

**INDUCEMENT RESOLUTION  
JCC DEVELOPMENT CORP. PROJECT**

A special meeting of County of Chautauqua Industrial Development Agency (the "Issuer") was convened in public session in the Conference Room of 200 Harrison Street in the City of Jamestown, Chautauqua County, New York on April 26, 2007 at 10:00 o'clock a.m., local time.

The meeting was called to order by the (Vice) Chairman of the Issuer and, upon roll being called, the following members of the Issuer were:

PRESENT:

Michael Piazza	Chairman
Michael Metzger	Vice-Chairman/Treasurer
Richard Star	Secretary
David Bryant	Member
Gregory DeCinque	Member
Ronald Szot	Member
Kim Peterson	Member
Dennis Rak	Member
Doreen Sixbey	Member

ABSENT:

ISSUER STAFF PRESENT INCLUDED THE FOLLOWING:

William J. Daly	Administrative Director/Chief Executive Officer
Richard E. Dixon	Chief Financial Officer
George W. Cregg, Jr., Esq.	Bond Counsel
Gregory Peterson, Esq.	Issuer Counsel

The following resolution was offered by \_\_\_\_\_, seconded by \_\_\_\_\_, to wit:

**Resolution No. 04-26-07-05**

**RESOLUTION TAKING OFFICIAL ACTION TOWARD THE ISSUANCE OF REVENUE BONDS IN AN AMOUNT SUFFICIENT TO FINANCE A CERTAIN CIVIC FACILITY PROJECT FOR JCC DEVELOPMENT CORP. (THE "APPLICANT") ON BEHALF OF A WHOLLY-OWNED SUBSIDIARY LIMITED LIABILITY COMPANY TO BE FORMED (THE "INSTITUTION") AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PRELIMINARY AGREEMENT WITH THE INSTITUTION WITH RESPECT TO SUCH FINANCING.**

**WHEREAS**, County of Chautauqua Industrial Development Agency (the "Issuer") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of

Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 71 of the 1972 Laws of New York, as amended, constituting Section 895-h of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of civic facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

**WHEREAS**, to accomplish its stated purposes, the Issuer is authorized and empowered under the Act to issue its revenue bonds to finance the cost of the acquisition, construction, reconstruction and installation of one or more "projects" (as defined in the Act), to acquire, construct, reconstruct and install said projects or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

**WHEREAS**, in March, 2007, JCC Development Corp. (the "Applicant") on behalf of a wholly-owned subsidiary limited liability company to be formed (the "Institution"), submitted an application (the "Application") to the Issuer, a copy of which Application is on file at the office of the Issuer, which Application requested that the Issuer consider undertaking a project (the "Project") for the benefit of the Institution, said Project consisting of the following: (A) (1) the acquisition of an interest or interests in an approximately eight (8) acre parcel of land located on the southwest corner of the Jamestown Community College (the "College") campus located at 525 Falconer Street in the City of Jamestown, Chautauqua County, New York (the "Land"), (2) the construction of an approximately 220-bed student housing facility on the Land (the "Facility") and (3) the acquisition and installation thereon and therein of various machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"); all of the foregoing to be operated by the College or an entity affiliated with the College as a dormitory facility intended to be occupied by students and staff of the College; (B) the financing of all or a portion of the costs of the foregoing by the issuance of revenue bonds of the Issuer in one or more issues or series in an aggregate principal amount sufficient to pay the cost of undertaking the Project, together with necessary incidental costs in connection therewith, presently estimated to be approximately \$10,000,000 and in any event not to exceed \$20,000,000 (the "Obligations"); (C) paying a portion of the costs incidental to the issuance of the Obligations, including issuance costs of the Obligations and any reserve funds as may be necessary to secure the Obligations; (D) the granting of certain other "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real estate transfer taxes and mortgage recording taxes (collectively with the Obligations, the "Financial Assistance"); and (E) the lease (with an obligation to purchase) or sale of the Project Facility to the Institution or such other person as may be designated by the Institution and agreed upon by the Issuer; and

**WHEREAS**, by resolution adopted by the members of the Issuer on March 29, 2007 (the "Public Hearing Resolution"), the Issuer agreed to accept the Application and authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Project; and

**WHEREAS**, pursuant to the authorization contained in the Public Hearing Resolution, the Administrative Director of the Issuer (A) caused notice of public hearing of the Issuer (the "Public Hearing") pursuant to Section 859-a of the Act and Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), to hear all persons interested in the Project and the Financial Assistance being contemplated by the Issuer with respect to the Project, to be mailed on March 23, 2007 to the chief executive officers of the county and of each city, town, village and school district in which the Project is

or is to be located, (B) caused notice of the Public Hearing to be posted on March 23, 2007 on a bulletin board located at 200 E. 3<sup>rd</sup> Street in the City of Jamestown, Chautauqua County, New York, (C) caused notice of the Public Hearing to be published on March 24, 2007 in The Post-Journal, a newspaper of general circulation available to the residents of in the City of Jamestown, Chautauqua County, New York, (D) conducted the Public Hearing on April 26, 2007 at 10:00 o'clock a.m., local time at the Jamestown Community College located at 525 Falconer Street, Carnahan Building, Room 123 in the City of Jamestown, Chautauqua County, New York, and (E) prepared a report of the Public Hearing (the "Hearing Report") which fairly summarized the views presented at said Public Hearing and distributed same to the members of the Issuer and to the County Executive of Chautauqua County, New York (the "County Executive"); 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 Issuer on March 29, 2007 (the "Preliminary SEQR Resolution"), the Issuer (A) determined (1) that the Project involves more than one "involved agency", and (2) therefore that the coordinated review procedures outlined in the Regulations are optional with respect to the Project and (B) authorized the Administrative Director of the Issuer to contact all other "involved agencies" for the purpose of ascertaining whether such "involved agencies" were interested in undertaking a coordinated review of the Project and, if so, designating a "lead agency" with respect to the Project (as such quoted terms are defined in SEQRA); and

**WHEREAS**, the Issuer has given due consideration to the Application, and to representations by the Institution that (A) issuance of the Obligations and the granting by the Issuer of the other Financial Assistance with respect to the Project will be an inducement to the Institution to retain the Project in Chautauqua County, New York and (B) the completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York; and

**WHEREAS**, the Issuer desires to encourage the Institution to preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of Chautauqua County, New York by retaining the Project in Chautauqua County, New York; and

**WHEREAS**, pursuant to the Act, any approval of the Project contained herein is contingent upon a determination by the members of the Issuer to proceed with the Project following satisfaction of (A) all requirements of SEQRA that relate to the Project and (B) the public hearing and notice requirements and other procedural requirements contained in Section 859-a of the Act; and

**WHEREAS**, with respect to any portion of the Obligations intended to be issued as federally tax-exempt obligations, interest on such portion of the Obligations will not be excludable from gross income for federal income tax purposes unless (A) pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations of the United States Treasury Department thereunder (the "Treasury Regulations"), the issuance of such portion of the Obligations is approved by the County Executive after the Issuer has held a public hearing on the nature and location of the Project Facility and the issuance of the Obligations as required by Section 147(f) of the Code; and (B) pursuant to Section 145(a) of the Code, all property which is to be provided by the net proceeds of such portion of the Obligations is to be owned by a Section 501(c)(3) organization or a governmental unit and at least ninety-five percent (95%) of the net proceeds of the Obligations are used with respect to (1) governmental units and/or (2) the activities of Section 501(c)(3) organizations which do not constitute "unrelated trades or

businesses” (as defined in Section 513(a) of the Code) with respect to such Section 501(c)(3) organizations; and

**WHEREAS**, although the resolution authorizing the issuance of the Obligations and the undertaking of the Project has not yet been drafted for approval by the Issuer, a preliminary agreement (the “Preliminary Agreement”) relative to the proposed issuance of the Obligations and the undertaking of the Project by the Issuer has been presented for approval by the Issuer;

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

Section 1. The Issuer has reviewed the Application and, based upon the representations made by the Institution to the Issuer in the Application and at this meeting, the Issuer hereby makes the following findings and determinations with respect to the Project:

(A) The Project constitutes a “project” within the meaning of the Act; and

(B) The completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York; and

(C) Although the Project Facility may constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one third of the total cost of the Project Facility, the Institution shall ensure that the Project Facility will be operated by the Institution, which is a not-for-profit corporation, the College or another not-for-profit corporation within the meaning of Section 862(2)(a) of the Act; and

(D) Except to the extent permitted by Section 854(13) of the Act, no portion of the proceeds of the Obligations will be expended on any “housing facilities” or any “medical facilities which are predominately used for the delivery of medical services” or any other facilities prohibited by Section 854(13) of the Act; and

(E) The granting of the Financial Assistance by the Issuer with respect to the Project, through the issuance of the Obligations and the granting of certain exemptions from taxation with respect to the Project (the “Exemptions”), as further described in Section 2(E) of this Resolution will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of Chautauqua County, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act; and

(F) It is desirable and in the public interest to issue the Obligations in a principal amount sufficient to pay the cost of undertaking the Project, together with necessary incidental expenses in connection therewith (collectively, the “Project Costs”), which Project Costs are presently estimated to be approximately \$10,000,000 and in any event not to exceed \$20,000,000;

provided, however, that the foregoing determinations shall not entitle or permit the Institution to commence the Project unless and until the Issuer shall determine that all requirements of SEQRA that relate to the Project and to the issuance of the Obligations have been fulfilled.

Section 2. If, following full compliance with SEQRA, the Issuer will (A) authorize the issuance of the Obligations in such principal amount and with such maturities, interest rate or rates, redemption terms and other terms and provisions as shall be determined by a further resolution of the Issuer; (B) acquire, construct, and install the Project Facility, or cause the Project Facility to be acquired, constructed, and installed; (C) sell the Project Facility to the Institution pursuant to an installment sale agreement (hereinafter, the "Installment Sale Agreement") between the Issuer and the Institution whereby the Institution will be obligated, among other things, (1) to make payments to the Issuer in amounts and at times so that such payments will be adequate to pay the principal of, premium, if any, and interest on the Obligations and (2) to pay all costs incurred by the Issuer with respect to the Project and/or the Project Facility, including all costs of operation and maintenance, all taxes and other governmental charges, any required payments in lieu of taxes, and all reasonable fees and expenses incurred by the Issuer with respect to or in connection with the Project and/or the Project Facility; (D) secure the Obligations in such manner as the Issuer, the Institution and the purchasers of the Obligations shall mutually deem appropriate; and (E) provide certain exemptions from taxation with respect to the Project, in accordance with the Issuer's uniform tax exemption policy (the "Exemptions", and collectively with the Obligations, the "Financial Assistance"), including (1) exemption from sales and use taxes relating to the acquisition, construction, reconstruction and installation of the Project Facility, (2) exemption from mortgage recording taxes with respect to any documents recorded by the Issuer with respect to the Project in the office of the County Clerk of Chautauqua County, New York or elsewhere, and (3) exemption from deed transfer taxes on real estate transfers to and from the Issuer with respect to the Project, all as contemplated by the Preliminary Agreement and the Future Resolution. If the proceeds from the sale of the Obligations are insufficient to finance the entire cost of the acquisition, construction, and installation of the Project Facility, the Issuer will, upon request of the Institution and subject to the provisions of the Preliminary Agreement and Section 3 hereof, use its best efforts to effect the issuance from time to time in the future of additional bonds, whether on a parity with the Obligations or otherwise, for the purpose of paying the cost of completing the acquisition and installation of the Project Facility.

Section 3. The issuance of the Obligations and any additional bonds, as contemplated by Section 2 of this Resolution, and the granting of any other Financial Assistance with respect to the Project by the Issuer, as contemplated by Section 2 of this Resolution, shall be subject to: (A) the determination by the Issuer to proceed with the Project following a determination by the Issuer that all requirements of SEQRA that relate to the Project have been fulfilled; (B) execution and delivery by the Institution of the Preliminary Agreement, which sets forth certain conditions for the issuance of the Obligations and the granting of any other Financial Assistance with respect to the Project by the Issuer, and satisfaction by the Institution of all the terms and conditions of the Preliminary Agreement applicable to the Institution; (C) agreement by the Issuer, the Institution and the purchasers of the Obligations on mutually acceptable terms for the Obligations and for the sale and delivery thereof and mutually acceptable terms and conditions for the security for the payment thereof; (D) agreement between the Institution and the Issuer as to payment by the Institution of the administrative fee of the Issuer with respect to the Project; (E) if any portion of the Financial Assistance to be granted by the Issuer with respect to the Project is not consistent with the Issuer's uniform tax exemption policy, the Issuer must follow the procedures for deviation from such policy set forth in Section 874(b) of the Act prior to granting such portion of the Financial Assistance; (F) if interest on any portion of the Obligations is to be treated as excludable from gross income for federal income tax purposes, (1) pursuant to Section 145(a) of the Code, all property which is to be provided by the net proceeds of such portion of the Obligations must be owned by a Section 501(c)(3) organization or a governmental unit and at least ninety-five percent (95%) of the net proceeds of such portion of the Obligations must be used with respect to (a) governmental units and/or (b) the activities of Section 501(c)(3) organizations which do not constitute "unrelated trades or businesses" (as defined in Section 513(a) of the Code), and (2) the County Executive of Chautauqua County, New York must have approved the issuance of such portion of the Obligations after a public hearing on the issuance of the Obligations and the nature and location of the Project Facility has been held

by the Issuer, as required by Section 147(f) of the Code; (G) all property which is to be provided by the proceeds of the Obligations shall satisfy the requirements contained in Section 854(13) of the Act and any other provisions of the Act which govern the use of the proceeds of the Obligations, it being expressly understood and agreed by the Issuer and the Institution that any portions of the Project Facility not satisfying such requirements of the Act shall be financed from sources other than the proceeds of the Obligations; (H) a determination by the members of the Issuer to proceed with the issuance of the Obligations and the granting of any other Financial Assistance with respect to the Project following a determination by the members of the Issuer that all requirements of SEQRA that relate to the Project have been fulfilled; and (I) the following additional condition(s): **NONE**.

Section 4. The form, terms and substance of the Preliminary Agreement (in substantially the form presented to this meeting and attached hereto) are in all respects approved, and the Chairman (or Vice Chairman) of the Issuer is hereby authorized, empowered and directed to execute and deliver said Preliminary Agreement in the name and on behalf of the Issuer, said Preliminary Agreement to be substantially in the form presented to this meeting, with such changes therein as shall be approved by the officer executing same on behalf of the Issuer, the execution thereof by such officer to constitute conclusive evidence of such officer's approval of any and all changes or revisions therein from the form now before this meeting.

Section 5. From and after the execution and delivery of the Preliminary Agreement, the officers, agents and employees of the Issuer are hereby authorized, empowered and directed to proceed with the undertakings provided for therein on the part of the Issuer and are further authorized to do all such acts and things and to execute all such documents as may be necessary or convenient to carry out and comply with the terms and provisions of the Preliminary Agreement as executed.

Section 6. The Institution is hereby authorized to conduct such environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary or convenient to enable the Issuer to make its final determination whether to approve the Project, and the Institution is further authorized to advance such funds as may be necessary for such purpose, subject, to the extent permitted by law, to reimbursement from the proceeds of the sale of the Obligations, if the Obligations are issued; provided, however, that such authorization shall not entitle or permit the Institution to commence the Project unless and until the Issuer shall determine to proceed with the Project following a determination by the Issuer that all requirements of SEQRA that relate to the Project and to the issuance of the Obligations have been fulfilled. The officers, agents and employees of the Issuer are hereby directed to proceed to comply with the provisions of SEQRA and to do such things or perform such acts as may allow the Issuer to proceed to its final consideration of the Project. This Resolution constitutes a determination of compliance with technical requirements within the meaning of Section 617.3(c)(2) of the DEC Regulations and does not constitute, and shall not be deemed to constitute, either an approval by the Issuer of the Project for the purposes of SEQRA or a commitment by the Issuer to issue the Obligations or to grant any other Financial Assistance with respect to the Project except upon satisfaction of the requirements of SEQRA, the requirements set forth in Section 3 hereof and the requirements set forth in the Preliminary Agreement.

Section 7. It is intended that this Resolution shall constitute an affirmative official action toward the issuance of the Obligations within the meaning of Section 1.103-8(a)(5) of the United States Treasury Regulations.

Section 8. The law firm of Hodgson Russ LLP is hereby appointed Bond Counsel to the Issuer with respect to all matters in connection with the Project and the issuance of the Obligations. Bond

Counsel for the Issuer is hereby authorized, at the expense of the Institution, to work with the Institution, counsel to the Institution, counsel to the Issuer, the purchasers of the Obligations and others to prepare, for submission to the Issuer, all documents necessary to effect the authorization, issuance, sale and delivery of the Obligations and the other transactions contemplated by this Resolution.

Section 9. If any portion of the Obligations is intended to be issued as federally tax-exempt obligations, the Issuer hereby authorizes the Administrative Director of the Issuer (A) to submit a copy of the Report to the County Executive of Chautauqua County, New York; (B) to request that Chautauqua County, New York, acting through its elected County Executive, approve the issuance of such portion of the Obligations intended to be issued as federally tax-exempt obligations; and (C), if applicable to the Obligations, to take all actions required to comply with the provisions of Section 146 (Volume Cap) of the Code.

Section 10. The Chairman, the Vice Chairman and/or the Administrative Director of the Issuer is hereby authorized and directed to distribute copies of this Resolution to the Institution and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 11. This Resolution shall take effect immediately.

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

Michael Piazza	VOTING	_____
Michael Metzger	VOTING	_____
Richard Star	VOTING	_____
David Bryant	VOTING	_____
Gregory DeCinque	VOTING	_____
Ronald Szot	VOTING	_____
Kim Peterson	VOTING	_____
Dennis Rak	VOTING	_____
Doreen Sixbey	VOTING	_____

The foregoing Resolution was thereupon declared duly adopted.

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

I, the undersigned (Assistant) Secretary of County of Chautauqua Industrial Development Agency (the "Issuer"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Issuer, including the Resolution contained therein, held on April 26, 2007 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Issuer had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Issuer present throughout said meeting.

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Issuer this 26<sup>th</sup> day of April, 2007.

\_\_\_\_\_  
(Assistant) Secretary

(SEAL)



## PRELIMINARY AGREEMENT

THIS PRELIMINARY AGREEMENT made as of April 26, 2007 between COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York (the "Issuer") and JCC DEVELOPMENT CORP. (the "Applicant") on behalf of a wholly-owned subsidiary limited liability company to be formed (the "Institution"), a not-for-profit corporation organized and existing under the laws of the State of New York;

### WITNESSETH:

WHEREAS, the Issuer is authorized and empowered by the provisions of the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of the State of New York, as amended (the "Enabling Act") and Chapter 71 of the 1972 Laws of New York, as amended, constituting Section 895-h of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research, recreation and civic facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, the purposes of the Act are to promote industry and develop trade and thereby advance the job opportunities, health, general prosperity and economic welfare of the inhabitants of Chautauqua County, New York and the State of New York, to improve their prosperity and standard of living and to prevent unemployment and economic deterioration, and to that end the Act vests the Issuer with all powers necessary to enable it to issue civic facility revenue bonds; and

WHEREAS, in March, 2007, JCC Development Corp. (the "Applicant") on behalf of a wholly-owned subsidiary limited liability company to be formed (the "Institution"), submitted an application (the "Application") to the Issuer, a copy of which Application is on file at the office of the Issuer, which Application requested that the Issuer consider undertaking a project (the "Project") for the benefit of the Institution, said Project consisting of the following: (A) (1) the acquisition of an interest or interests in an approximately eight (8) acre parcel of land located on the southwest corner of the Jamestown Community College (the "College") campus located at 525 Falconer Street in the City of Jamestown, Chautauqua County, New York (the "Land"), (2) the construction of an approximately 220-bed student housing facility on the Land (the "Facility") and (3) the acquisition and installation thereon and therein of various machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"); all of the foregoing to be operated by the College or an entity affiliated with the College as a dormitory facility intended to be occupied by students and staff of the College; (B) the financing of all or a portion of the costs of the foregoing by the issuance of revenue bonds of the Issuer in one or more issues or series in an aggregate principal amount sufficient to pay the cost of undertaking the Project, together with necessary incidental costs in connection therewith, presently estimated to be approximately \$10,000,000 and in any event not to exceed \$20,000,000 (the "Obligations"); (C) paying a portion of the costs incidental to the issuance of the Obligations, including issuance costs of the Obligations and any reserve funds as may be necessary to secure the Obligations; (D) the granting of certain other "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real estate transfer taxes and mortgage recording taxes (collectively with the Obligations, the "Financial

Assistance”); and (E) the lease (with an obligation to purchase) or sale of the Project Facility to the Institution or such other person as may be designated by the Institution and agreed upon by the Issuer; and

**WHEREAS**, by resolution adopted by the members of the Issuer on March 29, 2007 (the “Public Hearing Resolution”), the Issuer agreed to accept the Application and authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Project; and

**WHEREAS**, pursuant to the authorization contained in the Public Hearing Resolution, the Administrative Director of the Issuer (A) caused notice of public hearing of the Issuer (the “Public Hearing”) pursuant to Section 859-a of the Act and Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”), to hear all persons interested in the Project and the Financial Assistance being contemplated by the Issuer with respect to the Project, to be mailed on March 23, 2007 to the chief executive officers of the county and of each city, town, village and school district in which the Project is or is to be located, (B) caused notice of the Public Hearing to be posted on March 23, 2007 on a bulletin board located at 200 E. 3<sup>rd</sup> Street in the City of Jamestown, Chautauqua County, New York, (C) caused notice of the Public Hearing to be published on March 24, 2007 in The Post-Journal, a newspaper of general circulation available to the residents of in the City of Jamestown, Chautauqua County, New York, (D) conducted the Public Hearing on April 26, 2007 at 10:00 o’clock a.m., local time at the Jamestown Community College located at 525 Falconer Street, Carnahan Building, Room 123 in the City of Jamestown, Chautauqua County, New York, and (E) prepared a report of the Public Hearing (the “Hearing Report”) which fairly summarized the views presented at said Public Hearing and distributed same to the members of the Issuer and to the County Executive of Chautauqua County, New York (the “County Executive”); 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 Issuer on March 29, 2007 (the “Preliminary SEQR Resolution”), the Issuer (A) determined (1) that the Project involves more than one “involved agency”, and (2) therefore that the coordinated review procedures outlined in the Regulations are optional with respect to the Project and (B) authorized the Administrative Director of the Issuer to contact all other “involved agencies” for the purpose of ascertaining whether such “involved agencies” were interested in undertaking a coordinated review of the Project and, if so, designating a “lead agency” with respect to the Project (as such quoted terms are defined in SEQRA); and

**WHEREAS**, by further resolution adopted by the members of the Issuer on April 26, 2007 (the “Inducement Resolution”), the members of the Issuer determined, following a review of the Report and subject to certain conditions, to proceed with the Project and to enter into a preliminary agreement with the Institution (the “Preliminary Agreement”) relating to the Project;

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the Issuer and the Institution agree as follows:

Article 1.        Representations.

Among the representations which have resulted in the execution of this Preliminary Agreement are the following:

Section 1.01.    The Institution hereby represents to the Issuer that:

(A) The completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York.

(B) Although the Project Facility may constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one third of the total cost of the Project Facility, the Institution shall ensure that the Project Facility will be operated by the Institution, which is a not-for-profit corporation, the College or another not-for-profit corporation within the meaning of Section 862(2)(a) of the Act.

(C) The Institution shall ensure that, except to the extent permitted by Section 854(13) of the Act, no portion of the proceeds of the Obligations will be expended on any "housing facilities" or any "medical facilities which are predominately used for the delivery of medical services" or any other facilities prohibited by Section 854(13) of the Act.

(D) The Project Facility is and/or will be located entirely within the boundaries of Chautauqua County, New York.

(E) The provision of the Financial Assistance by the Issuer with respect to the Project, through the issuance of the Obligations and the granting of certain exemptions from taxation with respect to the Project (the "Exemptions") as further described in Section 2(E) of the Inducement Resolution (such Exemptions and such Obligations being collectively referred to as the "Financial Assistance"), will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of Chautauqua County, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act.

(F) It is estimated at the present time that the costs of the planning, development, acquisition, construction and installation of the Project Facility, including the costs incurred in connection with the issuance of the Obligations (collectively, the "Project Costs") will be approximately \$10,000,000 and in any event not to exceed \$20,000,000.

(G) The Institution will ensure that the acquisition, construction, installation and operation of the Project Facility will comply with all applicable federal, state and local laws, ordinances, rules and regulations (the applicability of same to be determined both as if the Issuer were the owner of the Project Facility and as if the Institution and not the Issuer were the owner of the Project Facility), and the Institution will obtain all necessary approvals and permits required thereunder.

Section 1.02. By the Inducement Resolution, the Issuer has approved the execution of this Preliminary Agreement. The Issuer intends this Preliminary Agreement to constitute its official binding commitment, subject to the terms hereof and of the Inducement Resolution: (A) to issue its Obligations in one or more series or issues pursuant to the Act in an aggregate principal amount sufficient to pay the Project Costs, the actual principal amount of such Obligations to be agreed upon by the Issuer and the Institution when the Project Costs are more definitely established; (B) to use the proceeds of the Obligations to finance the Project Costs; and (C) to grant certain other Financial Assistance with respect to the Project; provided, however, that this Preliminary Agreement shall not entitle or permit the Institution to commence the undertaking of the Project unless and until the Issuer shall determine that all requirements of SEQRA that relate to the Project have been fulfilled or commit the Issuer to issue the Obligations or to grant to the Institution any other "financial assistance" (as defined in the Act) with

respect to the Project unless and until the Issuer shall determine to proceed with the Project following a determination by the Issuer that all requirements of SEQRA that relate to the Project have been fulfilled.

Section 1.03. Pursuant to SEQRA, the Issuer (or any other “involved agency”) (as such quoted phrase is defined in SEQRA) has not yet made a preliminary determination as to the potential environmental significance of the Project and therefore has not yet determined whether an environmental impact statement is required to be prepared with respect to the Project. The Institution understands that (A) the Inducement Resolution constitutes a determination of compliance with technical requirements within the meaning of Section 617.3(c)(2) of the DEC Regulations; and (B) neither the Inducement Resolution nor this Preliminary Agreement constitute either an approval by the Issuer of the Project for purposes of SEQRA or a commitment by the Issuer to grant the Financial Assistance except upon satisfaction of the requirements of SEQRA and the requirements set forth in the Inducement Resolution and herein.

Section 1.04. The Issuer intends this Preliminary Agreement to be an affirmative official action of the Issuer toward the issuance of the Obligations within the meaning of Section 1.103-8(a)(5) of the United States Treasury Regulations.

Article 2. Undertakings on the Part of the Issuer.

Based upon the statements, representations and undertakings of the Institution and subject to the conditions set forth herein, the Issuer agrees as follows:

Section 2.01. If the Institution complies with all conditions set forth in this Preliminary Agreement and the Inducement Resolution, then the Issuer will (A) undertake the Project, (B) authorize, sell and deliver its Obligations, in one or more series or issues from time to time, pursuant to the terms of the Act as then in force, for the purpose of financing the Project Costs, in an aggregate principal amount necessary and sufficient to finance the Project Costs and (C) grant certain other Financial Assistance with respect to the Project. The precise amount of the Obligations shall be fixed by the resolution of the Issuer at a later date and to be agreed to by the Institution. Upon the sale of the Obligations, the Issuer will expend the proceeds of the Obligations to finance the Project Costs, either by assuming the acquisition, construction, and installation of the Project Facility (and reimbursing the Institution for its funds expended on the Project Costs subsequent to the date of adoption of the Inducement Resolution and prior to such assumption by the Issuer), or by acquiring the Project Facility from the Institution upon the completion thereof and paying to the Institution the purchase price of the Project Facility, whichever shall be agreeable to the Issuer and the Institution and shall not exceed the actual Project Costs; PROVIDED, HOWEVER, that the Obligations are to be secured by and payable from the revenues to be derived by the Issuer either in accordance with the terms of an installment sale agreement, or other similar financing agreement, or any combination thereof, to be entered into by and between the Issuer and the Institution (all said agreements being hereinafter collectively referred to as the “Financing Agreement”); PROVIDED FURTHER, HOWEVER, that the foregoing obligation of the Issuer to undertake the Project to issue the Obligations and to grant the other Financial Assistance relating to the Project is subject to the conditions hereinafter contained in this Preliminary Agreement, including but not limited to the following conditions:

(A) An interest in the real estate portion of the Project Facility (as it exists on the date of conveyance) shall be acquired by the Issuer from the Institution pursuant to a deed, lease agreement, license agreement or other documentation to be negotiated between the Issuer and the Institution (hereinafter, the “Acquisition Agreement”) which contains terms mutually acceptable to the Issuer and the Institution for the conveyance to the Issuer of an interest in the real estate portion of the Project Facility (as it exists on the date of conveyance). Any portion of the

Equipment acquired by the Institution prior to the execution and delivery of the Financing Agreement shall be conveyed to the Issuer by a bill of sale from the Institution to the Issuer. After the Financing Agreement has been executed and delivered by the Issuer and the Institution, then, pursuant to the Financing Agreement, any Equipment acquired by the Institution as part of the Project will be acquired by the Institution as the agent of the Issuer. The sale of the Project Facility by the Issuer to the Institution shall be effected by the Financing Agreement between the Issuer and the Institution whereby the Institution will be obligated, among other things, to make payments to the Issuer in such amounts and at such times so that such payments will be adequate to enable the Issuer to timely pay all amounts due under the Obligations. The Financing Agreement and any other documents to be executed by the Issuer in connection with the Project and the Obligations (collectively, the "Project Documents"), including the Obligations, shall in all respects comply with the requirements of, and limitations contained in, the Act and shall further specifically provide that the obligations of the Issuer thereunder are payable solely from the revenues derived by the Issuer from the sale or other disposition of the Project Facility (except to the extent payable out of proceeds of the Obligations); that the obligations of the Issuer thereunder shall not be a general obligation of the Issuer and shall not constitute an indebtedness or pledge of the general credit of the Issuer; that no beneficiary of the obligations of the Issuer thereunder, including any holder of any of the Obligations, shall have the right to compel any exercise of the taxing power of the Issuer (if any) or of the State of New York or any political subdivision thereof, including Chautauqua County, New York; and that the obligations of the Issuer thereunder shall not create a debt or loan of credit of Chautauqua County, New York or the State of New York, but such obligations shall be a special obligation of the Issuer secured and payable solely as provided in the Project Documents or the Obligations, as the case may be, and such facts shall be plainly stated in each of such documents and on the face of each of the Obligations;

(B) The Institution shall have executed the Financing Agreement between the Issuer and the Institution, the terms of which shall be acceptable in form and content to the Institution, the Issuer and the purchasers of the Obligations, and pursuant to which, among other things, the Institution shall be obligated to make aggregate basic payments (i.e. payments used to pay the principal and, premium, if any, and interest on the Obligations) to, or on behalf of, the Issuer in accordance with the terms of such Financing Agreement, which basic payments shall be in an amount at least sufficient to pay the principal of, premium, if any, and interest on the Obligations, as and when the same become due and payable, and to pay all costs incurred by the Issuer with respect to the Project and/or the Project Facility together with all costs of operation and maintenance of the Project Facility, including all taxes and other governmental charges, any required payments in lieu of taxes, and the reasonable fees and expenses incurred by the Issuer in connection with the Project, it being understood that the Institution will, prior to or contemporaneously with the issuance of the Obligations, enter into such Financing Agreement;

(C) No event shall have occurred which constitutes (or which after notice or lapse of time or both would constitute) an event of default under the Financing Agreement;

(D) One or more purchasers shall agree to purchase the Obligations, it being understood that the Institution will use all reasonable efforts to find one or more purchasers for the Obligations;

(E) The Institution shall provide the Issuer and the purchasers of the Obligations with all information required to facilitate compliance with all applicable securities laws and all other information reasonably necessary in connection with the issue, sale, delivery and any resale of the Obligations;

(F) The Issuer shall have adopted a resolution determining to proceed with the Project after making a determination that all requirements of SEQRA that relate to the Project and to the issuance of the Obligations have been fulfilled. The Institution shall provide the Issuer and the other "involved agencies" (as such quoted term is defined in the Regulations) with all information and statements which may be required by said respective entities in order to facilitate compliance by said entities with SEQRA;

(G) If the costs of the Project exceed the amount of the proceeds of the Obligations, or if the Obligations shall not be issued, the Institution will pay all such Project Costs or such excess Project Costs and shall not be entitled to any reimbursement for any such payment from the Issuer;

(H) The Obligations shall bear such dates, mature at such time or times, bear interest at such rate or rates, and contain such other terms and provisions as shall be determined by subsequent action of the Issuer and approved by the Institution;

(I) The Issuer shall receive, in form and substance satisfactory to the Issuer, such rulings, approvals, resolutions, consents, certificates, opinions of counsel and other instruments and proceedings as shall be specified by the Issuer in connection with the Obligations and (if applicable) the tax exemption of the interest thereon, the Exemptions, the Project, the Financing Agreement, and the various other documents to be executed in connection with the Project, such rulings, approvals, resolutions, consents, certificates, opinions of counsel and other instruments and proceedings to be obtained from Bond Counsel, counsel to the Issuer and such other governmental and nongovernmental agencies and entities as may have or assert competence or jurisdiction over or interest in matters pertaining thereto, and the same shall be in full force and effect at the time of the issuance of the Obligations;

(J) Agreements shall be made as to (1) indemnity by the Institution of the Issuer and the members and officers of the Issuer and (2) payment by the Institution of the expenses incurred by the Issuer in connection with the Project (including counsel fees and out-of-pocket expenses) and the administrative fee of the Issuer, and such agreements shall be satisfactory in form and substance to the Issuer;

(K) If interest on any portion of the Obligations is to be treated as excludable from gross income for federal income tax purposes, (1) pursuant to Section 145(a) of the Code, all property which is to be provided by the net proceeds of such portion of the Obligations must be owned by a Section 501(c)(3) organization or a governmental unit and at least ninety-five percent (95%) of the net proceeds of such portion of the Obligations must be used with respect to (a) governmental units and/or (b) the activities of Section 501(c)(3) organizations which do not constitute "unrelated trades or businesses" (as defined in Section 513(a) of the Code), with respect to such Section 501(c)(3) organizations and (2) the County Executive of Chautauqua County, New York must have approved the issuance of such portion of the Obligations after a public hearing on the issuance of such portion of the Obligations and the nature and location of the Project Facility has been held by the Issuer, as required by Section 147(f) of the Code;

(L) All property which is to be provided by the proceeds of the Obligations shall satisfy the requirements contained in Section 854(13) of the Act, and any other provisions of the Act which govern the use of the proceeds of the Obligations, it being expressly understood and agreed by the Issuer and the Institution that any portions of the Project Facility not satisfying such requirements of the Act shall be financed from sources other than the proceeds of the Obligations;

(M) If any portion of the Financial Assistance to be granted by the Issuer with respect to the Project is not consistent with the Issuer's uniform tax exemption policy, the Issuer must follow the procedures for deviation from such policy set forth in Section 874(b) of the Act prior to granting such portion of the Financial Assistance; and

(N) The following additional conditions: None.

Section 2.02. The obligations of the Issuer pursuant to this Preliminary Agreement are subject to the conditions elsewhere contained in this Preliminary Agreement and to the additional condition that the Issuer shall not undertake the Project Facility, nor issue its Obligations to finance the Project Costs, nor grant any other Financial Assistance with respect to the Project, unless and until the Issuer shall have complied with the provisions of SEQRA.

Section 2.03. Subject to the conditions stated in this Preliminary Agreement, the Issuer from time to time will adopt, or cause to be adopted, such proceedings and authorize the execution of such documents as may be necessary or advisable for: (A) the authorization, issuance and sale of the Obligations; (B) the acquisition, construction, and installation of the Project Facility; (C) the use of the proceeds of the Obligations to finance the Project Costs; and (D) the sale of the Project Facility to the Institution, all as shall be authorized by law and be mutually satisfactory to the Issuer, the Institution and the purchasers of the Obligations. If acceptable to the Institution and the purchasers of the Obligations, such actions and documents may permit the issuance from time to time in the future of additional bonds on terms which shall be set forth therein, whether on a parity with the Obligations or otherwise, for the purpose of defraying the cost of completion of the Project.

Section 2.04. The Issuer 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.

Article 3. Undertakings on the Part of the Institution.

Based upon the statements, representations and undertakings of the Issuer and subject to the conditions set forth herein, the Institution agrees as follows:

Section 3.01. The Institution will use all reasonable efforts to find or cause to be found one or more purchasers for the Obligations and will use reasonable efforts to insure that the Obligations are sold; provided, however, that the terms of such Obligations and of the sale and delivery thereof shall be mutually satisfactory to the Issuer and the Institution.

Section 3.02. Contemporaneously with the sale and delivery of the Obligations, the Institution will enter into the Financing Agreement with the Issuer containing the terms and conditions described in Section 2.01 hereof. The Institution agrees that, if the Obligations shall not be issued or if the Project Costs exceed the amount of the proceeds of the Obligations, the Institution will pay all such Project Costs or such excess Project Costs and shall not be entitled to any reimbursement for any such payment either from the Issuer or from the purchasers or holders of the Obligations. THE ISSUER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, THAT THE PROCEEDS OF THE OBLIGATIONS

WILL BE SUFFICIENT TO PAY ALL PROJECT COSTS, OR THAT THE PROJECT FACILITY WILL BE SUITABLE FOR THE INSTITUTION'S PURPOSES OR NEEDS.

Section 3.03. The Institution hereby agrees to indemnify and hold the Issuer (and its members, officers, agents and employees) harmless from all losses, expenses, claims and liabilities arising out of or based on (A) labor, services, materials and supplies, including equipment, ordered or used in connection with the acquisition and installation of the Project Facility, including any expenses incurred by the Issuer (and its members, officers, agents and employees) in defending any claims, suits or actions which may arise as a result of any of the foregoing and/or (B) any untrue statement or alleged untrue statement of a material fact included in any written materials relating to the offering or sale of the Obligations or the omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Institution shall not permit to stand, and will, at its own expense, take steps reasonably necessary to remove, any mechanic's or other liens against the Project Facility for labor or material furnished in connection with the acquisition and installation of the Project Facility.

Section 3.04. The Institution hereby agrees to indemnify, defend and hold the Issuer (and its members, officers, agents and employees) harmless from any and all (A) claims and liabilities for the 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 and/or the Project Facility, including any expenses incurred by the Issuer (and its members, officers, agents and employees) in defending any claims, suits or actions which may arise as a result of the foregoing; and (B) claims and liability arising from or expenses incurred in connection with the Project or by the Issuer's financing, acquisition, construction, installation, owning and sale of the Project Facility, including all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The Institution shall include the Issuer (and its members, officers, agents and employees) as a named insured under all public liability insurance policies obtained by the Institution with respect to the Project.

Section 3.05. The Institution 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.

Article 4. General Provisions.

Section 4.01. All commitments of the Issuer under Article 2 hereof and of the Institution under Article 3 hereof (excepting the obligations of the Institution set forth in Sections 3.03 and 3.04 hereof, which shall survive the termination of this Preliminary Agreement) are subject to the condition that the following events shall have occurred not later than two (2) years from the date hereof (or such other date as shall be mutually satisfactory to the Issuer and the Institution):

- (A) The Issuer, the Institution and the purchasers of the Obligations shall have agreed on mutually acceptable terms and conditions of the Obligations, the Financing Agreement and any agreements securing the Obligations and any other agreements referred to in Articles 2 or 3 hereof;
- (B) All necessary governmental approvals shall be obtained; and
- (C) All other conditions expressed in this Preliminary Agreement shall have been satisfied.



Section 4.02. Subject to the terms and conditions of Section 4.03 hereof, the Institution shall have the right to unilaterally cancel this Preliminary Agreement at any time prior to the time that the Obligations are issued by the Issuer upon thirty (30) days prior written notice of cancellation delivered to the Issuer at the address set forth in Section 4.04 hereof.

Section 4.03. If the events set forth in Section 4.01 hereof do not take place within the time set forth in said Section 4.01, or any extension thereof, or if the Institution exercises its right of cancellation as set forth in Section 4.02 hereof, the Institution agrees that (A) it will promptly reimburse the Issuer (and its officers, members, agents or employees) for all reasonable and necessary direct out-of-pocket expenses (including legal fees and expenses) which the Issuer (and its officers, members, agents or employees) may incur with respect to the execution of this Preliminary Agreement and the performance of its obligations hereunder; and (B) the obligations of the Institution set forth in Section 3.03 and 3.04 hereof shall survive the termination of this Preliminary Agreement and shall remain in full force and effect until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters described therein may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by the Issuer (and its officers, members, agents or employees) relating to the enforcement of the provisions therein stated.

Section 4.04. (A) All notices and other communications hereunder shall be in writing and shall be deemed given when mailed by United States registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

(1) To the Issuer:

County of Chautauqua Industrial Development Agency  
200 Harrison Street  
Jamestown, New York 14701-6902  
Attention: Chairman

With copies to:

Phillips Lytle LLP  
307 M&T Bank Building  
2-8 East 3rd Street  
Jamestown, New York 14702  
Attention: Gregory Peterson, Esq.

and

Hodgson Russ LLP  
677 Broadway, Suite 301  
Albany, New York 12207  
Attention: George W. Cregg, Jr., Esq.

(2) To the Institution:

JCC Development Corp.  
525 Falconer Street  
Jamestown, New York 14701  
Attention: Robert L. Barber, Treasurer

With a copy to:

Abdella & Abdella  
PO Box 3006  
Jamestown, New York 14701  
Attention: Stephen Abdella, Esq.

(B) The Issuer and the Institution may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

Section 4.05. All covenants and agreements herein contained by or on behalf of the Issuer and the Institution shall bind and inure to the benefit of the respective successors and assigns of the Issuer and the Institution, whether so expressed or not.

Section 4.06. The obligations and agreements of the Issuer contained herein shall be deemed the obligations and agreements of the Issuer, and not of any member, officer, agent or employee of the Issuer in his individual capacity, and the members, officers, agents and employees of the Issuer shall not be liable personally hereon or be subject to any personal liability or accountability based upon or in respect hereof or of any transaction contemplated hereby. The obligations and agreements of the Issuer contained herein shall not constitute or give rise to an obligation of the State of New York or of Chautauqua County, New York and neither the State of New York nor Chautauqua County, New York shall be liable thereon, and further, such obligations and agreements shall not constitute or give rise to a general obligation of the Issuer, but rather shall constitute limited obligations of the Issuer payable solely from the revenues of the Issuer derived and to be derived from the sale or other disposition of the Project Facility.

Section 4.07. Notwithstanding any provision of this Preliminary Agreement to the contrary, the Issuer shall not be obligated to take any action pursuant to any provision hereof unless (A) the Issuer shall have been requested to do so in writing by the Institution; and (B) if compliance with such request is reasonably expected to result in the incurrence by the Issuer (or any member, officer, agent or employee of the Issuer) of any liability, fees, expenses or other costs, the Issuer shall have received from the Institution security or indemnity satisfactory to the Issuer for protection against all such liability and for the reimbursement of all such fees, expenses and other costs.

**IN WITNESS WHEREOF**, the parties hereto have entered into this Preliminary Agreement as of the day and date first written above.

**COUNTY OF CHAUTAUQUA  
INDUSTRIAL DEVELOPMENT AGENCY**

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

**JCC DEVELOPMENT CORP.** on behalf of a  
wholly-owned subsidiary limited liability  
company to be formed

BY: \_\_\_\_\_  
Authorized Officer