

INDUCEMENT RESOLUTION

A regular meeting of the County of Oswego Industrial Development Agency was convened in public session on April 23, 2014, at 9:00 a.m., at 44 West Bridge Street, Oswego, New York.

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

PRESENT: Nick Canale, Jr., Donald H. Kunzwiler, Carolyn A. Rush, H.
Leonard Schick, Morris Sorbello and Gary T. Toth

ABSENT: None

ALSO PRESENT: Kevin C. Caraccioli and L. Michael Treadwell

The following resolution was duly offered and seconded:

RESOLUTION UNDERTAKING THE ACQUISITION, RECONSTRUCTION, RENOVATION AND EQUIPPING OF A CERTAIN PROJECT, APPOINTING THE COMPANY AGENT OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, RECONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT; APPROVING FINANCIAL ASSISTANCE IN THE FORM OF EXEMPTIONS FROM STATE AND LOCAL SALES AND USE TAX AND MORTGAGE RECORDING TAX AND A LOAN FROM THE AGENCY'S ECONOMIC DEVELOPMENT FUND IN AN AMOUNT NOT TO EXCEED \$200,000; AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY AND THE COMPANY

WHEREAS, the County of Oswego Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 234 of the Laws of 1973 of the State of New York, as amended from time to time (collectively, the "**Act**") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing

recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to grant “financial assistance” (as defined in the Act) in connection with the acquisition, construction, renovation and equipping of one or more “projects” (as defined in the Act); and

WHEREAS, Kenneth Joseph Green, LLC, a New York limited liability company, or an entity to be formed (the “**Company**”), submitted an application to the Agency on or about March 24, 2014 (the “**Application**”), a copy of which is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the “**Project**”) consisting of: (A) (i) the acquisition of a leasehold interest in approximately 6 acres of improved real property located at 384 County Route 54, Pennellville, New York 13132, Town of Schroepel, Oswego County (the “**Land**”); (ii) the reconstruction and renovation of an approximately 13,500 square foot building into approximately 14 senior living apartments located on the Land (the “**Facility**”); and (iii) the acquisition of and installation in the Facility of various machinery, equipment and furnishings (the “**Equipment**”) (the Land, Facility and Equipment are hereinafter collectively referred to as the “**Project Facility**”); (B) granting certain financial assistance in the form of exemptions from mortgage recording tax and State and local sales and use tax and a loan from the Agency’s Economic Development Fund in an amount not to exceed \$200,000 (collectively the “**Financial Assistance**”); (C) the appointment of the Company as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement; the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, the Agency adopted a resolution on April 2, 2013 describing the Project and the financial assistance and authorizing a public hearing (“**Initial Resolution**”); and

WHEREAS, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on April 22, 2014 pursuant to Section 859-a of the Act, notice of which was published on April 6, 2014 in The Post-Standard, a newspaper of general circulation in the County of Oswego, New York and given to the chief executive officers of the affected tax jurisdictions by letter dated April 3, 2014; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “**SEQRA**”), the Agency has examined the EAF prepared by the Company in order to classify the Project and has determined that the Project constitutes a “Type II” action as that term is defined under SEQRA, and therefore no further review is required; and

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

WHEREAS, 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; and

WHEREAS, the Agency has given due consideration to the Application and to representations by the Company that the provision of Financial Assistance (i) will induce the Company to develop the Project Facility in the County of Oswego, (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) the Project will serve the purposes of the Act by creating and/or preserving permanent, private sector jobs and increasing the overall number of permanent, private sector jobs in the State.

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

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

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

- a. The Project constitutes a Type II action under SEQRA and therefore no further review is required.
- b. Ratifies the findings in its Initial Resolution.
- c. The Project constitutes a “project” within the meaning of the Act.
- d. The granting of the Financial Assistance will be an inducement to the Company to develop the Project in the Town of Schroepel, County of Oswego.
- e. The commitment of the Agency to provide Financial Assistance to the Company will enable the Company to construct the Project and help to ensure the continued physical and financial viability of the Project.

- f. The reconstruction, renovation and equipping of the Project will promote employment opportunities and help prevent economic deterioration in the Town of Schroepfel by the creation and preservation of both full and part-time jobs.
- g. The acquisition of a controlling interest in the Project Facility by the Agency and the designation of the Company as the Agency's agent for completion of the Project will be an inducement to the Company to reconstruct, renovate, equip and operate the Project Facility in the County of Oswego, and will serve the purposes of the Act by, among other things, preserving and/or creating permanent private sector jobs, the general prosperity and economic welfare of the inhabitants of the County of Oswego and the granting of the Financial Assistance is necessary to assist in financing the costs of the acquisition, reconstruction, renovation and equipping of the Project.
- h. The Project will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act.

Section 3. Subject to the terms of this Resolution and conditions set forth in Section 4.02 of the Agreement (hereinafter defined), the Agency will: (i) acquire a controlling interest in the Land and Facility pursuant to a lease agreement (the "**Lease**") to be entered into between the Company and the Agency and accept an interest in the Equipment pursuant to a bill of sale from the Company (the "**Bill of Sale**"); (ii) sublease the Project Facility to the Company pursuant to a sublease agreement (the "**Sublease**" and together with the Lease, the Bill of Sale and any other certificates and documents deemed necessary by the Agency to undertake the Project, collectively, the "**Lease Documents**") to be entered into between the Agency and the Company; (iii) grant the Financial Assistance; (iv) provided that no default shall have occurred and be continuing under the Agreement, the Lease Documents or any loan documents, execute and deliver all other certificates and documents necessary or appropriate for the grant of the Financial Assistance requested by the Company, in form and substance acceptable to the Agency, or its commercial lender(s) in connection with financing for the Project, including but not limited to, one or more mortgages in favor of the Agency and/or the Company's commercial lender(s). 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 sales and use exemptions benefits. Notwithstanding anything herein to the contrary, the amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved herein shall not exceed \$46,080.00.

Section 4. The Company shall provide or cause its Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "**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.

Section 5. As a condition to the extension of sales and use tax exemption benefits and the Company's appointment as provided herein, the Company agrees to execute an agreement with the Agency setting forth the preliminary undertakings of the Agency and the Company with respect to the Project. The form and substance of the proposed agreement (as set forth as on **Exhibit "A"** attached hereto and presented at this meeting) (the "**Agreement**") are hereby approved. The Chief Executive Officer or (Vice) Chairperson 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 Chief Executive Officer or (Vice) Chairperson shall approve. The execution thereof by the Chief Executive Officer or (Vice) Chairperson shall constitute conclusive evidence of such approval.

Section 6. Subject to the due execution and delivery by the Company of the Agreement, the satisfaction of the conditions of this Resolution and the Agreement, and the payment by the Company of any attendant fees, the Company is appointed the true and lawful agent of the Agency to proceed with the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf. The appointment made by this Section 6 shall not be effective until the Agreement referred to in Section 4 hereof is duly executed and delivered by the Company. The Company is hereby authorized to appoint Additional Agents to proceed with the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf. The appointment of Additional Agents shall not be effective until the terms of the Agreement relative to such appointment(s) are satisfied.

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

Section 8. 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 herein on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

Section 9. Should the Agency's participation in the Project, or the appointments made in accordance herewith, be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursement of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under the Act to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company hereunder or otherwise.

Section 10. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

Section 11. The Chief Executive Officer of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 12. Counsel to the Agency and special Agency counsel are hereby authorized to work with the Company, and others to prepare, for submission to the Agency, all documents necessary to effect the grant of Financial Assistance and consummate the Lease Documents.

Section 13. This Resolution shall take effect immediately.

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>	<u>Abstain</u>	<u>Absent</u>	<u>Recuse</u>
Nick Canale, Jr.	X				
Donald H. Kunzwiler	X				
Carolyn A. Rush	X				
H. Leonard Schick	X				
Morris Sorbello	X				
Gary T. Toth	X				

The resolution was thereupon declared duly adopted.

EXHIBIT “A”

AGENCY/COMPANY AGREEMENT

This Agreement is between the County of Oswego Industrial Development Agency (the “**Agency**”), and Kenneth Joseph Green, LLC, a New York limited liability company (the “**Company**”).

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, together with Chapter 234 of the Laws of 1973 of the State of New York, as amended from time to time (collectively, the “**Act**”) to grant “financial assistance” (as defined in the Act) in connection with “Projects” (as defined in the Act) and to lease or sell the same upon such terms and conditions as the Agency may deem advisable and 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 grant financial assistance, acquire and dispose of interests in real property and to appoint agents for the purpose of completion of projects undertaken by the Agency.

1.03. The Company has requested that the Agency undertake a project (the “**Project**”) consisting of: (A) (i) the acquisition of a leasehold interest in approximately 6 acres of improved real property located at 384 County Route 54, Pennellville, New York 13132, Town of Schroepfel, Oswego County (the “**Land**”); (ii) the reconstruction and renovation of an approximately 13,500 square foot building into approximately 14 senior living apartments located on the Land (the “**Facility**”); and (iii) the acquisition of and installation in the Facility of various machinery, equipment and furnishings (the “**Equipment**”) (the Land, Facility and Equipment are hereinafter collectively referred to as the “**Project Facility**”); (B) granting certain financial assistance in the form of exemptions from mortgage recording tax and State and local sales and use tax and a loan from the Agency’s Economic Development Fund in an amount not to exceed \$200,000 (collectively the “**Financial Assistance**”); (C) the appointment of the Company and/or its designee(s) as an agent of the Agency in connection with the acquisition,

reconstruction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement; the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company; 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 undertaking the Project, the designation of the Company as the Agency's agent for the construction 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 construct and equip the Project Facility in the County of Oswego (the "***County***"); (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 reconstruction, 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 "***Inducement Resolution***") agreeing, subject to the satisfaction of all conditions precedent set forth in such Resolution, to designate the Company as the Agency's agent for the acquisition, reconstruction, renovation and equipping of the Project Facility and determining that the acquisition, reconstruction, renovation and equipping of the Project Facility and the leasing of the same to the Company will promote and further the purposes of the Act.

