

CLOSING ITEM NO.: A-1

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122 2ND STREET ASSOCIATION, LLC,  
AS LANDLORD

AND

ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY,  
AS TENANT

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LEASE TO AGENCY

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DATED AS OF JUNE 1, 2015

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RELATING TO A LEASEHOLD INTEREST HELD BY THE  
LANDLORD IN A CERTAIN PARCEL OF LAND LOCATED AT 122  
2ND STREET IN THE CITY OF WATERVLIET, ALBANY  
COUNTY, NEW YORK.

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and is for convenience of reference only.)

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## LEASE TO AGENCY

THIS LEASE TO AGENCY dated as of June 1, 2015 (the "Underlying Lease") by and between 122 2ND STREET ASSOCIATION, LLC, a limited liability company organized and existing under the laws of the State of New York (the "State") having an office for the transaction of business located at 172 River Street, Suite D, Troy, New York (the "Company"), as landlord, and ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 112 State Street, Albany, New York (the "Agency"), as tenant;

### 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 178 of the Laws of 1975 of the State (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, 122 2nd Street Association, LLC (the "Company"), a limited liability company duly organized and validly existing under the laws of the State of New York, presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest in a parcel of real estate containing approximately 1.46 acres of land located at 122 2nd Street in the City of Watervliet, Albany County, New York (the "Land"), together with the existing building containing approximately 80,000 square feet of space located thereon (the "Facility"), (2) the reconstruction and renovation of the Facility, and (3) the acquisition and installation thereon and therein of machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment being hereinafter collectively referred to as the "Project Facility"), all of the foregoing to be owned by the Company, to constitute a mixed use retail/residential facility and to be leased by the Company to various commercial and residential tenants and any other directly and indirectly related activities; (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, real

property transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) 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

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on November 19, 2014 (the “Public Hearing Resolution”), the Chairman of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on November 26, 2014 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is to be located, (B) caused notice of the Public Hearing to be posted on December 5, 2014 on a public bulletin board located at 112 State Street in the City of Albany, Albany County, New York and the Albany County Courthouse, Eagle Street in the City of Albany, Albany County, New York, (C) caused notice of the Public Hearing to be published on December 1, 2014 in the Albany Times Union, a newspaper of general circulation available to the residents of the City of Watervliet, Albany County, New York, (D) conducted the Public Hearing on December 11, 2014 at 5:30 o’clock p.m., local time in the Watervliet Senior Citizens Center located at the J. Leo O’Brien Building, 1501 Broadway in the City of Watervliet, Albany County, New York, and (E) prepared a report of the Public Hearing (the “Public Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available 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”), by resolution adopted by the members of the Agency on December 17, 2014 (the “SEQR Resolution”) the Agency determined (A) that the Project constituted an “Unlisted Action” under SEQRA, (B) that the Project would 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 (C) as a consequence of the foregoing, to prepare a negative declaration with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on December 17, 2014 (the “Commercial/Retail Findings Resolution”), the Agency (A) determined that the Project constituted a “commercial project” within the meaning of the Act, (B) found that although the Project Facility appears to constitute a project where facilities or properties that are primarily used in making the retail sales of goods or services to customers who personally visit such facilities may constitute more than one-third of the costs of the Project, the Agency is authorized to provide financial assistance in respect of the Project pursuant to Section 862(2)(a) of the Act because the Project Facility is located in a “highly distressed area” (as defined in the Act), (C) determined, following a review of the Public Hearing Report, that the Project would serve the public purposes of the Act by preserving permanent private sector jobs in the State of New York, (D) determined that the Agency would proceed with the Project and the granting of the Financial Assistance; provided however, that no financial assistance would be provided to the Project by the Agency unless and until the County Executive of Albany County, as chief executive officer of Albany County, New York, pursuant to Section 862(2)(c) of the Act, confirmed the proposed action of the Agency with respect to the Project; and

WHEREAS, the Agency’s Uniform Tax Exemption Policy (the “Policy”) provides that the Agency will not grant any Financial Assistance relating to an exemption from real property taxes unless the project applicant obtains the approval of the “affected taxing jurisdictions” (as defined in the Act) to the terms of any such abatement. The Company has negotiated a real property tax abatement schedule with the City of Watervliet (the “City”), the City of Watervliet City School District (the “School

District") and Albany County (the "County," and together with the City and the School District, being collectively referred to as the "Affected Tax Jurisdictions"), and such Affected Tax Jurisdictions have adopted resolutions and certificates, as applicable (the "PILOT Approval Documents"), approving the payment terms of a payment in lieu of tax agreement to be entered into by the Agency with respect to the Project Facility; and

WHEREAS, by further resolution adopted by the members of the Agency on December 17, 2014 (the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of June 1, 2015 (the "Lease Agreement") between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"). Pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company for a lease term ending on the earlier to occur of (1) December 31, 2036 or (2) the date on which the Lease Agreement is terminated pursuant to the optional termination provisions thereof. The Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, by certificate dated April 16, 2015 (the "Public Approval"), the County Executive of the County of Albany, New York, approved the proposed action to be taken by the Agency with respect to the Project for purposes of Section 862(2)(c) of the Act; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency dated as of June 1, 2015 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises") for a lease term ending on December 31, 2036; (2) a certain license agreement dated as of June 1, 2015 (the "License to Agency") by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency (a) a license to enter upon the balance of the Land (the "Licensed Premises") for the purpose of undertaking and completing the Project and (b) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement; and (3) a bill of sale dated as of June 1, 2015 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency will execute and deliver (1) a payment in lieu of tax agreement dated as of June 1, 2015 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility, (2) a project benefits agreement dated as of June 1, 2015 (the "Project Benefits Agreement") relating to the granting of the Financial Assistance by the Agency to the Company, and (3) a certain recapture agreement (the "Section 875 GML Recapture Agreement") by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes, (C) the Agency will file with the assessor and mail to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement, (D) the Agency will execute and deliver to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (E) the Agency will file with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report"); and

WHEREAS, in order to finance a portion of the costs of the Project, the Company will obtain a loan in the principal sum of up to \$6,500,000 (the "Loan") from Pioneer Savings Bank (the "Lender"), which Loan will be secured by (1) a mortgage and security agreement dated as of June 1, 2015 (the "Mortgage") from the Agency and the Company to the Lender and (2) an assignment of rents and leases dated as of June 1, 2015 (the "Assignment of Rents") from the Agency and the Company to the Lender; and

WHEREAS, the Company desires to convey the leasehold interest created pursuant to this Underlying Lease to the Agency on the terms and conditions set forth in this Underlying Lease; and

WHEREAS, pursuant to the Lease Agreement, the Company will, as agent of the Agency, undertake and complete the Project and the Agency will lease the Project Facility to the Company, and it is the intention of the parties hereto that the leasehold interest created pursuant to this Underlying Lease and the Company's leasehold interest in the Project Facility created by the Lease Agreement shall not merge; and

WHEREAS, all things necessary to constitute this Underlying Lease a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Underlying Lease have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS TO WIT:

ARTICLE I  
DEFINITIONS

SECTION 1.1. DEFINITIONS. All of the capitalized terms used in this Lease to Agency and the preambles hereto not otherwise defined shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Appendix A and made a part hereof.

SECTION 1.2. INTERPRETATION. In this Underlying Lease, unless the context otherwise requires:

(A) The terms "hereby", "hereof", "herein", "hereunder", and any similar terms as used in this Underlying Lease, refer to this Underlying Lease, and the term "heretofore" shall mean before, and the term "hereafter" shall mean after, the date of this Underlying Lease.

(B) Words of masculine gender shall mean and include correlative words of feminine and neuter genders.

(C) Words importing the singular number shall mean and include the plural number, and vice versa.

(D) Any headings preceding the texts of the several Articles and Sections of this Underlying Lease, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Underlying Lease nor affect its meaning, construction or effect.

(E) Any certificates, letters or opinions required to be given pursuant to this Underlying Lease shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Underlying Lease.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

**SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE AGENCY.** The Agency makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(A) The Agency has been duly established under the provisions of the Act and has the power to enter into this Underlying Lease and to carry out its obligations hereunder.

(B) Neither the execution and delivery of this Underlying Lease nor the consummation of the transactions contemplated hereby will conflict with or result in a breach by the Agency of any of the terms, conditions or provisions of the Act, the by-laws of the Agency or any order, judgment, agreement or instrument to which the Agency is a party or by which the Agency is bound, or will constitute a default by the Agency under any of the foregoing.

**SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.** The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(A) The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, is qualified and authorized to do business in the State and all other jurisdictions in which its operations or ownership of Properties so require, and has the power to enter into this Underlying Lease and carry out its obligations hereunder and has been duly authorized to execute this Underlying Lease. This Underlying Lease and the transactions contemplated hereby have been duly authorized by all necessary action on the part of the members of the Company.

(B) Neither the execution and delivery of this Underlying Lease, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Underlying Lease will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the articles of organization or operating agreement of the Company or any order, judgment, agreement or instrument to which the Company is a party or by which the Company is bound, or constitute a default under any of the foregoing, or (2) result in the creation or imposition of any Lien of any nature upon any Property of the Company other than pursuant to the Basic Documents, or (3) require consent (which has not been heretofore received) under any restriction, agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (4) to the best of the Company's knowledge, require consent (which has not been heretofore received) under, conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign) having jurisdiction over the Company or any of the Property of the Company.

## ARTICLE III

### LEASE PROVISIONS

SECTION 3.1. LEASE. (A) The Company hereby demises and leases to the Agency, and the Agency hereby hires and leases from the Company, the Land, as said Land is more particularly described on Exhibit A attached hereto and the improvements now and hereafter located thereon, including the Facility, (the Land, the Facility and said improvements being sometimes collectively referred to as the "Premises") for the term set forth in Section 3.2 hereof. The Premises are intended to include (1) all buildings and improvements located on the Land, (2) any strips or gores of land adjoining the Land, (3) any land lying in the bed of any street or avenue abutting the Land, to the centerline thereof, and (4) a non-exclusive right to use any easements or other rights in adjoining property inuring to the Company by reason of the Company's ownership of the Land.

(B) It is the intention of the Company and the Agency that the Agency shall hold leasehold title to Premises. Accordingly, leasehold title to any improvements hereinafter constructed by the Company on the Land shall vest in the Agency or its successors and assigns as and when the same are constructed thereon.

SECTION 3.2. TERM. (A) The term of this Underlying Lease (the "Term") shall commence as of the dated date hereof and shall expire on the earlier to occur (1) December 31, 2036 or (2) so long as neither the Lease Agreement nor the Company's right of possession as lessee thereunder shall have been terminated by the Agency pursuant to Article X thereof, the termination of the term of the Lease Agreement.

(B) So long as neither the Lease Agreement nor the Company's right of possession as lessee thereunder shall have been terminated by the Agency pursuant to Article X thereof, upon any termination of this Underlying Lease, the Company shall prepare and the Agency will execute and deliver to the Company such instruments as the Company shall deem appropriate to evidence the release and discharge of this Underlying Lease.

SECTION 3.3. RENT. The rent payable by the Agency under this Underlying Lease shall be one dollar (\$1.00), and other good and valuable consideration, receipt of which is hereby acknowledged by the Company.

SECTION 3.4. USE; LEASE AGREEMENT; NON-MERGER. (A) So long as neither the Lease Agreement nor the Company's right of possession as lessee thereunder have been terminated by the Agency pursuant to Article X thereof, the Agency shall (1) hold and use the Premises only for lease to the Company under the Lease Agreement and (2) shall not sell or assign its rights hereunder nor the leasehold estate hereby created, except as provided in the Lease Agreement.

(B) Contemporaneously with the execution and delivery of this Underlying Lease, the Agency is entering into the Lease Agreement, pursuant to which the Company as agent of the Agency agrees to undertake and complete the Project and the Agency agrees, upon completion of the Project, to lease (with an obligation to purchase) the Project Facility to the Company. Pursuant to the Lease Agreement, the Company, as tenant of the Project Facility under the Lease Agreement, is required to perform all of the Agency's obligations under this Underlying Lease. Accordingly, and notwithstanding anything to the contrary contained in this Underlying Lease, the Company shall not be entitled to declare a default hereunder or exercise any rights or remedies hereunder if any asserted default by the Agency

hereunder relates to a failure by the Company, as tenant of the Project Facility under the Lease Agreement, to perform its corresponding obligations under the Lease Agreement.

(C) Notwithstanding the lease of the Project Facility by the Agency to the Company pursuant to the Lease Agreement, during the Term of this Underlying Lease, there shall be no merger of this Underlying Lease nor of the leasehold estate created by this Underlying Lease with the fee estate in the Premises or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, (1) this Underlying Lease or the leasehold estate created by this Underlying Lease or any interest in this Underlying Lease or in any such leasehold estate and (2) the fee estate in the Premises or any part thereof or any interest in such fee estate, and no such merger shall occur unless and until all corporations, firms and other entities, including any mortgagee having any interest in (x) this Underlying Lease or the leasehold estate created by this Underlying Lease and (y) the fee estate in the Premises or any part thereof or any interest in such fee estate, shall join in a written instrument effecting such merger and shall duly record the same.

(D) Upon any termination of the Lease Agreement or the Company's rights of possession as lessee thereunder pursuant to Article X thereof, the Agency may use the Premises for any lawful purpose, may sell or assign its rights hereunder or the leasehold estate hereby created to any Person or Persons without the consent of the Company, and may enter upon the Premises for purpose of taking possession thereof.

**SECTION 3.5. ADDITIONS, ALTERATIONS AND IMPROVEMENTS.** Subject to the provisions of the Lease Agreement, the Company shall have the right, from time to time, to make such changes, additions, improvements and alterations, demolition or new construction, structural or otherwise, to the Premises as the Company shall deem necessary or desirable. Title to improvements now located or hereafter constructed upon the Premises, and any modifications, additions, restrictions, repairs and replacements, thereof, shall be in the Agency during the term of this Underlying Lease, except as otherwise provided in the Lease Agreement.

**SECTION 3.6. ASSIGNMENT.** (A) So long as neither the Lease Agreement nor the Company's right of possession as lessee thereunder shall have been terminated by the Agency pursuant to Article X thereof, neither the Agency nor the Company shall assign or transfer this Underlying Lease, nor sublease the whole or any part of the Property leased hereby, except that the Agency may lease the leasehold interest created hereunder to the Company pursuant to the Lease Agreement. The Agency may enter into the Lease Agreement on the terms provided therein.

(B) Upon the occurrence and continuance of an Event of Default under the Lease Agreement, the Agency shall have the unrestricted right to assign and sublet, from time to time, all or any part of this Underlying Lease and the leasehold estate hereby created, to any one or more Persons. Upon such assignment, the assignee shall thereupon be subrogated to all the rights of the former lessee under this Underlying Lease, whereupon (1) the former lessee shall have no further rights or obligations hereunder and (2) such assignee shall forthwith be obligated to assume and perform each and all of the former lessee's obligations and covenants hereunder.

**SECTION 3.7. POSSESSION; QUIET ENJOYMENT.** (A) Pursuant to the terms of the Lease Agreement, except as otherwise provided therein after the occurrence of an Event of Default thereunder, the Company has the exclusive right to possess and make improvements to the Premises leased hereby.

(B) The Agency, upon paying the rent and observing and keeping all covenants, warranties, agreements and conditions of this Underlying Lease on the Agency's part to be kept, shall quietly have, hold and enjoy the Premises during the Term of this Underlying Lease.

SECTION 3.8. LIENS. So long as neither the Lease Agreement nor the Company's right of possession as lessee thereunder shall have been terminated by the Agency pursuant to Article X thereof, the Agency shall not, directly, or indirectly, create or permit to be created, any mortgage, lien, encumbrance or other charge upon, or pledge of, the Premises or the Agency's interest therein (except for Permitted Encumbrances) without the Company's prior written consent.

SECTION 3.9. TAXES. (A) It is recognized that, under the provisions of the Act, the Agency is required to pay no taxes or assessments upon any property acquired by it or under its jurisdiction or control or supervision. Pursuant to the Lease Agreement, the Company has agreed to pay all taxes levied against the Premises.

(B) Pursuant to the Lease Agreement and the Payment in Lieu of Tax Agreement, the Agency has agreed to apply for the tax exemptions respecting the Premises to which the Agency may be entitled pursuant to the Act, upon the condition that the Company make certain payments in lieu of taxes respecting the Premises, as more fully set forth in the Lease Agreement and the Payment in Lieu of Tax Agreement. The Agency agrees to use its best efforts to apply for any tax exemptions to which the Agency may be entitled with respect to the Premises.

(C) In the event that (1) title to the Agency's interest in the Premises shall be conveyed to the Company, (2) on the date on which the Company obtains title to the Agency's interest in the Premises, the Premises shall be assessed as exempt upon the assessment roll of any one or more of any taxing entities, and (3) the fact of obtaining title to the Agency's interest in the Premises shall not immediately obligate the Company to make pro rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of the State (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), the Company shall be obligated to make payments in lieu of taxes to the respective receivers of taxes in amounts equal to those amounts which would be due from the Company as real property taxes with respect to the Premises if the Premises were owned by the Company and not the Agency until the first tax year in which the Company shall appear on the tax rolls of the various taxing entities having jurisdiction over the Premises as the legal owner of record of the Agency's interest in the Premises.

SECTION 3.10. MAINTENANCE. Pursuant to the Lease Agreement, during the term of this Underlying Lease, the Company has agreed, at the Company's sole cost and expense, to keep and maintain or cause to be kept and maintained the Premises and all improvements now or hereafter located thereon in good order and condition and make or cause to be made all repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen. The Agency will have no responsibility with respect to the foregoing.

SECTION 3.11. CONDEMNATION. Subject to the provisions of the Lease Agreement, in the event of a total, substantial or partial taking by eminent domain or for any public or quasi public use under any statute (or voluntary transfer or conveyance to the condemning agency under threat of condemnation), the Agency shall be entitled to its costs and expenses incurred with respect to the Premises (including any unpaid amounts due pursuant to the Basic Documents and the costs of participating in such condemnation proceeding or transfer), and thereafter the Agency shall not participate further in any condemnation award.

## ARTICLE IV

### EVENTS OF DEFAULT AND REMEDIES

SECTION 4.1. DEFAULT. (A) Any one or more of the following events shall constitute an "Event of Default" under this Underlying Lease:

- (1) The failure of the Agency (or the Company on behalf of the Agency) to pay the rent due pursuant to this Underlying Lease within fifteen (15) days after notice to the Agency specifying the nature of such default; or
- (2) The failure of the Agency (or the Company on behalf of the Agency) to observe and perform any covenant, condition or agreement on its part to be performed (other than as referred to in paragraph (1) above) and continuance of such failure for a period of thirty (30) days after notice to the Agency specifying the nature of such default; provided that if by reason of the nature of such default the same cannot be remedied within thirty (30) days, failure of the Agency (or the Company on behalf of the Agency), to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence.

(B) Notwithstanding the provisions of Section 4.1(A) hereof, if by reason of force majeure (as hereinafter defined) either party hereto shall be unable, in whole or in part, to carry out its obligations under this Underlying Lease and if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Underlying Lease of the party giving such notice so far as they are affected by such force majeure, shall be suspended during the continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (B) shall not be deemed an event of default under this Section. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public, enemies, orders of any kind of government authority or any civil or military authority, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, partial or entire failure of utilities. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty and the party having difficulty shall not be required to settle any strike, lockout or other industrial disturbances by acceding to the demands of the opposing party or parties.

SECTION 4.2. REMEDIES ON DEFAULT. Whenever any Event of Default described in Section 4.1(A)(2) hereof shall have occurred, the Agency may, at its option, terminate this Underlying Lease upon not less than 5 days written notice to the Company (the Company shall notify the Lender of such notice). If such notice is so given by the Agency this Underlying Lease shall automatically terminate upon the date set forth in the notice without the necessity of any further actions or the filing or recording of any documents or instruments. Nevertheless, the Agency may, but need not, record a Notice of the Cancellation of this Underlying Lease in the Albany County Clerk's Office without the signature of the Company to confirm the termination of this Underlying Lease. Nothing contained in this Underlying Lease shall be deemed to limit, amend or modify the remedies available to the Agency pursuant to the Lease Agreement or other Basic Documents.

SECTION 4.3. REMEDIES CUMULATIVE. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Underlying Lease or now or

hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article IV, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

**SECTION 4.4. AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.** In the event either party should default under any of the provisions of this Underlying Lease and the other party should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the defaulting party herein contained, the defaulting party shall, on demand therefor, pay to the other party the reasonable fees of such attorneys and such other expenses so incurred, whether an action is commenced or not.

**SECTION 4.5. NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.** In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**ARTICLE V**  
**MISCELLANEOUS**

**SECTION 5.1. SURRENDER.** (A) The Agency shall, on the last day of the Term of this Underlying Lease or on the last day of any earlier termination of the Term of this Underlying Lease, surrender and deliver the Premises and all buildings, improvements, alterations, equipment and fixtures located thereon to the possession and use of the Company without delay and in good order, condition and repair, except for reasonable wear and tear.

(B) On the last day of the Term of this Underlying Lease or on the last day of any earlier termination of the Term of this Underlying Lease, title to all buildings, improvements, alterations, equipment located on the Premises shall automatically, and without the need of any further or additional instrument, vest in the Company. Notwithstanding the foregoing, upon the reasonable request of the Company, the Agency shall execute and deliver to the Company an instrument in a form of Exhibit C to the Lease Agreement to be recorded to confirm this vesting of title.

**SECTION 5.2. NOTICES.** (A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (1) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by an affidavit of the Person who attempted to effect such delivery.

(B) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

**IF TO THE COMPANY:**

122 2nd Street Association, LLC  
172 River Street, Suite D  
Troy, New York 12180  
Attention: Thomas Rossi, Manager

**WITH A COPY TO:**

Sciocchetti & Abbott, PLLC  
12 Century Hill Drive  
Latham, New York 12110  
Attention: Paul V. Sciocchetti, Esq.

**IF TO THE AGENCY:**

Albany County Industrial Development Agency  
112 State Street  
Albany, New York 12207  
Attention: Chairman

WITH A COPY TO:

The Forman Law Firm  
68 Simmons Avenue  
Cohoes, New York 12047  
Attention: Walter J. Forman, Esq.

and

Hodgson Russ LLP  
677 Broadway, Suite 301  
Albany, New York 12207  
Attention: A. Joseph Scott, III, Esq.

(C) The Agency or the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications to the Agency or the Company, as the case may be, shall be sent.

**SECTION 5.3. APPLICABLE LAW.** This Underlying Lease shall be governed exclusively by the applicable laws of the State.

**SECTION 5.4. BINDING EFFECT.** This Underlying Lease shall inure to the benefit of, and shall be binding upon the Agency and the Company and their respective successors and assigns; provided, that, except as provided elsewhere herein, the interest of the Agency in this Underlying Lease may not be assigned, sublet or otherwise transferred without the prior written consent of the Company.

**SECTION 5.5. SEVERABILITY.** If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining provisions hereof and shall in no way affect the validity of the other provisions of this Underlying Lease.

**SECTION 5.6. AMENDMENTS, CHANGES AND MODIFICATIONS.** This Underlying Lease may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

**SECTION 5.7. EXECUTION OF COUNTERPARTS.** This Underlying Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 5.8. TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING.** The Table of Contents and the headings of the several Sections in this Underlying Lease 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 Underlying Lease.

**SECTION 5.9. NO REOURSE; SPECIAL OBLIGATION.** (A) The obligations and agreements of the Agency contained herein and in the other Basic Documents shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company) and

employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(B) The obligations and agreements of the Agency contained herein and in the other Basic Documents shall not constitute or give rise to an obligation of the State of New York or the County of Albany, New York, and neither the State of New York nor the County of Albany, New York shall be liable hereon or thereon and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility.

(C) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or under the other Basic Documents shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten [10] days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

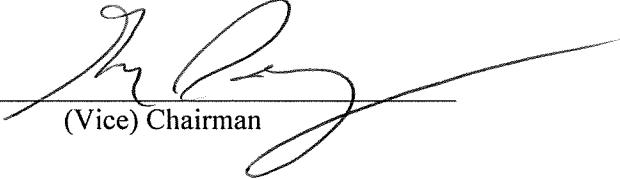
SECTION 5.10. RECORDING. The Agency and the Company agree that this Underlying Lease (or a memorandum thereof) shall be recorded by the Agency in the appropriate office of the County Clerk of Albany County, New York.

IN WITNESS WHEREOF, the Agency and the Company have caused this Underlying Lease to be executed in their respective names by their respective duly authorized officers and to be dated as of the day and year first above written.

ALBANY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_

(Vice) Chairman

  
122 2ND STREET ASSOCIATION, LLC

BY: \_\_\_\_\_

Authorized Officer

IN WITNESS WHEREOF, the Agency and the Company have caused this Underlying Lease to be executed in their respective names by their respective duly authorized officers and to be dated as of the day and year first above written.

ALBANY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

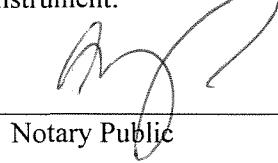
BY: \_\_\_\_\_  
(Vice) Chairman

122 2ND STREET ASSOCIATION, LLC

BY:   
Authorized Officer

STATE OF NEW YORK        )  
                              )ss:  
COUNTY OF ALBANY        )

On the 17<sup>th</sup> day of February, in the year 2015, before me, the undersigned, personally appeared GARY DOMALEWICZ, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



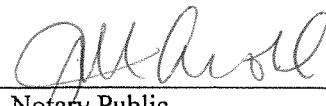
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Notary Public

A. Joseph Scott III  
Notary Public, State of New York  
Qualified in Albany County  
No. 02SC4811591  
Commission Expires December 31, 2018

STATE OF NEW YORK )  
Reusselair )ss:  
COUNTY OF ALBANY )

On the 8th day of March, in the year 2015, before me, the undersigned, personally appeared Thomas A. Rose, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

JILL M. ARNOLD  
Notary Public, State of New York  
No. 01AR6157354  
Qualified in Albany County  
Commission Expires Dec. 4, 2018

**APPENDIX A**  
**SCHEDULE OF DEFINITIONS**

The following words and terms used in the attached document shall have the respective meanings set forth below unless the context or use indicates another or different meaning or intent:

“Act” means Title 1 of Article 18-A of the General Municipal Law of the State, as amended from time to time, together with Chapter 178 of the 1975 Laws of the State, constituting Section 903-b of the General Municipal Law of the State, as amended from time to time.

“Affected Tax Jurisdiction” shall have the meaning assigned to such term in Section 854(16) of the Act), which defines such term, in the context of the Project, to mean any village, town, city, county, and school district in which the Project Facility is located

“Affected Tax Jurisdictions” means all Affected Tax Jurisdictions in which the Project Facility is located.

“Agency” means (A) Albany County Industrial Development Agency and its successors and assigns, and (B) any public benefit corporation or other public corporation resulting from or surviving any consolidation or merger to which Albany County Industrial Development Agency or its successors or assigns may be a party.

“Applicable Laws” means all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Project Facility or any part thereof or the conduct of work on the Project Facility or any part thereof or to the operation, use, manner of use or condition of the Project Facility or any part thereof (the applicability of such statutes, codes, laws, acts, ordinances, orders, rules, regulations, directions and requirements to be determined both as if the Agency were the owner of the Project Facility and as if the Company and not the Agency were the owner of the Project Facility), including but not limited to (1) applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, and (3) judgments, decrees or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority.

“Approving Resolution” means the resolution duly adopted by the Agency on December 17, 2014, authorizing and directing the undertaking and completion of the Project and the execution and delivery of the Basic Documents to which the Agency is a party.

“Assignment of Rents” means the assignment of rents and leases dated as of March 1, 2015 from the Agency and the Company to the Lender.

“Authorized Representative” means (A) with respect to the Agency, its Chairman or Vice-Chairman, or such other Person or Persons at the time designated to act on behalf of the Agency by written certificate furnished to the Company containing the specimen signature of each such Person and signed on behalf of the Agency by its Chairman, Vice Chairman or such other person as may be authorized by resolution of the Agency to act on behalf of the Agency, and (B) with respect to the Company, its chief executive officer or chief financial officer, or such other Person or Persons at the time designated to act on behalf of the Company by written certificate furnished to the Agency containing the

specimen signature of each such Person and signed on behalf of the Company by its chief executive officer or chief financial officer, or such other person as may be authorized by the members of the Company to act on behalf of the Company.

“Basic Documents” means the Conveyance Documents, the Lease Agreement, the Payment in Lieu of Tax Agreement, the Project Benefits Agreement, the Section 875 GML Recapture Agreement, the Loan Documents and all other instruments and documents related thereto and executed in connection therewith, and any other instrument or document supplemental thereto, each as amended from time to time.

“Bill of Sale to Agency” means the bill of sale delivered on the Closing Date from the Company to the Agency conveying all of the Company’s interest in the Equipment to the Agency.

“Bill of Sale to Company” means the bill of sale from the Agency to the Company conveying all of the Agency’s interest in the Equipment to the Company, substantially in the form attached as Exhibit D to the Lease Agreement.

“Business Day” means a day on which banks located in the City of Albany, Albany County, New York are not required or authorized to remain closed and on which the New York Stock Exchange is not closed.

“Closing” means the closing at which the Basic Documents are executed and delivered by the Company and the Agency.

“Closing Date” means the date of the Closing.

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations of the United States Treasury Department promulgated thereunder.

“Company” means 122 2nd Street Association, LLC, a limited liability company duly organized and existing under the laws of the State of New York, and its successors and assigns, to the extent permitted pursuant to Section 8.4 of the Lease Agreement.

“Completion Date” means the earlier to occur of (A) October 31, 2015 or (B) such date as shall be certified by the Company to the Agency as the date of completion of the Project pursuant to Section 4.2 of the Lease Agreement, or (C) such earlier date as shall be designated by written communication from the Company to the Agency as the date of completion of the Project.

“Condemnation” means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any Governmental Authority.

“Conveyance Documents” means, collectively, the Lease to Agency, the License to Agency and the Bill of Sale to Agency.

“Default Interest Rate” means a per annum rate of interest equal to twelve percent (12%) per annum, or the maximum rate of interest permitted by law, whichever is less.

“Equipment” means all equipment, fixtures, machines, building materials and items of personal property and all appurtenances intended to be acquired in connection with the completion of the Project prior to the Completion Date with the proceeds of any payment made by the Company pursuant to Section 4.1(H) of the Lease Agreement, and such substitutions and replacements therefor as may be made

from time to time pursuant to the Lease Agreement, including without limitation, all the Property described in Exhibit B attached to the Lease Agreement.

“Event of Default” means, with respect to any particular Basic Document, any event specified as an Event of Default pursuant to the provisions thereof.

“Facility” means all buildings (or portions thereof), improvements, structures and other related facilities, and improvements thereto, (A) located on the Land, (B) financed with the proceeds of any payment made by the Company pursuant to Section 4.1(H) of the Lease Agreement, and (C) not constituting a part of the Equipment, all as they may exist from time to time.

“Financial Assistance” shall have the meaning assigned to such term in the fifth recital clause to the Lease Agreement.

“Governmental Authority” means the United States of America, the State, any other state and any political subdivision thereof, and any agency, department, commission, court, board, bureau or instrumentality of any of them.

“Gross Proceeds” means one hundred percent (100%) of the proceeds of the transaction with respect to which such term is used, including, but not limited to, the settlement of any insurance or Condemnation award.

“Hazardous Materials” shall mean all hazardous materials including, without limitation, any flammable explosives, radioactive materials, radon, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), Articles 15 or 27 of the State Environmental Conservation Law, or in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule or regulation.

“Indebtedness” means (1) the monetary obligations of the Company to the Agency and its members, officers, agents, servants and employees under the Lease Agreement and the other Basic Documents, (2) the monetary obligations of the Company to the Affected Tax Jurisdictions under the Payment in Lieu of Tax Agreement and the other Basic Documents, and (3) all interest accrued and accruing on any of the foregoing.

“Independent Counsel” means an attorney or firm of attorneys duly admitted to practice law before the highest court of any state and not a full-time employee of the Company or the Agency.

“Independent Engineer” means an engineer or architect or firm of engineers or architects duly admitted to practice engineering or architecture in the state and not a full-time employee of the Company or the Agency.

“Land” means the Premises, constituting the leasehold and license interests in real property created by the License to Agency and the Lease to Agency, respectively, as more particularly described on Exhibit A attached to the Lease Agreement.

“Lease Agreement” means the lease agreement dated as of March 1, 2015 by and between the Agency, as landlord, and the Company, as tenant, pursuant to which, among other things, the Agency has leased the Project Facility to the Company, as said lease agreement may be amended or supplemented from time to time.

“Leased Premises” means the Property leased to the Agency pursuant to the Lease to Agency.

“Lender” means Pioneer Savings Bank and its successors and assigns as holder of the Mortgage.

“License to Agency” means the license agreement dated as of March 1, 2015 and delivered on the Closing Date from the Company to the Agency, pursuant to which the Company has authorized the Agency to enter upon the Land for the purpose of (A) undertaking and completing the Project and (B) enforcing the provisions of the Lease Agreement, as said license agreement may be amended or supplemented from time to time.

“Licensed Premises” means the Property licensed to the Agency pursuant to the License to Agency.

“Lien” means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to a security interest arising from a mortgage, a security agreement, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes or a judgment against the Company. The term “Lien” includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics’, materialmen’s, warehousemen’s and carriers’ liens and other similar encumbrances affecting real property. For purposes of the Basic Documents, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

“Loan” means a loan in the principal sum of up to \$6,500,000 to be made by the Lender to the Company and to be secured by, among other things, the Mortgage.

“Loan Documents” means, collectively, the Mortgage and any building loan and other agreements reasonably requested by the Lender in connection with the Loans.

“Mortgage” means the mortgage dated as of March 1, 2015 from the Company and the Agency to the Lender to secure advances of up to \$6,500,000 under the Loan.

“Mortgaged Property” means all Property which may from time to time be subject to the Lien of the Mortgage.

“Net Proceeds” means so much of the Gross Proceeds with respect to which that term is used as remain after payment of all fees for services, expenses, costs and taxes (including attorneys’ fees and expenses) incurred in obtaining such Gross Proceeds.

“Payment in Lieu of Tax Agreement” means the payment in lieu of tax agreement dated as of March 1, 2015 by and between the Agency and the Company, pursuant to which the Company has agreed to make payments in lieu of taxes with respect to the Project Facility, as such agreement may be amended or supplemented from time to time.

“Permitted Encumbrances” means (A) utility, access and other easements, rights of way, restrictions, encroachments and exceptions that exist on the Closing Date and benefit or do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (B) mechanics’, materialmen’s, warehousemen’s, carriers’ and other similar Liens, to the extent permitted by Section 8.8 of the Lease Agreement, (C) Liens for taxes, assessments and utility charges, to the extent permitted by Section 6.2(B) of the Lease Agreement, (D) any Lien on the Project Facility obtained through any Basic Document, (E) the Mortgage and (F) any Lien requested by the Company in writing and consented to by the Agency, which consent of the Agency shall not be unreasonably withheld or delayed.

“Person” means an individual, partnership, corporation, trust, unincorporated organization or Governmental Authority.

“Plans and Specifications” means the description of the Project appearing in the fifth recital clause to the Lease Agreement.

“Premises” means, collectively, the Leased Premises and the Licensed Premises.

“Project” means shall have the meaning set forth in the fifth recital clause to the Lease Agreement.

“Project Benefits Agreement” means the project benefits agreement dated as of March 1, 2015 by and between the Agency, pursuant to which, among other things, the Agency has granted the Financial Assistance to the Company, as said project benefits agreement may be amended or supplemented from time to time.

“Project Facility” means, collectively, the Land, the Facility and the Equipment.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

“Real Property Tax Exemption Form” means a New York State Board of Real Property Services Form RP-412-a relating to the Project Facility.

“Sales Tax Exemption Letter” shall have the meaning assigned to such term in Section 8.12 of the Lease Agreement.

“Section 875 GML Recapture Agreement” means the recapture agreement dated as of March 1, 2015 by and between the Agency and the Company regarding certain sales and use tax recovery or recapture relating to the Project.

“SEQRA” means Article Eight of the Environmental Conservation Law of the State and the statewide regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York.

“State” means the State of New York.

“Term” means the term of the Underlying Lease.

“Termination of Lease Agreement” means a termination of lease agreement by and between the Company, as tenant, and the Agency, as landlord, intended to evidence the termination of the lease agreement, substantially in the form attached as Exhibit E to the Lease Agreement.

“Termination of Lease to Agency” means the termination of the Lease to Agency from the Agency to the Company, evidencing termination of the Lease to Agency, substantially in the form attached as Exhibit C to the Lease Agreement, which termination is intended, upon certain terminations of the Lease Agreement, to terminate the leasehold interest of the Agency created pursuant to the Lease to Agency.

“Termination of License to Agency” means the termination of the License to Agency from the Agency to the Company, evidencing termination of the License to Agency, substantially in the form attached as Exhibit F to the Lease Agreement.

“Unassigned Rights” means (A) the rights of the Agency granted pursuant to Sections 2.2, 3.2, 3.3, 4.1(B), 4.1(D), 4.1(E)(2), 4.1(F), 4.1(G), 5.2(A), 5.3(B), 5.4(B), 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 7.1, 7.2, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 9.1, 9.3, 11.1, 12.4, 12.8 and 12.10 of the Lease Agreement, (B) the moneys due and to become due to the Agency for its own account or the members, officers, agents (other than the Company) and employees of the Agency for their own account pursuant to Sections 2.2(F), 3.3, 4.1, 5.3(B)(2), 5.3(C), 6.4(B), 8.2, 10.2 and 10.4 of the Lease Agreement, (C) the moneys due as payments in lieu of taxes pursuant to Section 6.6 of the Lease Agreement and the Payment in Lieu of Tax Agreement, and (D) the right to enforce the foregoing pursuant to Article X of the Lease Agreement.

“Underlying Lease” or “Lease to Agency” means the lease to agency dated as of March 1, 2015 by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company has conveyed a leasehold interest in the Premises to the Agency, as said lease to agency may be amended or supplemented from time to time.

**EXHIBIT A**  
**DESCRIPTION OF THE LEASED LAND**

A leasehold interest created by a certain lease to agency dated as of June 1, 2015 (the "Lease to Agency") between 122 2nd Street Association, LLC (the "Company"), as landlord, and Albany County Industrial Development Agency (the "Agency"), as tenant, in an approximately 1.46 acres parcel of land (the "Leased Land") located at 122 2nd Street in the City of Watervliet, Albany County, New York, said Leased Land being more particularly described below), together with any improvements now or hereafter located on the Leased Land (the Leased Land and all such improvements being sometimes collectively referred to as the "Leased Premises"):

ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND situate, lying and being in City of Watervliet, Albany County, New York, bounded and described as follows:

**- SEE ATTACHED -**

## SCHEDULE A - LEGAL DESCRIPTION

ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND, situate, lying and being in the City of Watervliet, County of Albany, State of New York being known as Lots 233-237, a portion of Lot 238, and 243-254 as shown on a map entitled "Map of the Village of Port Schuyler" made by John Campbell in 1795, refiled in the Albany County Clerk's Office in Book 23, Dr. 23, Map 396, and lying generally southerly of Second Street, easterly of Second Avenue, westerly of First Avenue and northerly of First Street and being more particularly bounded and described as follows:

BEGINNING AT A POINT, on the southwesterly boundary of Second Street at its intersection with the southeasterly boundary of Second Avenue and runs thence from said point of beginning South 57 deg 32 min 25 sec East, a distance of 360.56 feet to its intersection with the northwesterly boundary of First Avenue; thence, southwesterly along said street boundary South 32 deg 09 min 38 sec West, a distance of 220.00 feet to its intersection with the northeasterly boundary of First Street; thence, North 57 deg 32 min 25 sec West, along said northeasterly boundary of First Street a distance of 220.80 feet to its intersection with the boundary line between lands, now or formerly, of the City of Watervliet as described in Liber 1502 of Deeds at page 475 on the northwest and lands herein described on the southeast; thence North 32 deg 09 min 38 sec East along said boundary line a distance of 120.00 feet to a point; thence along the southwesterly boundary of lots 247, 246, 245 and 243 and long the northerly boundary of the common alley North 57 deg 32 min 25 sec West, a distance of 161.84 feet to its intersection with the above first mentioned southeasterly boundary of Second Avenue; thence North 44 deg 37 min 34 sec East, along said road boundary a distance of 102.30 feet to the point or place of beginning.

SCHEDULE A CONTINUED

THE SAID PREMISES HAS PREVIOUSLY BEEN DESCRIBED AS FOLLOWS:

ALL that piece, parcel or tract of land situate in the City of Watervliet, County of Albany and State of New York, and described as follows: Beginning at a point three feet east of the dividing line between Lot No. 233, now owned by Elizabeth Stewart, party of the first part, and Lot No. 234, now owned by the John S. Tilley Ladders Co., Inc., party of the second part, and running thence north on a line parallel with said dividing line between said Lot Nos. 233 and 234, aforesaid, to a point three feet south of the alley on the north of said lots, thence east on a line parallel with said alley to First Avenue, thence along First Avenue three feet to said alley, thence west along said alley to the dividing line between said lots Nos. 233 and 234 aforesaid, thence south along said dividing line to First Street, thence east along said First Street three feet to the place of beginning. The parcel herein described is intended to be a rectangular strip of land three feet wide out of the north and west sides of said Lot No. 233.

ALL that certain tract or parcel of land situate in the First Ward of the City of Watervliet (formerly Village of West Troy), County of Albany and State of New York, known and distinguished as Lot Number Two Hundred Thirty-Three (233) on the north side of First Street (formerly South Street), and bounded as follows: On the north by an alley; on the east by First Avenue (formerly Boston Street) on the south by First Street, and on the west by Lot No. 234, excepting and reserving therefrom a certain portion of spid premises heretofore conveyed to The John S. Tilley Ladders Co. by deed of Elizabeth Stewart and George Stewart dated March 22, 1921 and filed in the office of the Clerk of Albany County May 11, 1921 in Book of Deed 697 at page 273.

ALL that certain lot, piece or parcel of land situate, lying and being in the City of Watervliet, County of Albany and State of New York, and designated on a map of the former Village of Port Schuyler made by Everett Van Allen and filed in the Albany County Clerk's Office, as Lot Number Two Hundred and Thirty-four (234) South Street (now called First Street) and bounded as follows: On the East by Lot Number Two Hundred Thirty-three (233); on the West by Lot Number Two Hundred Thirty-five (235); on the South, by South Street; and on the North by an alley.

ALL that certain lot of land No. (235) Two Hundred Thirty-five, being in the First Ward of the City of Watervliet (formerly Village of West Troy), and is bounded as follows: To wit, on the south by First Street (formerly South Street); on the west by Lot No. (236) Two Hundred Thirty-Six; on the east by Lot No. (234) Two Hundred Thirty-Four; on the north by an alley, said lot being forty (40) feet wide front and rear; One Hundred (100) feet deep more or less.

ALL those certain lots, pieces or parcels of land, situate, lying and being in the Village of West Troy (now City of Watervliet), County of Albany and State of New York, known and designated on the map of said

Village as lot numbers Two Hundred Two Hundred and Forty-Seven (247), Two Hundred and Forty-Eight (248), and Two Hundred and Forty-Nine (249) South Canal Street (now called Second Street) and which said lots are together bounded on the north by South Canal Street (now called Second Street); on the east by lot number Two Hundred and Fifty (25); on the south by an alley and on the west by lot number Two Hundred and Forty-Six (246).

Excepting and reserving from the above described parcel or land a certain piece or parcel of land five (5) feet wide on the east side of lot number Two Hundred and Forty-Nine (249), and running the entire length of said lot from Second Street to the alley, which said parcel was heretofore conveyed to the party of the second part by the said party of the first part hereto.

ALSO, all that tract, piece or parcel of land, situate in the City of Watervliet, County of Albany and State of New York, as follows:

BEGINNING at the north-east corner of lot number Two Hundred and Forty-Six (246) on the south side of Second Street - formerly called Canal Street - running thence Westerly along the line of said Second Street, sixteen (16) feet; thence southerly parallel with the easterly line of said lot number Two Hundred and Forty-Six (246) and sixteen (16) feet distant therefrom to an alley, being the southerly line of said lot, thence easterly along the northerly line of said lot, sixteen (16) feet to the south-east corner of said lot; thence northerly on the line dividing lot numbers Two Hundred and Forty-Six (246) and Two Hundred Forty-Seven (247) to the point of beginning the premises hereby conveyed being the easterly sixteen (16) feet of said lot number Two Hundred and Forty-Six (246), as laid down on a map made by Evert Van Allen, of that portion of the said City of Watervliet, which was formerly called Port Schuyler.

ALL that certain piece or parcel of land situate, lying and being in the City of Watervliet, County of Albany and State of New York, known and distinguished upon a map of that part of the said city formerly called Port Schuyler, as the north half of lot number Two Hundred and Fifty-Three (253) and Two Hundred and Fifty-Four (254) South Canal Street (now called Second Street), the said lots being bounded as follows: On the north by said South Canal Street; on the east by Boston Street (now called First Avenue); on the south by an alley; and on the west by lot number Two Hundred and Fifty-Two (252); the said premises being about sixty (60) feet in width on said Canal Street and extending from the said division line northerly to the present boundary line of said Second Street.

ALL that tract, piece or parcel of land, situate in the City of Watervliet, County of Albany and State of New York, and known upon a map of that part of the said city formerly called Port Schuyler, as lot number Two Hundred Fifty-Two (252) Canal Street (now called Second Street), bounded as follows: On the north by said Canal Street; on the east by lot number Two Hundred Fifty-Three (253) on the south by an alley; and on the west by lot number Two Hundred Fifty-One (251).

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ALL that certain piece or parcel of land situate, lying and being in the City of Watervliet, County of Albany and State of New York, known and distinguished on a map of that part of the City formerly called Fort Schuyler, as the easterly five (5) feet of Lot Number Two Hundred Forty-Nine (249) Canal Street (now called Second Street) bounded and described as follows:

Beginning at the southeasterly corner of said Lot Number Two Hundred Forty-Nine (249), and running thence westerly along the North side of the alley five (5) feet; thence northerly and parallel with the easterly boundary line of said Lot Number Two Hundred Forty-Nine (249) to the southerly boundary line of Second Street as now located; thence easterly along the said boundary line of Second Street (5) feet; thence southerly on a line parallel with the westerly line of the premises hereby conveyed, to the point or place of beginning.

ALL that tract, piece or parcel of land, situate in the City of Watervliet, County of Albany and State of New York, known and distinguished on a map of a part of the said City formerly called Fort Schuyler as Lot Numbers Two Hundred Thirty-Eight (238) and Two Hundred Thirty-Nine (239) South Street (now called First Street) and which said lots are together bounded as follows: On the North by an alley; on the east by Lot Number Two Hundred Thirty-Seven (237); on the south by said South Street; and on the west by Lot Number Two Hundred Forty (240).

ALSO, all that certain lot, piece or parcel of land situate, lying and being in the City of Watervliet, County of Albany and State of New York (being in that part of said city formerly called Fort Schuyler), known and designated on the map of said City as Lot No. 244 Second Avenue, said lot being forty (40) feet in width, front and rear, and extending from the easterly line of said Second Avenue, as shown on said map, to the westerly line of Lot No. 245. Said lot is bounded as follows: On the north by Second Street, on the east by Lot No. 245, on the south by Lot No. 243 and on the west by Second Avenue.

AND ALSO, all that certain strip, piece or parcel of land, lying and being in said City of Watervliet, County of Albany and State of New York (being in that part of said city formerly called Fort Schuyler), and being part of lot known and designated on the map of said city as Lot No. 243 Second Avenue, and strip or parcel being bounded as follows: On the north by lot No. 244; on the east by lot No. 245; on the south by a line running parallel to the south line of Lot No. 243 and thirty-five feet distant therefrom; and on the west by Second Avenue; said strip being about five feet wide front and rear and about 80' feet deep, as shown on said map, be the same more less.

Together with all right, title and interest in and to whatever rights have heretofore been granted by the City of Watervliet (formerly Village of West Troy) to William Hayes and Elizabeth J. Hayes, his wife, or their predecessors in interest in and to about twenty-five feet of land, be the

same more or less, adjoining said above described Lot No. 244, part the north, being a part of the Erie Canal or branch thereof.

ALL those certain places or parcels of land situate, lying and being in the First Ward of the City of Watervliet, County of Albany and State of New York, bounded and described as follows:

AND Lots numbers Two Hundred Fifty and Two Hundred Fifty-One, on a Map of the Village of West Troy, made in 1845 by S.A. Beers, Civil Engineer, and filed in the Office of the Clerk of the County of Albany, as the lots now stand on the south side of Second Street since the abandonment of the canal in what was formerly South Canal Street, which said lots constitute a plot of land approximately sixty feet front and rear and one hundred five feet deep, generally bounded on the north by Second Street, on the east by Lot No. 252, on the south by an alley, and on the west by Lot No. 249, together with all the right, title and interest of John S. Tilley and Rose E. Tilley, in and to said Second Street with all the right, title and interest of John S. Tilley and Rose E. Tilley in and to said Second Street in front of and adjoining said premises on the north to the center line thereof, and in and to that part of said alley in the rear of and adjoining said premises to the center line thereof.

Lots Numbers Two Hundred Thirty-Six and Two Hundred Thirty-Seven on a Map of the Village of West Troy, made in 1845 by S.A. Beers, Civil Engineer, and filed in the Office of the Clerk of the County of Albany, as the lots now stand on the north side of First Street, which said lots constitute a plot of land approximately eighty feet front and rear and one hundred feet deep, generally bounded on the south by First Street, on the west by a strip of land ten feet wide, on the north by an alley, and on the east by Lot No. 235 now or formerly belonging to Bassett, together with all the right, title and interest of John S. Tilley and Rose E. Tilley in and to said First Street in front of and adjoining said premises on the south to the center line thereof, and in and to that part of said alley in the rear of and adjoining said premises to the center line thereof.

A strip of land ten feet wide, Lot No. 237 on a Map of the Village of West Troy made in 1845 by S.A. Beers, Civil Engineer, and filed in the office of the Clerk of the County of Albany, on the west and extending through from First Street to the alley in the rear, one hundred feet in depth, together with all the right, title and interest of said John S. Tilley and Rose E. Tilley in and to said First Street in front of and adjoining said premises on the south to the center line thereof, and in and to that part of said alley in the rear of and adjoining said premises to the center line thereof.

ALL that certain piece, parcel or lot of land situate lying and being in the City of Watervliet (formerly Village of West Troy), County of Albany and State of New York, and known and distinguished on the map of the southern portion of said Village of West Troy, formerly known as Port Schuyler, as Lot Number Two Hundred Forty-Five (245) (South) Canal Street, now called South Street.

ALSO All that tract, piece or parcel of land, situate, lying and being in the City of Watervliet aforesaid and known and distinguished as the westerly fourteen (14) feet of Lot Number Two Hundred and Forty-Six (246) (South) Canal Street (now Second Street).

AND ALL that piece or tract of land situate in the City of Watervliet, County of Albany and State of New York, being a part of the lot designated on the map of the Village of Port Schuyler as Lot No. 243, and bounded and described as follows: Beginning at a point at the south-west corner of said lot at the intersection of the east line of Second Avenue and the alley in rear of said lot, and running thence north along Second Avenue thirty-five feet; thence east on a line parallel with said alley to the line dividing Lot Numbers 243 and 245, as shown on said map, thence south along said dividing line thirty-five feet to said alley, thence west along said alley to the place of beginning. The parcel intended to be conveyed herein is a parcel of land thirty-five feet wide and about eighty feet long, be the same more less.

ALL that tract or parcel of land, situate in the City of Watervliet, formerly in the First Ward of the Village of West Troy, County of Albany, and State of New York, being parts of the lots designated on the map of said Village as Lot Numbers Two Hundred Fifty-Three (253) and Two Hundred Fifty-Four (254) on the south said of Second Street, formerly called South Canal Street, the parts of said lots hereby conveyed being bounded and described as follows: Commencing at the southeasterly corner of said lot number Two Hundred Fifty-Four (254) and running thence westerly along the southerly boundary line of said Lot Numbers Two Hundred Fifty-Three (253) and Two Hundred Fifty-Four (254), Sixty (60) feet to the westerly boundary line of said Lot Number Two Hundred Fifty-Three (253), thence northerly along said westerly boundary line of said lot number Two Hundred Fifty-Three (253), Forty (40) feet; thence easterly on a line parallel with said southerly boundary line of said Lot Numbers Two Hundred Fifty-Three (253) and Two Hundred Fifty-Four (254) Sixty (60) feet to the First Avenue formerly called Boston Street thence southerly along the said First Avenue, formerly call Boston street, Forty (40) feet to the place of beginning, said parcel hereby conveyed being bounded as follows, to wit: Northerly by the Northerly half of said Lot Numbers Two Hundred Fifty-Three (253) and Two Hundred Fifty-Four (254); Easterly by said First Avenue formerly called Boston Street; Southerly by an alley and westerly by Lot Number Two Hundred Fifty-Two (252).

ALSO including all right, title and interest of the grantor in and to that portion of the alley lying between First Street and Second Street and extending westerly from the westerly side of First Avenue a distance of approximately two hundred feet, as the same was discontinued as a public highway as set forth in a Ordinance No. 580 of the City of Watervliet.

Said premises are also described as follows:

ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND, situate, lying and being in the City of Watervliet, County of Albany, State of New York being known as Lots 233-237, a portion of Lot 238, and 243-254 as shown on a map entitled "Map of the Village of Fort Schuyler" made by John Campbell in 1795, refiled in the Albany County Clerk's Office in Book 23, Dr. 23, Map 396, and lying generally southerly of Second Street, easterly of Second Avenue, westerly of First Avenue and northerly of First Street and being more particularly bounded and described as follows:

BEGINNING AT A POINT, on the southwesterly boundary of Second Street at its intersection with the southeasterly boundary of Second Avenue and thence from said point of beginning South 57 deg 32 min 25 sec East, a distance of 360.56 feet to its intersection with the northwesterly boundary of First Avenue; Thence, southwesterly along said street boundary South 32 deg 09 min 38 sec West, a distance of 228.00 feet to its intersection with the northeasterly boundary of First Street; Thence, North 57 deg 32 min 25 sec West, along said northeasterly boundary of First Street a distance of 220.84 feet to its intersection with the boundary line between lands, now or formerly, of the City of Watervliet as described in Liber 1502 of Deeds at Page 475 on the northwest and lands herein described on the southeast; Thence, North 32 deg 09 min 38 sec East along said boundary line a distance of 120.00 feet to a point; Thence, along the southwesterly boundary of Lots 247, 246, 245 and 243 and along the northerly boundary of the common alley North 57 deg 32 min 25 sec West, a distance of 161.84 feet to its intersection with the above First mentioned southeasterly boundary of Second Avenue; Thence North 44 deg 37 min 34 sec East, along said road boundary a distance of 162.30 feet to the point or place of beginning and containing 63,656+ square feet of land.

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