COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY as sublessor

AND

S. ST. GEORGE ENTERPRISES, INC. as sublessee

AGENCY LEASE AGREEMENT (UNIFORM PROJECT AGREEMENT)

DATED AS OF NOVEMBER 1, 2019

ADDRESS: 3689 Webster Road

Fredonia

VILLAGE: -

TOWN:

Pomfret

COUNTY:

Chautauqua

STATE:

New York

Prepared By:

Phillips Lytle LLP 201 West Third Street, Suite 205 Jamestown, New York 14701 Attention: Gregory Peterson, Esq.

AGENCY LEASE AGREEMENT (UNIFORM PROJECT AGREEMENT)

THIS AGENCY LEASE AGREEMENT (UNIFORM PROJECT AGREEMENT) dated as of November 1, 2019 (this "Lease") by and between the COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at 201 West Third Street, Suite 115, Jamestown, NY 14701 (the "Agency"), and S. ST. GEORGE ENTERPRISES, INC., a corporation organized under the laws of the State of New York, having an address at 3689 Webster Road, P.O. Box 348, Fredonia, NY 14063 (the "Company").

WITNESSETH:

WHEREAS, 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 New York, as amended (the "Enabling Act") authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to promote, develop, encourage and assist in the acquiring, renovating, construction, reconstruction, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, among others, including industrial pollution control facilities, and to thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, in accordance with the provisions of the Enabling Act, the Agency was established pursuant to Chapter 71 of the 1972 Laws of the State of New York, as amended, constituting Section 895-h of the New York General Municipal Law (said Chapter and the Enabling Act, each as amended from time to time, collectively, the "Act"), for the benefit of the County of Chautauqua and its inhabitants; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, renovate, construct, reconstruct and install one or more "projects" (as defined in the Act), or to cause said projects to be acquired, renovated, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, the Company submitted an application for financial assistance (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the acquisition of an interest in an approximately 70 acre parcel of land located at 3689 Webster Road, Fredonia, Town of Pomfret, County of Chautauqua, New York (the "Land"), (2) the construction of an approximately 19,999 square foot addition to an existing approximately 23,000 square foot building (collectively, the "Building" and together with the Land, collectively, the "Facility"), together with related improvements to the Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the "Equipment") necessary for the completion thereof (collectively, the "Project Facility"), all of the foregoing for use by the Company and/or its

affiliates as an inventory and heavy equipment storage facility; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes, mortgage recording taxes and sales and use taxes; and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Chief Financial Officer of the Agency, (A) caused notice of public hearings of the Agency pursuant to Section 859-a of the Act (the "Public Hearing(s)") to hear all persons interested in the Project and the Financial Assistance (as hereinafter defined) contemplated by the Agency with respect to the Project, to be mailed on September 3, 2019 to the chief executive officer of the County of Chautauqua, New York (the "County") and of each other affected taxing entity within which the Project Facility is or is to be located, and posted a copy of the Application on the Agency's website; (B) caused notice of the Public Hearings to be published on September 10, 2019 in the *Observer*, a newspaper of general circulation available to residents of the Town of Pomfret and the County; (C) caused the Public Hearing to be conducted on September 19, 2019 at 10:00 a.m. at the Town of Pomfret offices, 9 Day Street, Fredonia, Town of Pomfret, County of Chautauqua, New York; and (D) caused a written report of the Public Hearing to be prepared which fairly summarizes the views presented at the Public Hearing and collected written correspondence from the public (collectively, the "Report") and distributed the Report to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (the "Regulations" and collectively with the SEQR Act, "SEQRA"), the appropriate personnel of the Agency reviewed the environmental assessment form and other materials submitted by the Company and made any necessary comments to the members of the Agency, and by resolution of the members of the Agency adopted on September 24, 2019, the Agency decided to conduct an uncoordinated review of the Project and determined that the Project will not have a significant adverse environmental impact and that an environmental impact statement will not be prepared; and

WHEREAS, by resolution adopted by the members of the Agency on September 24, 2019 (the "Authorizing Resolution"), the Agency, following a review of the Report, determined to proceed with the Project, to grant the Financial Assistance and to enter into the "straight lease transaction" (as such quoted term is defined in the Act) contemplated by this Lease and the other Transaction Documents (as hereinafter defined); and

WHEREAS, the Agency proposes to appoint the Company as agent of the Agency to undertake the acquisition, construction, renovation, installation and equipping of the Project Facility and to sub-sublease the Project Facility to the Company, and the Company desires to act as agent of the Agency to undertake the acquisition, construction, renovation, installation and equipping of the Project Facility and to sub-sublease the Project Facility from the Agency, all

pursuant to the terms and conditions hereinafter set forth in this Lease and in the other Transaction Documents; and

WHEREAS, the acquisition of an interest in the Project Facility, the straight lease of the Project Facility and the granting of the Financial Assistance by the Agency to the Company are for proper purposes, including, without limitation, the advancement of the job opportunities, health, general prosperity and economic welfare of the inhabitants of the State of New York and the prevention of unemployment and economic deterioration pursuant to the provisions of the Act; and

WHEREAS, the members of the Agency have determined that (A) the granting of the Financial Assistance by the Agency to the Company is necessary to induce the Company to proceed with the Project, and (B) there is a likelihood that the Project would not be undertaken but for the granting of the Financial Assistance by the Agency to the Company; and

WHEREAS, the Company is the tenant under a Lease dated as of November 1, 2019 (the "Overlease") between Steven St. George, as landlord (in such capacity, the "Overlandlord"), and the Company, as tenant, pursuant to which the Company leases the Premises (as hereinafter defined) from the Overlandlord; and

WHEREAS, immediately prior to the execution and delivery of this Lease, the Company will execute and deliver or cause to be executed and delivered to the Agency (A) a certain company lease agreement of even date herewith (the "Company Lease") between the Company and the Agency, which conveys to the Agency a subleasehold interest in and to the Premises (as hereinafter defined), and (B) a bill of sale dated the Closing Date (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in and to the Equipment; and

WHEREAS, pursuant to a certain Payment in Lieu of Taxes Agreement of even date herewith among the Company, the Overlandlord and the Agency (the "PILOT Agreement"), the Company and the Overlandlord have agreed to make certain payments in lieu of real property taxes with respect to the Premises and the Agency has agreed to file certain paperwork for real property tax abatement on behalf of the Company and the Overlandlord with respect to the Project;

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

ARTICLE I DEFINITIONS

SECTION 1.1 DEFINITIONS. The following words and terms used in this Lease shall have the respective meanings set forth below, unless the context or use indicates another or different meaning or intent:

"Act" shall have the meaning assigned to such term in the recitals to this Lease.

"Administrative Fee" shall have the meaning assigned to such term in Section 5.3 of this Lease.

"Affiliate" of a Person means a Person who directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with, such Person. The term "control" means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, or (ii) the ownership, either directly or indirectly, of at least fifty-one percent (51%) of the voting stock or other equity interest of such Person.

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

"Anti-Terrorism Laws" means any applicable laws relating to terrorism or money laundering, including Executive Order No. 13224, the USA Patriot Act, applicable laws comprising or implementing the Bank Secrecy Act, and applicable laws administered by the United States Treasury Department's Office of Foreign Asset Control (as any of the foregoing may from time to time be amended, renewed, extended, or replaced).

"Applicable Law" or "Applicable Laws" means, individually or collectively as the context may require, all current and future statutes, codes, laws, acts, ordinances, treaties, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, determinations and requirements, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Project Facility or any part thereof or the conduct of work on the Project Facility or any part thereof or to the operation, use, manner of use or condition of the Project Facility or any part thereof (the applicability of the foregoing to be determined both as if the Agency were the owner of an interest in the Project Facility and as if the Company (or the Overlandlord) and not the Agency were the owner of an interest in the Project Facility), including but not limited to (1) applicable health, building, zoning, use, rent, accessibility, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, (3) judgments, decrees, orders or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority, and (4) applicable covenants and restrictions relating in any way to the Project Facility.

"Application" shall have the meaning assigned to such term in the recitals to this Lease.

"Authorizing Resolution" shall have the meaning assigned to such term in the recitals to this Lease.

"Authorized Representative" means the Person or Persons at the time designated to act on behalf of the Agency or the Company, as the case may be, by written certificate furnished to the Agency or the Company, as the case may be, containing the specimen signature of each such Person and signed on behalf of (A) the Agency by its Chairman, Vice-Chairman, Secretary,

Executive Director, Administrative Director, Chief Financial Officer or such other Person as may be authorized by resolution of the members of the Agency to act on behalf of the Agency, and (B) the Company by its President or any Vice President, if a corporation, or a member or a manager, if a limited liability company, or a general partner, if a partnership, or such other Person as may be authorized in writing by the members of such limited liability company or by the board of directors of such corporation or by the general partner of such partnership, to act on behalf of the Company, as the case may be.

"Bill of Sale to Agency" shall have the meaning assigned to such term in the recitals to this Lease.

"Bill of Sale to Company" means the bill of sale from the Agency to the Company, pursuant to which the Agency conveys to the Company all of the Agency's interest in the Equipment, substantially in the form attached as Exhibit D to this Lease.

"Building" shall have the meaning assigned to such term in the recitals to this Lease.

"Business Day" means a day on which banks located in the County are not required or authorized to remain closed and on which the New York Stock Exchange is not closed.

"Closing" means the closing at which this Lease and the other Transaction Documents are executed and delivered by the Company, the Agency and the other parties thereto.

"Closing Date" means the date of the Closing.

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

"Collateral" shall have the meaning assigned to such term in Section 5.5 of this Lease.

"Commissioner" means the Commissioner of Taxation and Finance of the State of New York.

"Company" means S. St. George Enterprises, Inc., a corporation organized and existing under the laws of the State of New York, and its successors and assigns, to the extent permitted pursuant to this Lease.

"Company Lease" shall have the meaning assigned to such term in the recitals to this Lease.

"Completion Date" means such date as shall be certified by the Company to the Agency (and accepted by the Agency in its reasonable discretion) as the date of completion of the Project pursuant to Section 4.2 of this Lease, or such earlier date as the Company shall notify the Agency as being the date of completion of the Project (subject to acceptance thereof by the Agency in its reasonable discretion).

"Compliance Report" shall have the meaning assigned to such term in Section 8.11(J)(3) of this Lease.

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

"County" means the County of Chautauqua, New York.

"Default Interest Rate" means a rate of interest equal to eighteen percent (18%) per annum or the maximum rate permitted by applicable law, whichever is less.

"Environmental Indemnification" shall have the meaning assigned to such term in Section 3.3 of this Lease.

"Environmental Law" or "Environmental Laws" shall have the meaning assigned to such term in Section 3.3 of this Lease.

"Equipment" shall have the meaning assigned to such term in the recitals to this Lease and shall include all those materials, machinery, equipment, fixtures and furnishings intended to be acquired with the proceeds of any payment made by the Company pursuant to Section 4.1(H) of this Lease, and such substitutions and replacements therefor as may be made from time to time pursuant to this Lease, including without limitation, all the Property described in Exhibit B attached to this Lease. "Equipment" shall not include: (i) inventory, (ii) rolling stock, (iii) any item of personalty having a useful life of less than one (1) year or which shall not constitute a tangible capital asset, (iv) plants, shrubs, trees, flowers, lawns or plants, (v) fine art or other similar decorative items, or (vi) motor vehicles, including any cars, trucks, vans or buses that are licensed by the Department of Motor Vehicles or similar agency for use on public highways or streets.

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

"Financial Assistance" means (A) an exemption from all New York State and local sales and use taxes for purchases and rental of qualifying personal property necessary for the completion of the Project and having a value not exceeding the Maximum Sales Tax Benefit (as hereinafter defined), and (B) an exemption from real property taxes pursuant to the PILOT Agreement, which exemption from real property taxes the Agency has estimated to have a value of \$167,449.

"Governmental Authority" means the United States of America, the State, any other state, the County, any political subdivision of any of the foregoing, and any court, tribunal, arbitrator, mediator, agency, department, commission, board, bureau, authority or instrumentality of any of them.

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

"Guarantor" or "Guarantors" means, individually or collectively, as the context may require, Steven St. George.

"Guaranty" means the Guaranty of even date herewith from the Guarantor to the Agency.

"Hazardous Materials" means all hazardous materials including, without limitation, any explosives, radioactive materials, radon, asbestos-containing materials, urea formaldehyde foam insulation, polychlorinated biphenyls, lead based paints, petroleum, petroleum products, methane, hazardous materials, hazardous chemicals, hazardous wastes, extremely hazardous wastes, restricted hazardous wastes, hazardous or toxic substances, toxic pollutants, hazardous air pollutants, pollutants, contaminants, toxic chemicals, toxics, pesticides or related materials as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Clean Water Act, as amended (33 U.S.C. Section 1251 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. Section 300f, et seq.) the Clean Air Act, as amended (42 U.S.C. Section 7401, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et seq.), Articles 15 or 27 of the New York State Environmental Conservation Law, or in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule or regulation of any Governmental Authority having jurisdiction.

"IDA Meeting" shall have the meaning assigned to such term in the recitals to this Lease.

"Indebtedness" means (1) the monetary obligations of the Company to the Agency or to any of its members, officers, agents (other than the Company), attorneys, servants or employees, past, present or future, under this Lease or any of the other Transaction Documents, and (2) all interest accrued on any of the foregoing.

"Land" shall have the meaning assigned to such term in the recitals to this Lease and is more particularly described in <u>Exhibit A</u> to this Lease.

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

"Maximum Sales Tax Benefit" means \$42,000.00.

"Minimum Employment Requirement" shall have the meaning assigned to such term in Section 2.2 of this Lease.

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

"Overlandlord" shall have the meaning assigned to such term in the recitals to this Lease.

"Overlease" shall have the meaning assigned to such term in the recitals to this Lease.

"Permitted Encumbrances" means (A) utility, access and other easements, rights of way, restrictions, encroachments and exceptions that exist on the Closing Date and are identified on Schedule B to the Title Policy, (B) Liens for taxes, assessments and utility charges, to the extent permitted by this Lease, (C) any Lien or encumbrance on the Project Facility obtained through any Transaction Document, (D) the Overlease, (E) any Lien or encumbrance requested by the Company in writing and consented to by the Agency, which consent shall not be unreasonably withheld, conditioned or delayed, and (F) the lien of Mortgage Consolidation, Modification and Extension Agreement dated February 24, 2019 in the consolidated principal amount of \$700,000 made by the Overlandlord in favor of Five Star Bank.

"Person" means an individual, partnership, limited liability company, corporation, trust, unincorporated organization or Governmental Authority.

"PILOT Agreement" shall have the meaning assigned to such term in the recitals to this Lease.

"Plans and Specifications" means the plans and specifications for the construction, renovation, installation and equipping of the Project Facility contemplated by Section 4.1 of this Lease prepared by the Company's architect and reviewed by the Agency (solely for purposes of the granting of the Financial Assistance) and all applicable Governmental Authorities, as the same may be amended, modified, supplemented, restated or replaced from time to time in accordance with the terms hereof and subject to the review and approval of the Agency (solely for purposes of determining compliance with this Lease).

"Premises" means the Land, together with the Building, and all buildings, structures and other improvements now or hereafter located thereon, and all fixtures and appurtenances and additions thereto and substitutions and replacements thereof, now or hereafter attached to or contained in or located on the Land; provided, however, that nothing in this definition shall constitute the Agency's consent to the construction of any new building or structure thereon or the construction of an addition to any existing building or structure thereon, other than the construction, renovation, installation and equipping of the improvements depicted in the Plans and Specifications.

"Prohibited Person" means (i) any Person (A) that is in default or in breach, beyond any applicable grace or cure period, of its obligations under any written agreement with the Agency, or (B) that directly or indirectly controls, is controlled by or is under common control with a Person that is in default or in breach, beyond any applicable grace or cure period, of its obligations under any written agreement with the Agency, unless such default or breach has been waived in writing by the Agency, as the case may be, and (ii) any Person (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is

an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or (B) that directly or indirectly controls, is controlled by or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure.

"Project" means that project being undertaken by the Agency consisting of (A) the acquisition of a subleasehold interest in the Premises, (B) the construction and renovation of the Building and related improvements on the Land, (C) the acquisition and installation of the Equipment, (D) the granting of the Financial Assistance, and (E) the sub-subleasing of the Project Facility by the Agency to the Company, all as more particularly described in the recitals to this Lease.

"Project Facility" shall have the meaning assigned to such term in the recitals to this Lease.

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

"Public Hearing" shall have the meaning assigned to such term in the recitals to this Lease.

"Quarterly Sales Tax Report" shall have the meaning assigned to such term in Section 8.11(C) of this Lease.

"Real Property Tax Exemption Form" shall have the meaning assigned to such term in Section 6.5(A) of this Lease.

"Recapture Event" shall have the meaning assigned to such term in Section 11.4 of this Lease.

"Recapture of Benefits" shall have the meaning assigned to such term in Section 11.4 of this Lease.

"Report" shall have the meaning assigned to such term in the recitals to this Lease.

"Restricted Party" means any individual or entity: (a) listed in the Annex to the Executive Order No. 13224 or is otherwise subject to the provisions of such Executive Order; (b) listed on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury, as updated or amended from time to time, or any similar list issued by OFAC; or (c) whose property has been blocked, or is subject to seizure, forfeiture or confiscation, by any order relating to terrorism or money laundering issued by the President, Attorney General, Secretary of State, Secretary of Defense, Secretary of the Treasury or any other U.S. State or Federal governmental official or entity.

"Sales Tax Agency Agreement" shall have the meaning assigned to such term in Section 8.11(B) of this Lease.

"Scheduled Completion Date" shall have the meaning assigned to such term in Section 4.2(A) of this Lease.

"SEQRA" shall have the meaning assigned to such term in the recitals to this Lease.

"Special Counsel" means the law firm of Phillips Lytle LLP, Jamestown, New York, or such other attorney or firm of attorneys located in the State whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and who are acceptable to the Agency.

"State" means the State of New York.

"State Sales and Use Taxes" means sales and compensating use taxes and fees imposed by Article 28 or Article 28-A of the New York State Tax Law, but excluding such taxes imposed in a city by Section 1107 or Section 1108 of such Article 28.

"Stated Expiration Date" shall have the meaning assigned to such term in Section 5.2(B) of this Lease.

"Sub-Agent Agency Agreement" shall have the meaning assigned to such term in Section 8.11(H) of this Lease.

"Sublease Agreement" or "Sublease Agreements" means any lease, sublease, subsublease or other occupancy agreement with respect to the Project Facility, or any part thereof, permitted or approved pursuant to Section 9.3 of this Lease, other than this Lease and the Company Lease.

"Sublessee" or "Sublessees" means each tenant, lessee, sublessee, sub-sublessee or other occupant under a Sublease Agreement.

"Taxing Entities" shall have the meaning assigned to such term in Section 6.5(B) of this Lease.

"Termination of Company Lease" means the Termination of Company Lease from the Agency to the Company, pursuant to which the Agency and the Company terminate the Company Lease, substantially in the form attached as Exhibit C to this Lease.

"Termination of Lease" means the Termination of Agency Lease Agreement (Uniform Project Agreement) between the Company and the Agency, pursuant to which the Agency and the Company terminate this Lease, substantially in the form attached as $\underline{\text{Exhibit F}}$ to this Lease.

"Title Policy" shall have the meaning assigned to such term in Section 3.5 of this Lease.

"Transaction Documents" means the Company Lease, the Bill of Sale to Agency, the PILOT Agreement, this Lease, the Sales Tax Agency Agreement, the Guaranty, the Environmental Indemnification, any Sub-Agent Agency Agreement and all other instruments, agreements, certificates and documents related thereto and executed in connection therewith, and any other instrument, agreement, certificate or document supplemental thereto.

"UCC" shall have the meaning assigned to such term in Section 5.5 of this Lease.

"Unassigned Rights" means (A) the rights of the Agency granted pursuant to Sections 2.2, 3.1, 3.2, 3.3, 4.1(B), 4.1(D), 4.1(E), 4.1(F), 4.1(G), 5.2 (A), 5.3, 6.1, 6.2, 6.3, 6.4, 6.5, 7.1, 7.2, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.12, 8.13, 8.14, 9.1, 9.3, 11.2, 11.4, 12.4, 12.7, 12.9 and 12.19 of this Lease, (B) the moneys due and to become due to the Agency for its own account or the members, officers, agents, servants and employees, past, present and future, of the Agency for their own account pursuant to Sections 2.2(F), 3.1, 3.3, 4.1, 5.2, 5.3, 6.3, 8.1, 8.9, 8.11, 9.1, 9.3, 10.2, 10.4, 11.2 and 11.4 of this Lease, (C) the moneys due as payments in lieu of taxes pursuant to Section 6.5 of this Lease and as Recapture of Benefits pursuant to Section 11.4 of this Lease, (D) the right of the Agency in its own behalf to enforce the obligation of the Company to undertake and complete the Project and to confirm the qualification of the Project as a "project" under the Act, and (E) the right to enforce the foregoing pursuant to the PILOT Agreement and Section 5.5 and Article X of this Lease.

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

- (A) the terms "hereby", "hereof", "herein", "hereunder" and any similar terms as used in this Lease, refer to this Lease, and the term "heretofore" shall mean before, and the term "hereafter" shall mean after, the Closing Date;
- (B) words of masculine gender shall mean and include correlative words of feminine and neuter genders;
- (C) words importing the singular number shall mean and include the plural number, and vice versa;
- (D) words importing persons shall include firms, associations, partnerships, trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons;
- (E) any certificates, letters or opinions required to be given pursuant to this Lease shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Lease; and
- (F) references to documents, instruments or agreements shall mean such documents, instruments and agreements as they may be amended, modified, renewed, replaced or restated from time to time in accordance with the terms hereof.

ARTICLE II REPRESENTATIONS, WARRANTIES AND COVENANTS

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

- (A) The Agency is duly established under the provisions of the Act and has the power to enter into this Lease and the other Transaction Documents to which the Agency is a party and to carry out its obligations hereunder and thereunder. Based upon the representations of the Company, the Project will constitute a "project", as such quoted term is defined in the Act. By proper official action, the Agency has been duly authorized to execute, deliver and perform this Lease and the other Transaction Documents to which the Agency is a party.
- (B) Neither the execution and delivery of this Lease or the other Transaction Documents to which the Agency is a party, the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the provisions of this Lease or the other Transaction Documents to which the Agency is a party will conflict with or result in a breach by the Agency of any of the terms, conditions or provisions of the Act, the by-laws of the Agency or any order, judgment, agreement or instrument to which the Agency is a party or by which the Agency is bound, nor will constitute a default by the Agency under any of the foregoing.
- (C) Except as provided in Articles IX, X and XI hereof, the Agency, to the extent of its interest therein, shall not sell, assign, transfer, encumber or pledge as security the Project Facility or any part thereof and shall maintain the Project Facility free and clear of all liens or encumbrances created by the Agency, except as contemplated or permitted by the terms of this Lease and the other Transaction Documents.
- SECTION 2.2 REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY. The Company makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:
- (A) The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, is qualified and authorized to do business as a foreign corporation in all other jurisdictions in which its operations or ownership of its Properties so require, and has the power to enter into this Lease and the other Transaction Documents to which the Company is a party and to carry out its obligations hereunder and thereunder. By proper action of its directors, the Company has been duly authorized to execute, deliver and perform this Lease and the other Transaction Documents to which the Company is a party. No other consent, approval or action by the shareholders or directors of the Company or any other consent or approval (governmental or otherwise) or the taking of any other action is required as a condition to the validity or enforceability of this Lease or any of the other Transaction Documents.
- (B) Neither the execution and delivery of this Lease or any of the other Transaction Documents to which the Company is a party, the consummation of the transactions contemplated hereby and thereby, nor the fulfillment of or compliance with the provisions of this Lease or the other Transaction Documents to which the Company is a party will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the Company's certificate of incorporation or by-laws or any other company restriction, order, judgment, agreement, document or instrument to which the Company is a party or by which the Company or any of its Property is bound, or constitute a default by the Company under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon the Project Facility under the terms of

any of the foregoing, other than Permitted Encumbrances, (2) conflict with or result in a violation of Applicable Laws, (3) require consent or approval (which has not been heretofore received and provided to the Agency) under any company restriction, agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (4) require consent or approval (which has not been heretofore obtained and provided to the Agency) under or conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any Governmental Authority having jurisdiction over the Company or any of the Property of the Company.