1.07 In the Resolution, subject to the execution of this Agreement by the Company and other conditions set forth therein and herein the Agency has agreed to appoint the Company as its agent for the purposes of reconstructing, renovating and equipping the Project Facility, entering into contracts and doing all things requisite and proper for constructing, renovating and equipping the Project Facility. For purposes of that appointment, the Agency authorized State and local sales and use tax exemption benefits as part of the approved Financial Assistance in an amount not exceed \$46,080.00.

Article 2. Undertakings on the Part of the Agency. Based upon the statements, 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 acquiring, reconstructing, renovating 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: (i) acquisition of a

controlling interest in the Project Facility; (ii) designation of the Company as the agent of the Agency, and designation by the Company of Additional Agents, all for reconstruction, renovation and equipping of the Project Facility subject to the terms of the Resolution and hereof; and (iii) the leasing or subleasing of the Project Facility to the Company, all as shall be authorized by law and be mutually satisfactory to the Agency and the Company.

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

2.04. After satisfying the conditions precedent set forth in the Sections 3.06 and 4.02 hereof and in the Inducement Resolution, the Company may proceed with the construction and equipping of the Project Facility and the 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 for the reconstruction and equipping of the Project Facility, and 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 reconstruction, 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, reconstruction, 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, reconstruction, 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, 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 include the Agency as a named insured under all public liability insurance policies obtained by the Company with respect to the Project Facility.

(h) The Company shall apply and diligently pursue all approvals, permits and consents from the State of New York, the Town and any other governmental authority which approvals, permits and consents are required under applicable law for the development, reconstruction and renovation 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.

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, reconstruction, 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, 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 all the requirements 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 acquisition, reconstruction, renovation and equipping of the Project Facility 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 hereby ratifies and confirms its obligations to pay an administrative fee to the Agency in the amount of .50% of the Project costs. Such amount is due and payable in full at closing.

3.08 The Company hereby ratifies and confirms its obligations to pay an annual administrative reporting fee of \$500.00 to cover administrative and reporting requirements to comply with New York State reporting regulations on Agency assisted projects.

3.09 Whenever practicable, the Company and/or its Additional Agents and employees agree to hire from the local labor pool during the construction 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 and, subject to Section 4.04 hereof, shall remain in effect until the Lease Documents become effective. It is the intent of the Agency and the Company that this Agreement be superseded in its entirety by the Lease Documents.

4.02. (a) It is understood and agreed by the Agency and the Company that the grant of Financial Assistance and the execution of the Lease Documents and related documents are subject to (i) payment by the Company of the Agency’s fee and Agency’s counsel fees; (ii) obtaining all necessary governmental approvals, permits and consents of any kind required in connection with the Project Facility; (iii) approval by the members of the Agency; (iv) approval by the Company; and (v) the condition that there are no changes in New York State Law, including regulations, which prohibit or limit the Agency from fulfilling its obligations

hereunder; (b) The Company, by executing this agreement, acknowledges and agrees to make, or cause its Additional Agents to make, all records and information regarding State and local sales and use tax exemption benefits given to the Project as part of the Financial Assistance available to the Agency upon request; (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 or not this matter closes or the Project Facility is completed: (i) reimburse the Agency for all reasonable and necessary expenses, including without limitation the fees and expenses of counsel to the Agency 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, including but not limited to, any obligations related to Additional Agents.

4.04. If for any reason the Agency Lease is not executed and delivered by the Company and the Agency on or before eighteen (18) months from the execution hereof, the provisions of this Agreement (other than the provisions of 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, which shall survive) shall unless extended by agreement of the Agency and the Company, terminate and be of no further force or effect, and following such termination neither party shall have any rights against the other party except:

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

(b) The Company shall assume and be responsible for any contracts for reconstruction 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, counsel for the Agency and special Agency counsel incurred in connection with the Project and will pay the fees of counsel for the Agency and special Agency counsel 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 in this Agreement as of _____, 2014.

**COUNTY OF OSWEGO INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
L. Michael Treadwell
Chief Executive Officer

KENNETH JOSEPH GREEN, LLC

By: _____
Name:
Title: