

APPROVING RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on April 23, 2014 at 8:30 a.m. in the Syra-Stat Conference Room, 215 City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by M. Catherine Richardson and, upon the roll being duly called, the following members were:

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

EXCUSED: William Ryan

The following persons were **ALSO PRESENT:** Staff Present: Benjamin Walsh, Susan Katzoff, Esq., Debra Ramsey-Burns, Thomas Babilon, Esq.; Others Present: Aggie Lane, Rick Esposito, Scott Smith, Carol Zenzel, Courtney Wilson, Timothy Lynn, Esq., Bob Lawson, Joe Gehm, Jake Barrett, Robert Frank, Dan Queri, Terrance Mannion, Esq., Alexander Marion; Media: Dylun Segelban, The Daily Orange

The following Resolution was offered by Donald Schoenwald and seconded by Pamela Hunter:

RESOLUTION APPROVING AN EXTENSION OF THE SALES TAX APPOINTMENT AGENT STATUS OF BUTTERNUT ST. LLC UNTIL SEPTEMBER 30, 2015 AND APPROVING A CHANGE IN THE OWNERSHIP OF THE COMPANY

WHEREAS, the City of Syracuse Industrial Development Agency (the “*Agency*”) is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the “*State*”), as amended (the “*Enabling Act*”), together with Section 926 of the General Municipal Law, as amended (said Section and the Enabling Act, collectively referred to as, the “*Act*”), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research, civic and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

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

WHEREAS, by resolution adopted on April 25, 2013 (the “*Inducement Resolution*”), the Agency approved the undertaking of a project (the “*Project*”) at the request of Butternut St. LLC (the “*Company*”) consisting of: (A)(i) the acquisition of a leasehold interest in

approximately 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.) in the City of Syracuse, New York (the “**Land**”); (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, food and drink, approximately 24 apartments and approximately 2-4 rental townhouses and related parking, all located on the Land (collectively, the “**Facilities**”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the “**Equipment**”, and together with the Land and the Facilities, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and State and local sales and use taxation (collectively, the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, among other things, pursuant to the Inducement Resolution, the Agency appointed the Company as an agent of the Agency for purposes of completing the Project and benefitting from the sales and use tax exemption; and

WHEREAS, by letter dated March 24, 2014, the Company requested the Agency retroactively grant an extension of their sales tax appointment agent status from March 31, 2014 to September 30, 2015 to provide them an opportunity to complete the Project Facility (the “**Additional Financial Assistance**”); and

WHEREAS, the Company has further advised that it would like to change the membership of the Company such that Giovanni LaFace would go from owning 100% of the interests in the LLC to the following structure: Giovanni LaFace would own 48%, his brother Domenico LeFace would own 29%, his sister Carmena Rachetta would own 18% and his sister Terri Ann LaFace would own 5%; and

WHEREAS, the extension of the appointment of the Company as the agent of the Agency for the purpose of completing the Project and benefitting from State and local sales and use tax exemptions is in furtherance of the Financial Assistance that was previously approved for the Project, which underwent an environmental review by the Agency pursuant to the State Environmental Quality Review Act (“**SEQRA**”), and the present sales tax appointment extension request is insubstantial and does not require reconsideration or further review by the Agency under SEQRA; and

WHEREAS, the Company advised that the need for the extension stemmed from a delay in the initial closing which in turn delayed construction.

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

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

(a) The extension of the sales tax appointment agent status of the Company through and including September 30, 2015 does not amount to a significant change in the Project from what was originally approved by the Agency, and therefore further review under SEQRA and amendment of the Agency's prior SEQRA negative declaration shall not be required.

(b) The Agency authorizes, retroactively, the extension of the sales tax appointment agent status of the Company through and including September 30, 2015. The Agency hereby appoints the Company and its designees the true and lawful agents of the Agency to proceed with the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf. Such extension and appointment is subject to the terms of this Resolution and the execution and delivery by the Company of an agreement with the Agency, the form and substance of which were presented at this meeting and are attached hereto as **Exhibit "A"**, (the "**Agreement**"). The Chairman or Vice Chairman of the Agency are each hereby authorized, on behalf of the Agency, to execute and deliver the Agreement, in substantially the same form as presented at this meeting and attached hereto as **Exhibit "A"**, with changes in terms and form as shall be consistent with this Resolution and as the Chairman or Vice Chairman shall approve. The execution thereof by the Chairman or Vice Chairman shall constitute conclusive evidence of such approval. The terms and conditions of subdivision 3 of Section 875 of the Act are herein incorporated by reference and the Company shall agree to such terms as a condition precedent to receiving or benefiting from an exemption from New York State and local sales and use taxation. Notwithstanding anything herein to the contrary, the amount of State and local sales and use tax exemption benefits comprising the Financial Assistance and the Additional Financial Assistance approved herein and in the Inducement Resolution shall not exceed \$512,000.00.

(2) The Company is hereby authorized to appoint Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "**Additional Agents**") to complete the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf. The appointment made by this Section 2 shall not be effective until the terms of the Agreement referred to in Section 1(b) hereof are satisfied.

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

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

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

(6) The change in the Company's membership interests as set forth in the sixth WHEREAS clause of this Resolution, is hereby approved.

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

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

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

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

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

The foregoing Resolution was thereupon declared duly adopted.

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


I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on April 23, 2014, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

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

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

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the Agency this 20 day of May, 2014.

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Steven P. Thompson, Secretary

(S E A L)

EXHIBIT "A"

AGENCY/COMPANY AGREEMENT

THIS AGREEMENT is between **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the "**Agency**"), with an office at 333 West Washington Street, Suite 130, Syracuse, New York 13202, and **BUTTERNUT ST. LLC** (the "**Company**"), with a business office at 3721 New Court Avenue, Syracuse, New York 13206.

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

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

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

1.03. At the request of the Company the Agency undertook a project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold interest in approximately 1.4 acres of improved real property located at the corner of North Townsend Street and Butternut Street (specifically, 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.) in the City of Syracuse, New York (the "**Land**"); (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, food and drink, approximately 24 apartments and approximately 2-4 rental townhouses and related parking, all located on the Land (collectively, the "**Facilities**"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "**Equipment**", and together with the Land and the Facilities, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and State and local sales and use taxation (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

1.04. The Company hereby represents to the Agency that the designation of the Company as the Agency's agent for the construction, renovation and equipping of the Project Facility, and the appointment by the Company of a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "***Additional Agents***"): (i) will be an inducement to it to reconstruct, renovate and equip the Project Facility in the City of Syracuse (the "***City***"); (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or of any other proposed occupant of the Project Facility from one area of the State to another or in the abandonment of one or more plants or facilities of the Company or of any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) undertaking the Project will promote, create and/or preserve private sector jobs in the State.

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

1.06 On April 23, 2014, the Agency adopted a resolution (the "***Resolution***") agreeing, subject to the satisfaction of all conditions precedent set forth in such Resolution, to extend the Company's designation as the Agency's agent for the construction, renovation and equipping of the Project Facility. For purposes of that designation, the Agency authorized as part of the approved Financial Assistance, State and local sales and use tax exemption benefits in an amount not exceed \$512,000.00.

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

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

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

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

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

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

2.05. Subject to Section 4.02 hereof, the Company is appointed the true and lawful agent of the Agency (i) for the construction, renovation and equipping of the Project Facility and (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for the construction, renovation and equipping of the Project Facility, all with the same powers and the same validity as if the Agency were acting in its own behalf.

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

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

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

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

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

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

(e) The defense and indemnities provided for in this Article 3 shall survive expiration or termination of this Agreement and shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

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

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

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

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

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

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

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

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

(1) A written, executed agreement, in form and substance acceptable to the Agency, from each Additional Agent which provides for: (i) the assumption by the Additional Agent, for itself, of obligations under Sections 3.01 (except (d) and (h)), 3.02, 3.03, 3.04, 3.05, 3.08, 4.02(b) and (c) and 4.05 of this Agreement relative to the appointment, work and purchases done and made by each Additional Agent; (ii) a commitment to utilize local contractors and suppliers for the construction and equipping of the Project to the extent practicable (“local” being defined in Section 3.02(h) hereof); (iii) an acknowledgement that the Additional Agent is obligated, to timely provide the Company with the necessary information to permit the Company, pursuant to General Municipal Law §874(8), to timely file an Annual Statement with the New York State Department of Taxation and Finance on “Annual Report of Sales and Use Tax Exemptions” (Form ST-340) regarding the value of sales and use tax exemptions the Additional Agent claimed pursuant to the agency conferred on it by the Company with respect to this Project; (iv) an acknowledgment by the Additional Agent that the failure to comply with the foregoing will result in the loss of the exemption; and (v) such other terms and conditions as the Agency deems necessary; and

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

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

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

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

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

Article 4. General Provisions.

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

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

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

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

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

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

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

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

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

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
William M. Ryan, Chairman

BUTTERNUT ST. LLC

By: _____
Name:
Title: