" pursuant to SEQRA and, therefore that no environmental impact statement need be prepared with respect to the Project, and (D) that a negative declaration would be prepared with respect to the Project; and

WHEREAS, in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents with the Company (hereinafter collectively referred to as the "**Agency Documents**"):

- (A) A lease to the Agency (and a memorandum thereof) (the "**Underlying Lease**") by and between the Company, as landlord, and the Agency, as tenant pursuant to which the Company will lease to the Agency the Project Facility;
- (B) A lease agreement (and a memorandum thereof) (the "**Lease Agreement**") by and between the Agency and the Company, pursuant to which, among other things, the Company agrees to undertake the Project as agent of the Agency and the Company further agrees to lease the Project Facility from the Agency and to pay all legal fees and expenses incurred by the Agency with respect to the Project;
- (C) A payment in lieu of tax agreement (the "**Payment in Lieu of Tax Agreement**" or the "**PILOT**") by and between the Agency and the Company, pursuant to which the Company will agree to make certain payments in lieu of taxes with respect to the Project Facility; and
- (D) Various certificates relating to the Project (the "**Closing Documents**"); and

WHEREAS, the Agency has given due consideration to the Application and to the representations by the Company that the granting by the Agency of the Financial Assistance with respect to the Project will be in an inducement to the Company to undertake the Project in Jefferson County, New York; and

WHEREAS, the Company and the Agency have agreed on a certain Payment in Lieu of Taxes Agreement and Distribution Schedule to the Taxing Jurisdictions of such payments in lieu of taxes in substantially the form and affect and appears at **Exhibit "A"** to this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1 The Agency hereby finds and determines that:

- (A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and
- (B) The Project constitutes a "project", as such term is defined in the Act; and
- (C) The acquisition of the Project Facility and the lease of the Project Facility to the Company will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of Jefferson County, New York and the State of New York and improve their standard of living; and
- (D) It is desirable and in the public interest for the Agency to grant to the Company the relief provided by the Payment In Lieu of Taxes Agreement, and to enter into the Agency Documents upon the satisfaction of all conditions thereto.

Section 2 In consequence of the foregoing, the Agency hereby determines that the granting of the financial assistance by the Agency with respect to the Project, through the granting of various tax exemptions described herein, and set forth on the exhibits attached hereto, will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of Jefferson County, New York and the State of New York, and improve their standard of living, and thereby serve the public purposes of the Act.

Section 3 In consequence of the foregoing, and subject to the satisfactions of any conditions as imposed herein or as may be required by the Act, the Agency hereby determines to:

- (A) Proceed with the Project;
- (B) Acquire the Project Facility;
- (C) Accept an Underlying Lease of the Project on terms to be determined by the Agency;
- (D) Lease the Project Facility to the Company pursuant to a Lease Agreement on terms to be determined by the Agency;
- (E) Enter into the Payment in Lieu of Tax Agreement in the form and substance as attached hereto; and
- (F) Execute and deliver the other Agency Documents upon terms and conditions satisfactory to the Chief Executive Officer; and

(G) Execute and deliver the Closing Documents upon terms and conditions satisfactory to the Chief Executive Officer; and

(H) Grant the Financial Assistance with respect to the Project.

Section 4 The Agency is hereby authorized to acquire a leasehold interest in the Project Facility pursuant to an Underlying Lease and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 5 The Agency is hereby authorized to lease the Project Facility back to the Company pursuant to the Lease Agreement and to do all things necessary or appropriate to renovate, construct and equip the Project pursuant to the terms of the Lease Agreement.

Section 6 (A) The Chief Executive Officer of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the forms thereof presented to this meeting, with such changes, variations, omissions and insertions thereto as the Chief Executive Officer shall approve, the execution thereof by the Chief Executive Officer to constitute conclusive evidence of such approval.

(B) The Chief Executive Officer of the Agency is hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 7 The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 8 The Agency hereby determines and finds that the Project is a qualifying non-industrial project, therefore, pursuant to the Agency's Uniform Tax Exempt Policy, the consent of the Affected Taxing Jurisdictions is not required.

Section 9 This Resolution shall take effect immediately.

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

<u>David Converse</u>	VOTING <u>Absent</u>
<u>John Jennings</u>	VOTING <u>Yea</u>
<u>Robert E. Aliasso, Jr.</u>	VOTING <u>Yea</u>
<u>W. Edward Walldroff</u>	VOTING <u>Yea</u>
<u>Paul Warneck</u>	VOTING <u>Yea</u>
<u>William Johnson</u>	VOTING <u>Yea</u>
<u>Lisa L'Huillier</u>	VOTING <u>Absent</u>

The foregoing Resolution was thereupon declared and duly adopted.

EXHIBIT "A" to AUTHORIZING RESOLUTION

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS AGREEMENT, by and between **OSWEGO BEVERAGE COMPANY LLC** a New York limited liability company having an address of 113 Gardenier Road, Oswego, New York 13126 ("**Company**") and **JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, an Industrial Development Agency and a Public Benefit Corporation of the State of New York having an address of 800 Starbuck Avenue, Watertown, New York 13601 ("**Agency**"),

WITNESSETH:

WHEREAS, the Agency was created by Chapter 369 of the Laws of 1971 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**"); and

WHEREAS, the Agency by Resolution dated December 5, 2019, has agreed to undertake a project to construct a new 8,050 square foot building together with the acquisition of certain machinery and equipment all of which to constitute a warehouse distribution and redemption facility on certain land owned by the Company at New York State Route 3 , Watertown, New York (Tax Map Parcel No. _____) (the "**Land**"), in the Town of Watertown, Jefferson County, New York, as more particularly described in Schedule "A" attached hereto (the Project and the Land are hereinafter referred to as the "**Project Facility**"); and

WHEREAS, the Company is or will be the fee title owner of the Project Facility; and

WHEREAS, the Company will execute and deliver to the Agency, a certain lease agreement to the Agency (the "**Underlying Lease**") pursuant to which the Company leases to the Agency the Project Facility; and

WHEREAS, the Agency will immediately thereafter lease the Project Facility to the Company pursuant to a Lease Agreement executed and entered into of even date herewith (the "**Lease Agreement**") by and between Agency and the Company; and

WHEREAS, pursuant to the terms of the Lease Agreement (1) the Company will agree to cause the Project to be undertaken and completed, and (2) the Agency will agree to undertake and complete the Project; and

WHEREAS, pursuant to section 874(1) of the Act, and Section 412(a) of the Real Property Tax Law of the State of New York, the Agency is exempt from the payment of taxes and assessments imposed upon real property and improvements owned by it other than special ad valorem levies, special assessments and service charges against real property

located in Jefferson County which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Taxing Jurisdictions, which are, collectively, the Town of Watertown (“**Town**”), Jefferson County (“**County**”) and the Watertown City School District (“**School**”), have the following taxable years: the Town and County January 1 to December 31, and the School July 1 to June 30; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into this agreement making provision for payments in lieu of taxes by the Company to the Agency, for the benefit of the respective Taxing Jurisdictions within which the Project Facility is or is to be located;

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

1. (a) For the purpose of payments to be made pursuant to this Agreement, the Completion Date for the Project shall be the earlier of twelve (12) months from the date the building permit was issued for any part of the Project, or the issuance of a Certificate of Occupancy. The Company shall notify each Taxing Jurisdiction and the Agency within 30 days after the Completion Date for the Project.

- (b) Commencing with the tax year beginning on the next Taxable Status Date following the Completion Date and for the period set forth below or until the earlier termination of the Lease Agreement, the Company agrees to pay in lieu of all real estate, tangible personal property, inventory and/or other similar taxes and assessments (in addition to paying all special ad valorem levies, special assessments and service charges which are or may be imposed for special improvements or special district improvements) which would be levied upon the Project Facility during such tax years as if the Project Facility were owned by the Company and not by the Agency, the amounts determined according to the following formula:

$$\text{PILOT} = \text{AV} \times \text{ATR} \times \text{PR}$$

WHERE

- | | | |
|-------|---|---|
| PILOT | = | Amount of payment in lieu of taxes due to the Taxing Jurisdictions for the applicable tax year. |
| AV | = | Assessed Value of the Project Facility. |
| ATR | = | Actual Tax Rate for the respective Taxing Jurisdictions for the applicable year. |

PR = Payment Ratio as set forth in Table I for the applicable tax year.

TABLE I

Year 1 – 5 25% of all Real Estate Taxes;
Years 6 – 10 50% of all Real Estate Taxes;
Years 11 – 15 75% of all Real Estate Taxes;
Thereafter; 100% of all Real Estate Taxes;

(c) The Company shall pay, or cause to be paid the amounts set forth in Paragraph 1(b) hereof within the grace period, without penalty, applicable to taxes, assessments, special ad valorem levies, special service charges or similar tax equivalents, as the case may be, on similar property subject to taxation by the Taxing Jurisdictions during such respective tax years, subject to any late payment penalties pursuant to §874 of the Act if not made within the grace period. Any failure on the part of the Company to timely make any payments pursuant to this Agreement within ten (10) days following written notice from the Agency shall be an event of default ("**Event of Default**") under this Agreement and under the Lease Agreement. Upon such Event of Default, the Agency shall have any and/or all of the Remedies on Default set forth in the Lease Agreement. Further, upon such Event of Default, the Payments In Lieu of Tax due under this Agreement shall, upon thirty (30) days written notice from the Agency to the Company, immediately bear a Payment Ratio of 100% as such term is defined in the PILOT in Paragraph 1(b) of this Agreement until such Event of Default shall be cured by the Company.

(d) The assessed value of the Project Facility shall be the value as finally determined on the Assessment Roll of the Taxing Jurisdiction for the applicable year.

(e) Prior to the Completion Date as defined in Paragraph 1(a) above of the Project, the Company shall pay to the Agency on the Project an amount equal to the real estate taxes and assessments on the Land for the Project as if the Land were owned by the Company and not by the Agency. The Company shall pay or cause such amounts to be paid within the grace period without penalty, applicable to taxes, assessments, special ad valorem levies, special service charges or similar tax equivalents, as the case may be, on similar property subject to taxation by the Taxing Jurisdictions during such respective tax years, subject to any late payment penalties pursuant to Section 874 of the Act if not made within the grace period.

2. This Agreement shall terminate, unless it is terminated sooner pursuant to the Lease Agreement or any other provisions of this Agreement, on a date which will be 180 months from the initial Taxable Status Date ("**Termination Date**") at which time the parties agree that the Lease and Underlying Lease for the Project Facility shall terminate. In the event

of an early termination either pursuant to this Paragraph or any other termination pursuant to this Agreement, both the Lease and the Underlying Lease shall terminate.

3. In the event that the Project Facility is transferred from the Agency to the Company, the Project Facility shall be immediately subject to taxation pursuant to Sections 302 and 520 of the New York Real Property Tax Law, as amended. However, in no event shall the Company be required to pay both a PILOT payment pursuant to the Agreement and real property taxes for a concurrent tax year or portion thereof. Therefore, should the Project Facility be conveyed to the Company and thus become taxable pursuant to New York RPTL Section 520, any payments payable under this Agreement as Payments required in Lieu of Taxes shall be reduced by the amount of any taxes which are required to be paid under RPTL Section 520 for any such concurrent tax year or portion thereof, and should such Payment-in-Lieu-of-Taxes already have been made, the Taxing Jurisdictions shall refund any such amounts owing to Company.

4. To the extent the Project Facility or any part thereof is declared to be subject to taxation or assessments by an amendment to the Act, other legislative change, or by a final judgment of a court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

5. Any notice required to be given under this Agreement shall be deemed to have been duly given when delivered and, if delivered by mail, postage prepaid, return receipt requested, addressed to the respective parties hereto at their respective addresses specified below or such other addresses as either party may specify in writing to the other:

If to the Agency: Jefferson County Industrial Development Agency
800 Starbuck Avenue, Suite 800
Watertown, New York 13601
Attn: Donald C. Alexander

With a copy to: Barclay Damon, LLP
120 Washington Street, Suite 500
Watertown, New York 13601
Attn: Joseph W. Russell, Esq..

If to the Company: Oswego Beverage Company LLC
Attn: Daniel E. Dorsey, Jr.
113 Gardiner Road
Oswego, New York 13126

With a copy to: Victor Hirshdorfer, Esq
Pappas, Cox, Kimpel, Dodd & Levine, P.C.
614 James Street
Syracuse, New York 13203

6. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

7. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

8. This Agreement may only be assigned by the Company in accordance with Section 8.4 of the Lease Agreement.

9. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original for all purposes and all of which shall constitute collectively a single agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement on the date set forth before the signature of its respective representative.

Date: _____, 2019

OSWEGO BEVERAGE COMPANY LLC

By: _____
Daniel E. Dorsey, Jr.

Date: _____, 2019

**JEFFERSON COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Donald C. Alexander, CEO

SCHEDULE "A"
(Legal Description of Land)

AUTHORIZING RESOLUTION

A meeting of Jefferson County Industrial Development Agency (the "**Agency**") was convened in public session at the offices of the Agency at 800 Starbuck Avenue, in the City of Watertown, Jefferson County, New York on December 5, 2019 at 8:30 a.m., local time.

The meeting was called to order by the Chairperson and, upon being called, the following members of the Agency were:

PRESENT: John Jennings, Robert E. Aliasso, Jr., W. Edward Walldroff, Paul Warneck, William Johnson

ABSENT: David Converse, Lisa L'Huillier

FOLLOWING PERSONS WERE ALSO PRESENT: Donald Alexander, David Zembiec, Lyle Eaton, Peggy Sampson, Marshall Weir, Kent Burto, Marcus Wolf and Craig Fox from the Watertown Daily Times

The following resolution was offered by Mr. Aliasso, seconded by Mr. Walldroff, to wit;

Resolution No.:12.05.2019.01

RESOLUTION OF THE JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY TAKING OFFICIAL ACTION TOWARD THE LEASE-LEASEBACK TRANSACTION WITH OSWEGO BEVERAGE COMPANY LLC HAVING AN ADDRESS OF 113 GARDENIER ROAD, OSWEGO, NEW YORK 13216 FOR THE PURPOSE OF THE CONSTRUCTION OF A 8,050 SQUARE FOOT BUILDING AND THE EQUIPPING THEREOF WITH CERTAIN MACHINERY AND EQUIPMENT TO CONSTITUTE A WAREHOUSE, DISTRIBUTION AND REDEMPTION FACILITY.

WHEREAS, Jefferson County Industrial Development Agency (the "**Agency**") is authorized and empowered by the provisions of Chapter 1030 of Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "**Enabling Act**") and Chapter 77 of the 1974 Laws of New York, as amended, constituting Section 902 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "**Act**") to promote, develop, encourage and assist in the acquiring, constructing, renovating, improving, maintaining, equipping and furnishing of commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to

advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their 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, construct, reconstruct and install one or more "projects" (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, pursuant to an application, including a cost benefits analysis (the "**Application**"), submitted to the Agency by Oswego Beverage Company LLC (the "**Company**"), wherein the Agency has been requested to consider undertaking a project (the "**Project**"), consisting of the following:

(A) (1) The acquisition of an interest in that certain property located at NYS Route 3, in the Town of Watertown, County of Jefferson, New York (the "**Land**"), as more particularly described in the PILOT Agreement, and

(2) The construction on the Land of a new 8,050 square foot building and the equipping thereof with certain machinery and equipment to constitute a warehouse, distribution and redemption facility (the "**Project**") (the Land and the Project being collectively referred to as the "**Project Facility**"); and

(B) The granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including exemption from certain sales taxes, mortgage recording taxes and real property taxes (collectively, the "**Financial Assistance**"); and

(C) The lease or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to a preliminary Inducement Resolution adopted by the members of the Agency on November 7, 2019, the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project (the "**Public Hearing**") to be mailed on November 14, 2019 to the chief executive officer of the County, Town, and School District in which the Project is to be located, (B) caused notice of the Public Hearing to be published on November 16, 2019, in the Watertown Daily Times, a newspaper of general circulation available to residents of the County of Jefferson, (C) conducted the Public Hearing on December 3, 2019 at 10:00 o'clock a.m., local time at the Town of Watertown Town Offices, 22867 County Route 67, Watertown, New York, (D) prepared a report of the Public Hearing which fairly summarized the views presented at said Public Hearing and distributed same to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), the members of the Agency adopted a resolution on November 7, 2019, (the "SEQR Resolution") in which the Agency determined (A) that the Project constitutes an "Unlisted Action", (B) therefore that the coordinated review procedures outlined in the Regulations are strictly optional, (C) that the Project will not have a "significant effect on the environment" pursuant to SEQRA and, therefore that no environmental impact statement need be prepared with respect to the Project, and (D) that a negative declaration would be prepared with respect to the Project; and

WHEREAS, in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents with the Company (hereinafter collectively referred to as the "**Agency Documents**"):

- (A) A lease to the Agency (and a memorandum thereof) (the "**Underlying Lease**") by and between the Company, as landlord, and the Agency, as tenant pursuant to which the Company will lease to the Agency the Project Facility;
- (B) A lease agreement (and a memorandum thereof) (the "**Lease Agreement**") by and between the Agency and the Company, pursuant to which, among other things, the Company agrees to undertake the Project as agent of the Agency and the Company further agrees to lease the Project Facility from the Agency and to pay all legal fees and expenses incurred by the Agency with respect to the Project;
- (C) A payment in lieu of tax agreement (the "**Payment in Lieu of Tax Agreement**" or the "**PILOT**") by and between the Agency and the Company, pursuant to which the Company will agree to make certain payments in lieu of taxes with respect to the Project Facility; and
- (D) Various certificates relating to the Project (the "**Closing Documents**"); and

WHEREAS, the Agency has given due consideration to the Application and to the representations by the Company that the granting by the Agency of the Financial Assistance with respect to the Project will be in an inducement to the Company to undertake the Project in Jefferson County, New York; and

WHEREAS, the Company and the Agency have agreed on a certain Payment in Lieu of Taxes Agreement and Distribution Schedule to the Taxing Jurisdictions of such payments in lieu of taxes in substantially the form and affect and appears at **Exhibit "A"** to this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1 The Agency hereby finds and determines that:

- (A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and
- (B) The Project constitutes a "project", as such term is defined in the Act; and
- (C) The acquisition of the Project Facility and the lease of the Project Facility to the Company will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of Jefferson County, New York and the State of New York and improve their standard of living; and
- (D) It is desirable and in the public interest for the Agency to grant to the Company the relief provided by the Payment In Lieu of Taxes Agreement, and to enter into the Agency Documents upon the satisfaction of all conditions thereto.

Section 2 In consequence of the foregoing, the Agency hereby determines that the granting of the financial assistance by the Agency with respect to the Project, through the granting of various tax exemptions described herein, and set forth on the exhibits attached hereto, will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of Jefferson County, New York and the State of New York, and improve their standard of living, and thereby serve the public purposes of the Act.

Section 3 In consequence of the foregoing, and subject to the satisfactions of any conditions as imposed herein or as may be required by the Act, the Agency hereby determines to:

- (A) Proceed with the Project;
- (B) Acquire the Project Facility;
- (C) Accept an Underlying Lease of the Project on terms to be determined by the Agency;
- (D) Lease the Project Facility to the Company pursuant to a Lease Agreement on terms to be determined by the Agency;
- (E) Enter into the Payment in Lieu of Tax Agreement in the form and substance as attached hereto; and
- (F) Execute and deliver the other Agency Documents upon terms and conditions satisfactory to the Chief Executive Officer; and

(G) Execute and deliver the Closing Documents upon terms and conditions satisfactory to the Chief Executive Officer; and

(H) Grant the Financial Assistance with respect to the Project.

Section 4 The Agency is hereby authorized to acquire a leasehold interest in the Project Facility pursuant to an Underlying Lease and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 5 The Agency is hereby authorized to lease the Project Facility back to the Company pursuant to the Lease Agreement and to do all things necessary or appropriate to renovate, construct and equip the Project pursuant to the terms of the Lease Agreement.

Section 6 (A) The Chief Executive Officer of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the forms thereof presented to this meeting, with such changes, variations, omissions and insertions thereto as the Chief Executive Officer shall approve, the execution thereof by the Chief Executive Officer to constitute conclusive evidence of such approval.

(B) The Chief Executive Officer of the Agency is hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 7 The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 8 The Agency hereby determines and finds that the Project is a qualifying non-industrial project, therefore, pursuant to the Agency's Uniform Tax Exempt Policy, the consent of the Affected Taxing Jurisdictions is not required.

Section 9 This Resolution shall take effect immediately.

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

<u>David Converse</u>	VOTING <u>Absent</u>
<u>John Jennings</u>	VOTING <u>Yea</u>
<u>Robert E. Aliasso, Jr.</u>	VOTING <u>Yea</u>
<u>W. Edward Walldroff</u>	VOTING <u>Yea</u>
<u>Paul Warneck</u>	VOTING <u>Yea</u>
<u>William Johnson</u>	VOTING <u>Yea</u>
<u>Lisa L'Huillier</u>	VOTING <u>Absent</u>

The foregoing Resolution was thereupon declared and duly adopted.

EXHIBIT "A" to AUTHORIZING RESOLUTION

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS AGREEMENT, by and between **OSWEGO BEVERAGE COMPANY LLC** a New York limited liability company having an address of 113 Gardenier Road, Oswego, New York 13126 ("**Company**") and **JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, an Industrial Development Agency and a Public Benefit Corporation of the State of New York having an address of 800 Starbuck Avenue, Watertown, New York 13601 ("**Agency**"),

WITNESSETH:

WHEREAS, the Agency was created by Chapter 369 of the Laws of 1971 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**"); and

WHEREAS, the Agency by Resolution dated December 5, 2019, has agreed to undertake a project to construct a new 8,050 square foot building together with the acquisition of certain machinery and equipment all of which to constitute a warehouse distribution and redemption facility on certain land owned by the Company at New York State Route 3 , Watertown, New York (Tax Map Parcel No. _____) (the "**Land**"), in the Town of Watertown, Jefferson County, New York, as more particularly described in Schedule "A" attached hereto (the Project and the Land are hereinafter referred to as the "**Project Facility**"); and

WHEREAS, the Company is or will be the fee title owner of the Project Facility; and

WHEREAS, the Company will execute and deliver to the Agency, a certain lease agreement to the Agency (the "**Underlying Lease**") pursuant to which the Company leases to the Agency the Project Facility; and

WHEREAS, the Agency will immediately thereafter lease the Project Facility to the Company pursuant to a Lease Agreement executed and entered into of even date herewith (the "**Lease Agreement**") by and between Agency and the Company; and

WHEREAS, pursuant to the terms of the Lease Agreement (1) the Company will agree to cause the Project to be undertaken and completed, and (2) the Agency will agree to undertake and complete the Project; and

WHEREAS, pursuant to section 874(1) of the Act, and Section 412(a) of the Real Property Tax Law of the State of New York, the Agency is exempt from the payment of taxes and assessments imposed upon real property and improvements owned by it other than special ad valorem levies, special assessments and service charges against real property

located in Jefferson County which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Taxing Jurisdictions, which are, collectively, the Town of Watertown ("**Town**"), Jefferson County ("**County**") and the Watertown City School District ("**School**"), have the following taxable years: the Town and County January 1 to December 31, and the School July 1 to June 30; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into this agreement making provision for payments in lieu of taxes by the Company to the Agency, for the benefit of the respective Taxing Jurisdictions within which the Project Facility is or is to be located;

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

1. (a) For the purpose of payments to be made pursuant to this Agreement, the Completion Date for the Project shall be the earlier of twelve (12) months from the date the building permit was issued for any part of the Project, or the issuance of a Certificate of Occupancy. The Company shall notify each Taxing Jurisdiction and the Agency within 30 days after the Completion Date for the Project.

(b) Commencing with the tax year beginning on the next Taxable Status Date following the Completion Date and for the period set forth below or until the earlier termination of the Lease Agreement, the Company agrees to pay in lieu of all real estate, tangible personal property, inventory and/or other similar taxes and assessments (in addition to paying all special ad valorem levies, special assessments and service charges which are or may be imposed for special improvements or special district improvements) which would be levied upon the Project Facility during such tax years as if the Project Facility were owned by the Company and not by the Agency, the amounts determined according to the following formula:

$$\text{PILOT} = \text{AV} \times \text{ATR} \times \text{PR}$$

WHERE

PILOT = Amount of payment in lieu of taxes due to the Taxing Jurisdictions for the applicable tax year.

AV = Assessed Value of the Project Facility.

ATR = Actual Tax Rate for the respective Taxing Jurisdictions for the applicable year.

PR = Payment Ratio as set forth in Table I for the applicable tax year.

TABLE I

Year 1 – 5 25% of all Real Estate Taxes;
Years 6 – 10 50% of all Real Estate Taxes;
Years 11 – 15 75% of all Real Estate Taxes;
Thereafter; 100% of all Real Estate Taxes;

(c) The Company shall pay, or cause to be paid the amounts set forth in Paragraph 1(b) hereof within the grace period, without penalty, applicable to taxes, assessments, special ad valorem levies, special service charges or similar tax equivalents, as the case may be, on similar property subject to taxation by the Taxing Jurisdictions during such respective tax years, subject to any late payment penalties pursuant to §874 of the Act if not made within the grace period. Any failure on the part of the Company to timely make any payments pursuant to this Agreement within ten (10) days following written notice from the Agency shall be an event of default ("**Event of Default**") under this Agreement and under the Lease Agreement. Upon such Event of Default, the Agency shall have any and/or all of the Remedies on Default set forth in the Lease Agreement. Further, upon such Event of Default, the Payments In Lieu of Tax due under this Agreement shall, upon thirty (30) days written notice from the Agency to the Company, immediately bear a Payment Ratio of 100% as such term is defined in the PILOT in Paragraph 1(b) of this Agreement until such Event of Default shall be cured by the Company.

(d) The assessed value of the Project Facility shall be the value as finally determined on the Assessment Roll of the Taxing Jurisdiction for the applicable year.

(e) Prior to the Completion Date as defined in Paragraph 1(a) above of the Project, the Company shall pay to the Agency on the Project an amount equal to the real estate taxes and assessments on the Land for the Project as if the Land were owned by the Company and not by the Agency. The Company shall pay or cause such amounts to be paid within the grace period without penalty, applicable to taxes, assessments, special ad valorem levies, special service charges or similar tax equivalents, as the case may be, on similar property subject to taxation by the Taxing Jurisdictions during such respective tax years, subject to any late payment penalties pursuant to Section 874 of the Act if not made within the grace period.

2. This Agreement shall terminate, unless it is terminated sooner pursuant to the Lease Agreement or any other provisions of this Agreement, on a date which will be 180 months from the initial Taxable Status Date ("**Termination Date**") at which time the parties agree that the Lease and Underlying Lease for the Project Facility shall terminate. In the event

of an early termination either pursuant to this Paragraph or any other termination pursuant to this Agreement, both the Lease and the Underlying Lease shall terminate.

3. In the event that the Project Facility is transferred from the Agency to the Company, the Project Facility shall be immediately subject to taxation pursuant to Sections 302 and 520 of the New York Real Property Tax Law, as amended. However, in no event shall the Company be required to pay both a PILOT payment pursuant to the Agreement and real property taxes for a concurrent tax year or portion thereof. Therefore, should the Project Facility be conveyed to the Company and thus become taxable pursuant to New York RPTL Section 520, any payments payable under this Agreement as Payments required in Lieu of Taxes shall be reduced by the amount of any taxes which are required to be paid under RPTL Section 520 for any such concurrent tax year or portion thereof, and should such Payment-in-Lieu-of-Taxes already have been made, the Taxing Jurisdictions shall refund any such amounts owing to Company.

4. To the extent the Project Facility or any part thereof is declared to be subject to taxation or assessments by an amendment to the Act, other legislative change, or by a final judgment of a court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

5. Any notice required to be given under this Agreement shall be deemed to have been duly given when delivered and, if delivered by mail, postage prepaid, return receipt requested, addressed to the respective parties hereto at their respective addresses specified below or such other addresses as either party may specify in writing to the other:

If to the Agency: Jefferson County Industrial Development Agency
800 Starbuck Avenue, Suite 800
Watertown, New York 13601
Attn: Donald C. Alexander

With a copy to: Barclay Damon, LLP
120 Washington Street, Suite 500
Watertown, New York 13601
Attn: Joseph W. Russell, Esq..

If to the Company: Oswego Beverage Company LLC
Attn: Daniel E. Dorsey, Jr.
113 Gardiner Road
Oswego, New York 13126

With a copy to: Victor Hirshdorfer, Esq
Pappas, Cox, Kimpel, Dodd & Levine, P.C.
614 James Street
Syracuse, New York 13203

6. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

7. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

8. This Agreement may only be assigned by the Company in accordance with Section 8.4 of the Lease Agreement.

9. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original for all purposes and all of which shall constitute collectively a single agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement on the date set forth before the signature of its respective representative.

Date: _____, 2019

OSWEGO BEVERAGE COMPANY LLC

By: _____
Daniel E. Dorsey, Jr.

Date: _____, 2019

**JEFFERSON COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Donald C. Alexander, CEO

SCHEDULE "A"
(Legal Description of Land)

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS AGREEMENT, by and between **MDD, L.L.C.** a New York limited liability company having an address of 1043 County Route 25, Oswego, New York 13126 ("**Company**") and **JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, an Industrial Development Agency and a Public Benefit Corporation of the State of New York having an address of 800 Starbuck Avenue, Watertown, New York 13601 ("**Agency**"),

WITNESSETH:

WHEREAS, the Agency was created by Chapter 369 of the Laws of 1971 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**"); and

WHEREAS, the Agency by Resolution dated December 5, 2019, as amended by Resolution dated January 9, 2020, has agreed to undertake a project to construct a new 8,050 square foot building together with the acquisition of certain machinery and equipment all of which to constitute a warehouse distribution and redemption facility on certain land owned by the Company at 19970 New York State Route 3 , Watertown, New York (a portion of Tax Map Parcel No. 82.00-2-1) (the "**Land**"), in the Town of Watertown, Jefferson County, New York, as more particularly described in Schedule "A" attached hereto (the Project and the Land are hereinafter referred to as the "**Project Facility**"); and

WHEREAS, the Company is or will be the fee title owner of the Project Facility; and

WHEREAS, the Company will execute and deliver to the Agency, a certain lease agreement to the Agency (the "**Underlying Lease**") pursuant to which the Company leases to the Agency the Project Facility; and

WHEREAS, the Agency will immediately thereafter lease the Project Facility to the Company pursuant to a Lease Agreement executed and entered into of even date herewith (the "**Lease Agreement**") by and between Agency and the Company; and

WHEREAS, pursuant to the terms of the Lease Agreement (1) the Company will agree to cause the Project to be undertaken and completed, and (2) the Agency will agree to undertake and complete the Project; and

WHEREAS, pursuant to section 874(1) of the Act, and Section 412(a) of the Real Property Tax Law of the State of New York, the Agency is exempt from the payment of taxes and assessments imposed upon real property and improvements owned by it other than special ad valorem levies, special assessments and service charges against real property located in Jefferson County which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Taxing Jurisdictions, which are, collectively, the Town of Watertown (“**Town**”), Jefferson County (“**County**”) and the Watertown City School District (“**School**”), have the following taxable years: the Town and County January 1 to December 31, and the School July 1 to June 30; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into this agreement making provision for payments in lieu of taxes by the Company to the Agency, for the benefit of the respective Taxing Jurisdictions within which the Project Facility is or is to be located;

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

1. (a) For the purpose of payments to be made pursuant to this Agreement, the Completion Date for the Project shall be the earlier of twelve (12) months from the date the building permit was issued for any part of the Project, or the issuance of a Certificate of Occupancy. The Company shall notify each Taxing Jurisdiction and the Agency within 30 days after the Completion Date for the Project.

(b) Commencing with the tax year beginning on the next Taxable Status Date following the Completion Date and for the period set forth below or until the earlier termination of the Lease Agreement, the Company agrees to pay in lieu of all real estate, tangible personal property, inventory and/or other similar taxes and assessments (in addition to paying all special ad valorem levies, special assessments and service charges which are or may be imposed for special improvements or special district improvements) which would be levied upon the Project Facility during such tax years as if the Project Facility were owned by the Company and not by the Agency, the amounts determined according to the following formula:

$$\text{PILOT} = \text{AV} \times \text{ATR} \times \text{PR}$$

WHERE

- PILOT = Amount of payment in lieu of taxes due to the Taxing Jurisdictions for the applicable tax year.
- AV = Assessed Value of the Project Facility.
- ATR = Actual Tax Rate for the respective Taxing Jurisdictions for the applicable year.
- PR = Payment Ratio as set forth in Table I for the applicable tax year.

TABLE I

Year 1 – 5	25% of all Real Estate Taxes;
Years 6 – 10	50% of all Real Estate Taxes;
Years 11 – 15	75% of all Real Estate Taxes;
Thereafter;	100% of all Real Estate Taxes;

(c) The Company shall pay, or cause to be paid the amounts set forth in Paragraph 1(b) hereof within the grace period, without penalty, applicable to taxes, assessments, special ad valorem levies, special service charges or similar tax equivalents, as the case may be, on similar property subject to taxation by the Taxing Jurisdictions during such respective tax years, subject to any late payment penalties pursuant to §874 of the Act if not made within the grace period. Any failure on the part of the Company to timely make any payments pursuant to this Agreement within ten (10) days following written notice from the Agency shall be an event of default ("**Event of Default**") under this Agreement and under the Lease Agreement. Upon such Event of Default, the Agency shall have any and/or all of the Remedies on Default set forth in the Lease Agreement. Further, upon such Event of Default, the Payments In Lieu of Tax due under this Agreement shall, upon thirty (30) days written notice from the Agency to the Company, immediately bear a Payment Ratio of 100% as such term is defined in the PILOT in Paragraph 1(b) of this Agreement until such Event of Default shall be cured by the Company.

(d) The assessed value of the Project Facility shall be the value as finally determined on the Assessment Roll of the Taxing Jurisdiction for the applicable year.

(e) Prior to the Completion Date as defined in Paragraph 1(a) above of the Project, the Company shall pay to the Agency on the Project an amount equal to the real estate taxes and assessments on the Land for the Project as if the Land were owned by the Company and not by the Agency. The Company shall pay or cause such amounts to be paid within the grace period without penalty, applicable to taxes, assessments, special ad valorem levies, special service charges or similar tax equivalents, as the case may be, on similar property subject to taxation by the Taxing Jurisdictions during such respective tax years, subject to any late payment penalties pursuant to Section 874 of the Act if not made within the grace period.

2. This Agreement shall terminate, unless it is terminated sooner pursuant to the Lease Agreement or any other provisions of this Agreement, on a date which will be 180 months from the initial Taxable Status Date ("**Termination Date**") at which time the parties agree that the Lease and Underlying Lease for the Project Facility shall terminate. In the event of an early termination either pursuant to this Paragraph or any other termination pursuant to this Agreement, both the Lease and the Underlying Lease shall terminate.

3. In the event that the Project Facility is transferred from the Agency to the Company, the Project Facility shall be immediately subject to taxation pursuant to Sections 302 and 520 of the New York Real Property Tax Law, as amended. However, in no event shall the Company be required to pay both a PILOT payment pursuant to the Agreement and real property taxes for a concurrent tax year or portion thereof. Therefore, should the Project Facility be conveyed to the Company and thus become taxable pursuant to New York RPTL Section 520, any payments payable under this Agreement as Payments required in Lieu of Taxes shall be reduced by the amount of any taxes which are required to be paid under RPTL Section 520 for any such concurrent tax year or portion thereof, and should such Payment-in-Lieu-of-Taxes already have been made, the Taxing Jurisdictions shall refund any such amounts owing to Company.

4. To the extent the Project Facility or any part thereof is declared to be subject to taxation or assessments by an amendment to the Act, other legislative change, or by a final judgment of a court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

5. Any notice required to be given under this Agreement shall be deemed to have been duly given when delivered and, if delivered by mail, postage prepaid, return receipt requested, addressed to the respective parties hereto at their respective addresses specified below or such other addresses as either party may specify in writing to the other:

If to the Agency: Jefferson County Industrial Development Agency
800 Starbuck Avenue, Suite 800
Watertown, New York 13601
Attn: Donald C. Alexander

With a copy to: Barclay Damon, LLP
120 Washington Street, Suite 500
Watertown, New York 13601
Attn: Joseph W. Russell, Esq..

If to the Company: MDD, L.L.C.
Attn: Daniel E. Dorsey, Jr.
1043 County Route 25
Oswego, New York 13126

With a copy to: Victor Hirshdorfer, Esq
Pappas, Cox, Kimpel, Dodd & Levine, P.C.
614 James Street
Syracuse, New York 132023

6. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

7. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

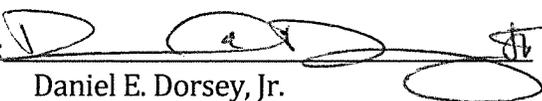
8. This Agreement may only be assigned by the Company in accordance with Section 8.4 of the Lease Agreement.

9. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original for all purposes and all of which shall constitute collectively a single agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement on the date set forth before the signature of its respective representative.

Date: January 23, 2020

MDD, L.L.C.

By: 
Daniel E. Dorsey, Jr.

Date: January 23, 2020

**JEFFERSON COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Donald C. Alexander, CEO

SCHEDULE A

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Watertown, County of Jefferson, State of New York and being more particularly described as follows:

BEGINNING at a 1/2" iron pipe with cap to be set in the easterly bounds of a 2.264± acre parcel of land to be dedicated to the Town of Watertown for road development, said iron pipe being the southwesterly corner of Lot 5 of T.I. Ag Park;

THENCE S. 87°-59'-18" E, a distance of 306.26 feet to a 1/2" iron pipe with cap to be set;

THENCE S. 02°-00'-42" W., a distance of 417.54 feet to a 1/2" iron pipe with cap to be set;

THENCE N. 87°-59'-18" W., a distance of 501.46 feet to a 1/2" iron pipe with cap to be set in the easterly bounds of said 2.264± acre parcel;

THENCE along the easterly bounds of said 2.264± acre parcel, and along a curve to the right having a radius of 217.00 feet, a distance of 102.24 feet to a 1/2" iron pipe with cap to be set, said iron pipe being situate a direct of N. 30°-39'-25" E., a distance of 101.30 feet from the previously mentioned iron pipe;

THENCE N. 44°-09'-16" E., continuing along the easterly bounds of said 2.264± acre parcel a distance of 110.13 feet to a 1/2" iron pipe with cap to be set;

THENCE continuing along the easterly bounds of said 2.264± acre parcel, and along a curve to the left having a radius of 283.00 feet, a distance of 210.27 feet to a 1/2" iron pipe with cap to be set, said iron pipe being situate a direct of N. 22°-52'-07" E., a distance of 205.47 feet from the previously mentioned iron pipe;

THENCE N. 01°-34'-59" E., continuing along the easterly bounds of said 2.264± acre parcel, a distance of 54.98 to the **POINT OF BEGINNING**;

CONTAINING 3.597± acres of land, more or less.

TOGETHER WITH AND SUBJECT TO all rights, in common with others, in accordance with a certain Declaration of Access and Utility Easement made by Grantor and dated November 1, 2019 and recorded in the Jefferson County Clerk's Office on November 4, 2019 as Instrument No. 2019-17823.

TOGETHER WITH AND SUBJECT TO an easement for access and utilities over the .464± acre parcel as shown on a Subdivision Plat of a portion of the lands of T.I. Ag Park, LLC as filed in the Jefferson County Clerk's Office on September 27, 2019 as Map #7334 (the "Subdivision Map").

ALSO SUBJECT TO an easement for highway purposes to be conveyed to the Town of Watertown over the .064± acre parcel shown on the Subdivision Map near the southwest corner of the premises.

PROJECT AGREEMENT

THIS PROJECT AGREEMENT (the "Project Agreement"), made as of January 23, 2020, by and among the **JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, with offices at 800 Starbuck Ave., Watertown, New York 13601 (the "Agency"), **MDD, L.L.C.**, a limited liability company organized and existing under the laws of the State, having an office for the transaction of business located at 2043 County Route 25, Oswego, New York (the "Company").

WITNESSETH:

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

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

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

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 369 of the Laws of 1971 of the State, as amended (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, the Company submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project (the "Project") consisting of: (A) (1) the acquisition of an interest in a parcel of land located at 19970 County Route 3 in the Town of Watertown, Jefferson County, New York (a portion of Tax Map No. 82.00-2-1) (the "Land"); (2) the construction of a building (the "Facility") located on the Land; (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the "Facility Equipment") (the Land, the Facility and the Facility Equipment being collectively referred to as the "Project Facility"), such Project Facility to be utilized as a warehouse, distribution and redemption facility; (B) the granting of certain "financial assistance" (within the

meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real estate transfer taxes and mortgage recording taxes (subject to certain statutory limitations) (collectively, the "Financial Assistance"); and (C) (1) the lease (with an obligation to purchase) or sale of the Company Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and (2) and the lease (with an obligation to purchase) or sale of the Equipment to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by resolution of its members adopted on December 4, 2019 as amended on January 9, 2020 (the "Approving Resolution"), the Agency has conferred on the Company in connection with the Project certain financial assistance consisting of: (a) an exemption from New York State and local sales and use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Project Facility or used in the acquisition, renovation, construction, reconstruction or equipping of the Project Facility; (b) an abatement from real property taxes through a 15-year payment in lieu of taxes agreement with the Company for the benefit of each municipality and school district having taxing jurisdiction over the Project (the "Taxing Jurisdictions"); and (c) an exemption from mortgage recording taxes (subject to certain statutory limitations) (collectively, the sales and use tax exemption benefit, the abatement from real property taxes benefit and the mortgage recording tax exemption benefit (subject to certain statutory limitations) are hereinafter collectively referred to as the "Financial Assistance"); and

WHEREAS, it has been estimated and confirmed by the Company that the Company have included within their Application for Financial Assistance that: (i) the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$481,000.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$38,400.00; (ii) the mortgage to be obtained for completion of the Project shall be for an amount not to exceed \$ N/A and therefore, the value of the mortgage recording tax exemption benefits authorized and approved by the Agency cannot exceed \$ N/A; and (iii) the real property tax abatement benefits to be provided to the Company over the 15-year benefit period of the anticipated payment in lieu of taxes agreement are estimated to be approximately \$117,078.00 (such savings are estimated based on the current assessed value and tax rates of the Taxing Jurisdictions; actual savings are subject to change over the term of the Lease Agreement (as hereinafter defined) depending on any changes to assessed value of the Project Facility and/or tax rates of the Taxing Jurisdictions); and

WHEREAS, the Company proposes to lease the Land and Facility to the Agency, and the Agency desires to lease the Land and Facility from the Company pursuant to the terms of a certain underlying lease to agency dated as of January 23, 2020 (the "Underlying Lease"), by and between the Company and the Agency; and

WHEREAS, the Agency proposes to acquire an interest in the Facility Equipment pursuant to a bill of sale to Agency (the "Bill of Sale to Agency") from the Company; and

WHEREAS, the Agency proposes to lease the Company Project Facility to the Company, and the Company desires to lease the Company Project Facility from the Agency, upon the terms and conditions set forth in a certain lease agreement dated as of January 23, 2020 (the "Lease Agreement"); and

WHEREAS, the Agency proposes to acquire an interest in the Equipment pursuant to an equipment bill of sale to Agency (the "Equipment Bill of Sale to Agency") from the Company; and

WHEREAS, in order to define the obligations of the Company regarding payments in lieu of taxes for the Project Facility, the Agency and the Company will enter into a payment in lieu of tax agreement, dated as of January 23, 2020 (the "PILOT Agreement"), by and among the Agency and the Company; and

WHEREAS, by its Approving Resolution, the Agency authorized the Company to act as its agents for the purposes of undertaking the Project and the Agency delegated to the Company the authority to appoint sub-agents subject to the execution of this Project Agreement and compliance with the terms set forth herein and in the Approving Resolution; and

WHEREAS, in order to define the obligations of the Company regarding their ability to utilize the Agency's Financial Assistance as agent of the Agency to acquire, construct, renovate, equip and complete the Project Facility and to undertake the Project, the Agency and the Company will enter into this Project Agreement; and

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

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

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

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

**ARTICLE I
PURPOSE OF PROJECT**

Section 1.01 Purpose of Project. It is understood and agreed by the parties hereto that the purpose of the Agency's provision of Financial Assistance with respect to the Project is to, and that the Agency is entering into the Underlying Lease, Lease Agreement, PILOT Agreement, the Equipment Lease Agreement and this Project Agreement in order to, promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project Facility to advance job opportunities, health, general prosperity and economic welfare of the people of the County of Jefferson and to otherwise accomplish the public purpose of the Act.

**ARTICLE II
REAL PROPERTY TAX EXEMPTION**

Section 2.01. PILOT Agreement. Attached hereto and made a part hereof is Exhibit A, which contains an executed copy of the PILOT Agreement entered into by and among the Company and the Agency.

**ARTICLE III
MORTGAGE RECORDING TAX EXEMPTION**

Section 3.01. Mortgage Recording Tax Exemption. The Agency hereby grants to the Company exemption from mortgage recording taxes (except to the extent limited by Section 874 of the Act) for one or more Mortgages securing an aggregate principal amount not to exceed \$ N/A or such greater amount as approved by the Agency in its sole and absolute discretion, in connection with the financing or refinancing of the Project Facility (the "Mortgage Recording Tax Exemption").

**ARTICLE IV
SALES AND USE TAX EXEMPTION**

Section 4.01. Scope of Agency. The Company hereby agrees to limit its activities as agents for the Agency under the authority of the Approving Resolution to acquisition, renovation and installation of the Project Facility. The right of the Company to act as agent of the Agency shall expire on December 31, 2020 unless extended by a resolution adopted by the members of the Agency. The value of the sales and use tax exemption benefits shall not exceed the amounts described in the Application and as set forth in Section 3.03(b) hereof unless approved by a resolution adopted by the members of the Agency. All contracts entered into by the Company as agents for the Agency shall include the following language:

"This contract is being entered into by MDD, L.L.C. (the "Company" or the "Agent"), as agent for and on behalf of the Jefferson County Industrial Development Agency (the "Agency"), in connection with a certain project of the Agency for the benefit of the Agent consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all

for incorporation and installation in certain premises located at 19770 NY State Route 3 in the Town of Watertown, Jefferson County, New York (a portion of Tax Map No. 82.00-2-1) (the "Premises"). The machinery, equipment and building materials to be incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York if the acquisition thereof is effected in accordance with the terms and conditions set forth in the Project Agreement dated as of January 23, 2020 by and among the Agency and the Company (the "Project Agreement"), and the Agent hereby represents that this contract is in compliance with the terms of the Project Agreement. This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

Section 4.02. Appointment of Sub-Agents. Subject to the terms and conditions of this Project Agreement and pursuant to the Approving Resolution, the Agency hereby delegates to the Company the authority to appoint sub-agents of the Agency in connection with the Project, which may be agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and such other parties as the Company chooses (each, a "Sub-Agent"). The appointment of each such Sub-Agent will be effective only upon: (1) the execution by the Sub-Agent and the Company of the Sub-Agent Appointment Agreement attached hereto as Exhibit B, the terms and provisions of which are incorporated herein, and (2) the receipt by the Agency of a completed Form ST-60 in accordance with Section 4.03(e) below.

Section 4.03. Representations and Covenants of the Company.

(a) The Company hereby incorporates and restates the representations, covenants and warranties made in the Lease Agreement and the Equipment Lease Agreement, respectively.

(b) The Company further covenants and agrees that the purchase of goods and services relating to the Project and subject to State and local sales and use taxes are estimated in the amount up to \$481,000.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$38,400.00.

(c) The Company further covenants and agrees to complete "IDA Appointment of Project Operator or Agent For Sales Tax Purposes" (Form ST-60) for itself and each Sub-Agent and to provide said form to the Agency within fifteen (15) days of appointment such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment.

(d) The Company further covenants and agrees to file an annual statement with the State Department of Taxation and Finance an "Annual Report of Sales and Use Tax

Exemptions" (Form ST-340) regarding the value of sales and use tax exemptions the Company has claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with Section 874(8) of the Act. The Company further covenants and agrees that it will, within thirty (30) days of each filing, provide a copy of same to the Agency, but in no event later than February 15 of each year. The Company understands and agrees that the failure to file such annual statement will result in the removal of (1) the Company's authority to act as agent for the Agency, and (2) the authority of any sub-agent of the Agency appointed by the Company pursuant to Section 4.02 hereof to act as agent for the Agency.

(e) The Company further acknowledges and agrees that all purchases made in furtherance of the Project by the Company and any Sub-Agent shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (Form ST-123, a copy of which is attached hereto as Exhibit C), and that it shall be the responsibility of the Company or the Sub-Agent, as the case may be, (and not the Agency) to complete Form ST-123. The Company acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Company acknowledges and agrees that the bill of invoice should state, "I, [NAME OF AGENT], certify that I am a duly appointed agent of the Jefferson County Industrial Development Agency 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 Project Agreement with the Jefferson County Industrial Development Agency." The Company further acknowledges and agrees that the following information shall be used by the Company to identify the Project on each bill and invoice: MDD, L.L.C., 19970 NY State Route 3, Town of Watertown, Jefferson County, New York.

(f) The Company acknowledges and agree that the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder.

ARTICLE V COMMITMENTS AND REPORTING

Section 5.01. Compliance Commitments. The Company agrees and covenants that it shall meet and maintain the following commitments beginning in the first year in which Financial Assistance is so claimed, and continuing through the term of the PILOT Agreement:

(a) The Company employed at least twenty-two (22) full time equivalent ("FTE") employees within the County of Jefferson at the date of the Application for Financial Assistance (the "Baseline FTE"). The Company shall at all times maintain such Baseline FTE within the County of Jefferson. In addition to the Baseline FTE employees, the Company shall, within two years after the Completion Date, create additional FTE

employment at the Project Facility equal to ten (10) FTE employees. The employment requirements set forth herein are hereinafter referred to as the "Employment Commitment". In no event shall any independent contractor as determined under the laws of the State of New York be included in calculating the number of FTE employees employed within the County of Jefferson and/or at the Project Facility.

(b) The Company shall annually provide to the Agency certain information to confirm that the Project is achieving the investment, job retention, job creation, and other objectives of the Project (the "Reporting Commitment").

Section 5.02. Reporting Requirement. (A) The Company agrees, whenever requested by the Agency, to provide and certify or cause to be certified such information concerning the Company, its finances and other topics as the Agency from time to time reasonably considers necessary or appropriate, including but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation. The Company also agrees to provide and certify information concerning its finances and other topics as the Agency considers appropriate.

(B) As part of the commitments set forth in Section 5.01 and paragraph (A) of this Section 5.02, the Company shall provide annually, to the Agency, a certified statement and supporting documentation: (i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the Project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. Exhibit D contains a form of annual certification that the Company must complete and submit to the Agency on an annual basis. The Agency reserves the right to modify such form to require additional information that the Agency must have in order to comply with its reporting requirements under the Act.

**ARTICLE VI
SUSPENSION, DISCONTINUATION, RECAPTURE
AND/OR TERMINATION OF FINANCIAL ASSISTANCE**

Section 6.01. Suspension, Discontinuation, Recapture and/or Termination of Financial Assistance. It is understood and agreed by the Parties hereto that the Agency is entering into the Underlying Lease, the Lease Agreement, the PILOT Agreement, the Equipment Lease Agreement and this Project Agreement in order to provide Financial Assistance to the Company for the Project Facility and to accomplish the public purposes of the Act.

(a) The Company attests that it understands and agrees to the recapture provisions of the Agency's Uniform Tax Exemption Policy (the "Policy").

(b) In accordance with Section 875(3) of the New York General Municipal Law, the Policy, and the Approving Resolution, the Company covenants and agrees that it is subject to recapture of all State sales and use tax exemption benefits if:

(1) the Company, its Subagents, if any, authorized to make purchases for the benefit of the Project is not entitled to the State sales and use tax exemption benefits; or

(2) the State sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company or its Subagents, if any; or

(3) the State sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or

(4) the Project has failed to comply with a material term or condition to use the property or services in the manner required by any project document between or among the Company or the Agency.

Each of the foregoing four events are hereinafter referred to as a "State-Mandated Recapture Event". The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency's attention, whether a State-Mandated Recapture Event has occurred.

(c) In addition to Section 6.01(b), in accordance with the Policy and the Approving Resolution, the Company covenants and agrees that the Agency shall have the right to suspend, discontinue, recapture or terminate all or any portion of any Financial Assistance:

(1) for projects that utilized local sales and use tax exemptions, the project was not entitled to such exemptions, such exemptions were in excess of the amounts authorized by the Agency; and/or such exemptions were for property or services not authorized by the Agency ("Local Sales Tax Benefit Violation");

(2) the Company fails to reach and maintain 75% of its Employment Commitment ("Job Deficit");

(3) the Company fails to meet their Reporting Commitment ("Reporting Failure"); or

(4) there otherwise occurs any event of default under any Basic Document (each, an "Event of Default") or a material violation of the terms and conditions of any Basic Document (a "Material Violation").

The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency's attention, whether a Local Sales Tax Benefit Violation, Job Deficit,

Reporting Failure, Event of Default or Material Violation (each a “Noncompliance Event”) has occurred. Notwithstanding the foregoing, the Agency may determine whether an Event of Default has occurred pursuant to any Basic Document in accordance with the terms of the Basic Document.

At the time of any Noncompliance Event, the Agency shall determine by resolution whether to exercise its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance, and shall consider the following criteria in determining whether to proceed to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance:

- Whether the Company has proceeded in good faith.
- Whether the Project has not performed as required due to economic issues, changes in market conditions or adverse events beyond the control of the Company.
- Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance would create a more adverse situation for the Company, such as the Company going out of business or declaring bankruptcy, which would not occur if the Agency’s rights were not exercised.
- Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance would create an adverse situation for the residents of the County of Jefferson.
- The assessment prepared in accordance with the Agency’s Annual Assessment Policy.
- Such other criteria as the Agency shall determine is a relevant factor in connection with any decision regarding the exercise of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance, pursuant to the Agency’s Recapture Policy.

The Agency shall document its evaluation of the above criteria in writing and, based upon its evaluation, the Agency shall determine whether to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance (the “Determination”). The Determination shall provide terms, if any, by which the Company may remedy any Noncompliance Event upon which the Determination was based. The Company must submit written documentation to the Agency of compliance with all terms and conditions of the Determination in order for the Agency to consider whether to resume Financial Assistance to the Company (which will be at the Agency’s sole discretion).

(d) If a State-Mandated Recapture Event occurs or the Agency makes a Determination, the Company agrees and covenants that it will: (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company; and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the State of New York and/or appropriate affected tax jurisdictions, unless agreed to otherwise by any local taxing jurisdiction. The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine the State sales and use tax due from the Company, together with any relevant penalties and interest due on such amounts.

(e) In the event (x) the Project Facility is sold or closed, the occurrence of a Noncompliance Event and (y) the Agency determines by resolution that no substantial future economic benefit is likely to accrue to the community, then the value of the Financial Assistance extended to the Company by the Agency shall be subject to recapture as provided in the Agency's Recapture Policy.

ARTICLE VII MISCELLANEOUS PROVISIONS

Section 7.01. Hold Harmless Provisions.

(a) The Company hereby releases the Agency and its members, officers, agents (other than the Company) and employees from, agree that the Agency and its members, officers, agents (other than the Company) and employees shall not be liable for and agree to indemnify, defend and hold the Agency and its members, officers, agents (other than the Company) and employees harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Agency's undertaking the Project, including, but not limited to, (1) liability for loss or damage to property or bodily injury to or death of any and all persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any person or property on, in or about the Project Facility, (2) liability arising from or expense incurred by the Agency's acquiring, renovating, equipping, installing, owning, leasing or selling the Project Facility, including, without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Project Facility, all liabilities or claims arising as a result of the Agency's obligations under this Project Agreement or the enforcement of or defense of validity of any provision of this Project Agreement, (3) all claims arising from the exercise by the Company of the authority conferred on them pursuant to Sections 4.01 and 4.02 hereof, and (4) all causes of action and reasonable attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing; provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Agency are not incurred or do not result from the gross negligence or intentional wrongdoing of the Agency or any of its members, officers, agents

(other than the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents (other than the Company) or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(b) In the event of any claim against the Agency or its members, officers, agents (other than the Company) or employees by any employee of the Company or any contractor of the Company, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Company or such contractor under workers' compensation laws, disability benefits laws or other employee benefit laws.

(c) To effectuate the provisions of this Section 7.01, the Company agrees to provide for and insure, in the liability policies required by Section 7.02 of this Project Agreement, their respective liabilities assumed pursuant to this Section 7.01.

(d) Notwithstanding any other provisions of this Project Agreement, the obligations of the Company pursuant to this Section 7.01 shall remain in full force and effect after the termination of this Project Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses, charges and costs incurred by the Agency, or its officers, members, agents (other than the Company) or employees, relating thereto.

Section 7.02. Insurance Required.

(a) The Company agrees that it shall maintain all insurance required under the Lease Agreement and the Equipment Lease Agreement, respectively.

(b) The Company agrees that it shall cause its general contractor for the Project to maintain, effective as of the date hereof and until the renovation of the Project Facility is complete, insurance with respect to the Project Facility against such risks and for such amounts as are customarily insured against by businesses of like size and type, paying, as the same become due and payable, all premiums with respect thereto, with the Agency named on each such policy as an additional insured.

Section 7.03. Survival. All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Project Agreement to the Agency regardless of any investigation made by the Agency.

Section 7.04. Notices. All notices, certificates and other communications under this Project Agreement shall be in writing and shall be deemed given when delivered personally or when sent by certified mail, postage prepaid, return receipt requested, or by overnight delivery service, addressed as follows:

If to the Agency: Jefferson County Industrial Development Agency
800 Starbuck Avenue
Watertown, New York 13601
Attention: Executive Director

With a copy to: Barclay Damon LLP
120 Washington Street, Suite 500
Watertown, New York 13601
Attention: Joseph W. Russell, Esq.

If to the Company: MDD, L.L.C.
1043 County Route 25
Oswego, New York 13126
Attention: Daniel E. Dorsey, Jr.

With a copy to: Pappas, Cox, Kimpel, Dodd & Levine, P.C.
614 James St.
Syracuse, New York 13203
Attn: Victor J. Hershdorfer, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when received or delivery of same is refused by the recipient or personally delivered in the manner provided in this Section.

Section 7.05. Amendments. No amendment, change, modification, alteration or termination of this Project Agreement shall be made except in writing upon the written consent of the Company, the Sublessee and the Agency.

Section 7.06. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Project Agreement or the application thereof shall not affect the validity or enforceability of the remaining portions of this Project Agreement or any part thereof.

Section 7.07. Counterparts. This Project Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

Section 7.08. Governing Law. This Project Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Jefferson County, New York.

Section 7.09. Term. Except as specifically provided otherwise, the term of this Project Agreement shall be the longer of: (1) the term of the Lease Agreement; or (2) five years

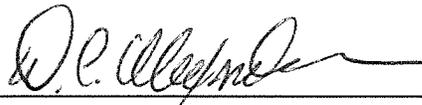
following the Project's completion date. The Project will remain "active" for purposes of Section 874(12) of General Municipal Law and the Agency's Annual Assessment Policy during the term of this Project Agreement.

Section 7.10. Joint and Several Liability. In the event that this Agreement is executed by more than one party as Indemnitor, the liability of such parties is joint and several. A separate action or actions may be brought and prosecuted against each of the Company, whether or not an action is brought against any other person or whether or not any other person is joined in such action or actions.

Section 7.11. Section Headings. The headings of the several Sections in this Project Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Project Agreement.

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

**JEFFERSON COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By:  _____
Donald C. Alexander, Chief Executive Officer

MDD, L.L.C.
a New York limited liability company

By: 
~~Donald E. Dorsey, Jr.~~
Daniel

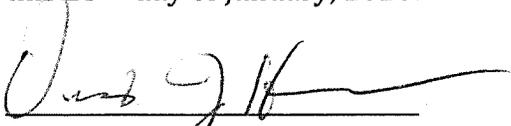

STATE OF NEW YORK)
COUNTY OF ~~ONONDAGA~~) ss.:

 ~~Daniel~~
Donald E. Dorsey, Jr., being first duly sworn, deposes and says:

1. That I am a Member of MDD, L.L.C., and that I am duly authorized on behalf of the Company to bind the Company and to execute this Project Agreement.
2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.


~~Donald E. Dorsey, Jr.~~
Daniel


Subscribed and affirmed to me
under penalties of perjury
this 23rd day of January, 2020.


(Notary Public)

VICTOR J. HERSHDORFER
Notary Public, State of New York
No. 34-6873553, Reg. Onondaga County
My Commission Expires June 30, 2022

EXHIBIT A

PILOT Agreement

See Closing Item No. A-6

PAYMENT IN LIEU OF TAXES AGREEMENT

COPY

THIS AGREEMENT, by and between **MDD, L.L.C.** a New York limited liability company having an address of 1043 County Route 25, Oswego, New York 13126 ("**Company**") and **JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, an Industrial Development Agency and a Public Benefit Corporation of the State of New York having an address of 800 Starbuck Avenue, Watertown, New York 13601 ("**Agency**"),

WITNESSETH:

WHEREAS, the Agency was created by Chapter 369 of the Laws of 1971 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**"); and

WHEREAS, the Agency by Resolution dated December 5, 2019, as amended by Resolution dated January 9, 2020, has agreed to undertake a project to construct a new 8,050 square foot building together with the acquisition of certain machinery and equipment all of which to constitute a warehouse distribution and redemption facility on certain land owned by the Company at 19970 New York State Route 3 , Watertown, New York (a portion of Tax Map Parcel No. 82.00-2-1) (the "**Land**"), in the Town of Watertown, Jefferson County, New York, as more particularly described in Schedule "A" attached hereto (the Project and the Land are hereinafter referred to as the "**Project Facility**"); and

WHEREAS, the Company is or will be the fee title owner of the Project Facility; and

WHEREAS, the Company will execute and deliver to the Agency, a certain lease agreement to the Agency (the "**Underlying Lease**") pursuant to which the Company leases to the Agency the Project Facility; and

WHEREAS, the Agency will immediately thereafter lease the Project Facility to the Company pursuant to a Lease Agreement executed and entered into of even date herewith (the "**Lease Agreement**") by and between Agency and the Company; and

WHEREAS, pursuant to the terms of the Lease Agreement (1) the Company will agree to cause the Project to be undertaken and completed, and (2) the Agency will agree to undertake and complete the Project; and

WHEREAS, pursuant to section 874(1) of the Act, and Section 412(a) of the Real Property Tax Law of the State of New York, the Agency is exempt from the payment of taxes and assessments imposed upon real property and improvements owned by it other than special ad valorem levies, special assessments and service charges against real property located in Jefferson County which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Taxing Jurisdictions, which are, collectively, the Town of Watertown (“**Town**”), Jefferson County (“**County**”) and the Watertown City School District (“**School**”), have the following taxable years: the Town and County January 1 to December 31, and the School July 1 to June 30; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into this agreement making provision for payments in lieu of taxes by the Company to the Agency, for the benefit of the respective Taxing Jurisdictions within which the Project Facility is or is to be located;

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

1. (a) For the purpose of payments to be made pursuant to this Agreement, the Completion Date for the Project shall be the earlier of twelve (12) months from the date the building permit was issued for any part of the Project, or the issuance of a Certificate of Occupancy. The Company shall notify each Taxing Jurisdiction and the Agency within 30 days after the Completion Date for the Project.

(b) Commencing with the tax year beginning on the next Taxable Status Date following the Completion Date and for the period set forth below or until the earlier termination of the Lease Agreement, the Company agrees to pay in lieu of all real estate, tangible personal property, inventory and/or other similar taxes and assessments (in addition to paying all special ad valorem levies, special assessments and service charges which are or may be imposed for special improvements or special district improvements) which would be levied upon the Project Facility during such tax years as if the Project Facility were owned by the Company and not by the Agency, the amounts determined according to the following formula:

$$\text{PILOT} = \text{AV} \times \text{ATR} \times \text{PR}$$

WHERE

PILOT	=	Amount of payment in lieu of taxes due to the Taxing Jurisdictions for the applicable tax year.
AV	=	Assessed Value of the Project Facility.
ATR	=	Actual Tax Rate for the respective Taxing Jurisdictions for the applicable year.
PR	=	Payment Ratio as set forth in Table I for the applicable tax year.

TABLE I

Year 1 – 5	25% of all Real Estate Taxes;
Years 6 – 10	50% of all Real Estate Taxes;
Years 11 – 15	75% of all Real Estate Taxes;
Thereafter;	100% of all Real Estate Taxes;

(c) The Company shall pay, or cause to be paid the amounts set forth in Paragraph 1(b) hereof within the grace period, without penalty, applicable to taxes, assessments, special ad valorem levies, special service charges or similar tax equivalents, as the case may be, on similar property subject to taxation by the Taxing Jurisdictions during such respective tax years, subject to any late payment penalties pursuant to §874 of the Act if not made within the grace period. Any failure on the part of the Company to timely make any payments pursuant to this Agreement within ten (10) days following written notice from the Agency shall be an event of default ("**Event of Default**") under this Agreement and under the Lease Agreement. Upon such Event of Default, the Agency shall have any and/or all of the Remedies on Default set forth in the Lease Agreement. Further, upon such Event of Default, the Payments In Lieu of Tax due under this Agreement shall, upon thirty (30) days written notice from the Agency to the Company, immediately bear a Payment Ratio of 100% as such term is defined in the PILOT in Paragraph 1(b) of this Agreement until such Event of Default shall be cured by the Company.

(d) The assessed value of the Project Facility shall be the value as finally determined on the Assessment Roll of the Taxing Jurisdiction for the applicable year.

(e) Prior to the Completion Date as defined in Paragraph 1(a) above of the Project, the Company shall pay to the Agency on the Project an amount equal to the real estate taxes and assessments on the Land for the Project as if the Land were owned by the Company and not by the Agency. The Company shall pay or cause such amounts to be paid within the grace period without penalty, applicable to taxes, assessments, special ad valorem levies, special service charges or similar tax equivalents, as the case may be, on similar property subject to taxation by the Taxing Jurisdictions during such respective tax years, subject to any late payment penalties pursuant to Section 874 of the Act if not made within the grace period.

2. This Agreement shall terminate, unless it is terminated sooner pursuant to the Lease Agreement or any other provisions of this Agreement, on a date which will be 180 months from the initial Taxable Status Date ("**Termination Date**") at which time the parties agree that the Lease and Underlying Lease for the Project Facility shall terminate. In the event of an early termination either pursuant to this Paragraph or any other termination pursuant to this Agreement, both the Lease and the Underlying Lease shall terminate.

3. In the event that the Project Facility is transferred from the Agency to the Company, the Project Facility shall be immediately subject to taxation pursuant to Sections 302 and 520 of the New York Real Property Tax Law, as amended. However, in no event shall the Company be required to pay both a PILOT payment pursuant to the Agreement and real property taxes for a concurrent tax year or portion thereof. Therefore, should the Project Facility be conveyed to the Company and thus become taxable pursuant to New York RPTL Section 520, any payments payable under this Agreement as Payments required in Lieu of Taxes shall be reduced by the amount of any taxes which are required to be paid under RPTL Section 520 for any such concurrent tax year or portion thereof, and should such Payment-in-Lieu-of-Taxes already have been made, the Taxing Jurisdictions shall refund any such amounts owing to Company.

4. To the extent the Project Facility or any part thereof is declared to be subject to taxation or assessments by an amendment to the Act, other legislative change, or by a final judgment of a court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

5. Any notice required to be given under this Agreement shall be deemed to have been duly given when delivered and, if delivered by mail, postage prepaid, return receipt requested, addressed to the respective parties hereto at their respective addresses specified below or such other addresses as either party may specify in writing to the other:

If to the Agency: Jefferson County Industrial Development Agency
800 Starbuck Avenue, Suite 800
Watertown, New York 13601
Attn: Donald C. Alexander

With a copy to: Barclay Damon, LLP
120 Washington Street, Suite 500
Watertown, New York 13601
Attn: Joseph W. Russell, Esq..

If to the Company: MDD, L.L.C.
Attn: Daniel E. Dorsey, Jr.
1043 County Route 25
Oswego, New York 13126

With a copy to: Victor Hirshdorfer, Esq
Pappas, Cox, Kimpel, Dodd & Levine, P.C.
614 James Street
Syracuse, New York 132023

6. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

7. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

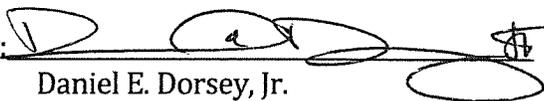
8. This Agreement may only be assigned by the Company in accordance with Section 8.4 of the Lease Agreement.

9. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original for all purposes and all of which shall constitute collectively a single agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement on the date set forth before the signature of its respective representative.

Date: January 23, 2020

MDD, L.L.C.

By: 
Daniel E. Dorsey, Jr.

Date: January 23, 2020

**JEFFERSON COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Donald C. Alexander, CEO

SCHEDULE A

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Watertown, County of Jefferson, State of New York and being more particularly described as follows:

BEGINNING at a 1/2" iron pipe with cap to be set in the easterly bounds of a 2.264± acre parcel of land to be dedicated to the Town of Watertown for road development, said iron pipe being the southwesterly corner of Lot 5 of T.I. Ag Park;

THENCE S. 87°-59'-18" E, a distance of 306.26 feet to a 1/2" iron pipe with cap to be set;

THENCE S. 02°-00'-42" W., a distance of 417.54 feet to a 1/2" iron pipe with cap to be set;

THENCE N. 87°-59'-18" W., a distance of 501.46 feet to a 1/2" iron pipe with cap to be set in the easterly bounds of said 2.264± acre parcel;

THENCE along the easterly bounds of said 2.264± acre parcel, and along a curve to the right having a radius of 217.00 feet, a distance of 102.24 feet to a 1/2" iron pipe with cap to be set, said iron pipe being situate a direct of N. 30°-39'-25" E., a distance of 101.30 feet from the previously mentioned iron pipe;

THENCE N. 44°-09'-16" E., continuing along the easterly bounds of said 2.264± acre parcel a distance of 110.13 feet to a 1/2" iron pipe with cap to be set;

THENCE continuing along the easterly bounds of said 2.264± acre parcel, and along a curve to the left having a radius of 283.00 feet, a distance of 210.27 feet to a 1/2" iron pipe with cap to be set, said iron pipe being situate a direct of N. 22°-52'-07" E., a distance of 205.47 feet from the previously mentioned iron pipe;

THENCE N. 01°-34'-59" E., continuing along the easterly bounds of said 2.264± acre parcel, a distance of 54.98 to the **POINT OF BEGINNING**;

CONTAINING 3.597± acres of land, more or less.

TOGETHER WITH AND SUBJECT TO all rights, in common with others, in accordance with a certain Declaration of Access and Utility Easement made by Grantor and dated November 1, 2019 and recorded in the Jefferson County Clerk's Office on November 4, 2019 as Instrument No. 2019-17823.

TOGETHER WITH AND SUBJECT TO an easement for access and utilities over the .464± acre parcel as shown on a Subdivision Plat of a portion of the lands of TI. Ag Park, LLC as filed in the Jefferson County Clerk's Office on September 27, 2019 as Map #7334 (the "Subdivision Map").

ALSO SUBJECT TO an easement for highway purposes to be conveyed to the Town of Watertown over the .064± acre parcel shown on the Subdivision Map near the southwest corner of the premises.

EXHIBIT B

Form of Sub-Agent Appointment Agreement

THIS SUB-AGENT APPOINTMENT AGREEMENT (the "Agreement"), dated as of _____, 20__, is by and between [_____] a [_____] of the State of [____], having an office for the transaction of business at [_____] (the "Company"), 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 Jefferson County Industrial Development Agency (the "Agency") was created by Chapter 369 of the Laws of 1971 of the State of New York (the "State") as amended pursuant to Title 1 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, by resolution of its members adopted on December 5, 2019 as amended on January 9, 2020 (the "Approving Resolution"), the Agency authorized the Company to act as its agent for the purposes of undertaking a project for the benefit of the Company (the "Project") consisting of: (A) (1) the acquisition of an interest in a parcel of land located at 19970 NY State Route 3, Town of Watertown, Jefferson County, New York (tax map nos. _____) (the "Land"); (2) the renovation of a building (the "Facility") located on the Land; and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the "Facility Equipment") (the Land, the Facility and the Facility Equipment being collectively referred to as the "Company Project Facility"), such Project Facility to be utilized as a warehouse, distribution and redemption facility; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes and mortgage recording taxes (subject to certain statutory limitations) (collectively, the "Financial Assistance"); and (C) (1) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and (2) and the lease (with an obligation to purchase) or sale of the Equipment to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by the Approving Resolution, the Agency delegated to the Company the authority to appoint sub-agents subject to the execution of a project agreement by and among the Company and the Agency and compliance with the terms set forth therein; and

WHEREAS, the Company and the Agency entered into a Project Agreement by and between the Company and the Agency dated as of January __, 2020 (the "Project Agreement");

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

1. The Company hereby appoints the Sub-Agent as an agent of the Agency for the purpose of assisting the Company and the Agency in the completion of the Project 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 completion of the Project Facility.

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 Project 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 Section 875(3) of the Act as if such section were fully set forth herein. Without limiting the scope of the foregoing, the Sub-Agent acknowledges that pursuant to Section 875(3) of the Act, 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 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 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 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 application to the Agency in regard to the Project 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 State Commissioner of Taxation and Finance to collect sales and use taxes from the Sub-Agent under Article 28 of the Tax Law, 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 Project shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate"

(Form ST-123, a copy of which is attached hereto as Exhibit A), and it shall be the responsibility of the Sub-Agent (and not the Agency) to complete Form ST-123. The Sub-Agent acknowledges and agrees that it shall identify the Project 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 Project 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 Jefferson County Industrial Development Agency 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 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 Project on each bill and invoice: MDD, L.L.C., 19970 Co. Rt. 3, Town of Watertown, Jefferson County, New York.

e. 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 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), 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 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.

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.

f. 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 Project Facility.

g. 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 Project, 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.

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 Sub-Agent's, the Company's or the Sublessee's State and local sales and use tax exemption with respect to the Project 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 [Sublessee] of its obligations under any provisions of the Approving Resolution, the Lease Agreement by and between the Company and the Agency dated as of January __, 2020, the Project Agreement or of any other agreement entered into by the Company in connection with the Project.

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) the completion of the work on the Project by the Sub-Agent; 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) and 2(e) shall survive the termination of this Agreement.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the Company 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.

[_____]

By: _____

Name:

Title:

[NAME OF SUB-AGENT]

By: _____

Name:

Title:

Exhibit A to Sub-Agent Appointment Agreement

Form ST-123
(see attached)



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

(7/14)

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

Note: To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, *IDA Agent or Project Operator Exempt Purchase Certificate for Fuel*.

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 (see 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/yyyy)	/	/
Enter the date that agent or project operator status ends (mm/dd/yyyy)	/	/

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 183B 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 company)	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-05(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

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, Privacy Notification. See *Need help?* for the Web address and telephone number.

Need help?



Visit our Web site at www.tax.ny.gov

- get information and manage your taxes online
- check for new online services and features



Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431



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



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

(7/14)

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

Note: To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, *IDA Agent or Project Operator Exempt Purchase Certificate for Fuel*.

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 (see 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/yyyy)	/	/
Enter the date that agent or project operator status ends (mm/dd/yyyy)	/	/

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.

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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

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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

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Need help?

 Visit our Web site at www.tax.ny.gov

- get information and manage your taxes online
- check for new online services and features

 **Sales Tax Information Center:** (518) 485-2889

To order forms and publications: (518) 457-5431

 **Text Telephone (TTY) Hotline**
(for persons with hearing and speech disabilities using a TTY): (518) 485-6882

EXHIBIT D

Form of Annual Reporting Questionnaire

Jefferson County Industrial Development Agency

**Annual Survey of Companies
January 2019**

Overview: As an agent of the Jefferson County Industrial Development Agency, _____ is required annually to document for the term of its contractual agreement with the Issuer: its employment levels, insurance coverage, payment of taxes and fees, and in some instances amount of indebtedness. To fulfill your compliance requirements, please:

1. Complete the employment and if applicable to your project, the indebtedness , sales tax and mortgage recording tax sections of the document;
2. Attach the required supporting documentation;
3. Sign and certify the document; and
4. Return to the Issuer **no later than February 28, 20**

Failure to comply with this request may result in an action by the Issuer to terminate or recapture the benefits granted to you. As noted in the Issuer agreement, the Issuer reserves the right to verify any information provided in this document, including an onsite inspection of the project facility or its supporting records throughout the life of the project agreement

I. Contact Information – please update any of the following information.

File Number: _____

Project Name: _____

Responsible Company Officer: _____

Officer Title: _____

Officer Phone: _____

Officer Fax: _____

Officer Email: _____

II. Employment Section – Please report the number and average hourly wage rate of all full-time equivalent (FTE) employees working at the project location, including the employees of any tenants or subtenants. Also, please report the number of construction employees working on the project if applicable. The Issuer definition of the term “full-time equivalent employee” is located on the last page of this document.

Number of FTE jobs as of December 31, _____

Average Wage of Full-time Employee _____

Number of FTE construction jobs created
between January 1, ____ – December 31, _____

II. Outstanding Indebtedness – Please report the information for any Issuer authorized bonds and notes issued, outstanding or retired during the period beginning January 1, ____ and ending December 31, ____.

Current Interest Rate: _____

Outstanding Balance as of Dec. 31,
____: _____

Principle payments during the period
Jan. 1, ____ through Dec. 31, ____: _____

Outstanding Balance as of Dec. 31, ____: _____

Final Maturity Date of the Issue: _____

Were the bonds or notes retired during the
reporting period of Jan. 1, ____ through
Dec. 31, ____ Yes No

III. Sales Tax Exemption – Please report amount of New York State sales and use tax exemption accrued by the project during the period of January 1, ____ through December 31, _____. This information should agree with that reported on your ____ NYS Tax Form ST340.

\$ _____

V. **Mortgage Recording Tax Exemption** - Please report amount of mortgage recording tax exemption accrued by project during period Jan. 1, ____ and ending Dec. 31, ____.

\$ _____

VI. **Required Attachments** – Please attach copies of the following documents.

- NYS-45-MN Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Form, filed for the quarter ending Dec. 31, ____.
- For companies that have made sales tax exempt purchases utilizing the sale tax exempt certificate provided to it by the Jefferson County Industrial Development Agency, a copy of NYS ST-340 Annual Statement to NYS Department of Tax and Finance of the value of all sales and use tax exemptions claimed by the Company under the authority granted by the Issuer.

VII. **Certification:** The undersigned hereby certifies the Company has complied with all provisions of its agreement with the Issuer and that the information provided to the Issuer in this annual survey is accurate and correct.

Signed

Date

Name (Printed)

Title

Phone