- (C) The completion of the Project Facility by the Company as agent of the Agency, the sub-sublease thereof by the Agency to the Company and the operation thereof by the Company will not result in the removal of a facility or plant of the Company or any Sublessee of the Project Facility, or any part thereof, from one area of the State to another area of the State (other than relocations within the County) or in the abandonment of one or more plants or facilities of the Company or any Sublessee of the Project Facility, or any part thereof, located in the State (other than within the County); provided, however, that nothing in this Section shall constitute an authorization by the Agency for the Company to lease, sublease, sub-sublease or permit any other occupancy arrangements with respect to the Project Facility or any part thereof without the prior written consent of the Agency, except as set forth in Section 9.3 of this Lease. Therefore, the provisions of subdivision (1) of Section 862 of the Act are not and will not be violated as a result of the granting of the Financial Assistance by the Agency to the Company.
- (D) The Transaction Documents to which the Company is a party constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid, legal and binding obligations of the Company, enforceable in accordance with their respective terms.
- (E) The Project constitutes a commercial facility and will advance the Agency's purposes by promoting job opportunities and preventing economic deterioration in the County. The Project Facility is, and so long as this Lease shall remain in effect, the Project Facility will continue to be a "project", as such quoted term is defined in the Act, and the Company will not take any action (or omit to take any action), or allow any action to be taken or not taken, which action, inaction or omission would in any way cause the Project Facility not to constitute a "project", as such quoted term is defined in the Act.
- (F) The Project Facility and the operation thereof will comply with all Applicable Laws, and the Company will indemnify, defend (with counsel selected by the Agency and approved by the Company, which approval shall not be unreasonably withheld, conditioned or delayed) and save the Agency and its officers, members, agents (other than the Company), attorneys, servants and employees, past, present and future, harmless from all claims, liabilities, damages, fees, expenses, fines and penalties due to failure, or alleged failure, to comply with all Applicable Laws. The Company shall cause all notices as required by all Applicable Laws to be given, and shall comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on the Project or the operation of the Project Facility, and the Company will indemnify, defend (with counsel selected by the Agency and approved by the Company, which approval shall not be unreasonably withheld, conditioned or delayed) and save the Agency and its officers, members, agents (other than the Company), attorneys, servants and employees, past,

present and future harmless, from all claims, liabilities, damages, fees, expenses, fines and penalties due to failure, or alleged failure, to comply therewith; provided that such claims, liabilities, damages, fees, expenses, fines and penalties of the Agency are not incurred or do not result solely from the intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents (other than the Company), attorneys, servants or employees, and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

- (G) The Project will not have a "significant adverse environmental impact" (as such term is used in SEQRA) as determined by the members of the Agency on September 24, 2019, who adopted the SEQRA Resolution. The Company hereby covenants to comply with all mitigating measures, requirements and conditions enumerated in the SEQRA Resolution applicable to the acquisition, construction, renovation, installation, equipping and operation of the Project Facility contemplated by Section 4.1 of this Lease and in any other approvals issued by any other Governmental Authority with respect to the Project Facility. No material changes with respect to any aspect of the Project Facility have arisen from the date of the adoption of such Agency SEQRA Resolution which would cause the determinations contained therein to be untrue.
- (H) The owner, occupant or operator receiving Financial Assistance hereby certifies, under penalty of perjury, that it is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.
- (I) The Project is in substantial compliance with all provisions of the Act, including, but not limited to, the provisions of Section 859-a and 862(1) thereof.
- (J) There are no actions, suits, investigations or proceedings of or before any Governmental Authority, pending or threatened against the Company or any of its Property which (i) either in any case or in the aggregate, if adversely determined, would materially, adversely affect the business, operations or condition, financial or otherwise, of the Company, or (ii) question the validity of any of the Transaction Documents or any action to be taken in connection with the transactions contemplated thereby.
- (K) The Company is not in default with respect to any order, writ, injunction or decree of any Governmental Authority, or in violation of any law, statute or regulation, domestic or foreign, to which the Company or any of its Property is subject.
- (L) The subleasing of the Project Facility by the Agency to the Company and the granting of the Financial Assistance have induced the Company to proceed with the Project in the County. The granting of the Financial Assistance by the Agency with respect to the Project Facility, will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of the County and the State and improve their prosperity and standard of living, and will prevent unemployment and economic deterioration and thereby serve the public purposes of the Act.

- The Company shall (i) cause to be maintained on an annualized basis not (M) less than fifty-eight (58) full-time equivalent, private sector jobs as described in the Application throughout the term of this Lease, (ii) cause to be created on an annualized basis at least two (2) new, full-time equivalent, private sector jobs within one (1) year after the Scheduled Completion Date as described in the Application and maintain such jobs throughout the term of this Lease, (iii) cause to be created on an annualized basis at least an additional three (3) new, full-time equivalent, private sector job within two (2) years after the Scheduled Completion Date as described in the Application and maintain such jobs throughout the term of this Lease, (iv) cause to be created on an annualized basis at least an additional two (2) new, full-time equivalent, private sector job within three (3) years after the Scheduled Completion Date as described in the Application and maintain such jobs throughout the term of this Lease, and (v) cause to be created on an annualized basis at least five (5) new, full-time equivalent, private sector construction jobs during the period from the Closing Date until the Completion Date; all of which jobs shall, at all applicable times during the term of this Lease, be located at the Project Facility (collectively, the "Minimum Employment Requirement"). The Minimum Employment Requirement shall be measured on a full-time equivalency basis using a forty (40) hour work week. For example, twopart time employees who work forty (40) hours per week for twenty-six (26) weeks in a calendar year shall constitute one (1) full-time equivalent job on an annualized basis.
- (N) The funds available to the Company are sufficient to pay all costs in connection with the acquisition, construction, renovation, installation and equipping of the Project Facility.
- (O) The Company is not a Prohibited Person, no Guarantor is a Prohibited Person, no Affiliate of the Company or any Guarantor is a Prohibited Person and no member, manager, director or shareholder of the Company is a Prohibited Person.
- (P) Neither this Lease, any other Transaction Document, the Application nor any other document, certificate, agreement or instrument furnished to the Agency by or on behalf of the Company, the Overlandlord or any Guarantor contains any untrue statement of a material fact or fails to state a material fact necessary to make the statements contained herein and therein not misleading.
- (Q) No funds of the Agency shall be used in connection with the transactions contemplated by this Lease for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promotional materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given hereunder to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.
- (R) The Company is and shall at all times during the term of this Lease continue to be owned solely by Steven St. George (the "Majority Owner"); provided, however, that the Majority Owner may transfer up to forty-nine percent (49%) of his interests in the Company in the aggregate to (1) the Majority Owner's children, (2) trusts for the benefit of members of the Majority Owner's immediate family, and (3) "key employees" of the Company; provided that no such transfers individually or in the aggregate shall result in a change in the

day-to-day control of the management and operations of the Company. As used the in preceding sentence, "key employees" of the Company shall mean corporate officers and senior managers.

- (S) The Project Facility is located entirely within the boundaries of the Town of Pomfret, County of Chautauqua, State of New York, is not located within the boundaries of any incorporated village or city, and is located only within the Fredonia Central School District.
 - (T) The total cost of the Project is at least \$765,000.00.
- (U) As of the Closing Date, no leases, licenses or other occupancy arrangements exist with respect to the Project Facility or any part thereof except the Overlease, this Lease and the Company Lease, and no Person is in occupancy or possession of any portion of the Project Facility, other than the Company.
- (V) Neither the Overlandlord nor the Company has conveyed, assigned, transferred, mortgaged, hypothecated, pledged or granted a security interest in its interest in the Project Facility pursuant to a mortgage, security agreement, pledge or other agreement that prohibits the Company or the Overlandlord, as the case may be, from executing and delivering the Company Lease, this Lease or any other Transaction Document; provided, however, that the foregoing representation does not apply with respect to any such mortgage, security agreement, pledge or other agreement held by a Person that has consented in writing to the execution and delivery of the Company Lease, this Lease and the other Transaction Documents by the parties thereto. The Company covenants and agrees that it shall not enter into a mortgage, security agreement, pledge or other agreement pursuant to which the existence of the Company Lease, this Lease or any other Transaction Document would constitute a default or an event of default.
- (W) Neither the Company, nor any Guarantor nor any Affiliate of the Company or any Guarantor has employed or retained any appointed or elected governmental official to solicit or secure the Agency's undertaking of the Project or its agreement to enter into this Lease or any other Transaction Document upon an agreement of understanding for a commission or percentage, brokerage or contingent fee.
- (X) The Project Facility does not 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. For purposes of this representation, retail sales shall mean: (i) sales by a registered vendor under Article 28 of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section 1101 of the New York Tax Law; or (ii) sales of a service to such customers.

ARTICLE III CONVEYANCE AND USE OF PROJECT FACILITY

SECTION 3.1 CONVEYANCE TO THE AGENCY. (A) Pursuant to the Company Lease, the Company has conveyed or will convey to the Agency a subleasehold interest in and to the Premises for the purpose of undertaking and completing the Project. The Company hereby represents and warrants that the Overlandlord has good and marketable fee title and the Company has good and marketable leasehold title to the Premises pursuant to the Overlease, free

and clear from all Liens except for Permitted Encumbrances, and agrees that the Company will defend (with counsel selected by the Agency and approved by the Company, which approval shall not be unreasonably withheld, conditioned or delayed), indemnify and hold the Agency harmless from any expense or liability due to any defect in title thereto or due to any defect in the subleasehold interest granted to the Agency pursuant to the Company Lease.

(B) The Company and the Agency acknowledge that the Project Facility and the subleasehold interest therein conveyed to the Agency from the Company and sub-subleased by the Agency back to the Company are not "property" as defined in Title 5-A of the Public Authorities Law of the State because such property and the interests therein are security for the Company's obligations to the Agency under this Lease and the other Transaction Documents, including, without limitation, (i) the Company's obligation to acquire, construct, renovate, install, equip and maintain the Project Facility on behalf of the Agency, and (ii) the performance by the Company to the Agency of the Company's other obligations under this Lease and the other Transaction Documents.

SECTION 3.2 USE OF PROJECT FACILITY. Subsequent to the Closing Date, the Company shall be entitled to use the Project Facility in any manner not otherwise prohibited by the Transaction Documents, provided such use causes the Project Facility to qualify or to continue to qualify as a "project" under the Act and does not tend, in the reasonable judgment of the Agency, to bring the Project into disrepute as a public project; provided, further, however, that at no time shall any such use be other than for use by the Company and/or its Affiliates as an inventory and heavy equipment storage facility, together with uses incidental thereto, except with the prior written consent of the Agency, which consent may be withheld in the Agency's sole and absolute discretion. The Company shall not occupy, use or operate the Project Facility, or any part thereof, or permit or suffer the Project Facility, or any part thereof, to be occupied, used or operated (1) for any unlawful purpose, or (2) in violation of any certificate of occupancy affecting the Project Facility, or (3) for any use that constitutes a nuisance, public or private, or (4) for any use that makes void or voidable any insurance then in force with respect thereto, or (5) by any tenant, subtenant, user or occupant whose use, occupancy or operation of the Project Facility would be in violation of Applicable Laws. All permits and licenses necessary for the operation of the Project Facility as contemplated by this Section 3.2 shall be procured promptly by the Company. Any provision of this Lease to the contrary notwithstanding, the Company shall be liable at all times for all risk, loss and damage with respect to the Project Facility.

Nothing in this Section shall constitute an authorization by the Agency for the Company to lease, license, sublease, sub-sublease or permit any other occupancy arrangements with respect to the Project Facility or any part thereof, except in accordance with Section 9.3 of this Lease.

SECTION 3.3 HAZARDOUS MATERIALS.

(A) The Company represents, warrants and covenants that, (i) the Company has not used Hazardous Materials on, from or affecting the Project Facility in any manner that violates any Applicable Law, including, but not limited to, those governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials (each, an "Environmental Law" and, collectively, the "Environmental Laws"), (ii) the environmental and ecological condition of the Project Facility is not in violation

of any Applicable Law, including, without limitation, any Environmental Law, (iii) the Company has all Environmental Permits required to construct and operate the Project Facility and is in compliance with their requirements, (iv) the Premises is not listed in CERCLIS, the NPL or any similar state or local listing nor is it included in an area included in such a list, and the Company has no knowledge that such a listing is pending or contemplated, (v) no event has occurred which, with the passage of time or the giving of notice or both, would constitute a violation of any Environmental Law, (vi) to the best of the Company's knowledge, there are not now any underground storage tanks on or under the Premises and any underground storage tanks that were previously on or under the Premises were removed and remediated in accordance with Environmental Laws, (vii) there are no actions, suits, claims or proceedings seeking money damages, injunctive relief, remedial action or any other remedy pending or, to the Company's knowledge, threatened relating to a violation of Environmental Law or the disposal, discharge or release of Hazardous Materials, and (viii) to the best of the Company's knowledge, no prior owner of the Project Facility or any tenant, subtenant, operator, occupant, prior tenant, prior subtenant, prior operator or prior occupant, has used Hazardous Materials on, from or affecting the Project Facility in any manner which violates any Environmental Law.

- (B) The Company shall keep and shall cause the Project Facility to be kept free of Hazardous Materials except in compliance with Environmental Laws. Without limiting the foregoing, the Company shall not cause or permit the Project Facility to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all Environmental Laws, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company, or any Sublessee of the Project Facility, or any part thereof, an unlawful release of Hazardous Materials onto, under or from the Project Facility or onto any other property. The Company shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or its members, managers, shareholders, directors, officers, agents, servants, employees or representatives, a release of Hazardous Materials on, under or from the Project Facility, except in compliance with all Environmental Laws.
- (C) The Company shall comply with and cause the Overlandlord and all Sublessees of the Project Facility, or any part thereof, to comply with, all Environmental Laws whenever and by whomever triggered, and shall obtain and comply with, and shall cause the Overlandlord and all such Sublessees to obtain and comply with, any and all approvals, registrations or permits required thereunder. The Company agrees to provide the Agency with copies of any notifications given by the Company to any Governmental Authorities or received by the Company from any Governmental Authorities with respect to the environmental or ecological condition of the Project Facility. The Company hereby agrees that at all times during which it owns, leases or operates the Project Facility, and whether or not this Lease or any other Transaction Document is in effect, to comply with, and ensure compliance by all tenants, subtenants, users and occupants of the Project Facility with, the provisions of the "Environmental Indemnification" given by the Company and the Guarantor to the Agency on the date hereof with regard to the Project.
- (D) The Company shall (1) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up, remove or contain all Hazardous Materials on, from or affecting the Project Facility (a) in accordance

with all Environmental Laws, (b) to the satisfaction of the Agency, and (c) in accordance with the orders and directives of all Governmental Authorities, and (2) defend (with counsel selected by the Agency and approved by the Company, which approval shall not be unreasonably withheld, conditioned or delayed), indemnify, and hold harmless the Agency and its employees, agents, officers, attorneys, servants and members, past, present and future, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to: (a) the presence, disposal, release or threatened release of any Hazardous Materials on, from, under or affecting the Project Facility, (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, (c) any lawsuit brought or threatened, settlement reached, or any government order relating to such Hazardous Materials, and/or (d) any violations of Environmental Laws which are based upon or in any way related to such Hazardous Materials, including, without limitation, consultant fees, costs of remediation, investigation and laboratory fees, court costs, reasonable attorney fees and litigation expenses. Costs under this subsection (D) will be repaid immediately upon demand with interest at the Default Interest Rate commencing five (5) days after such demand.

- (E) In the event this Lease is terminated, the Company shall deliver the Project Facility to the Agency free of any and all Hazardous Materials (except Hazardous Materials the presence of which do not violate any Environmental Laws), so that the condition of the Project Facility shall conform with all Environmental Laws affecting the Project Facility.
- (F) The Company agrees that the Agency and its officers, agents, employees, members, servants or representatives, may at any reasonable time and upon prior notice, and at the Company's expense inspect the Company's books and records and inspect and conduct any tests on the Project Facility, including taking soil samples, in order to determine that the Company is in compliance with all Environmental Laws.
- (G) In the event that insurance is or shall become available at a reasonable cost to cover the Company's obligations under this Section 3.3, then, at the option of the Agency, the Company shall obtain adequate coverage.

SECTION 3.4 NON-MERGER. During the term of this Lease, there shall be no merger of this Lease or the Company Lease nor of the subleasehold estate created by the Company Lease or the sub-subleasehold estate created by this Lease with the fee estate in the Premises or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, (1) this Lease or the Company Lease or the sub-subleasehold estate created by this Lease or the subleasehold estate created by the Company Lease or any interest in this Lease or the Company Lease or in any such subleasehold or sub-subleasehold estate and (2) the fee estate in the Premises or any part thereof or any interest in such fee estate, and no such merger shall occur unless and until all corporations, firms and other entities, including any mortgagee having any interest in (x) this Lease or the Company Lease or the sub-subleasehold estate created by this Lease or the subleasehold estate created by the Company Lease and (y) the fee estate in the Premises or any part thereof or any interest in such fee estate, shall join in a written instrument effecting such merger and shall duly record the same.

SECTION 3.5 TITLE INSURANCE. On or prior to the Closing Date, the Company will obtain and deliver to the Agency, in form, amount and substance satisfactory to the Agency, (a) a \$100,000 leasehold owner's title insurance policy (the "Title Policy") insuring the Agency's subleasehold interest in the Premises against loss as a result of defects in title, subject only to Permitted Encumbrances, (b) RESERVED, and (c) a current survey of the Premises certified to the Agency, the Company and the title insurance company issuing the Title Policy. Any proceeds of the Title Policy shall be paid to the Company and applied by the Company to remedy the applicable defect in title. If not so capable of being applied or if a balance remains after such application, the Net Proceeds or the remaining balance of the Net Proceeds, as the case may be, shall be applied to the payment of any sums due the Agency under this Lease or under any other Transaction Document, and any balance thereafter may be used by the Company for any lawful company purpose.

ARTICLE IV UNDERTAKING AND COMPLETION OF THE PROJECT

SECTION 4.1 ACQUISITION, CONSTRUCTION, RENOVATION, INSTALLATION AND EQUIPPING OF THE PROJECT FACILITY.

- (A) The Company shall, on behalf of the Agency, promptly acquire, construct, renovate, install and equip the Project Facility, or cause the acquisition, construction, renovation, installation and equipping of the Project Facility, all in accordance with the Plans and Specifications, in a first-class, workmanlike manner using high grade materials, free of material defects in materials and workmanship. Notwithstanding the foregoing, the Company shall not, at any time during the term of this Lease, construct any new structure on the Land (other than the Building) or construct an addition to or otherwise materially alter the Project Facility depicted in the Plans and Specifications or otherwise construct any additional improvements on the Land without the prior written consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed.
- (B) No material change in the Plans and Specifications shall be made unless the Agency shall have consented thereto in writing (which consent shall not be unreasonably withheld or delayed).
- (C) Title to all materials, equipment, machinery and other items of Property presently incorporated or installed in and which are a part of the Project Facility shall vest in the Agency immediately upon execution of the Bill of Sale to Agency. Title to all materials, equipment, machinery and other items of Property acquired subsequent to the Closing Date and intended to be incorporated or installed in and to become part of the Project Facility shall vest in the Agency immediately upon deposit on the Premises or incorporation or installation in the Project Facility, whichever shall first occur. The Company shall execute, deliver and record or file all instruments necessary or appropriate to vest title to the above in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons.
- (D) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1; provided, however, that the liability of the Agency thereunder shall be limited to the moneys of the

Company available therefor and advanced by the Company for such purpose pursuant to Section 4.1(H) of this Lease.

- The Agency hereby appoints the Company, and the Company hereby **(E)** accepts such appointment, as its true and lawful agent to perform the following in compliance with the terms, purposes and intent of the Transaction Documents: (1) to acquire, construct, renovate, install and equip the Project Facility, (2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be required or proper, all for the acquisition, construction, renovation, installation and equipping of the Project Facility, with the same powers and with the same validity as the Agency could do if acting in its own behalf, provided that the liability of the Agency thereunder shall be limited to the moneys made available therefore by the Company and advanced for such purposes by the Company pursuant to Section 4.1(H) of this Lease, (3) to pay all fees, costs and expenses incurred in the acquisition, construction, renovation, installation and equipping of the Project Facility from funds made available therefor in accordance with this Lease, and (4) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt, writing or instruction in connection with the acquisition, construction, renovation, installation and equipping of the Project Facility and to enforce the provisions of any contract, agreement, obligation, bond or other performance security in connection with the same.
- (F) The Company has given or will give or cause to be given all notices and has complied and will comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on the Project Facility, and the Company will defend (with counsel selected by the Agency and approved by the Company, which approval shall not be unreasonably withheld, conditioned or delayed), indemnify and save the Agency and its officers, members, agents, attorneys, servants and employees, past, present and future, harmless from all fees, expenses, fines and penalties due to failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Project Facility shall be procured promptly by the Company.
- (G) The Company shall not take any action, or neglect to take any action, including, without limitation, the employment of any contractor, if such action or inaction would result in jurisdictional disputes or strikes or labor disharmony at or in connection with the Project Facility.
- (H) The Company agrees, for the benefit of the Agency, to undertake and complete the Project and to pay all such sums as may be required in connection therewith. A subleasehold interest in portions of the Project Facility acquired, constructed and installed at the Company's cost shall immediately upon such acquisition, construction or installation vest in the Agency, subject to Permitted Encumbrances. The Company shall execute, deliver and record or file such instruments as the Agency may request in order to perfect or protect the Agency's interest in and to such portions of the Project Facility.

- (I) No payment by the Company pursuant to this Section 4.1 shall entitle the Company to any reimbursement for any such expenditure from the Agency or to any diminution or abatement of any amounts payable by the Company under this Lease.
- (J) The Company covenants and agrees to make a total investment in the Project Facility as of the Scheduled Completion Date in an amount not less than \$688,500.00 (which represents the product of (1) 0.90 and (2) the sum of \$765,000.00 being the total project costs as stated in the Application). The Company shall provide written documentation of such investment, in form and substance satisfactory to the Agency, no later than March 1st of the calendar year following the Scheduled Completion Date.
- (K) The Company shall furnish to the Agency all information and/or documentation requested by the Agency pursuant to this Section 4.1 and will cooperate with the Agency for the purposes of investigation to ascertain compliance with this Section 4.1.

SECTION 4.2 COMPLETION OF THE PROJECT FACILITY; FEES.

- The Company will proceed with due diligence to commence construction, (A) renovation, installation and equipping of the Project Facility in accordance with Section 4.1 of this Lease within thirty (30) days after the Closing Date and shall proceed with due diligence to complete the construction, renovation, installation and equipping of the Project Facility on or before December 31, 2020 (the "Scheduled Completion Date") and shall thereafter continuously operate its business at the Project Facility. The Company covenants to diligently prosecute its application for any required building permits for the Project Facility. Completion of the construction, renovation, installation and equipping of the Project Facility shall be evidenced by a certificate signed by an Authorized Representative of the Company delivered to the Agency stating (a) the date of such completion, (b) that all labor, services, materials and supplies used therefor and all costs and expenses in connection therewith have been paid, (c) that the acquisition, construction, renovation, installation and equipping of the Project Facility have been completed in a good and workmanlike manner, (d) that the Company and the Agency have good and valid interests in and to all Property constituting a portion of the Project Facility, free and clear of all Liens and encumbrances except Permitted Encumbrances, and (e) that the Project Facility is ready for occupancy, use and operation for its intended purposes. Such certificate shall be accompanied by a permanent certificate of occupancy for the Building (if required) and any and all permissions, licenses or consents required of Governmental Authorities for the occupancy, operation and use of the Project Facility for its intended purposes.
- (B) The Company shall pay within the time periods required by applicable Governmental Authorities, all construction related and other fees for the Project, including, without limitation, building permit fees, plumbing fixture permit fees, recreation fees, site planning fees, municipal consultant review fees, special use fees, variance fees, sewer hookup fees, water service installation fees and fire line fees, if any.

SECTION 4.3 REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES. In the event of a default by any contractor, subcontractor or materialman under any contract made by it in connection with the acquisition, construction, renovation, installation and equipping of the Project Facility

or in the event of a breach of warranty or other liability with respect to any materials, workmanship or performance guaranty, the Company shall proceed, either separately or in conjunction with others, to exhaust the remedies of the Company and the Agency against the contractor, subcontractor or materialman so in default and against each surety for the performance of such contract. The Company may, in its own name or, with the prior written consent of the Agency, which consent shall not be unreasonably withheld, in the name of the Agency, prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman or surety which the Company deems reasonably necessary, and in such event the Agency hereby agrees, at the Company's sole expense, to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding. The Company shall advise the Agency of any actions or proceedings taken hereunder. The Net Proceeds of any recovery secured by the Company as a result of any action pursued against a contractor, subcontractor, materialman or their sureties pursuant to this Section 4.3 shall be used to the extent necessary to complete the Project Facility then to pay all reasonable costs and expenses incurred by the Agency in connection therewith, and thereafter be paid to the Company for its own use.

SECTION 4.4 PURPOSE OF THE PROJECT.

It is understood and agreed by the Agency and the Company that the purposes of the granting of the Financial Assistance are to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project Facility to advance the job opportunities, health, general prosperity and economic welfare of the people of the County and the State, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration, and to otherwise accomplish the purposes of the Act.

ARTICLE V DEMISE OF PROJECT FACILITY; RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE

SECTION 5.1 SUB-SUBLEASE OF THE PROJECT FACILITY FROM THE AGENCY TO THE COMPANY. In consideration of the Company's covenant herein to make rental payments hereunder, and in consideration of the other covenants of the Company contained herein, including the covenant to make additional and other payments required hereby, the Agency hereby agrees to demise and sub-sublease to the Company, and the Company hereby agrees to rent and sub-sublease from the Agency, a sub-subleasehold interest in the Project Facility, subject only to the Permitted Encumbrances.

SECTION 5.2 DURATION OF THE LEASE TERM; QUIET ENJOYMENT.

(A) The Agency shall deliver to the Company possession of the Project Facility, subject to the provisions of this Lease, and the sub-subleasehold estate created hereby shall commence, on the Closing Date, and the Company shall accept possession of the Project Facility on the Closing Date.

- (B) Provided that all amounts, costs and expenses payable by the Company to the Agency under this Lease and all other Transaction Documents are paid in full, the subsubleasehold estate created hereby shall terminate at 12:00 a.m. on the earlier to occur of (1) December 31, 2030, or (2) the date that this Lease shall terminate pursuant to Article X or Article XI hereof.
- (C) The Agency shall take no action, other than pursuant to Article X or Article XI of this Lease, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project Facility during the term of this Lease and will, at the request of the Company and at the Company's expense, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Project Facility.

SECTION 5.3 RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE.

- (A) The Company shall pay on the date of execution and delivery of this Lease, as the basic sub-sublease payments due hereunder: (1) the sum of \$1.00, (2) all reasonable fees and expenses of counsel to the Agency and Special Counsel to date with respect to the Project, and (3) all other actual costs and expenses incurred by the Agency in connection with the transactions contemplated by this Lease and the other Transaction Documents.
- (B) The Company agrees to pay to the Agency the following fees: (1) an Agency administrative fee in the amount of \$7,650.00, with respect to the Project, and (2) the Agency's general counsel fee in an amount invoiced prior to the Closing Date (collectively, the "Administrative Fee"). The Administrative Fee is due and payable by the Company to the Agency on the Closing Date. The Administrative Fee is non-refundable and is deemed earned in full upon the execution and delivery of this Lease.
- (C) Within ten (10) days after receipt of a demand therefor from the Agency, the Company shall pay to the Agency the sum of the reasonable costs and expenses of the Agency and the officers, members, agents, attorneys, servants and employees thereof, past, present and future, incurred by reason of the Agency's ownership, leasing, subleasing or sale of the Project Facility or in connection with the carrying out of the Agency's duties and obligations under this Lease or any of the other Transaction Documents, and any other reasonable fee or expense of the Agency with respect to the Project Facility, the leasing, subleasing or sale of the Project Facility to the Company, the sub-subleasing of portions of the Project Facility to the Sublessees, the payment of which is not otherwise provided for under this Lease.
- (D) The Company agrees to make the above-mentioned payments in immediately available funds, without any further notice or demand, by wire transfer or other form of payment satisfactory to the Agency, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event the Company shall fail to make any payment required by this Section 5.3 within ten (10) days of the date such payment is due, the Company shall pay the same, together with interest thereon at the Default Interest Rate, from the date on which such payment was due until the date on which such payment is received by the Agency.

SECTION 5.4 NATURE OF OBLIGATIONS OF THE COMPANY HEREUNDER.

- The obligations of the Company to make the payments required by this (A) Lease and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be general obligations of the Company and shall be absolute and unconditional irrespective of any defense or any right of setoff, recoupment, counterclaim or abatement that the Company may otherwise have against the Agency. The Company agrees that it will not suspend, discontinue or abate any payment required by, or fail to observe any of its other covenants or agreements contained in, this Lease, or terminate this Lease (except as set forth in Section 11.1 hereof), for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the Project, any defect in the title, design, operation, merchantability, fitness or condition of the Project Facility or any part thereof or in the suitability of the Project Facility or any part thereof for the Company's purposes or needs, failure of consideration for, destruction of or damage to, Condemnation of or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State or any political subdivision thereof, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Lease.
- (B) Nothing contained in this Section 5.4 shall be construed to release the Agency from the performance of any of the agreements on its part expressly contained in this Lease, and, in the event the Agency should fail to perform any such agreement, the Company may institute such action against the Agency as the Company may deem necessary to compel performance or recover damages for non-performance (subject to the provisions of Section 12.9 hereof); provided, however, that the Company shall look solely to the Agency's estate and interest in the Project Facility for the satisfaction of any right or remedy of the Company for the collection of a judgment (or other judicial process) requiring the payment of money by the Agency in the event of any liability on the part of the Agency, and no other Property or assets of the Agency or of the members, officers, agents (other than the Company), servants or employees, past, present and future, of the Agency shall be subject to levy, execution, attachment or other enforcement procedure for the satisfaction of the Company's remedies under or with respect to this Lease, the relationship of the Agency and the Company hereunder or the Company's use and occupancy to the Project Facility, or any other liability of the Agency to the Company.

SECTION 5.5 GRANT OF SECURITY INTEREST. This Lease shall constitute a "security agreement", as such term is defined in the Uniform Commercial Code adopted in the State, as the same may from time to time be in effect (the "UCC"). The Company hereby grants the Agency a first-priority security interest in all of the right, title and interest of the Company in the materials, machinery, equipment, trade fixtures, fixtures, furniture, furnishings and other tangible personal property acquired by or on behalf of the Company using the Sales Tax Agency Agreement and/or any Sub-Agent Agency Agreement, and in all additions and accessions thereto, all replacements and substitutions therefor, and all proceeds and products thereof (collectively, the "Collateral"), as security for payment of the rental payments and all other payments and obligations of the Company hereunder and under the PILOT Agreement, and the Agency is authorized to file financing statements with respect to such Collateral without the Company executing the same. If an Event of Default shall occur under this Lease or any other Transaction Document, the Agency shall have, in addition to any and all other rights and remedies granted to a secured party under the UCC, including, but not limited to, the right to take

possession of the Equipment and any fixtures or other personal property that constitute part of the Collateral, and the right to advertise and sell the same, or any part thereof, pursuant to and in accordance with the UCC. The Company agrees that any notice of public or private sale with respect to such Collateral, or any part thereof, shall constitute reasonable notice if it is sent to the Company not less than ten (10) days prior to the date of any such sale. The Company hereby irrevocably appoints the Agency as its attorney-in-fact to execute, deliver and/or file any instruments or statements necessary or convenient to perfect and continue the security interest granted herein.

(B) RESERVED.

ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

SECTION 6.1 MAINTENANCE AND MODIFICATIONS OF THE PROJECT FACILITY.

- (A) The Company shall (1) keep the Project Facility in good condition and repair and preserve the same against waste, loss, damage and depreciation, ordinary wear and tear excepted, (2) occupy, use and operate the Project Facility, and shall cause the Project Facility to be occupied, used and operated, in the manner for which it was intended and contemplated by this Lease, (3) make all necessary repairs and replacements to the Project Facility or any part thereof (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen), (4) operate the Project Facility in a sound and economical manner, (5) not abandon the Project Facility, and (6) not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Project Facility, or any part thereof, or the interest of the Agency or the Company in the Project Facility, the Company Lease or this Lease, except for Permitted Encumbrances. The Agency shall have no obligation to replace, maintain or effect replacements, renewals or repairs of the Project Facility, or to furnish any utilities or services for the Project Facility and the Company hereby agrees to assume full responsibility therefor.
- (B) Upon prior written notice to the Agency, the Company may make alterations, modifications or improvements to the Project Facility, or any part thereof, provided:
 - (1) the Company shall (a) give or cause to be given all notices and comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on such modification or improvement to the Project Facility, or any part thereof, (b) indemnify, defend (with counsel selected by the Agency and approved by the Company, which approval shall not be unreasonably withheld, conditioned or delayed) and save the Agency and its officers, members, agents (other than the Company), attorneys, servants and employees, past, present and future harmless from all fees, expenses, fines and penalties due to failure to comply therewith, (c) promptly procure all permits and licenses necessary for the prosecution of any work described in this Section 6.1(B), and (d) not be in monetary default under this Lease or under any of the other Transaction Documents beyond applicable notice and cure periods;

- (2) such alterations, modifications and improvements are effected with due diligence, in a good and workmanlike manner and in compliance with all Applicable Laws;
- (3) the Company shall promptly and fully pay for such alterations, modifications and improvements in accordance with the terms of the applicable contract(s) therefor;
- (4) the alteration, modification or improvement to the Project Facility shall not constitute or cause a default under any of the Transaction Documents;
- (5) the Company shall furnish to the Agency, at least thirty (30) days prior to commencing such alteration, modification or improvement to the Project Facility, detailed plans and specifications therefor; provided, further, however, that such plans need not be furnished to the Agency for (a) nonstructural modifications or improvements to the Project Facility which do not exceed, at any one time, \$150,000.00 in value, and (b) non-structural modifications or improvements, without limitation as to amount, performed in connection with customary and reasonable initial tenant improvements;
- (6) as a result of such alterations, modifications or improvements, neither the usefulness, structural integrity nor operating efficiency of the Project Facility would be materially impaired in the reasonable judgment of the Agency;
- (7) if the cost of such alterations, modifications or improvements is estimated to exceed \$150,000.00, such alterations, modifications or improvements shall be conducted only after the Company shall have furnished to the Agency a labor and materials payment bond, or other security, naming the Agency as dual obligee and otherwise in form and substance satisfactory to the Agency; provided, however, that such bond or other security need not be furnished to the Agency in connection with the initial construction, renovation, installation and equipping of the Project Facility;
- (8) the Agency receives reasonably satisfactory evidence that such alterations, modifications and improvements do not change the nature of the Project Facility such that it would not comply with the terms of this Lease or such that it would not constitute a "project" (as such quoted term is defined in the Act);
- (9) if such alterations, modifications or improvements involve an addition to the Project Facility or would otherwise result, but for the Agency's interest in the Project Facility, in an increase in the assessed value of the Premises, then the Agency may require an increase in the Administrative Fee and/or the sums payable under the PILOT Agreement, if any, before such alterations, modifications or improvements proposed can be undertaken or completed;
- (10) no such alterations, modifications or improvements shall be entitled to any "financial assistance" (as such quoted term is defined in the Act) from the Agency unless agreed to in writing by the Agency; and

(11) an Event of Default shall not have occurred and be continuing under this Lease or any other Transaction Document.

All such alterations, modifications and improvements shall constitute a part of the Project Facility and the Company shall deliver or cause to be delivered to the Agency appropriate documents to convey title to or a subleasehold interest in such property, as the case may be, to the Agency, free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances, and to subject such property to this Lease.

The provisions of this Subsection (B) shall not apply to the initial construction, renovation, installation and equipping of the Project Facility pursuant to the Plans and Specifications.

- (C) The Company has given or will give or cause to be given all notices and has complied or will comply or cause compliance with all Applicable Laws applying to or affecting the operation of the Project Facility, and the Company will defend (with counsel selected by the Agency and approved by the Company, which approval shall not be unreasonably withheld, conditioned or delayed), indemnify and save the Agency and its officers, members, agents (other than the Company), attorneys, servants and employees, past, present and future, harmless from all fees, expenses, fines and penalties due to failure to comply therewith.
- (D) Any provision of this Lease to the contrary notwithstanding, the Company shall not construct any new building or structure on the Land (other than the Building) or any addition to any existing building on the Land, without the prior written consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed.

SECTION 6.2 TAXES, ASSESSMENTS AND UTILITY CHARGES.

- (A) The Company shall pay as the same respectively become due: (1) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Project Facility (other than those taxes for which payments in lieu thereof are being paid pursuant to the PILOT Agreement), (2) all utility and other charges, including "service charges" and deposits, incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Project Facility, and (3) all assessments and charges of any kind whatsoever lawfully made against the Project Facility by any Governmental Authority for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated hereunder to pay only such installments as are required to be paid during the term of this Lease.
- (B) If the Company fails to pay any tax, assessment or charge required to be paid pursuant to this Section 6.2, the Agency may pay or cause to be paid such taxes, assessments or charges. The Company shall reimburse the Agency for any amount paid under this Section 6.1, together with interest thereon from the date of payment at the Default Interest Rate.
- (C) Notwithstanding the provisions of this Section 6.2, the Company may withhold any such payment and the Company may in good faith actively contest the amount, validity or the applicability of any payment referred to in such subsection (A), provided that (1)

the Company shall have first notified the Agency in writing of such contest, (2) no Event of Default shall have occurred and be continuing under any of the Transaction Documents beyond applicable notice and cure periods, (3) the overall operating efficiency of the Project for the purposes for which it is intended is not materially impaired, (4) neither the Project Facility nor any part thereof or interest therein would be in any immediate danger of being sold, forfeited or lost by reason of such proceedings, (5) the Company shall have set aside on its books adequate reserves with respect thereto, and (6) the Company diligently prosecutes such contest to completion. Otherwise, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

SECTION 6.3 INSURANCE REQUIRED.

- (A) During the term of this Lease, the Company shall maintain insurance with respect to the Project Facility against such risks and liabilities and for such amounts as are, in the Agency's reasonable judgment, customarily insured against by businesses of like size and type, paying, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:
 - (1) Insurance protecting the interests of the Company, as named insured and the Agency, as loss payee, against loss or damage to the Project Facility by fire, lightning, vandalism, malicious mischief and other perils embraced by a so-called "Special Form" policy of property insurance, in amounts sufficient to prevent the Company and the Agency from becoming a co-insurer under such policy and not less than 100% of the replacement cost of the Project Facility, without deduction for depreciation, and including coverage against acts of terrorism. Additionally, during any period in which construction work or alterations are being performed at the Project Facility, the Company shall maintain "Special Form" property insurance in the form of a "Builder's Risk" completed value non-reporting policy in an amount satisfactory to the Agency and which shall contain a provision granting the insured permission to complete and/or occupy
 - (2) To the extent applicable, workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Project Facility or who are responsible for the acquisition, construction, renovation, installation and equipping of the Project Facility.
 - (3) Commercial general liability insurance protecting the Company, as named insured, and the Agency, as an additional insured, against loss or losses from liabilities imposed by law or assumed in any written contract (including, without limitation, the contractual liability assumed by the Company under Section 8.1 of this Lease), or arising from personal injury or death or damage to the Property of others caused by any accident or occurrence, with limits of not less than \$1,000,000.00 per person per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000.00 per accident or occurrence on account of damage to the Property of others, excluding liability imposed upon the Company by any applicable workers' compensation

law, and a separate umbrella liability policy protecting the Company, as named insured, and the Agency, as an additional insured, with a limit of not less than \$10,000,000.00, as said amounts may be adjusted by the Agency from time to time in its reasonable discretion.

- (4) During any period of construction, renovation, improvement or reconstruction, to the extent not covered by the general liability insurance set forth in Subsection 6.2(C) above, Owners & Contractors Liability insurance for the benefit of the Company and the Agency in a minimum amount of \$2,000,000.00 aggregate coverage for personal injury and property damage.
- (5) Boiler and machine property damage insurance in respect of any steam and pressure boilers and similar apparatus, insuring risks normally insured against under boiler and machinery policies and in amounts and with deductibles customarily obtained for similar enterprises.
- (6) A policy or policies of flood insurance in an amount not less than the maximum amount of flood insurance available with respect to the Project Facility under the Flood Disaster Protection Act of 1973, as amended. The requirements of this Subsection (F) shall be waived upon presentation of evidence satisfactory to the Agency that no portion of the Project Facility is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.
- (7) Such other insurance in such amounts and against such insurable hazards and risks as the Agency from time to time may reasonably require, including, without limitation, environmental hazard and liability insurance.
- Additional Provisions Regarding Insurance. All insurance required by (B) Section 6.3 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State and satisfactory and having an A.M. Best rating satisfactory to the Agency. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged and shall provide that such insurance shall be without any right of contribution from any other insurance carried by the Agency. All policies evidencing such insurance shall name the Company, as named insured, and the Agency as an additional insured, with respect to liability policies, and name the Agency as loss payee with respect to casualty policies, and provide for at least thirty (30) days' written notice to the Company and the Agency prior to cancellation, lapse, reduction in policy limits or material change in coverage thereof. All insurance required hereunder shall be in form, content and coverage satisfactory to the Agency. Certificates satisfactory in form and substance to the Agency to evidence all insurance required hereby shall be delivered to the Agency on or before the Closing Date. The Company shall deliver to the Agency on or before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 6.3 hereof. At least fifteen (15) days prior to the expiration of any such policy, the Company shall

furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Lease.

- (1) All premiums with respect to the insurance required by Section 6.3 hereof shall be paid by the Company; provided, however, that, if the premiums are not timely paid, the Agency may pay such premiums and the Company shall pay immediately upon demand all sums so expended by the Agency, together with interest thereon at the Default Interest Rate.
- (2) In the event of construction, reconstruction, improvement or renovation of any part of the Project Facility, the Company shall require its contractors and subcontractors, if any, to name the Agency as an additional insured on liability policies carried by such contractors or subcontractors with respect to their operations at the Premises or with respect to the Project.
- Each of the policies evidencing the insurance required by this Section 6.3 of this Lease shall provide that: (i) there shall be no recourse against the Agency for the payment of premiums or commissions or, if such policies provide for the payment thereof, additional premiums or assessments; (ii) in respect of the interest of the Agency in such policies, the insurance shall not be invalidated by any action or inaction of the Company or any other Person and shall insure the Agency regardless of, and any losses shall be payable notwithstanding, any such action or inaction; (iii) if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or if there shall occur any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Agency until at least thirty (30) days after receipt by the Agency of written notice by such insurers of such cancellation, lapse, expiration, reduction or change; and (iv) the insurers waive subrogation thereunder against any Person insured under such policy, and waive any right of the insurers to any setoff or counterclaim or other deduction, in respect of any liability of any Person insured under such policy. Any such insurance policies may be furnished under a so-called "master" or "blanket" policy covering locations other than the Project Facility; provided, however, that if casualty coverage for the Project Facility is provided under a master or blanket policy, such policy must contain an agreed amount endorsement evidencing that such coverage is in an amount sufficient to insure the full replacement cost of the Project Facility.
- (C) THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE COMPANY'S BUSINESS OR INTEREST IN THE PROJECT FACILITY.

SECTION 6.4 APPLICATION OF NET PROCEEDS OF INSURANCE. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.3 hereof shall be applied as follows, subject to Section 6.5 of this Lease, (A) the Net Proceeds of the insurance required by Sections 6.3(A)(2) and 6.3(A)(7) hereof shall be applied as provided in Section 7.1 hereof, and (B) the Net Proceeds of the insurance required by Sections 6.3(A)(3-6) hereof shall

be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

SECTION 6.5 PAYMENTS IN LIEU OF TAXES.

- (A) It is recognized that, under the provisions of the Act, the Agency is not required to pay certain taxes or assessments upon the Property acquired by it or under its jurisdiction, control or supervision or upon its activities as more particularly set forth in Section 874 of the Act. It is the intention of the parties hereto that the Project Facility be treated as exempt from real property taxation to the extent set forth in the PILOT Agreement, a copy of which is attached hereto as Exhibit H. Accordingly and subject to the terms of the immediately preceding sentence, the parties hereto acknowledge that the Agency shall file New York State Board of Real Property Services Form RP-412-a (a "Real Property Tax Exemption Form") with respect to the Project Facility. The Company hereby consents to any enforcement action provided to the Taxing Entities pursuant to law in the event that the Company should fail to pay any taxes not exempted as aforesaid and shall not object to any such enforcement action on the grounds that a subleasehold interest in the Project Facility is held by the Agency or that the Project Facility is under the Agency's jurisdiction, control or supervision or subject to its activities.
- (B) The Agency and the Company hereby agree that the Company shall be required to make or cause to be made payments in lieu of taxes to the school districts, cities, towns, county, villages and other political unit(s) wherein the Project Facility is located having taxing powers (such political units are hereinafter collectively referred to as the "Taxing Entities"), in such amounts and at such times as are required by the PILOT Agreement.
- (C) Within thirty (30) days after receipt of written request therefore, the Company shall deliver to the Agency official receipts of the Taxing Entities or other proof reasonably satisfactory to the Agency evidencing payment of any amount that the Company is required to pay under the PILOT Agreement.

ARTICLE VII DAMAGE, DESTRUCTION AND CONDEMNATION

SECTION 7.1 DAMAGE OR DESTRUCTION.

- (A) If the Project Facility becomes damaged or destroyed, in whole or in part at any time during the duration of this Lease:
 - (1) the Agency shall have no obligation to replace, repair, rebuild or restore the Project Facility;
 - (2) there shall be no abatement or reduction in the amounts payable by the Company under this Lease or the PILOT Agreement (whether or not the Project Facility is replaced, repaired, rebuilt or restored);
 - (3) the Company shall promptly give notice thereof to the Agency; and

- except as otherwise provided in subsection (B) of this Section 7.1, (a) the Company shall promptly replace, repair, rebuild or restore the Project Facility to substantially the same condition and value as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations or modifications do not so change the nature of the Project Facility that it does not constitute a "project", as such quoted term is defined in the Act, or change the use of the Project Facility as specified in Section 3.2 hereof without the prior written consent of the Agency, and (b) (1) the Agency shall make available to the Company (solely from the Net Proceeds of any insurance settlement relating to the Project Facility, if any, on deposit with the Agency) such moneys as may be necessary to pay the costs of the replacement, repair, rebuilding or restoration of the Project Facility, and, in the event that the funds from the Net Proceeds of any insurance settlement provided by the Agency to the Company, if any, are not sufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the Company shall nonetheless complete such work and shall pay from its own moneys that portion of the costs thereof in excess of such funds, and (2) any balance of such funds from the Net Proceeds of any insurance settlement, if any, remaining on deposit with the Agency after payment of all of the costs of such replacement, repair, rebuilding or restoration shall be paid to the Company for its own purposes.
- (B) Notwithstanding anything to the contrary contained in subsection (A) of this Section 7.1, the Company shall not be obligated to replace, repair, rebuild or restore the Project Facility, and the Net Proceeds of any insurance settlement shall not be applied as provided in subsection (A) of this Section 7.1, if the Company shall notify the Agency that it elects to exercise its option under Article XI hereof to terminate this Lease. In such event, subject to the provisions of Section 6.4 of this Lease, the Net Proceeds collected by the Agency under any and all policies of insurance covering the damage to or destruction of the Project Facility, after deducting the amount necessary to repay the Indebtedness, shall be paid to the Company for its own purposes. If the Net Proceeds collected under any and all policies of insurance are less than the amount necessary to repay the Indebtedness in full, the Company shall pay to the Agency the difference between the Net Proceeds of such insurance and the amount necessary to repay the Indebtedness in full.
- (C) Unless an Event of Default under any of the Transaction Documents shall have occurred and be continuing, the Company may adjust all claims under any policies of insurance required by Section 6.3 hereof.
- (D) The Company hereby waives the provisions of Section 227 of the Real Property Law of the State or any laws of like import, now or hereafter in effect.

SECTION 7.2 CONDEMNATION.

(A) To the best of the Company's knowledge, no Condemnation or eminent domain proceeding has been commenced or threatened against any part of the Project Facility or the Agency's, the Overlandlord's or the Company's interest therein or in the Overlease, the Company Lease or this Lease.

- (B) If title to, or the use of, all or any part of the Project Facility shall be taken by Condemnation:
 - (1) the Agency shall have no obligation to restore the Project Facility, or any part thereof;
 - (2) there shall be no abatement or reduction in the amounts payable by the Company under this Lease or the PILOT Agreement (whether or not the Project Facility is restored);
 - (3) the Company shall promptly give notice thereof to the Agency; and
 - except as otherwise provided in subsection (C) of this Section 7.1, (a) the **(4)** Company shall promptly restore the Project Facility (excluding any part of the Project Facility taken by Condemnation) as a complete architectural unit of substantially the same usefulness, design and construction as existed immediately prior to such Condemnation, with such changes, alterations and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations or modifications do not so change the nature of the Project Facility that it does not constitute a "project" as such quoted term is defined in the Act, or change the use of the Project Facility as specified in Section 3.2 hereof without the prior written consent of the Agency, and (b)(1) subject to the provisions of Section 6.4 of this Lease, the Agency shall make available to the Company (solely from the Net Proceeds of any Condemnation award, if any, on deposit with the Agency) such moneys as may be necessary to pay the costs of the restoration of the Project Facility, and in the event that the funds from the Net Proceeds of any Condemnation award on deposit with the Agency provided by the Agency to the Company are not sufficient to pay in full the costs of such restoration, the Company shall nonetheless complete such restoration and shall pay from its own moneys that portion of the costs thereof in excess of such funds, and (2) any balance of such funds from the Net Proceeds of any Condemnation award remaining on deposit with the Agency, if any, after payment of all of the costs of such restoration shall be paid to the Company for its own purposes.
- (C) Notwithstanding anything to the contrary contained in subsection (B) of Section 7.1, the Company shall not be obligated to restore the Project Facility and the Net Proceeds of any Condemnation award shall not be applied as provided in subsection (B) (4) of this Section 7.1, if the Company shall notify the Agency that it elects to exercise its option under Article XI hereof to terminate this Lease. In such event, subject to the provisions of Section 6.4 of this Lease, the Net Proceeds of any Condemnation award collected by the Agency, if any, after deducting the amount necessary to repay the Indebtedness, shall be paid over to the Company for its own purposes. If the Net Proceeds collected under any and all Condemnation awards are less than the amount necessary to repay the Indebtedness in full, the Company shall pay to the Agency the difference between such amounts and the Net Proceeds of such Condemnation awards so that the Indebtedness shall be repaid in full.
- (D) Unless an Event of Default under any of the Transaction Documents shall have occurred and be continuing, the Company shall have sole control of any Condemnation

proceeding with respect to the Project Facility or any part thereof or any interest therein or in the Overlease, the Company Lease or this Lease and may negotiate the settlement of any such proceeding. The Company shall notify the Agency of the institution of any Condemnation proceedings and, within seven (7) days after inquiry from the Agency, inform the Agency in writing of the status of such proceeding.

(E) The Agency shall, at the expense of the Company, cooperate fully with the Company in the handling and conduct of any such Condemnation proceeding. In no event shall the Agency voluntarily settle, or consent to the settlement of, any such Condemnation proceeding without the written consent of the Company, which consent shall not be unreasonably withheld or delayed.

SECTION 7.3 ADDITIONS TO THE PROJECT FACILITY. All replacements, repairs, rebuilding or restoration made pursuant to Section 7.1, whether or not requiring the expenditure of the Company's own money, shall automatically become part of the Project Facility as if the same were specifically described herein and shall be subject to this Lease.

ARTICLE VIII SPECIAL COVENANTS

SECTION 8.1 NO WARRANTY OF CONDITION OR SUITABILITY BY THE AGENCY; ACCEPTANCE "AS IS". THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE PROJECT FACILITY OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. THE COMPANY SHALL ACCEPT THE PROJECT FACILITY "AS IS", WITHOUT RECOURSE OF ANY NATURE AGAINST THE AGENCY FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE AGENCY SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.HOLD HARMLESS PROVISIONS.

(1) The Company hereby releases the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, from, agrees that the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, shall not be liable for and agrees to indemnify, defend (with counsel selected by the Agency and approved by the Company, which approval shall not be unreasonably withheld, conditioned or delayed) and hold the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising directly or indirectly as a result of the Agency's undertaking the Project, including, but not limited to: (1) liability for loss or damage to Property or bodily injury to or death of any and all Persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project or the Project Facility or arising by reason of or in connection with the occupancy or the use thereof or the

presence of any Person or Property on, in or about the Project Facility, (2) liability arising from or expense incurred by the Agency's acquiring, improving, equipping, installing, owning, leasing, subleasing, sub-subleasing or selling the Project Facility, or any part thereof, or arising from or incurred based on the Agency's involvement in the Project Facility, including, without limiting the generality of the foregoing, (i) all liabilities or claims arising as a result of the Agency's obligations under this Lease or any of the other Transaction Documents or the enforcement of or defense of validity of any provision of any of the Transaction Documents, and (ii) all liabilities or claims arising as a result of the Agency's involvement in the Project or the granting of the Financial Assistance, (3) all liabilities and expenses arising from the failure or alleged failure of the Project Facility, the Company or the Company's members, officers, agents, attorneys, servants or employees to comply with Applicable Laws, including, without limitation, any claim that the Agency aided or abetted in such failure or alleged failure to comply with Applicable Laws, (4) all claims arising from the exercise by the Company of the authority conferred on it pursuant to Section 4.1(E) of this Lease, and (5) all causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing; provided that such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents (other than the Company), attorneys, servants or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

- (2) In the event of any claim against the Agency or its members, officers, agents (other than the Company), attorneys, servants or employees, past, present or future, by any employee of the Company or any contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Company or such contractor under workers' compensation laws, disability benefits laws or other employee benefit laws.
- (3) To effectuate the provisions of this Section 8.1, the Company agrees to provide for and insure its liabilities assumed pursuant to this Section 8.1 in the liability policies required by Section 6.3 of this Lease.
- (C) Notwithstanding any other provisions of this Lease, the obligations of the Company pursuant to this Section 8.1 shall remain in full force and effect after the termination or expiration of this Lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses, charges and costs incurred by the Agency or its members, agents (other than the Company), attorneys, servants or employees, past, present or future, relating thereto.

SECTION 8.2 RIGHT OF ACCESS TO THE PROJECT FACILITY. The Company agrees that the Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable notice to enter upon and to examine and inspect the Project Facility; provided, however, that no such notice shall be required in the event of an emergency or if an Event of Default has occurred and is continuing under this Lease. The Company further agrees that the Agency shall have such rights of access to the Project Facility (subject to the provisions of the immediately preceding sentence of this Section) as may be reasonably necessary to cause the proper maintenance of the Project Facility in the event of failure by the Company to perform its obligations hereunder, but the exercise of such right shall in no event be construed to mean that the Agency has assumed any obligation hereunder to perform such maintenance.

SECTION 8.3 COMPANY NOT TO TERMINATE EXISTENCE OR DISPOSE OF ASSETS. The Company agrees that, during the term of this Lease, it (A) will maintain its corporate existence as in effect on the Closing Date, (B) will not dissolve or otherwise dispose of all or substantially all of its assets, and (C) will not consolidate with or merge into another corporation or other Person, or permit one or more corporations or other Persons to consolidate with or merge into it, without giving prior written notice to the Agency and obtaining the consent of the Agency. The Company agrees that it will not change its name or its state of organization without giving prior written notice to the Agency and obtaining the consent of the Agency, which consent shall not be unreasonably withheld or delayed.

SECTION 8.4 AGREEMENT TO PROVIDE INFORMATION. The Company agrees, whenever reasonably requested by the Agency, to promptly provide and certify or cause to be provided and certified such information concerning the Project Facility, the Company, the Overlandlord, the Guarantor and/or the Company's, the Overlandlord's or the Guarantor's finances, operations and affairs and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by Applicable Laws or other governmental regulation or to ensure compliance with the provisions of this Lease and the other Transaction Documents.

SECTION 8.5 BOOKS OF RECORD AND ACCOUNT; COMPLIANCE CERTIFICATES.

- (A) The Company agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Company.
- (B) Within thirty (30) days after request from the Agency, the Company shall furnish to the Agency a certificate of an Authorized Representative of the Company stating that no Event of Default hereunder or under any other Transaction Document has occurred or is continuing or, if any Event of Default exists, specifying the nature and period of existence thereof and what action the Company has taken or proposes to take with respect thereto. The Company represents to the Agency that the Company's fiscal year ends on December 31st.

SECTION 8.6 COMPLIANCE WITH APPLICABLE LAWS.

- (A) The Company agrees, for the benefit of the Agency, that it will, during the term of this Lease, promptly comply with all Applicable Laws.
- (B) Notwithstanding the provisions of subsection (A) of this Section 8.6, the Company may in good faith actively contest the validity or the applicability of any Applicable Law, provided that the Company (1) first shall have notified the Agency in writing of such contest, (2) no Event of Default shall have occurred and be continuing under any of the Transaction Documents beyond any applicable notice or cure period, (3) shall have set aside adequate reserves for any such requirement, (4) demonstrates to the reasonable satisfaction of the Agency that noncompliance with such Applicable Law will not subject the Project Facility or any part thereof to loss or forfeiture, (5) demonstrates to the reasonable satisfaction of the Agency that such contest shall not result in the Company or the Agency being in any danger of any civil or criminal liability for failure to comply therewith, and (6) diligently prosecutes such contest to completion. Otherwise, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.
- (C) Notwithstanding the provisions of subsection (B) of this Section 8.6, if the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees, past, present or future, may be liable for prosecution for failure to comply therewith, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

SECTION 8.7 DISCHARGE OF LIENS AND ENCUMBRANCES.

- (A) The Company hereby agrees not to create or suffer to be created any Lien on any Properties of the Agency or on any funds of the Agency applicable to or deriving from the Project Facility.
- (B) If any Lien (other than a Permitted Encumbrance) is filed or asserted, or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim, whether or not valid, is made against the Project Facility or any part thereof or the interest therein of the Company or the Agency or against any funds of the Agency applicable to or deriving from the Project Facility, the Company, immediately upon receiving notice of the filing, assertion, entry or issuance thereof, shall give written notice thereof to the Agency and take all action (including, without limitation, the payment of money and/or securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and remove or nullify the basis therefor. Nothing herein shall be construed as constituting the consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Project Facility.

SECTION 8.8 PERFORMANCE OF THE COMPANY'S OBLIGATIONS. Should the Company fail to make any payment or to do any act as herein provided, the Agency may, but shall not be obligated to, without notice to or demand on the Company and without releasing the Company from any obligation herein, make or do the same, including, without limitation, appearing in and defending any action purporting to affect the rights or powers of the Company or the Agency, and paying all fees, costs and expenses, including, without limitation, reasonable

attorneys' fees, incurred by the Agency in connection therewith; and the Company shall pay immediately upon demand all sums so incurred or expended by the Agency under the authority hereof, together with interest thereon, at the Default Interest Rate.

SECTION 8.9 DEPRECIATION DEDUCTIONS AND TAX CREDITS. The parties agree that as between them the Company shall be entitled to all depreciation deductions and accelerated cost recovery system deductions with respect to any portion of the Project Facility pursuant to Sections 167 and 168 of the Code and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Project Facility which constitutes "Section 38 Property" and to all other state and/or federal income tax deductions and credits which may be available with respect to the Project Facility.

SECTION 8.10 EMPLOYMENT OPPORTUNITIES.

- (A) The Company shall ensure that all employees and applicants for employment with regard to the Project, including, without limitation, the employees of and applicants for employment with the Company, or any of its Affiliates, are afforded equal employment opportunities without discrimination.
- (B) Pursuant to Section 858-b of the Act, except as otherwise provided by collective bargaining contracts or agreements, the Company agrees (1) to list or cause to be listed all new employment opportunities created as a result of the Project with the New York State Department of Labor, Community Services Division (the "NYSDOL") and with the administrative entity (collectively with NYSDOL, the "JTPA Referral Entities") of the service delivery area created by the federal Job Training Partnership Act (P.L. No. 97-300) (including any successor statute thereto, including without limitation, the Workforce Investment Act of 1998 (P.L. No. 105-270), collectively, the "JTPA") in which the Project Facility is located, and (2) where practicable, to first consider and to cause to be first considered for such new employment opportunities persons eligible to participate in federal JTPA programs who shall be referred by the JTPA Referral Entities.
- (C) Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the 1995 Laws of the State, the Company agrees to file with the Agency, prior to the effective date of this Lease, an employment plan, in form and substance satisfactory to the Agency.
- (D) The Company agrees to file with the Agency, on a calendar year basis not later than February 11 of each year during the term of this Lease, measured as of December 31st of the immediately preceding calendar year, reports (i) enumerating the full-time equivalent jobs retained and the full time equivalent jobs created as a result of the granting of the Financial Assistance, by category, including full-time equivalent independent contractors and employees of independent contractors that work at the Project Facility, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that were set forth in the Application are then still accurate or, if not then still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. Said annual reports shall be in substantially the form promulgated from time to time by the Agency. The current forms of reports are annexed hereto as Exhibit G. The Company shall

provide such annual reports (and supporting documentation) and shall cause its Affiliates, tenants, occupants, operators, contractors and agents to provide such reports (and supporting documentation) with respect to their respective employees, if any, at the Project Facility. The Agency shall have the right, at the Company's expense, to audit, confirm and/or require additional information with regard thereto and the Company agrees to cooperate with the Agency in connection therewith.

- (E) The Company shall, at all times during the term of this Lease, maintain the Minimum Employment Requirement. The Company agrees to give the Agency written notice of the occurrence of any default under this subsection (E) within five (5) days after the Company becomes aware of the occurrence of such default.
- (F) Subject to (i) collective bargaining contracts or agreements and other existing contracts or agreements to which the Company is a party or by which the Company is bound and (ii) compliance with Applicable Laws, the Company agrees to list or cause to be listed all new employment opportunities created as a result of the Project on the County Jobs website or other website designated by the Agency from time to time, provided that such listing shall be at no cost to the Company.
- (G) Subject to (i) collective bargaining contracts or agreements and other existing contracts or agreements to which the Company is a party or by which the Company is bound and (ii) compliance with Applicable Laws, the Company agrees that to the greatest extent possible all employment opportunities should be provided to residents of the County first.

SECTION 8.11 SALES AND USE TAX EXEMPTION.

- (A) Pursuant to Section 874 of the Act, the parties understand that the Agency is exempt from certain sales and use taxes imposed by the State and local governments in the State, and that the Project may be exempted from those taxes due to the involvement of the Agency in the Project. Any exemption from the payment of New York sales and use taxes resulting from Agency involvement in the Project shall be limited to purchases of services and the purchase or lease of tangible personal property conveyed to the Agency or utilized by the Agency or by the Company as agent of the Agency, in connection with the completion of the acquisition, construction, renovation, installation and equipping of the Project Facility (but not the operation thereof). No operating expenses (including, without limitation, costs of utilities, cleaning services or supplies) of the Project Facility and no other purchases or leases of services or property shall be subject to an exemption from the payment of New York sales or use taxes. The Agency makes no representations or warranties that any property or service is exempt from the payment of New York sales or use taxes.
- (B) On the Closing Date, the Agency and the Company shall execute and deliver a sales and use tax agency agreement in the form attached hereto as Exhibit E (the "Sales Tax Agency Agreement"). The granting of the sales and use tax exemption herein is subject to the following additional terms and conditions:
 - (1) The Sales Tax Agency Agreement shall be dated the Closing Date and shall be effective for a term commencing on its date and expiring upon the earliest to

occur of: (a) the termination of this Lease, (b) December 31, 2020, or (c) the termination of the Sales Tax Agency Agreement pursuant to the terms hereof and thereof;

- (2) Anything in this Lease or the Sales Tax Agency Agreement to the contrary notwithstanding, the sales and use tax exemption to be provided pursuant to the Sales Tax Agency Agreement (a) shall not be available for any date subsequent to which the Sales Tax Agency Agreement shall have been suspended as provided in this Lease; (b) shall not be available for or with respect to any tangible personal property having a useful life of less than one year; and (c) shall not be available after the Company (or the contractors or subcontractors engaged by the Company and approved by the Agency as its agents) shall have made purchases under the Sales Tax Agency Agreement resulting in sales and use tax exemptions in the aggregate amount of the Maximum Sales Tax Benefit.
- The Company agrees to furnish to the Agency within fifteen (15) days (C) after the end of each calendar quarter, a sales and use tax exemption report (the "Quarterly Sales Tax Report"), in form and substance satisfactory to the Agency in its reasonable judgment, with respect to the use of the Sales Tax Agency Agreement by the Company (and the contractors and subcontractors engaged by the Company and approved by the Agency as its agents) under the authority granted to the Company pursuant to Section 4.1(E) of this Lease during the preceding calendar quarter. Each said Quarterly Sales Tax Report shall be certified by an Authorized Representative of the Company and shall: (1) identify the contracts and specific property exempted from sales taxes and/or use taxes during such period; (2) indicate the parties to said contract; (3) indicate the maximum amount payable under said contract and indicate what portion of said amount would normally be subject to sales and use taxes imposed in the State; (4) indicate the amount of sales tax benefit expected to be received with respect to said contract; and (5) indicate the cumulative sales tax benefit claimed by the Company (and its contractors and subcontractors approved by the Agency as its agents) with respect to the Project for the calendar year.
- (through the year after the Sales Tax Agency Agreement expires or is earlier terminated), with the New York State Department of Taxation and Finance (the "Department"), no later than January 15th of each year, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Annual Sales Tax Report"), a statement of the value of all sales and use tax exemptions claimed by the Company (and the contractors and subcontractors engaged by the Company and approved by the Agency as its agents) under the authority granted to the Company pursuant to Section 4.1(E) of this Lease during the preceding calendar year. Pursuant to Section 874(8) of the Act, the penalty for failure to file the Annual Sales Tax Report shall be the termination of the authority granted herein for the Company to act as agent of the Agency and the Company (and its contractors and subcontractors) shall immediately cease to be the agent of the Agency in connection with the Project.
- (E) The Company agrees to furnish to the Agency, simultaneously with its delivery of such report to the Department, as required by Section 8.11(D), a copy of each such Annual Sales Tax Report submitted to the Department by the Company pursuant to Section 874(8) of the Act.

(F) The Company acknowledges that, pursuant to Section 874(9) of the Act, the Agency shall file within thirty (30) days of the Closing Date with the Department on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Thirty-Day Sales Tax Report"), statements identifying the Company and its contractors and subcontractors approved by the Agency as agents of the Agency, setting forth the taxpayer identification numbers of such Persons, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating a rough estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease. The Company agrees to timely provide the foregoing information to the Agency and to otherwise cooperate with the Agency in connection with the preparation and filing of the Thirty-Day Sales Tax Report.

(G) Intentionally omitted.

(H) The Company covenants and agrees that it shall include or cause to be included the following language in and as a part of each contract, agreement, lease, invoice, bill or purchase order entered into by the Company (or a contractor or subcontractor engaged by the Company and approved by the Agency as its agent), as agent of the Agency, in connection with the acquisition, construction, renovation, installation and equipping of the Project Facility:

"This [contract, agreement, lease, invoice, bill or purchase order] is 1 (the "Agent"), as being entered into by [approved agent for and on behalf of the County of Chautauqua Industrial Development Agency (the "Agency") in connection with a certain project (the "Project") of the Agency for S. St. George Enterprises, Inc. (the "Company") consisting in part of the acquisition, construction, renovation, installation and equipping of an inventory and heavy equipment storage facility located at 3689 Webster Road, Fredonia, Town of Pomfret, County of Chautauqua, New York (the "Premises") and the acquisition of certain capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary for the completion of the Project. The capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary for completion of the Project which are the subject of this [contract, agreement, lease, invoice, bill or purchase order] shall be exempt from the sales and use taxes levied by the State of New York and the County of Chautauqua if effected in accordance with the terms and conditions set forth in the attached Sales Tax Agency Agreement of the Agency, and the Agent hereby represents that this [contract, agreement, lease, invoice, bill or purchase order] is in compliance with the terms of the Sales Tax Agency Agreement. This [contract, agreement, lease, invoice, bill or purchase order] is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated

hereunder in any manner or to any extent whatsoever. By execution or acceptance of this [contract, agreement, lease, invoice, bill or purchase order], the [vendor, lessor, licensor, contractor or subcontractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

If the Company fails to include, incorporate by reference or otherwise cause the contract, agreement, lease, invoice, bill or purchase order to be subject to the above provision, then such contract, agreement, lease, invoice, bill or purchase order shall not be an undertaking on behalf of the Agency and shall not be entitled to any of the benefits that may be conferred by the Agency, neither the Company nor any contractor or subcontractor engaged by the Company and approved by the Agency as its agent shall claim any sales or use tax benefits or exemptions with respect thereto, and the Company shall return or cause to be returned to the Agency any such benefits or exemptions so taken, together with interest thereon at the Default Interest Rate, from the date of such taking. For convenience purposes, in the instance where the vendor does not print on each invoice the acknowledgment as described herein, an "Invoice Rider" (a copy of which is attached hereto as Exhibit I) can be substituted to satisfy the requirements of this section.

The appointment by the Company of a contractor or subcontractor as an agent of the Agency pursuant to this Section 8.11 shall be subject to the prior written approval of the Agency, which approval shall not be unreasonably withheld, and such appointment shall be subject to all of the provisions of this Section 8.11. Any such appointment approved by the Agency shall not be valid unless and until the contractor or subcontractor executes and delivers an agency agreement in the form required by the Agency attached as Exhibit J (each, a "Sub-Agent Agency Agreement").

- Project Operator Exempt Purchase Certificate, to each vendor, lessor, licensor, contractor or subcontractor from which the Company (or a contractor or subcontractor engaged by the Company and approved by the Agency as its agent) purchases and/or leases goods or services or with which the Company (or a contractor or subcontractor engaged by the Company and approved by the Agency as its agent) enters into an improvement or installation contract relating to the acquisition, construction, renovation, installation and equipping of the Project Facility. The Company acknowledges that, pursuant to Section 875 of the Act, the Certificate must be provided to the vendor, lessor, licensor, contractor or subcontractor in order for the contract, agreement, lease, invoice, bill or purchase order to be exempt from the imposition of sales and/or use taxes pursuant to the authority granted under Section 4.1(E) of this Lease. The Company agrees to provide the Agency a copy of each such Form ST-123 within five (5) days after the delivery of such form to the vendor, lessor, licensor, contractor or subcontractor.
- (J) (1) Without limitation of any of the Agency's other rights under this Lease, in the event that the Company (or any contractor or subcontractor engaged by the Company and approved by the Agency as its agent) shall utilize the sales or use tax exemption provided pursuant to Section 4.1(E) of this Lease (i) in a manner that is not authorized or for which the Company (or any contractor or subcontractor engaged by the Company and approved by the Agency as its agent) is not entitled to claim an exemption, (ii) to claim exemptions in

excess of the Maximum Sales Tax Benefit, (iii) to purchase or lease goods or services that are not authorized under this Lease, or (iv) in a manner that violates the provisions of this Section 8.11 or any other provision of this Lease or any provision of the Sales Tax Agency Agreement or Sub-Agent Agency Agreement, then the Company shall promptly deliver notice of same to the Agency, and the Company shall promptly pay or cause to be paid to the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the Default Interest Rate from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was used by the Company (or a contractor or subcontractor engaged by the Company and approved by the Agency as its agent). If the Company fails to promptly pay such return of sales or use tax exemptions when due, the Agency shall have the right, without limitation of any of its other rights under this Lease, to take any action or commence any proceeding at law or in equity which may appear necessary or desirable to the Agency to recover any such amounts and the Agency shall have the right to join the Commissioner as a party in any such action or proceeding. The Company shall cooperate with the Agency in all such actions and proceedings to recover such amounts. The Company acknowledges and agrees that its failure to pay over any such amounts to the Agency shall also be grounds for the Commissioner to assess and determine State Sales and Use Taxes due from the Company under Article 28 or Article 28-A of the New York State Tax Law, together with any applicable penalties and interest due on such amounts.

- (2) The Company acknowledges and agrees that, in the event the Agency recovers, receives or otherwise obtains any amount of State Sales and Use Tax from the Company (or a contractor or subcontractor engaged by the Company and approved by the Agency as its agent) pursuant to the foregoing subsection, the Agency shall have the right to remit same to the Commissioner, together with such information and report that the Commissioner deems necessary to administer payment over of such amounts, and the Company agrees to indemnify, defend (with counsel selected by the Agency and approved by the Company, which approval shall not be unreasonably withheld, conditioned or delayed) and hold harmless the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, against any liability incurred as a result of remitting such amounts to the Commissioner.
- (3) Pursuant to Section 875 of the Act, the Agency shall prepare and file an annual compliance report (each, a "Compliance Report") detailing provisions of this Lease and, if applicable, its activities and efforts to recover, receive or otherwise obtain State Sales and Use Taxes pursuant to the terms of this Lease, together with such other information as the Commissioner and/or the Commissioner of Economic Development may require, which Compliance Report will be filed with the Commissioner, the Director of the Division of the Budget, the Commissioner of Economic Development, the State Comptroller and the applicable City, Village, Town or Hamlet Council. The Company acknowledges the provisions of Section 875 of the Act, agrees to timely provide any information required by the Agency in connection with such Compliance Report and agrees to cooperate with the Agency in connection with the preparation and filing of such Compliance Report.

SECTION 8.12 IDENTIFICATION OF THE EQUIPMENT. All Equipment which is or may become part of the Project Facility pursuant to the provisions of this Lease shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency.

SECTION 8.13 FINANCIAL STATEMENTS. Within one hundred fifty (150) days after the end of each fiscal year, the Company shall deliver to the Agency the financial statements of the Company prepared and compiled by an independent certified public accountant, certified by the chief financial officer of the Company, including a balance sheet as of the last day of such period and an operating statement through the last day of such period. The Company represents to the Agency that the Company's fiscal year ends on December 31st.

SECTION 8.14 ANTI-TERRORISM LAWS.

- (A) <u>General</u>. Neither the Company nor any director, officer, member, manager or shareholder of the Company, nor any Affiliate of any of the foregoing, is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.
- (B) Executive Order No. 13224. Neither the Company, nor any director, officer, member, manager or shareholder of the Company, nor any Affiliate of any of the foregoing, nor their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by the Transaction Documents, is any of the following (each a "Blocked Person"):
 - (1) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224;
 - (2) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224;
 - (3) a Person or entity with which any lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;
 - (4) a Person or entity that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224;
 - (5) a Person or entity that is named as a "specially designated national" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list, or
 - (6) a Person or entity who is affiliated or associated with a person or entity listed above.

- (C) <u>Blocked Person or Transactions</u>. Neither the Company, nor any director, officer, member, manager or shareholder of the Company, nor any Affiliate of any of the foregoing, nor to the Company's knowledge any of its agents acting in any capacity in connection with the transactions contemplated by the Transactions Documents (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224.
- (D) <u>Trading with the Enemy</u>. The Company is not engaged, nor does it intend to engage, in any business or activity prohibited by the Trading with the Enemy Act.
- OFAC and Patriot Act. The Company represents, warrants, covenants and (E) agrees as follows: (i) the Company, its directors, officers, members, managers, shareholders and Affiliates are in compliance with all Anti-Terrorism Laws; (ii) the Company shall immediately notify the Agency if it obtains knowledge that it or any of its Affiliates has become or been listed as a Restricted Party or has been charged with or has engaged in any violation of any Anti-Terrorism Law; (iii) the Company shall not to receive any funds from a Restricted Party and, in any case, exclude any funds derived from any Restricted Party or from any person or entity involved in the violation of any Anti-Terrorism Law from being used to pay the Indebtedness or any part thereof; (iv) the Company shall not to transfer or permit the transfer of any legal or beneficial ownership interest of any kind in the Company to a Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law; (v) the Company shall not to acquire, directly or indirectly, ownership interest of any kind in any Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law, (vi) the Company shall not to form any partnership or joint venture or conduct any business with any Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law, (vii) the Company shall not to act, directly or indirectly, as the agent or representative of any Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law; and (viii) the Company shall indemnify, defend (with counsel selected by the Agency and approved by the Company, which approval shall not be unreasonably withheld, conditioned or delayed) and hold harmless the Agency from and against any costs incurred by the Agency, and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, as a result of any violation of an Anti-Terrorism Law by the Company or any of its directors, officers, members, managers, shareholders or Affiliates.

ARTICLE IX ASSIGNMENTS; LEASING; MERGER OF THE AGENCY

SECTION 9.1 ASSIGNMENT OF THIS LEASE.

This Lease may not be sold, assigned or otherwise transferred by the Company, in whole or in part, without the prior written consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed, and shall in all events be subject to and conditioned upon the payment of the then-standard fees of the Agency and the satisfaction of all requirements of the Act. Any such sale, assignment or transfer made by the Company without the prior written consent of the Agency as aforesaid shall be null and void. Any such sale, assignment or transfer consented to by the Agency shall be made pursuant to documentation

satisfactory to the Agency. The Company shall pay all reasonable and customary fees and expenses incurred by the Agency in connection with such sale, assignment or transfer.

SECTION 9.2 MERGER OF THE AGENCY.

- (A) Nothing contained in this Lease shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to, any other public benefit corporation of the State or any political subdivision thereof which has the legal authority to perform the obligations of the Agency hereunder and under the other Transaction Documents; provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all of the agreements and conditions of this Lease to be kept and performed by the Agency shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests under this Lease shall be assigned.
- (B) As of the date of any such consolidation, merger or assignment, the Agency shall endeavor to give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger or assignment as the Company may reasonably request.

SECTION 9.3 SALE OR LEASE OF THE PROJECT FACILITY.

- (A) The Company shall not lease, sub-sublease, sub-sublease, sub-sublease, license or otherwise permit others to use or occupy the Project Facility or any portion thereof without the prior written consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed, except for leases, subleases, sub-subleases, sub-sub-subleases and other occupancy arrangements as set forth in Subsection (B) of this Section 9.3, if any; provided, however, in each case (1) the Company shall remain liable to the Agency for the payment of all rent and for the full performance of all of the terms, covenants and conditions of this Lease, and (2) any approved Sublease Agreement will not diminish or impair the obligation of the Company to carry the insurance required under Article VI hereof, and that such insurance coverage shall in no manner by limited by such Sublease Agreement.
 - (B) Intentionally omitted.
- (C) Subject to Subsection (D) of Section 9.3 of this Lease, the Company shall not sell, transfer, convey or otherwise dispose of its interest in the Project Facility or any portion thereof without the prior written consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed.
- (D) Notwithstanding anything to the contrary contained in this Section 9.3, in any instance where the Company determines that any portion of the Project Facility has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such portion of the Project Facility and may sell, trade in, exchange or otherwise dispose of the same, as a whole or in part, without the prior written consent of the Agency but, upon reasonable prior notice to the Agency, provided that such removal will not materially impair the value of the Project Facility as collateral and provided the same is forthwith replaced with items

of similar quality and value as the items replaced as of the date of original installation of the replaced items. At the request of the Company, the Agency shall execute and deliver to the Company all instruments reasonably necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Property free from the Liens of the Transaction Documents. The Company shall pay all reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred in transferring title to and releasing from the Liens of the Transaction Documents any item of Property removed pursuant to this Section 9.3.

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

SECTION 10.1 EVENTS OF DEFAULT DEFINED.

- (A) The following shall be "Events of Default" under this Lease, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Lease, any one or more of the following events:
 - (1) A default by the Company in the due and punctual payment of any amount due under this Lease or under any other Transaction Document, and the continuance thereof for a period of ten (10) days after written notice thereof is given by the Agency to the Company.
 - (2) A default in the performance or observance of any covenant, condition or agreement on the part of the Company in this Lease (other than as set forth in subsection (1) above or in any other subsection of this Section 10.1(A)) and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Agency to the Company, or, if such covenant, condition or agreement is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Company to commence to cure within such thirty (30) day period and to prosecute the cure to completion with due diligence.
 - (3) The occurrence of an "Event of Default" under any other Transaction Document.
 - (4) The Company shall generally not pay its debts as such debts become due or admits its inability to pay its debts as they become due.
 - any part of its Property, with intent to hinder, delay or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of its Property which is fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall make any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or shall suffer or permit, while insolvent, any creditor to obtain a Lien upon any of its Property through legal proceedings or distraint which is not vacated within ten (10) days from the date thereof.

- (a) The filing by the Company (as debtor) of a voluntary petition under (6) Title 11 of the United States Code or any other federal or state bankruptcy or insolvency statute; (b) the failure by the Company within thirty (30) days to lift any execution, garnishment or attachment of such consequence as will impair the Company's ability to carry out its obligations hereunder; (c) the commencement of a case under Title 11 of the United States Code against the Company as the debtor or commencement under any other federal or state bankruptcy or insolvency statute of a case, action or proceeding against the Company and continuation of such case, action or proceeding without dismissal for a period of thirty (30) days; (d) the entry of an order for relief by a court of competent jurisdiction under Title 11 of the United States Code or any other federal or state bankruptcy statute with respect to the debts of the Company; or (e) in connection with any insolvency or bankruptcy case, action or proceeding, appointment by final order, judgment or decree of a court of competent jurisdiction of a receiver, liquidator or trustee of the whole or a substantial portion of the Property of the Company, unless such order, judgment or decree is vacated, dismissed or dissolved within thirty (30) days of such appointment.
- (7) If any interest in the Company shall be sold, assigned, transferred, conveyed, mortgaged, pledged, hypothecated or alienated, or if any member or shareholder of the Company enters into an agreement or contract to do so, without the prior written consent of the Agency, which consent shall not be unreasonably withheld by the Agency.
- (8) The imposition of a Lien on the Project Facility other than a Permitted Encumbrance and the failure of the Company to remove such Lien, whether by the payment of money, the securing of a bond or otherwise, within thirty (30) days after the Company receives notice or becomes aware of such imposition.
- (9) The removal of the Project Facility, or any portion thereof, outside the County, without the prior written consent of the Agency, other than in connection with a removal permitted under Section 9.3(D) of this Lease.
- (10) If any certificate, statement, representation, warranty or financial statement made to the Agency by or on behalf of the Company, the Overlandlord or any Guarantor shall prove to have been false, misleading or incorrect in any material respect at the time as of which the facts therein set forth were made, or to have omitted any material liability or claim against the Company, the Overlandlord or any Guarantor, as the case may be, or the Overlease shall expire by its terms or shall be sooner terminated for any reason.
- (11) If the environmental or ecological condition of the Project Facility is in violation of any Environmental Law or any permit, license or approval related thereto or if the Project Facility, or any part thereof, contains any Hazardous Materials (except Hazardous Materials which do not violate Environmental Laws), and the Company is unable to comply with such Environmental Laws within thirty (30) days of the notification or discovery of such violation or complete all appropriate and lawful

remedial containment and clean-up action within thirty (30) days of the notification or discovery of the existence of such Hazardous Materials.

- (12) Any loss or impairment of the Agency's interest in and to the Project Facility, or any part thereof.
- (13) The Company, any Guarantor or any Affiliate of any of the foregoing or any director, member, manager, officer or shareholder of the Company shall become a Prohibited Person.
- (14) Any assignment of this Lease or the Company Lease, in whole or in part, or any letting or sub-subletting of the Project Facility, or any portion thereof, in violation of the terms of this Lease.
- (15) A default (beyond applicable notice or cure periods) or an Event of Default shall occur under the Company Lease, the Overlease or under any other Permitted Encumbrance.
- (16) If any of the events enumerated in clauses (4) through (6) of this Section 10.1(A) shall happen to any Guarantor.
- (17) The Company or any Guarantor defaults under or attempts to withdraw, rerate, cancel or disclaim liability under any guaranty or indemnity made by such party in favor of the Agency, including, without limitation, the Environmental Indemnification or the Guaranty.
- (18) If the Company fails to maintain or fails to cause to be maintained the Minimum Employment Requirement as and when required during the term of this Lease.
- (19) Failure by the Company at any time to keep in full force and effect the insurance policies and coverages required by Section 6.3 of this Lease.
- (20) Any loss or impairment of the Company's interest in and to the Project Facility, or any part thereof.
- (B) Notwithstanding the provisions of Section 10.1(A) hereof if by reason of force majeure (as hereinafter defined) either party hereto shall be unable, in whole or in part, to carry out its obligations under this Lease and if such party shall give notice and full particulars of such force majeure event or cause in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Lease of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of the inability to perform. The suspension of such obligations for such period pursuant to this subsection (B) shall not be deemed an Event of Default under this Section 10.1. Notwithstanding anything to the contrary in this subsection (B), an event of force majeure shall not excuse, delay or in any way diminish the obligations of the Company to make the payments required under this Lease, to obtain and continue in full force and effect the insurance required by Article VI hereof, to provide the indemnity required by Sections 2.2(F), 3.1, 3.3, 4.1(E), 6.1, 8.1 and 12.9(C) hereof and to comply with the provisions of Sections 2.2(F), 6.3, 8.2, 8.4, 8.5

and 8.6(C) hereof. The term "force majeure" as used herein shall include acts outside of the control of the Agency and the Company, including, but not limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, restraint of government and people, civil disturbances, breakage or accident to transmission pipes or canals, and failure of utilities.

SECTION 10.2 REMEDIES ON DEFAULT.

- (A) Whenever any Event of Default shall have occurred and be continuing, the Agency may, to the extent not prohibited by law, take any one or more of the following remedial steps:
 - (1) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable, (a) all amounts payable pursuant to Section 5.3 hereof, and (b) all other payments due under this Lease or any of the other Transaction Documents, including, without limitation, any resulting Recapture of Benefits under Section 11.4 of this Lease; or
 - re-enter and take possession of the Project Facility, enforce or terminate **(2)** this Lease, sell or assign the Agency's interest in the Project Facility, subject to Permitted Encumbrances, at public or private sale, as a whole or piecemeal, in whole or in part, for such consideration as may be deemed appropriate in the circumstances by the Agency, and hold the Company liable for the amount, if any, by which the aggregate unpaid amounts due hereunder exceed the Net Proceeds received upon such sale, or manage and operate the Project Facility, collect all or any rents accruing therefrom, let or relet the Project Facility or any part thereof for the Agency's own account or the account of the Company, holding the Company liable for payments due up to the effective date of such leasing and for the difference in the rent and other amounts paid by the sublessee pursuant to such lease and the rental payments and other amounts payable by the Company hereunder, cancel or modify leases, evict tenants, bring or defend any suits in connection with the possession of the Project Facility in its own name or in the Company's name, make repairs as the Agency deems appropriate, and perform such other acts in connection with the management, operation or disposition of the Project Facility, or any portion thereof, as the Agency, in its discretion, may deem proper; or
 - (3) terminate this Lease and/or terminate the Company Lease and/or convey to the Company all the Agency's right, title and interest in and to the Project Facility. The conveyance of the Agency's right, title and interest in and to the Project Facility shall be effected by the execution by the Agency of the Termination of Lease and/or the Termination of Company Lease and/or the delivery of the Bill of Sale to Company, as applicable. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from any such termination and conveyance. The Company hereby waives delivery and acceptance of such termination and Bill of Sale to Company as a condition to their validity, and appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest) with full

power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording or filing of such documents; or

- (4) bring an action for damages, injunction or specific performance; or
- (5) suspend the right of the Company (and its contractors and subcontractors approved by the Agency as its agents) to act as agent for the Agency in connection with the Project, including, without limitation, as its agent for the purpose of the sales and use tax exemption afforded to the Company pursuant to this Lease; or
- (6) require the Company and the Overlandlord to make payments in lieu of real property taxes under the PILOT Agreement in amounts equal to the amounts the Company or the Overlandlord would otherwise be required to pay if the Company or the Overlandlord were the owner of the Project Facility (and the Agency did not hold an interest therein); or
- (7) take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due or thereafter to become due hereunder and to enforce the obligations, agreements or covenants of the Company under this Lease.
- (B) No action taken pursuant to this Section 10.2 (including repossession of the Project Facility) shall relieve the Company from its obligations to make all payments required by this Lease and the other Transaction Documents.

SECTION 10.3 REMEDIES CUMULATIVE. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

SECTION 10.4 AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES. In the event the Company should default under any of the provisions of this Lease or any other Transaction Document and the Agency should retain attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency such fees and expenses (including, without limitation, attorneys' fees and expenses) so incurred, whether an action is commenced or not.

SECTION 10.5 NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE XI OPTIONS TO TERMINATE

SECTION 11.1 EARLY TERMINATION OF THE LEASE. The Company shall have the option to terminate this Lease at any time prior to the termination date specified in Section 5.2 hereof, by filing with the Agency a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section 11.1 and setting forth the effective date of such termination, which effective date shall not be less than thirty (30) days after the delivery of the certificate to the Agency. The exercise of the option to terminate pursuant to this Section 11.1 shall constitute a "Recapture Event" (as such term is defined in Section 11.4 hereof). The Company shall not, at any time, assign or transfer its option to terminate this Lease and purchase the Agency's interest in the Project Facility as contained in this Section 11.1 separate and apart from a permitted assignment of this Lease pursuant to Section 9.1 of this Lease without the prior written consent of the Agency.

SECTION 11.2 OBLIGATIONS UPON TERMINATION OF THE LEASE.

- (A) Contemporaneously with the termination of this Lease in accordance with Section 5.2 or Section 11.1 hereof, the Company shall pay all sums required to be paid to the Agency or any other Person pursuant to this Lease and the other Transaction Documents then due and owing the Agency or such other Person at the time of termination or due and owing the Agency or such other Person as a result of such termination (including any applicable Recapture of Benefits). The obligation of the Agency under this Section 11.2 to convey its interest in the Project Facility to the Company will be subject to there being no Event of Default existing hereunder or under any other Transaction Document, and there being no other event which would, but for the passage of time or the giving of notice, or both, be such an Event of Default.
- (B) The termination of this Lease and the conveyance of the Agency's right, title and interest in and to the Project Facility shall be effected by the execution and delivery by the Agency of (1) the Termination of Company Lease (an unexecuted copy of which is attached hereto as Exhibit C), (2) the Bill of Sale to Company (an unexecuted copy of which is attached hereto as Exhibit D) and (3) the Termination of Lease (an unexecuted copy of which is attached hereto as Exhibit F). The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from such termination, including, without limitation, all of the Agency's reasonable costs and expenses in connection therewith (including reasonable attorneys' fees and expenses).
- (C) The Company agrees to prepare the Termination of Company Lease, the Bill of Sale to Company and/or the Termination of Lease, and all schedules thereto, together with all equalization and assessment forms and other necessary documentation, and to forward same to the Agency at least fifteen (15) days prior to the date that this Lease is to be terminated and the Agency's interest in the Project Facility or any portion thereof is to be conveyed to the Company. The Company hereby irrevocably appoints and designates the Agency as its attorney-in-fact for the purpose of executing, delivering and/or recording such documents and to take such other and further action as shall be necessary to terminate the Agency's interest in the Project Facility.

- (D) This Lease shall survive the transfer of the Project Facility to the Company pursuant to this Section 11.2 and shall remain in full force and effect until ninety-one (91) days after all of the Indebtedness shall have been paid in full, and thereafter the obligations of the Company shall survive as set forth in Section 12.7 hereof.
- (E) Upon the payment in full of all Indebtedness, and notwithstanding the survival of certain obligations of the Company as described in Section 12.7 hereof, the Agency shall upon the request of the Company execute and deliver to the Company such documents as the Company may reasonably request, in recordable form if so requested, to evidence the termination and release of all Liens granted to the Agency hereunder.

SECTION 11.3 RESERVED.

SECTION 11.4 RECAPTURE OF AGENCY BENEFITS.

- (A) It is understood and agreed by the parties to this Lease that the Agency is entering into this Lease in order to provide the Financial Assistance to the Company for the Project and to accomplish the purposes of the Act. In consideration therefor, the Company hereby agrees that if there shall occur a Recapture Event (as hereinafter defined), then the Agency at its option may pursue a recapture of public benefits conferred by the Agency (as defined in this Section 11.4) or waive such a recapture of public benefits in its sole and complete discretion. Should the Agency elect to pursue a recapture of public benefits conferred by the Agency following a Recapture Event, the amount of such benefits to be recaptured shall be as follows (such amount, the "Recapture of Benefits"):
 - (1) one hundred per cent (100%) of the Benefits (as defined below) if the Recapture Event occurs on or before the sixth (6th) anniversary of the Closing Date;
 - (2) eighty per cent (80%) of the Benefits if the Recapture Event occurs after the sixth (6th) anniversary of the Closing Date but on or before the seventh (7th) anniversary of the Closing Date;
 - (3) sixty per cent (60%) of the Benefits if the Recapture Event occurs after the seventh (7th) anniversary of the Closing Date but on or before the eighth (8th) anniversary of the Closing Date;
 - (4) forty per cent (40%) of the Benefits if the Recapture Event occurs after the eighth (8th) anniversary of the Closing Date but on or before the ninth (9th) anniversary of the Closing Date;
 - (5) twenty per cent (20%) of the Benefits if the Recapture Event occurs after the ninth (9th) anniversary of the Closing Date but on or before the tenth (10th) anniversary of the Closing Date; or
 - (6) zero per cent (0%) of the Benefits thereafter.
- (B) The term "Benefits", in this Section 11.4, shall mean the Agency's calculation of, collectively:

- (1) all real estate tax benefits which have accrued to the benefit of the Company during such time as the Agency held an interest in the Project Facility by reason of such interest, such tax benefits to be computed by subtracting the payments in lieu of taxes paid under the PILOT Agreement (through the date that the Project Facility is returned to the tax rolls as taxable property) from those payments which the Company would have been required to pay through such date had the Company been the owner of the Project Facility and the Agency not been involved in the Project and based on the records of the Tax Assessor, and treating any negative result as \$0; and
- (2) all miscellaneous benefits derived from the Agency's participation in the transactions contemplated by this Lease, including, but not limited to, any exemption from real property transfer taxes, any exemption from mortgage recording taxes, and/or any exemption from sales and use taxes, provided, however, that the recapture of the value of any exemption from sales and/or use taxes shall be in the full amount of any exemption taken and shall not be subject to the scheduled percentage reduction set forth in Subsection (A) above.
- (C) For the purposes of this Section 11.4 the term "Recapture Event" shall mean the occurrence of any of the following events:
 - (1) The Company shall have liquidated its operations and/or assets; or
 - (2) The Company shall have ceased all or substantially all of its operations at the Project Facility (whether by closure or by relocation to another facility either within or outside of the County); or
 - (3) All or substantially all of the employees engaged in the construction, renovation, maintenance or operation of the Project Facility have been transferred to a location outside of the County; or
 - (4) The occurrence and continuance of an Event of Default under this Lease or any other Transaction Document; or
 - (5) The Company shall have effected a substantial change in the scope and nature of the operations of the Company at the Project Facility without the prior written consent of the Agency; or
 - (6) The Company or the Overlandlord shall have sold, leased, subleased, sub-subleased, sub-sub-subleased, assigned, transferred or otherwise disposed of all or any part of its interest in the Project Facility in violation of this Lease; or
 - (7) The Company fails to maintain or fails to cause to be maintained the Minimum Employment Requirement at any time during the term of this Lease; or
 - (8) The Company elects to voluntarily terminate this Lease as provided in Section 11.1 hereof; or

(9) The Application, or documentation in support of the Application, contained a false or misleading statement as to any fact in the Application or omitted any information which, if included, would have rendered any information in the Application or supporting documentation false or misleading in any material respect, and such false or misleading statement or omission was made knowingly by the Company.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct, immediate result of (i) a Condemnation by governmental authority of all or substantially all of the Project Facility or any interest therein, or (ii) the inability at law of the Company to rebuild, repair, restore or replace the Project Facility after the occurrence of a casualty to substantially its condition prior to such casualty, which inability shall have arisen in good faith through no fault on the part of the Company.

- (D) The Company covenants and agrees to furnish the Agency with written notification upon the occurrence of any Recapture Event, which notification shall set forth the terms of such Recapture Event.
- (E) In the event any payment owing by the Company under this Section 11.4 shall not be paid on demand by the Company, such payment shall bear interest from the date of such demand at the Default Interest Rate until the Company shall have paid such payment in full, together with such accrued interest to the date of payment, to the Agency.

ARTICLE XII MISCELLANEOUS

SECTION 12.1 NOTICES.

- (A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given on the earlier of (1) three (3) Business Days after being sent to the applicable address stated below by registered or certified mail, return receipt requested, or two (2) Business Days after being sent by nationally recognized overnight courier service, or (2) the date on which delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.
- (B) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

To the Agency: County of Chautauqua Industrial Development Agency

201 West Third Street, Suite 115

Jamestown, NY 14701

Attention: Administrative Director

With a Copy to: Phillips Lytle LLP

201 West Third Street, Suite 205

Jamestown, NY 14701

Attention: Gregory Peterson, Esq.

To the Company: S. St. George Enterprises, Inc.

3689 Webster Road, P.O. Box 348

Fredonia, NY 14063

Attention: Steven St. George

With a copy to: Biltekoff Law Office, LLC

43 Court Street, Suite 930

Buffalo, NY 14202

Attention: Robert Biltekoff, Esq.

To the Bank: Five Star Bank

100 Chestnut Street, Suite 1400

Rochester, NY 14604

Attention: Michael J. Dermady

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

SECTION 12.2 BINDING EFFECT. This Lease shall inure to the benefit of the Agency and the Company and shall be binding upon the Agency, the Company and, as permitted by this Lease, their respective successors and assigns, but no assignment shall be effective to relieve the Company of any of its obligations hereunder unless expressly authorized and approved in writing by the Agency.

SECTION 12.3 SEVERABILITY. If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be held void, voidable, invalid or unenforceable by a court of competent jurisdiction, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Lease.

SECTION 12.4 AMENDMENT. This Lease may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

SECTION 12.5 EXECUTION OF COUNTERPARTS. This Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 12.6 APPLICABLE LAW. This Lease shall be governed by and construed in accordance with the applicable laws of the State, as in effect from time to time, without regard to its principles of conflicts of law.

SECTION 12.7 SURVIVAL OF OBLIGATIONS.

- (A) The obligations of the Company to make the payments required by Sections 2.2(F), 3.1, 3.3, 4.1, 5.3, 5.4, 6.5, 8.2, 8.9, 8.11, 9.1, 9.3, 10.2 10.4, 11.2 and 11.4 hereof and to provide the indemnity required by Sections 2.2(F), 3.1, 3.3, 4.1(E), 6.3, 8.2 and 12.9(C) hereof shall survive the termination of this Lease, and all such payments after such termination shall be made upon demand of the party to whom such payment is due.
- (B) The obligations of the Company to the Agency with respect to the Unassigned Rights shall survive the termination or expiration of this Lease until the expiration of the period stated in the applicable statute of limitation during which a claim, cause of action or prosecution relating to the Unassigned Rights may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by the Agency, or its officers, members, agents (other than the Company), attorneys, servants or employees, past, present or future, related thereto.

SECTION 12.8 TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING. The Table of Contents and the headings of the several Sections in this Lease have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Lease.

SECTION 12.9 NO RECOURSE; SPECIAL OBLIGATION.

- (A) The obligations and agreements of the Agency contained herein and in the other Transaction Documents and any other instrument or document executed in connection therewith or herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company), servant or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company), servants and employees, past, present and future, of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.
- (B) The obligations and agreements of the Agency contained herein and therein shall not constitute or give rise to an obligation of the State or the County and neither the State nor the County shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Agency's interest in the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).
- (C) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) business days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) business days, shall have failed to institute and diligently pursue action to

cause compliance with such request within such ten (10) business day period) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company), servants or employees, past, present or future, shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend (with counsel selected by the Agency and approved by the Company, which approval shall not be unreasonably withheld, conditioned or delayed) and hold harmless the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company), servants and employees, past, present and future, against all liability expected to be incurred as a result of compliance with such request.

SECTION 12.10 NET LEASE. The obligation of the Company to make the payments specified in this Lease shall be absolutely net to the Agency without any abatement, recoupment, diminution, reduction, deduction, counterclaim, set-off or offset whatsoever, so that this Lease shall yield, net, to the Agency, the payments set forth herein.

SECTION 12.11 WAIVER OF JURY TRIAL. THE COMPANY AND THE AGENCY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LEASE, ANY OTHER TRANSACTION DOCUMENT OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION WITH THIS LEASE.

SECTION 12.12 PRIOR AGREEMENTS. This Lease and the other Transaction Documents shall completely and fully supersede all other prior understandings or agreements, written or oral, between the Company and the Agency relating to the Project.

SECTION 12.13 SERVICE OF PROCESS.

(A) The Company represents that it is subject to service of process in the State of New York and covenants that it will remain so subject so long as this Lease shall be in effect. If for any reason the Company should cease to be so subject to service of process in the State of New York, the Company hereby designates and appoints, without power of revocation, Robert Biltekoff, Esq., c/o Biltekoff Law Office, LLC, 43 Court Street, Suite 930, Buffalo, NY 14202 and successor(s) as its agent for service of process, and if such agent shall cease to act or otherwise cease to be subject to service of process in the State of New York, the Secretary of State of the State of New York, as the agents of the Company upon whom may be served all process, pleadings, notices or other papers which may be served upon the Company as a result of any of its obligations under this Lease; provided, however, that the serving of such process, pleadings, notices or other papers shall not constitute a condition to the Company's obligations hereunder.

The Company irrevocably and unconditionally (a) agrees that any suit, (B) action or other legal proceeding arising out of this Lease or the other Transaction Documents may be brought in the courts of record of the State of New York in the County of Chautauqua or the courts of the United States, Western District of New York; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; and (c) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts. For such time as this Lease is in effect, the Company's agents designated above shall accept and acknowledge in the Company's behalf service of any and all process in any such suit, action or proceeding brought in any such court. The Company agrees and consents that any such service of process upon such agents and written notice of such service to the Company in the manner set forth in Section 12.1 hereof shall be taken and held to be valid personal service upon the Company whether or not the Company shall then be doing, or at any time shall have done, business within the State of New York and that any such service of process shall be of the same force and validity as if service were made upon the Company according to the laws governing the validity and requirements of such service in the State of New York, and waives all claim of error by reason of any such service. Such agents shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the Company or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Company.

SECTION 12.14 THIRD PARTY BENEFICIARIES. Nothing herein is intended to be for, or to inure to, the benefit of any Person other than the parties hereto.

SECTION 12.15 NON-DISCRIMINATION.

At all times during the term of this Lease, the Company shall not (A) discriminate against any employee or applicant for employment because of race, color, religion, creed, ethnicity, age, gender, pregnancy, sex, sexual orientation, gender identity, national origin, citizenship, marital status, domestic violence victim status, military status, veteran status, disability, familial status, genetic information, genetic predisposition or carrier status, or other characteristic or criteria protected by Applicable Law. The Company shall use reasonable efforts to ensure that employees and applicants for employment with any tenant, subtenant, occupant or user of the Project Facility, or any part thereof, or any contractor or subcontractor with respect to the Project Facility, are treated without regard to their race, color, religion, creed, ethnicity, age, gender, pregnancy, sex, sexual orientation, gender identity, national origin, citizenship, marital status, domestic violence victim status, veteran status, military status, disability, familial status, genetic information, genetic predisposition or carrier status, or other characteristic or criteria protected by Applicable Law. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

SECTION 12.16 DATE OF LEASE. The date of this Lease shall be for reference purposes only and shall not be construed to imply that this Lease was executed on the date first above written. This Lease was executed and delivered on October [_], 2019.

SECTION 12.17 RECORDING AND FILING. This Lease or a memorandum hereof shall be recorded by the Company in the appropriate office of the Clerk of the County, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

SECTION 12.18 OVERLEASE. The Company covenants and agrees to comply with and perform as and when required all of the covenants and agreements imposed on the tenant under the Overlease.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

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

COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

Title:

S. ST. GEORGE ENTERPRISES, INC.

Name: Steven St. George

Title: President

STATE OF NEW YORK)) ss.:		
COUNTY OF CHAUTAUQUA)		
On the Z day of October, 20 state, personally appeared (compared satisfactory evidence to be the individual acknowledged to me that he executed instrument, the individual, or the person instrument.	, persimally kn ual whose name is the same in his ca	own to me or proved to me og subscribed to the within inst pacity, and that by his signate	n the basis of rument and are on the
STATE OF NEW YORK COUNTY OF CHAUTAUQUA)) ss.:)	GREGORY LYLE PETERSON, # Notary Public. State of New Yo Qualified in Chautauqua Count My Commission Expires June	rk Y
On the	George, personally dual whose name is the same in his ca on upon behalf of	y known to me or proved to n s subscribed to the within ins apacity, and that by his signat	ne on the basis of trument and ure on the

EXHIBIT A

DESCRIPTION OF THE LAND

See Attached

CHICAGO TITLE INSURANCE COMPANY

Schedule A

COMMITMENT FOR TITLE INSURANCE

No: 1913-7318EC

LEGAL DESCRIPTION

Parcel I

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Pomfret, County of Chautauqua and State of New York; being part of Lot No. 7 Township 5 and Range 12 of the Holland Land Company's Survey; and being more particularly bounded and described as follows:

COMMENCING at a point on the existing centerline of pavement of Webster Road (a 49.5 foot wide pubic right of way and formerly known as East Road) at its intersection with the northwesterly corner of lands conveyed by Howard H. Ferry and Doris J. Ferry to James R. Decker and Christine L. Decker as described in a Warranty Deed dated June 14, 2000 and filed in the Chautauqua County Clerk's Office on July 10, 2000 in Liber 2445 of Deeds at page 584, said point being 249 feet distant westerly as measured along said centerline from its intersection with the easterly line of said Lot No. 7 (also being the division line between the Town of Pomfret on the west and the Town of Arkwright on the east); thence North 89 degrees 38 minutes 11 seconds West along said centerline, a distance of 840.25 feet to a point, said point being at the principle point of beginning of the parcel of land hereinafter described; thence South 00 degrees 21 minutes 49 seconds West, a distance of 99.00 feet to a point; thence South 89 degrees 38 minutes 11 seconds East, a distance of 309.00 feet to a point; thence South 00 degrees 28 minutes 17 seconds West parallel to the easterly line of said Lot No. 7, a distance of 1,661.99 feet to an existing iron stake on the southerly line of lands heretofore conveyed by Leo G. Seybold to Howard H. Ferry and Doris Ferry as described in a Warranty Deed dated July 10, 1962 and recorded in the Chautauqua County Clerk's Office on July 16, 1962 in Liber 1199 of Deeds at page 96; thence North 89 degrees 57 minutes 32 seconds West along said southerly line of Ferry, a distance of 559.30 feet to an existing iron stake on the easterly line of lands conveyed by Fred B. Straight and Lena A. Straight to Niagara, Lockport and Ontario Power Company as described in a Warranty Deed dated October 31, 1922 and recorded in said Clerk's Office on November 10, 1922 in Liber 495 of Deeds at page 64; thence North 00 degrees 29 minutes 46 seconds East along said easterly line of lands conveyed by Straight to Niagara, Lockport and Ontario Power Company, a distance of 1,747.16 feet to a an angle point therein; thence North 11 degrees 53 minutes 16 seconds East along said easterly line of lands of Niagara, Lockport and Ontario Power Company, a distance of 17.32 feet to point on said centerline of Webster Road; thence South 89 degrees 38 minutes 11 seconds East along said centerline, a distance of 245.91 feet to the point or place of beginning.

ALSO ALL THAT TRACT OR PARCEL OF LAND, situate in the same Town, County and State, and same Holland Land Company Lot, Township and Range; and being more particularly bounded and described as follows:

BEGINNING at a point on the existing centerline of pavement of Webster Road (a 49.5 foot wide pubic right of way and formerly known as East Road) at its intersection with the westerly line of lands conveyed by Fred B. Straight and Lena A. Straight to Niagara, Lockport and Ontario Power Company as described in a Warranty Deed dated October 31, 1922 and recorded in said Clerk's Office on November 10, 1922 in Liber 495 of Deeds at page 64, said point being 1,388.58 feet distant westerly as measured along said centerline from a point at its

intersection with the easterly line of said Lot No. 7 (also being the division line between the Town of Pomfret on the west and the Town of Arkwright on the east); thence South 00 degrees 29 minutes 46 seconds West along said westerly line of lands conveyed by Straight to Niagara, Lockport and Ontario Power Company, a distance of 1,809.18 feet to a point on the southerly line of lands heretofore conveyed by Leo G. Seybold to Howard H. Ferry and Doris Ferry as described in a Warranty Deed dated July 10, 1962 and recorded in the Chautauqua County Clerk's Office on July 16, 1962 in Liber 1199 of Deeds at page 96; thence North 89 degrees 04 minutes 14 seconds West along said southerly line of Ferry, a distance of 983.23 to a found iron stake at the southwesterly corner thereof; thence along the easterly line of lands James W. and Judith Wilcox as described in Liber 1423 of Deeds at page 97, lands formerly owned by Josiah Messenger as described in Liber 55 of Deed at page 343 and lands formerly owned by Nelson Gorham as described in Liber 51 of Deeds at page 220 the following three (3) courses and distances: (1) North 00 degrees 20 minutes 17 seconds West, a distance of 418.56 feet to a rebar; thence (2) North 28 degrees 18 minutes 47 seconds West, a distance of 233.63 feet to a found iron stake; thence (3) North 50 degrees 03 minutes 03 seconds West, a distance of 101.64 feet to a rebar at the northeasterly corner of said lands formerly owned by Gorham; thence North 85 degrees 41 minutes 03 seconds West along said lands of Gorham, a distance of 17.52 feet to a rebar on the easterly highway boundary of New York State Route No. 60 and at the southeasterly corner of lands appropriated by The People of the State of New York by Notice of Appropriation filed in said Clerk's Office on March 7, 1963 in Liber 1212 of Deeds at page 590 and shown on Map No. 8 as Parcel No. 9; thence along said highway boundary and along the easterly boundary of said Parcel No. 9 the following two (2) courses and distances: (1) North 04 degrees 47 minutes 56 seconds West, a distance of 145.96 feet to a found concrete highway monument; thence (2) North 16 degrees 15 minutes 56 seconds West, a distance of 171.83 feet to a rebar on the southerly line of lands heretofore known as the DeForest A. Straight, premises; thence along said lands of said Deforest A. Straight the following three courses and distances: (1) South 86 degrees 48 minutes 03 seconds East, a distance of 130.05 feet to a rebar; thence (2) North 00 degrees 41 minutes 03 seconds West, a distance of 112.0 feet to a found iron stake; thence (3) North 86 degrees 48 minutes 03 seconds West, a distance of 142.64 feet to a rebar at on the easterly highway boundary of New York State Route No. 60 and at the southeasterly corner of said lands appropriated by The People of the State of New York by Notice of Appropriation filed said in Liber 1212 of Deeds at page 590 and shown on Map No. 8 as Parcel No. 9; thence along said highway boundary and along the easterly boundary of said Parcel No. 9 the following three (3) courses and distances: (1) North 01 degrees 41 minutes 32 seconds West, a distance of 342.81 feet to a point of curvature, said point being 1.6 north and 0.3 feet west of a found concrete highway monument; thence (2) along a curve to the left having a radius of 5,779.58 feet, an arc length of 276.50 feet and a chord bearing and distance of North 03 degrees 03 minutes 46 seconds West, 276.48 feet to a rebar; thence (3) North 39 degrees 26 minutes 38 seconds East, a distance of 57.50 feet to point on the existing southerly boundary of Webster Road; thence North 00 degrees 21 minutes 49 second East, a distance of 24.75 feet to a point on said centerline of Webster Road; thence South 89 degrees 38 minutes 11 seconds East along said centerline a distance of 1,269.91 feet to the point of beginning.

Parcel II

EXCEPTING AND RESERVING from Parcel I above, all that tract or parcel of land, situate in the Town of Pomfret, County of Chautauqua and State of New York; being part of Lot No. 7, Township 5 and Range 12 of the Holland Land Company's Survey; and being more particularly bounded and described as follows:

BEGINNING at a point on the existing center line of pavement of Webster Road (formerly known as East Road) at its intersection with northwesterly corner of lands conveyed to Steven St. George, hereinafter referenced, said point being 2,658.5 feet, more or less distant westerly as measured along said center line from its intersection from the easterly line of said Lot No. 7 (also being the subdivision line between the Town of Pomfret on the west and the Town of Arkwright on the east; thence South 89° 38' 11" East along said center

line, a distance of 90.0 feet to a point; thence through the lands of said St. George the following two (2) courses and distances: (1) South 01° 41' 32" East, a distance of 361.0 feet to a point; thence (2) South 99° 18' 28" West, a distance of 122.04 feet to a point on the easterly highway boundary of New York State Route No. 60 and on the easterly bounds of lands appropriated by the People of the State of New York by Notice of Appropriation filed in said Liber 1212 of Deeds at page 590 and shown on Map No. 8 as Parcel No. 9; thence along said highway boundary and along the easterly boundary of said Parcel No. 9 the following three (3) courses and distances: (1) North 01° 41' 32" West a distance of 19.79 feet to a point of curvature, said point being 106 feet north and 0.3 feet west of a found concrete highway monument; thence (2) along a curve to the left having a radius of 5,779.58 feet, an arc length of 276.50 feet and a chord bearing and length of North 03° 03' 46" West, 276.50 feet and a chord bearing and length of North 03° 03' 46" West, 276.48 feet to a set rebar; thence (3) North 39° 26' 38" East, a distance of 57.50 feet to a point on the existing southerly boundary of Webster Road; thence North 00° 21" 49" East, a distance of 24.75 feet to the point or place of beginning.

For Conveyancing Only

Together with all right, title and interest of, in and to any streets and roads abutting the above described premises. Our Policy of Title Insurance includes such buildings and improvements thereon which by law constitute real property, unless specifically excepted therein.

EXHIBIT B

DESCRIPTION OF THE EQUIPMENT

All equipment, fixtures, machines, building materials and items of personal property and all appurtenances (A) acquired, constructed and/or intended to be installed and/or to be acquired, constructed or installed in connection with the acquisition, construction, renovation, installation and equipping of the 2019 St. George Enterprises Project (the "Project") of the County of Chautauqua Industrial Development Agency (the "Agency") located on the real property described on Exhibit A hereto (the "Land"), said Project to be acquired, constructed and installed by S. St. George Enterprises, Inc. (the "Company") as agent of the Agency pursuant to an agency lease agreement (uniform project agreement) dated as of November, 2019 (the "Agency Lease Agreement") by and between the Agency and the Company and (B) now or hereafter attached to, contained in or used in connection with the Land or placed on any part thereof, though not attached thereto, including but not limited to the following:

- (1) Pipes, screens, fixtures, heating, fencing, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators and other lunch room facilities, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors and machinery; and
- (2) Together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

EXHIBIT C

FORM OF TERMINATION OF COMPANY LEASE

WHEREAS, S. St. George Enterprises, Inc. (the "Company"), as landlord, and the County of Chautauqua Industrial Development Agency (the "Agency"), as tenant, entered into a company lease agreement dated as of November 1, 2019 (the "Company Lease Agreement") pursuant to which, among other things, the Agency subleased the Project Facility (as defined in the Company Lease Agreement) from the Company; and

WHEREAS, pursuant to the Company Lease Agreement, the Company and the Agency agreed that the Company Lease Agreement would terminate on the earlier to occur of (1) December 31, 2030 (the "Stated Expiration Date") or (2) any earlier date the Company Lease Agreement would terminate pursuant to the terms thereof; and

WHEREAS, the Company and the Agency now desire to evidence the termination of the Company Lease Agreement;

NOW, THEREFORE, it is hereby agreed that the Company Lease Agreement has terminated as of the dated date hereof; provided, however, that, (i) as provided in the Company Lease Agreement, certain obligations of the Company shall survive the termination of the Company Lease Agreement, and the execution of this termination of company lease agreement by the Agency is not intended, and shall not be construed, as a waiver or alteration by the Agency or the Company of the provisions thereof that expressly survive such termination, and (ii) in the event the Company Lease Agreement is being terminated pursuant to Article X or XI of the Lease Agreement, the Company shall pay to the Agency on the date hereof all fees and expenses of the Agency set forth in the Company Lease Agreement, in the Lease and in the other Transaction Documents.

npany and the Agency have signed this termination of to be dated as of the day of,
By:Authorized Officer
COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY
By:Authorized Officer

STATE OF NEW YORK)	
COUNTY OF CHAUTAUQUA) ss.:)	
On the day of a notary public in and for said state, per personally known to me or proved to a individual(s) whose name(s) is (are) so me that he/she/they executed the same signatures) on the instrument, the indi- individual(s) acted, executed the instru-	ersonally appeared me on the basis of satisf ubscribed to the within it in his/her/their capacity vidual(s), or the person	actory evidence to be the nstrument and acknowledged to y(ies), and that by his/her/their
<u>-</u>	Notary P	ublic
STATE OF NEW YORK)) ss.:	
COUNTY OF CHAUTAUQUA)	
On the day of a notary public in and for said state, p personally known to me or proved to individual(s) whose name(s) is (are) s me that he/she/they executed the same signatures) on the instrument, the indi- individual(s) acted, executed the instr	ersonally appeared me on the basis of satisf ubscribed to the within e in his/her/their capacit vidual(s), or the person	instrument and acknowledged to y(ies), and that by his/her/their
	Notary Pu	blic

EXHIBIT D

FORM OF BILL OF SALE TO COMPANY

COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having an office for the transaction of business located at 201 West Third Street, Suite 115, Jamestown, NY 14701 (the "Grantor"), for the consideration of One Dollar (\$ 1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from S. ST. GEORGE ENTERPRISES, INC., having an office for the transaction of business at 3689 Webster Road, P.O. Box 348, Fredonia, NY 14063 (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee, and its successors and assigns, any and all of Grantor's right, title and interest, if any, in and to those materials, machinery, equipment, fixtures or furnishings which are described in Exhibit B attached hereto (the "Equipment") now owned or hereafter acquired by the Grantor, which Equipment is located or intended to be located on a parcel of land (the "Land") located at 3689 Webster Road, Fredonia, Town of Pomfret, County of Chautauqua, State of New York, which Land is more particularly described on Exhibit A attached hereto.

TO HAVE AND TO HOLD the same unto the Grantee, and its successors and assigns, forever.

THE GRANTOR MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE EQUIPMENT OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE EQUIPMENT OR ANY PART THEREOF FOR THE GRANTEE'S PURPOSES OR NEEDS. THE GRANTEE SHALL ACCEPT TITLE TO THE EQUIPMENT "AS IS", WITHOUT RECOURSE OF ANY NATURE AGAINST THE GRANTOR FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE GRANTOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

	ntor has caused this bill of sale to be executed in its
•	date indicated beneath the signature of such officer
and dated as of the day of the day of _	, 20
	COUNTY OF CHAUTAUQUA
	INDUSTRIAL DEVELOPMENT AGENCY
	BY:

STATE OF NEW YORK)	
) ss.:	
COUNTY OF CHAUTAUQUA)	
On the day of	, in the year	, before me, the undersigned,
a notary public in and for said state		
personally known to me or proved		sfactory evidence to be the
		instrument and acknowledged to me
that he/she/they executed the same		
signatures) on the instrument, the		
individuals) acted, executed the in		1
iliaividuais) actou, circourt unit		
	Notary 1	Public

$\label{eq:exhibite} \mbox{EXHIBIT E}$ FORM OF SALES TAX AGENCY AGREEMENT

See Attached

SALES TAX AGENCY AGREEMENT

October ____, 2019

S. St. George Enterprises, Inc. 3689 Webster Road, P.O. Box 348 Fredonia, NY 14063

Re: County of Chautauqua Industrial Development Agency 2019 St. George Enterprises Project

Ladies and Gentlemen:

The County of Chautauqua Industrial Development Agency (the "Agency") and S. St. George Enterprises, Inc. (the "Company") agree as follows:

- 1. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, including the acquisition of property, is exempt from the imposition of any New York State or Chautauqua County sales and use tax. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required.
- 2. Pursuant to a resolution adopted by the Agency on September 24, 2019 (the "Authorizing Resolution") and an Agency Lease Agreement (Uniform Project Agreement), dated as of October 1, 2019 (as amended, modified, supplemented or restated, the "Agency Lease Agreement"), between the Agency and the Company, the Agency has authorized the Company to act as its agent to acquire, construct, renovate, install and equip a commercial facility in Chautauqua County, New York, consisting of: (A)(1) the acquisition of an interest in an approximately 70 acre parcel of land located at 3689 Webster Road, Fredonia, Town of Pomfret, County of Chautauqua, New York (the "Land"), (2) the construction of an approximately 19,999 square foot addition to an existing approximately 23,000 square foot

building (collectively, the "Building" and together with the Land, collectively, the "Facility"), together with related improvements to the Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the "Equipment") necessary for the completion thereof (collectively, the "Project Facility"), all of the foregoing for use by the Company and/or its affiliates as an inventory and heavy equipment storage facility.

3. As agent for the Agency, the Company agrees that each contract, agreement, lease, invoice, bill or purchase order entered into by the Company as agent for the Agency in connection with the acquisition, construction, renovation, installation or equipping of the Project Facility shall include language in substantially the following form:

"This [contract, agreement, lease, invoice, bill or purchase order] is being entered into by S. ST. GEORGE ENTERPRISES, INC. (the "Agent"), as approved agent for and on behalf of the County of Chautauqua Industrial Development Agency (the "Agency") in connection with a certain project (the "Project") of the Agency for S. St. George Enterprises, Inc. (the "Company") consisting in part of the acquisition, construction, renovation, installation and equipping of an inventory and heavy equipment storage facility located at 3689 Webster Road, Fredonia, Town of Pomfret, County of Chautauqua, New York (the "Premises") and the acquisition of certain capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary for the completion of the Project. The capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary for completion of the Project which are the subject of this [contract, agreement, lease, invoice, bill or purchase order] shall be exempt from the sales and use taxes levied by the State of New York and the County of Chautauqua if effected in accordance with the terms and conditions set forth in the attached Sales Tax Agency Agreement of the Agency, and the Agent hereby represents that this [contract, agreement, lease, invoice, bill or purchase order] is in compliance with the terms of the Sales Tax Agency Agreement. This [contract, agreement, lease, invoice, bill or purchase order] is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. execution or acceptance of this [contract, agreement, lease, invoice, bill or purchase order], the [vendor, lessor, licensor, contractor or subcontractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.."

4. The acquisition of capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary for the completion of the Project Facility (collectively, the "Property") shall be exempt from sales and use taxes levied by the State of New York and the County of Chautauqua on the condition that (i) such items of Property are separately identifiable property of the Agency, and

- (ii) each item of Property shall have a useful life of one year or more, and shall solely be for the use of the Company at and in the Project Facility, and for no other entity and at no other location, and shall be effected by and at the sole cost of the Company. The exemption provided pursuant to Section 4.1(E) and 8.11 of the Agency Lease Agreement shall not apply to the acquisition of: (i) inventory, (ii) rolling stock, (iii) any item of personalty having a useful life of less than one (1) year or which shall not constitute a tangible capital asset, (iv) plants, shrubs, trees, flowers, or lawns, (v) fine art or other similar decorative items, or (vi) motor vehicles, including any cars, trucks, vans or buses that are licensed by the Department of Motor Vehicles or other similar agency for use on public highways or streets.
- 5. The Agency shall have no liability or performance obligations under any contract, agreement, lease, invoice, bill or purchase order entered into by the Company, as agent for the Agency pursuant to Sections 4.1(E) and 8.11 of the Agency Lease Agreement, and in the event liability should arise under any such contract, agreement, lease, invoice, bill, or purchase order, the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, lease, invoice, bill or purchase order in any manner and to any extent whatsoever, and the Company shall be the sole party liable thereunder.
- 6. By execution of its acceptance of the terms of this Agreement, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of this Agreement by the Company is and will be strictly for the purposes above stated.
- 7. Until the earliest of (i) July 31, 2020, (ii) the completion of the Project as provided in the Agency Lease Agreement, (iii) the receipt by the Company of the Maximum Sales Tax Benefit (as defined in the Agency Lease Agreement), or (iv) the termination of the Agency Lease Agreement and/or revocation of the appointment of the Company as agent of the Agency (the earliest to occur of the foregoing, the "Termination Date"), all vendors, lessors, licensors, contractors and subcontractors are hereby authorized to rely on a Form ST-123 (as defined in Paragraph 11 hereof) prepared by the Company or sub-agent and issued to such vendor, lessor, licensor, contractor or subcontractor pursuant to Paragraph 11 hereof as evidence that purchases and leases of Property, and improvement and installation contracts relating to the acquisition, construction, renovation, installation and equipping of the Project Facility (but not the operation thereof), to the extent effected by the Company, as agent for the Agency, are exempt from all New York State and Chautauqua County sales and use taxes.
- 8. Any vendor, lessor, licensor, contractor or subcontractor that does not collect otherwise applicable sales or use tax in reliance upon this Agreement and the Form ST-123 issued by the Company or sub-agent to such vendor, lessor, licensor, contractor or subcontractor, shall be deemed to have acknowledged and agreed to the provisions of Paragraph 3 hereof regardless of whether or not the provisions thereof are inserted in the contract, agreement, lease, invoice, bill or purchase order entered into with the Company.
- 9. This Agreement and the Form ST-123 issued by the Company or subagent to a vendor, lessor, licensor, contractor or subcontractor are provided solely for the purposes described herein and therein. No other principal/agent relationship is intended or may be implied or inferred from this Agreement or the issuance of such Form ST-123.
- 10. The exemption from sales and use taxes provided under the Agency Lease Agreement is granted subject to the requirements of Section 875 of the General Municipal Law,

which requirements are incorporated herein by reference, and the Company agrees to such requirements as a condition precedent to receiving the exemption from sales and use taxes.

Project Operator Exempt Purchase Certificate (each, a "Form ST-123"), to each vendor, lessor, licensor, contractor or subcontractor from which the Company purchases and/or leases Property, or with which the Company enters into an improvement or installation contract relating to the acquisition, construction, renovation, installation and equipping of the Project Facility. All vendors, lessors, licensors, contractors and subcontractors are authorized to rely on such completed Form ST-123 as evidence that purchases and leases of Property, and improvement and installation contracts relating to the acquisition, construction, renovation, installation and equipping of the Project Facility (but not the operation thereof), to the extent effected by the Company as agent for the Agency pursuant to Section 3.2(b) of the Agency Lease Agreement, are exempt from all New York State and Chautauqua County sales and use taxes. The Company agrees to provide the Agency with a copy of each such Form ST-123 within ten (10) days after the delivery of such form to the vendor, lessor, licensor, contractor or subcontractor.

The signature of a representative of the Company where indicated below will indicate that the Company has accepted the terms hereof.

COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

	By:
	Name: Title:
ACCEPTED AND AGREED TO BY:	
S. ST. GEORGE ENTERPRISES, INC.	
By:	<u> </u>
Name: Steven St. George	
Title: President	

EXHIBIT F

TERMINATION OF AGENCY LEASE AGREEMENT

WHEREAS, S. St. George Enterprises, Inc. (the "Company"), as subtenant, and the County of Chautauqua Industrial Development Agency (the "Agency"), as sublandlord, entered into an agency lease agreement (uniform project agreement) dated as of November 1, 2019 (the "Agency Lease Agreement") pursuant to which, among other things, the Agency sub-subleased the Project Facility (as defined in the Agency Lease Agreement) to the Company; and

WHEREAS, pursuant to the Lease Agreement, the Company and the Agency agreed that the Agency Lease Agreement would terminate on the earlier to occur of (1) December 31, 2030, or (2) the date the Agency Lease Agreement would terminate pursuant to Article X or Article XI of the Agency Lease Agreement; and

WHEREAS, the Company and the Agency now desire to evidence the termination of the Agency Lease Agreement;

NOW, THEREFORE, it is hereby agreed that the Agency Lease Agreement has terminated as of the dated date hereof; provided, however, that, as provided in Section 12.7 of the Agency Lease Agreement, certain obligations of the Company shall survive the termination of the Agency Lease Agreement, and the execution of this termination of lease agreement by the Agency is not intended, and shall not be construed, as a waiver or alteration by the Agency or the Company of the provisions of Sections 11.4 and 12.7 of the Agency Lease Agreement.

npany and the Agency have signed this termination of to be dated as of the day of,
By:Authorized Officer
COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY
By:Authorized Officer

STATE OF)		
COUNTY OF) ss.:)		
personally known to n individual(s) whose na me that he/she/they ex	ne or proved to me ame(s) is (are) sub- ecuted the same in rument, the individ	on the basis of satis scribed to the within h his/her/their capaci dual(s), or the person	sfactory evidence to be the instrument and acknowledged to ty(ies), and that by his/her/their in upon behalf of which the
		Notary	Public
STATE OF)) ss.:		
COUNTY OF)		
personally known to n individual(s) whose na me that he/she/they ex	ne or proved to me ame(s) is (are) sub secuted the same in rument, the individual	on the basis of satistics of satistics of satistics of satistics of the within his/her/their capacidual(s), or the person	sfactory evidence to be the instrument and acknowledged to ity(ies), and that by his/her/their in upon behalf of which the
		Notary	Public

EXHIBIT G

FORMS OF ANNUAL EMPLOYMENT REPORT

EMPLOYMENT PLAN STATUS REPORT

COMPANY NAM	1E:			
ADDRESS:				
			Alam III	
			Numbe	er Filled
Occupation	Number of New Jobs	Number Listed ¹	Community Services Division Applicants	Job Training Partnership Act eligible persons
Form of then cur	rrent Annual M	onitoring Que	estionnaire to be attache	ed

With local Jobs Service Division and local service delivery office created pursuant to the Job Training Partnership Act.

EXHIBIT H

COPY OF PILOT AGREEMENT

See Attached

EXHIBIT I

INVOICE RIDER

(Complete and Attach to Invoice)

Ι,	, the
	of
certify that I am a duly appointed	agent of the County of Chautauqua Industrial
Development Agency ("Agency") a	and that I am purchasing the tangible personal
property or services for use in the fol	lowing Agency Project and that such purchases
qualify as exempt from sales and u	ase taxes under the Agency Lease Agreement
(Uniform Project Agreement), dated	d as of November 1, 2019, by and between the
Agency and S. St. George Enterpris	es, Inc.
Name of the Project:	2019 St. George Enterprises Project
Street address of the Project Site:	3689 Webster Road, Fredonia, NY.
IDA OSC project number:	

EXHIBIT J

SALES TAX SUB-AGENCY AGREEMENT

		E	ffective as of [_], 2019
_ADDRESS _ ADDRESS	SUBCO	ONTRACTORCONTACT/RESPONSIBLE PA	— ARTYI	
Aun: [FOIN	I OF C	SONTACT/RESTONSIBLE TO		
	Re:	County of Chautauqua Industria (2019 St. George Enterprises Pr	_	
Ladies and Ge	ntleme	n:		
	orises, I	County of Chautauqua Industrial Inc. (the "Company"), [_CONTROM_] (collectively, the "Sub -Ag	RACTOR_] (the "Contra	e "Agency"), S. St. actor"), and
	1	The Agency constitutes a corno	orate governmental agenc	ev and a public

- 1. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, including the acquisition of property, is exempt from the imposition of any New York State or Chautauqua County sales and use tax. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required.
- 2. Pursuant to a resolution adopted by the Agency on September 24, 2019 (the "Authorizing Resolution") and an Agency Lease Agreement (Uniform Project Agreement), dated as of November 1, 2019 (as amended, modified, supplemented or restated, the "Agency Lease Agreement"), between the Agency and the Company, the Agency has authorized the Company to act as its agent to acquire, construct, renovate, install and equip an inventory and heavy equipment storage facility.
- 3. As sub-agent for the Agency, the Sub-Agent agrees that each contract, agreement, lease, invoice, bill or purchase order entered into by the Sub-Agent as sub-agent for

the Agency in connection with the acquisition, construction, renovation, installation or equipping of the Project Facility shall include language in substantially the following form:

"This [contract, agreement, lease, invoice, bill or purchase order] is] (the "Agent"), as approved being entered into by [agent for and on behalf of the County of Chautauqua Industrial Development Agency (the "Agency") in connection with a certain project (the "Project") of the Agency for S. St. George Enterprises, Inc. (the "Company") consisting in part of the acquisition, construction, renovation, installation and equipping of an inventory and heavy equipment storage facility located at 3689 Webster Road, Fredonia, Town of Pomfret, County of Chautauqua, New York (the "Premises") and the acquisition of certain capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary for the completion of The capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary for completion of the Project which are the subject of this [contract, agreement, lease, invoice, bill or purchase order] shall be exempt from the sales and use taxes levied by the State of New York and the County of Chautauqua if effected in accordance with the terms and conditions set forth in the attached Sales Tax Agency Agreement of the Agency, and the Agent hereby represents that this [contract, agreement, lease, invoice, bill or purchase order] is in compliance with the terms of the Sales Tax Agency Agreement. This [contract, agreement, lease, invoice, bill or purchase order] is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this [contract, agreement, lease, invoice, bill or purchase order], the [vendor, lessor, licensor, contractor or subcontractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

4. The acquisition of capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary for the completion of the Project Facility (collectively, the "Property") shall be exempt from sales and use taxes levied by the State of New York and the County of Chautauqua on the condition that (i) such items of Property are separately identifiable property of the Agency, and (ii) each item of Property shall have a useful life of one year or more, and shall solely be for the use of the Company at and in the Project Facility, and for no other entity and at no other location, and shall be effected by and at the sole cost of the Company, the Contractor or the Sub-Agent. The exemption provided pursuant to Section 8.11 of the Project Agreement shall not apply to the acquisition of: (i) inventory, (ii) rolling stock, (iii) any item of personalty having a useful life of less than one (1) year or which shall not constitute a tangible capital asset, (iv) plants, shrubs, trees, flowers, lawns or plants, (v) fine art or other similar decorative items, or (vi) motor

vehicles, including any cars, trucks, vans or buses that are licensed by the Department of Motor Vehicles or other similar agency for use on public highways or streets.

- 5. The Agency shall have no liability or performance obligations under any contract, agreement, lease, invoice, bill or purchase order entered into by the Company, as agent for the Agency pursuant to Section 8.11 of the Project Agreement, or by the Sub-Agent, as subagent of the Agency pursuant to this Sales Tax Sub-Agency Agreement, and in the event liability should arise under any such contract, agreement, lease, invoice, bill, or purchase order, the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, lease, invoice, bill or purchase order in any manner and to any extent whatsoever, and the Company, the Contractor and the Sub-Agent shall be the sole parties liable thereunder.
- 6. By execution of its acceptance of the terms of this Agreement, the Sub-Agent agrees to accept the terms hereof and represents and warrants to the Agency that the use of this Agreement by the Sub-Agent is and will be strictly for the purposes above stated.
- 7. Until the earliest of (i) July 31, 2020, (ii) the completion of the Project as provided in the Project Agreement, (iii) the receipt by the Company of the Maximum Sales Tax Benefit (as defined in the Project Agreement), which shall include purchases and leases hereunder by the Sub-Agent, and (iv) the termination of the Project Agreement and/or revocation of the appointment of the Company as agent of the Agency or of the Sub-Agent as sub-agent of the Agency (the earliest to occur of the foregoing, the "Termination Date"), all vendors, lessors, licensors, contractors and subcontractors are hereby authorized to rely on a Form ST-123 (as defined in Paragraph 11 hereof) prepared by the Sub-Agent and issued to such vendor, lessor, licensor, contractor or subcontractor pursuant to Paragraph 11 hereof as evidence that purchases and leases of Property, and improvement and installation contracts relating to the acquisition, construction, renovation, installation and equipping of the Project Facility (but not the operation thereof), to the extent effected by the Sub-Agent, as sub-agent for the Agency, are exempt from all New York State and Chautauqua County sales and use taxes.
- 8. Any vendor, lessor, licensor, contractor or subcontractor that does not collect otherwise applicable sales or use tax in reliance upon this Agreement and the Form ST-123 issued by the Sub-Agent to such vendor, lessor, licensor, contractor or subcontractor, shall be deemed to have acknowledged and agreed to the provisions of Paragraph 3 hereof regardless of whether or not the provisions thereof are inserted in the contract, agreement, lease, invoice, bill or purchase order entered into with the Sub-Agent.
- 9. This Agreement and the Form ST-123 issued by the Sub-Agent to a vendor, lessor, licensor, contractor or subcontractor are provided solely for the purposes described herein and therein. No other principal/agent relationship is intended or may be implied or inferred from this Agreement or the issuance of such Form ST-123.
- 10. The exemption from sales and use taxes provided under the Project Agreement is granted subject to the requirements of Section 875 of the General Municipal Law, which requirements are incorporated herein by reference, and the Sub-Agent agrees to such requirements as a condition precedent to receiving the exemption from sales and use taxes.

Project Operator Exempt Purchase Certificate (each, a "Form ST-123"), to each vendor, lessor, licensor, contractor or subcontractor from which the Sub-Agent purchases and/or leases Property, or with which the Sub-Agent enters into an improvement or installation contract relating to the acquisition, construction, renovation, installation and equipping of the Project Facility. All vendors, lessors, licensors, contractors and subcontractors are authorized to rely on such completed Form ST-123 as evidence that purchases and leases of Property, and improvement and installation contracts relating to the acquisition, construction, renovation, installation and equipping of the Project Facility (but not the operation thereof), to the extent effected by the Sub-Agent as sub-agent for the Agency pursuant to Section 8.11 of the Project Agreement, are exempt from all New York State and Chautauqua County sales and use taxes. The Sub-Agent agrees to provide the Agency a copy of each such Form ST-123 within ten (10) Business Days after the delivery of such form to the vendor, lessor, licensor, contractor or subcontractor.

The signature of representatives of the Company, the Contractor and the Sub-Agent where indicated below will indicate that the Company, the Contractor and the Sub-Agent have accepted the terms hereof.

COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

By:	
Name:	
Title:	

ACCEPTED AND AGREED TO BY:

S. ST. GEORGE ENTERPRISES, INC.

By: _	
	Steven St. George President
NAME OI	F CONTRACTOR]
By:	
	Name: Title:
NAME OI	F SUBCONTRACTOR]
By:	
	Name: Title:
	Taynayer ID Number

CERTIFICATION

The undersigned, Steven St. George (the "Overlandlord"), hereby certifies to the

County of Chautauqua Industrial Development Agency (the "Agency") that (i) attached hereto is

a true, correct and complete copy of the Lease dated as of November 1, 2019, between the

Overlandlord and S. St. George Enterprises, Inc. (the "Company"), with respect to the demise of

a certain parcel of land and the improvements thereon located at 3689 Webster Road, Fredonia,

New York (collectively, the "Overlease"), (ii) the Overlease is in full force and effect, (iii) the

Overlease has not been further amended, modified or supplemented and there are no other

agreements or understandings, whether oral or written, between Overlandlord and the Company

with respect to the Premises, (iv) the Company has accepted possession of the Premises, (v) the

Overlandlord has not assigned the Overlease, and (vi) the Company has not assigned the

Overlease, or sublet any portion of the Premises.

Dated: November 7, 2019

TL JULI VEN ST. GEORGE

NYC Doc. # 370489.1

LEASE

This lease dated as of November 1, 2019 is made between Steven St. George having an address at 3689 Webster Road, Fredonia, NY 14063 as Lessor, and S. St. George Enterprises, Inc., having an address at 3689 Webster Road, Fredonia, NY 14063 as Lessee.

- 1. **Description of Leased Premises.** Lessor leases to Lessee and Lessee leases from Lessor, the premises, and all improvements thereon, located at 3689 Webster Road Fredonia, NY 14063 and as further described in Schedule A attached hereto (the "Premises").
- 2. **Term.** The Premises is leased for a term to commence on October 1, 2019 and to end on December 31, 2030 or on such earlier date as this lease may terminate as provided below, except that, if any such date falls on a Sunday or a holiday, then this lease shall end on the business day next preceding the above-mentioned date. Lessee shall have the option to lease the premises for an additional five (5) year term upon the same terms as contained herein. In the event Lessee desires to exercise this option, it must provide Lessor written notice ninety (90) days before the expiration of the original term herein.
- 3. **Rent.** The total annual rent is the sum of \$216,000.00 which sum is payable in equal monthly installments of \$18,000.00 in advance, on the first day of each calendar month during the term.
- 4. **Net Lease.** Lessor and Lessee agree that it is their intention that the fixed rent payable hereunder shall be triple net to Lessor, so that this Lease shall yield to Lessor the fixed rent specified herein during the term of this Lease, and that all costs, expenses and obligations of every kind and nature whatsoever relating to the Premises shall be paid by Lessee, and that all the terms, conditions and provisions of this Lease shall be construed to carry out the intention of the parties.
- 5. Taxes. Lessee shall, during the term of this Lease, pay all real estate taxes and assessments for the Premises. Additionally, with respect to taxes:
 - (a) Lessee may, at its expense, contest any and all such real estate taxes in the name of and on behalf of the Lessor.
- (b) Lessee shall pay, before delinquency, all municipal, county and state or federal taxes assessed against any leasehold interest of Lessee or any fixtures, furnishings, equipment, stock-in-trade or other personal property of any kind owned, installed or used in or on the Premises.
- (c) Lessee shall not be responsible for any income, inheritance or estate taxes imposed on Lessor or the income of Lessor.
- 6. Use and Occupancy. Lessee shall use and occupy the premises as a principal place of business of S. St. George Enterprises, Inc. and for any other lawful purpose.

- 7. **Improvements**. Lessee may make such non-structural alterations to the interior of the Premises as Lessee deems necessary or desirable. Lessee may make structural changes to the Premises only with Lessor's prior written consent, which consent shall not be unreasonably withheld. All work done to the Premises by Lessee shall be performed in a lien-free and good and workmanlike manner. Any alterations, additions or fixtures made or installed by Lessee, may, at the election of Lessee, be removed by Lessee prior to the expiration of the Term.
- 8. Maintenance and Repairs. Lessee, at its sole expense, shall maintain in good order and repair the entire Premises (both interior and exterior) including, but not limited to, any structural and roof repairs.

If the Lessee fails to fulfill its repair obligations set forth in Paragraph 8, within ten (10) days after written notice from Lessor to Lessee of the necessity for such repairs and replacements, then in addition to any other rights or remedies Lessor may have at law or in equity, Lessor may make such repairs and replacements at Lessee's expense and, together with interest thereon at the rate of ten (10%) percent per annum, add such sums to the rent and other amounts falling due under this Lease.

9. **Insurance**. Lessee shall, at its cost and expense, at all times during the term of this Lease and any extensions hereof, maintain bodily injury and property damage liability insurance covering the premises for any customarily insurable act or omission of Lessee, its employees, agents, representatives, assigns, guests, invitees, persons in privity with Lessee, or licensees. Such insurance policy shall be written for not less than \$1,000,000 combined single limit of liability for bodily injury and property damage with an annual aggregate of \$2,000,000, and shall include Lessor as an Additional Insured, using ISO Additional Insured Endorsement CG 20 11 Additional Insured-Managers or Lessors of Premises. Such insurance shall apply as primary insurance on a non-contributing basis before any other insurance or self-insurance, including any deductible, maintained by or provided to, the additional insured. Lessee shall deliver to Lessor a certificate of such insurance which shall also contain a 30-day prior written notice of cancellation provision.

Lessee shall also carry during the term of this Lease and any extensions hereof, all risk property insurance (herein 'Lessee's Property Insurance') covering fire and extended coverage, vandalism and malicious mischief, sprinkler leakage and all other perils included in a standard Special Causes of Loss or All Risk form for at least one hundred percent (100%) of the replacement value of any improvements on the premises (less footings and foundations) and of all of the Lessee's property located on or within the premises, with Lessee's customary deductibles. Lessee shall deliver to Lessor a certificate of such insurance which shall also contain a 30-day prior written notice of cancellation provision. Lessor and Lessor's lender shall be named as Additional Insureds and Loss Payees, as their interests may appear, with respect to such insurance. Lessor agrees it shall not have any right, title or interest in and to Lessee's Property Insurance or any proceeds therefrom to the extent such insurance insures Lessee's personal property.

Such insurance shall be provided by a company or companies with an A.M. Best rating of not less than B+ and authorized to do business in the state of New York.

- 10. Indemnification Clause. Lessee will indemnify, defend and hold Lessor harmless from and against any and all claims, losses, expenses, costs, judgments, and/or demands arising from the possession by Lessee of the premises and/or on account of any operation or action by Lessee and/or from and against all claims arising from any breach or default on the part of Lessee, or any act of negligence on behalf of Lessee, its agents, contractors, servants, employees, licensees, or invitees, or any accident, injury, or death of any person or damage to any property in or about the premises.
- 11. Waiver of Subrogation. Lessor and Lessee agree that if the interest or item on which they are required to obtain insurance in connection with the transaction contemplated hereby shall be damaged or destroyed during the term or any extension of this Lease by a peril insurable under this Lease, and whether or not such damage or destruction was caused by the neglect of the other party, neither party shall have liability to the other or to any insurer of the other for, or in respect of, such damage or destruction to the extent covered by such insurance. The waiver of subrogation hereby set forth shall extend only to the risks insured by the insurance policies required hereby. The foregoing language notwithstanding, in the event property of one party is damaged or destroyed by the negligent act or negligent failure to act of the other party, the party at fault shall be liable to the damaged party for the 'deductible' or retainage amount applicable to the insurance policy of the damaged party.
- 12. Additional Rent; Utilities. If Lessee shall not comply with its covenants made in Section 9, Lessor may cause insurance as aforesaid to be issued, in such event Lessee agrees to pay as additional rent, the premium for such insurance upon Lessor's demand. Lessee shall be responsible for obtaining and paying for all utilities and water for the premises.
- 13. Accumulation of Waste of Refuse Matter. Lessee shall not permit the accumulation of waste or refuse matter on the leased premises or anywhere in or near the premises.
- 14. **Abandonment**. Lessee shall not, without first obtaining the written consent of the Lessor, abandon the premises, or allow the premises to become vacant or deserted.
- 15. Assignment or Sublease. Lessee shall not, without first obtaining the written consent of the Lessor, assign, mortgage, pledge, or encumber this lease, in whole or in part, or sublet the premises or any part of such premises. Lessor expressly covenants that such consent shall not be unreasonably or arbitrarily refused. This covenant shall be binding upon the legal representatives of Lessee, and upon every person to whom Lessee's interest under this lease passes by operation of law, but shall not apply to an assignment or subletting to the parent or subsidiary of a corporate Lessee or to a transfer of the leasehold interest occasioned by a consolidation or merger involving such Lessee.
- 16. Compliance with Rules and Regulations. Lessee shall observe and comply with the rules and regulations set forth below, which are made part of this agreement, and with such

further reasonable rules and regulations as Lessor may prescribe, on written notice to the Lessee, for the safety, care, and cleanliness of the premises.

17. **Damages to Premises**. If the premises is damaged by fire or any other cause to such extent that the cost of restoration, as reasonably estimated by Lessor, will equal or exceed fifty (50%) percent of the replacement value of the premises (exclusive of foundations) just prior to the occurrence of the damage, then Lessor may, no later than the thirtieth (30th) day following the damage, give Lessee a notice of election to terminate this lease, or if the cost of restoration will equal or exceed fifty (50%) percent of such replacement value and if the premises shall not be reasonably usable for the purposes for which they are leased under this agreement, then Lessee may, no later than the thirtieth (30th) day following the damage, give Lessor a notice of election to terminate this lease. In event of either such election this lease shall be deemed to terminate on the fifteenth (15th) day after the giving of such notice, and Lessee shall surrender possession of the premises within a reasonable time thereafter, and the rent, and any additional rent, shall be apportioned as of the date of the surrender and any rent paid for any period beyond such date shall be repaid to Lessee.

In any case in which use of the premises is affected by any damage, there shall be either an abatement or an equitable reduction in rent depending on the period for which and the extent to which the premises are not reasonably usable for the purpose for which they are leased under this agreement. The words "restoration" and "restore" as used in this Section shall include repairs. If the damage results from the fault of the Lessee, or Lessee's agents, servants, visitors, or licensees, Lessee shall not be entitled to any abatement or reduction of rent, except to the extent, if any, that Lessor receives the proceeds of rent insurance in lieu of such rent.

- Eminent Domain. In the event that all or any portion of the Premises shall be taken 18. by any governmental authority under the exercise of its right of eminent domain or similar right (or by act in lieu thereof), all right, title and interest in and to any award granted (or sums paid in lieu thereof) shall belong entirely to Lessor, and Lessee hereby assigns to Lessor all of its interest, title or claim, if any, in and to such award (or sums paid in lieu thereof), including, but not limited to, any part of such award attributable to Lessee's leasehold interest, if any. Nothing contained herein shall preclude Lessee from seeking a separate award from the condemning authority for its relocation expenses and loss of any trade fixtures provided that the same does not diminish Lessor's award. In the event of a partial permanent taking, rent shall be reduced as of the date of such taking by an amount which shall equitably reflect the portion of the Premises taken. If the taking is permanent and of such a substantial nature that (a) it includes more then 25% of the Premises and (b) Lessee cannot conduct its operations in the Premises, Lessee shall have the option, to be exercised by notice in writing to the Lessor within thirty (30) days after such taking, of terminating this Lease, or, if such taking be total, this Lease shall terminate upon the taking. In the event that this Lease is terminated pursuant to this Section 18, Lessee shall not have any claim against Lessor for the balance of the unexpired term of this Lease.
- 19. **Default Grounds.** The occurrence of any of the following events shall constitute an Event of Default on the part of Lessee:

- (i) failure to pay any installment of rent or any other sum due and payable hereunder within fifteen (15) days after written notice of failure to pay on its due date; or
- (ii) default in the performance of any of Lessee's agreements or obligations hereunder where such default is (except default in the payment of any installment of rent or other payment of money) continuing for thirty (30) days after written notice thereof from Lessor to Lessee, provided that if such default is other than the payment of money and cannot be cured within such thirty (30) day period, then Lessee will not be in default hereunder if Lessee, within such thirty (30) day period, commences curing of such default and diligently and in good faith prosecutes the same to completion.
- 20. **Default Remedies.** Upon the happening of any such Event of Default, Lessor, at any time thereafter, may:
- (i) with notice declare the Term hereof ended and through court proceedings only, Lessor hereby waiving any right of "self help," re-enter the Premises or any part thereof and expel or remove therefrom Lessee and all parties occupying the same or any of them, and again repossess and enjoy the same;
- (ii) re-enter the Premises through court proceedings only, Lessor hereby waiving any right of "self help," without declaring the Term ended, and relet the whole or any part thereof for the account of Lessee on such terms and conditions and at such rent as Lessor may then deem desirable collecting such rent and applying it monthly on the amount due from Lessee hereunder and on the expense of reletting, recovering from Lessee the difference between the proceeds of such reletting and the amount of the rentals reserved hereunder, which sum Lessee agrees to pay upon demand. Lessor will not, by any re-entry, be deemed to have terminated this Lease, and the liability of Lessee for the total rent and other charges thereafter accruing and for damages shall continue until Lessee is notified in writing that this Lease has been terminated; and
- (iii) Lessor may rectify any defaults of Lessee and add to the rent to be paid hereunder, and to any installment or installments thereof thereafter becoming due, all of Lessor's reasonable expense in so doing, including attorneys' fees, plus interest on any such sum at the rate of ten (10%) percent per annum from the date of such expenditure until repaid;
- 21. **Holding Over.** If Lessee holds over the Premises beyond the end of the Term, this Lease will be deemed a month to month tenancy and Lessee shall continue to be liable to pay the rent and all other charges or payments contemplated in this Lease at the times specified herein.
- 22. Effect of Failure to Insist on Strict Compliance with Conditions. The failure of either party to insist on strict performance of any covenant or condition of this agreement, or to exercise any option contained in this agreement, shall not be construed as a waiver of such covenant, condition, or option in any other instance. This lease cannot be changed or terminated orally.

- 23. **Mechanics' Liens**. Lessee shall within thirty (30) days after notice from Lessor discharge any mechanics' liens for materials or labor claimed to have been furnished to the premises on Lessee's behalf.
- Notices. Any notice by either party to the other shall be in writing and shall be deemed to have been duly given only if delivered personally or sent by registered or certified mail in an addressed postpaid envelope; if to Lessee, at the above described address; if to Lessor, at Lessor's address as set forth above; or, to either, at such other address as Lessee or Lessor, respectively, may designate in writing. Notice shall be deemed to have been duly given, if delivered personally, upon delivery, and if mailed, upon the third (3rd) day after the mailing of such notice.
- 25. Lessor's Right to Inspection, Repair, and Maintenance. Lessor may enter the premises at any reasonable time, upon adequate notice to Lessee (except that no notice need be given in case of emergency) for the purpose of inspection or the making of such repairs, replacements, or additions in, to, on and about the premises, as Lessor deems necessary or desirable.
- 26. Interruption of Services or Use. Interruption or curtailment of any service maintained on the premises, if caused by strikes, mechanical difficulties, or any causes beyond Lessor's control whether similar or dissimilar to those enumerated, shall not entitle Lessee to any claim against Lessor or to any abatement in rent, and shall not constitute constructive or partial eviction, unless Lessor fails to take such measures as may be reasonable in the circumstances to restore the service without undue delay. If the premises are rendered untenantable in whole or in part, for a period of five (5) business days, by the making of repairs, replacements, or additions, other than those made with Lessee's consent or caused by misuse or neglect by Lessee or Lessee's agents, servants, visitors, or licensees, there shall be a proportionate abatement of rent during the period of such untenantability.
- 27. **Quiet Enjoyment**. Lessor covenants that if, and so long as, Lessee pays the rent, and any additional rent as provided, and performs the covenants of this lease, Lessee shall peaceably and quietly have, hold, and enjoy the premises for the term herein mentioned, subject to the provisions of this lease.
- 28. Section Headings. The Section headings in this lease are intended for convenience only and shall not be taken into consideration in any construction or interpretation of this lease or any of its provisions.
- 29. **Binding Effect on Successors and Assigns**. The provisions of this lease shall apply to, bind, and inure to the benefit of Lessor and Lessee, and their respective heirs, successors, legal representatives, and assigns.
- 30. Choice of Law. This Agreement will be governed and construed in accordance with the laws of the State of New York.

- 31. Severability. If any term or provision of this Lease is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Lease, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Lease. If any provision or part thereof of this Lease is stricken in accordance with the provisions of this section, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.
- 32. **Modification of Lease**. This Lease may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Lease shall be binding unless it is in writing and signed by all parties.
- 33. Entire Agreement. This Lease and all other agreements, exhibits, and schedules referred to in this Lease constitute(s) the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Lease and supersedes all prior and contemporaneous understandings or agreements of the parties. This Lease may not be contradicted by evidence of any prior or contemporaneous statements or agreements. No party has been induced to enter into this Lease by, nor is any party relying on any representation, understanding, agreement, commitment or warranty outside those expressly set forth in this Lease. The parties agree to accept a digital image of this Lease, as executed, as a true and correct original and such digital image shall be admissible as best evidence to the extent permitted by a court of competent jurisdiction.

Lessor:

Steven St. George

Lessee:

S. ST. GEORGE ENTERPRISES, INC.

Name: Steven St. George

Title: President

Schedule A

Premises

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Pomfret, County of Chautauqua and State of New York; being part of Lot No. 7 Township 5 and Range 12 of the Holland Land Company's Survey; and being more particularly bounded and described as follows:

COMMENCING at a point on the existing centerline of pavement of Webster Road (a 49.5) foot wide pubic right of way and formerly known as East Road) at its intersection with the northwesterly corner of lands conveyed by Howard H. Ferry and Doris J. Ferry to James R. Decker and Christine L. Decker as described in a Warranty Deed dated June 14, 2000 and filed in the Chautauqua County Clerk's Office on July 10, 2000 in Liber 2445 of Deeds at page 584, said point being 249 feet distant westerly as measured along said centerline from its intersection with the easterly line of said Lot No. 7 (also being the division line between the Town of Pomfret on the west and the Town of Arkwright on the east); thence North 89 degrees 38 minutes 11 seconds West along said centerline, a distance of 840.25 feet to a point, said point being at the principle point of beginning of the parcel of land hereinafter described; thence South 00 degrees 21 minutes 49 seconds West, a distance of 99.00 feet to a point; thence South 89 degrees 38 minutes 11 seconds East, a distance of 309.00 feet to a point; thence South 00 degrees 28 minutes 17 seconds West parallel to the easterly line of said Lot No. 7, a distance of 1,661.99 feet to an existing iron stake on the southerly line of lands heretofore conveyed by Leo G. Seybold to Howard H. Ferry and Doris Ferry as described in a Warranty Deed dated July 10, 1962 and recorded in the Chautauqua County Clerk's Office on July 16, 1962 in Liber 1199 of Deeds at page 96; thence North 89 degrees 57 minutes 32 seconds West along said southerly line of Ferry, a distance of 559.30 feet to an existing iron stake on the easterly line of lands conveyed by Fred B. Straight and Lena A. Straight to Niagara, Lockport and Ontario Power Company as described in a Warranty Deed dated October 31, 1922 and recorded in said Clerk's Office on November 10, 1922 in Liber 495 of Deeds at page 64; thence North 00 degrees 29 minutes 46 seconds East along said easterly line of lands conveyed by Straight to Niagara, Lockport and Ontario Power Company, a distance of 1,747.16 feet to a an angle point therein; thence North 11 degrees 53 minutes 16 seconds East along said easterly line of lands of Niagara, Lockport and Ontario Power Company, a distance of 17.32 feet to point on said centerline of Webster Road; thence South 89 degrees 38 minutes 11 seconds East along said centerline, a distance of 245.91 feet to the point or place of beginning.

ALSO ALL THAT TRACT OR PARCEL OF LAND, situate in the same Town, County and State, and same Holland Land Company Lot, Township and Range; and being more particularly bounded and described as follows:

BEGINNING at a point on the existing centerline of pavement of Webster Road (a 49.5 foot wide pubic right of way and formerly known as East Road) at its intersection with the westerly line of lands conveyed by Fred B. Straight and Lena A. Straight to Niagara, Lockport and Ontario Power Company as described in a Warranty Deed dated October 31, 1922 and

recorded in said Clerk's Office on November 10, 1922 in Liber 495 of Deeds at page 64, said point being 1,388.58 feet distant westerly as measured along said centerline from a point at its intersection with the easterly line of said Lot No. 7 (also being the division line between the Town of Pomfret on the west and the Town of Arkwright on the east); thence South 00 degrees 29 minutes 46 seconds West along said westerly line of lands conveyed by Straight to Niagara, Lockport and Ontario Power Company, a distance of 1,809.18 feet to a point on the southerly line of lands heretofore conveyed by Leo G. Seybold to Howard H. Ferry and Doris Ferry as described in a Warranty Deed dated July 10, 1962 and recorded in the Chautauqua County Clerk's Office on July 16, 1962 in Liber 1199 of Deeds at page 96; thence North 89 degrees 04 minutes 14 seconds West along said southerly line of Ferry, a distance of 983.23 to a found iron stake at the southwesterly corner thereof; thence along the easterly line of lands James W. and Judith Wilcox as described in Liber 1423 of Deeds at page 97, lands formerly owned by Josiah Messenger as described in Liber 55 of Deed at page 343 and lands formerly owned by Nelson Gorham as described in Liber 51 of Deeds at page 220 the following three (3) courses and distances: (1) North 00 degrees 20 minutes 17 seconds West, a distance of 418.56 feet to a rebar; thence (2) North 28 degrees 18 minutes 47 seconds West, a distance of 233.63 feet to a found iron stake; thence (3) North 50 degrees 03 minutes 03 seconds West, a distance of 101.64 feet to a rebar at the northeasterly corner of said lands formerly owned by Gorham; thence North 85 degrees 41 minutes 03 seconds West along said lands of Gorham, a distance of 17.52 feet to a rebar on the easterly highway boundary of New York State Route No. 60 and at the southeasterly corner of lands appropriated by The People of the State of New York by Notice of Appropriation filed in said Clerk's Office on March 7, 1963 in Liber 1212 of Deeds at page 590 and shown on Map No. 8 as Parcel No. 9; thence along said highway boundary and along the easterly boundary of said Parcel No. 9 the following two (2) courses and distances: (1) North 04 degrees 47 minutes 56 seconds West, a distance of 145.96 feet to a found concrete highway monument; thence (2) North 16 degrees 15 minutes 56 seconds West, a distance of 171.83 feet to a rebar on the southerly line of lands heretofore known as the DeForest A. Straight, premises; thence along said lands of said Deforest A. Straight the following three courses and distances: (1) South 86 degrees 48 minutes 03 seconds East, a distance of 130.05 feet to a rebar; thence (2) North 00 degrees 41 minutes 03 seconds West, a distance of 112.0 feet to a found iron stake; thence (3) North 86 degrees 48 minutes 03 seconds West, a distance of 142.64 feet to a rebar at on the easterly highway boundary of New York State Route No. 60 and at the southeasterly corner of said lands appropriated by The People of the State of New York by Notice of Appropriation filed said in Liber 1212 of Deeds at page 590 and shown on Map No. 8 as Parcel No. 9; thence along said highway boundary and along the easterly boundary of said Parcel No. 9 the following three (3) courses and distances: (1) North 01 degrees 41 minutes 32 seconds West, a distance of 342.81 feet to a point of curvature, said point being 1.6 north and 0.3 feet west of a found concrete highway monument; thence (2) along a curve to the left having a radius of 5,779.58 feet, an arc length of 276.50 feet and a chord bearing and distance of North 03 degrees 03 minutes 46 seconds West, 276.48 feet to a rebar; thence (3) North 39 degrees 26 minutes 38 seconds East, a distance of 57.50 feet to point on the existing southerly boundary of Webster Road; thence North 00 degrees 21 minutes 49 second East, a distance of 24.75 feet to a point on said centerline of Webster Road; thence South 89 degrees 38 minutes 11 seconds East along said centerline a distance of 1,269.91 feet to the point of beginning.

MEMORANDUM OF COMPANY LEASE

NAME AND ADDRESS OF LESSOR: S. ST. GEORGE ENTERPRISES, INC.

3689 Webster Road, P.O. Box 348

Fredonia, NY 10463

NAME AND ADDRESS OF LESSEE: COUNTY OF CHAUTAUQUA INDUSTRIAL

DEVELOPMENT AGENCY 201 West Third Street, Suite 115

Jamestown, NY 14701

DESCRIPTION OF LEASED PREMISES:

The real property, including any buildings, structures or improvements affixed or attached thereto, described as follows (collectively, "Project Facility"):

SEE SCHEDULE A ATTACHED HERETO

DATE OF EXECUTION OF LEASE: As of November 1, 2019.

TERM OF LEASE: The Lease shall commence as of November 1, 2019

and shall end on December 31, 2030.

MISCELLANEOUS PROVISIONS:

The Company Lease Agreement dated the date hereof between the Lessor and the Lessee (the "Company Lease Agreement") provides for the sublease of the Project Facility by the Lessor to the Lessee.

The Lessee has no option to extend the term of the Company Lease Agreement.

The Company Lease Agreement is available for inspection at the office of the Lessee.

This Memorandum of Company Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

	IN WITNESS	WHEREOF t	he parties:	hereto have	respectively	executed	this
Memorandum		ease as of this	3_7_	_ day of Oct	ober, 2019.		

COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

Title: CFO, CCIDA

S. ST. GEORGE ENTERPRISES, INC.

By:

Name: Steven St. George

Title: President

STATE OF NEW YORK))SS:
COUNTY OF CHAUTAUQUA)
personally appeared Richard Property satisfactory evidence to be the individu acknowledged to me that he/she execut signature on the instrument, the individual	Notary Public GREGORY LYLE PETERSON, #Q2PE 4645823 Notary Public. State of New York Qualified in Chautauqua Counity My Commission Express 130. 2923
STATE OF NEW YORK COUNTY OF CHAUTAUQUA))SS:)
On the day of Detober, 2 personally appeared Steven St. George satisfactory evidence to be the individual acknowledged to me that he/she execusignature on the instrument, the individual statement is the individual statement.	2019, before me, a Notary Public in and for said State, e, personally known to me or proved to me on the basis of ual whose name is subscribed to the within instrument and ited the same in his/her/their capacities, and that by his/her dual, or the person upon behalf of which the individual at such individual made such appearance before the
Milan K Tyler Notary Public, State of New York No. 02TY4949790 Qualified in West County Commission Expires June 12, 2013	Notary Public

CHICAGO TITLE INSURANCE COMPANY

Schedule A

COMMITMENT FOR TITLE INSURANCE

No: 1913-7318EC

LEGAL DESCRIPTION

Parcel I

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Pomfret, County of Chautauqua and State of New York; being part of Lot No. 7 Township 5 and Range 12 of the Holland Land Company's Survey; and being more particularly bounded and described as follows:

COMMENCING at a point on the existing centerline of pavement of Webster Road (a 49.5 foot wide pubic right of way and formerly known as East Road) at its intersection with the northwesterly corner of lands conveyed by Howard H. Ferry and Doris J. Ferry to James R. Decker and Christine L. Decker as described in a Warranty Deed dated June 14, 2000 and filed in the Chautauqua County Clerk's Office on July 10, 2000 in Liber 2445 of Deeds at page 584, said point being 249 feet distant westerly as measured along said centerline from its intersection with the easterly line of said Lot No. 7 (also being the division line between the Town of Pomfret on the west and the Town of Arkwright on the east); thence North 89 degrees 38 minutes 11 seconds West along said centerline, a distance of 840.25 feet to a point, said point being at the principle point of beginning of the parcel of land hereinafter described; thence South 00 degrees 21 minutes 49 seconds West, a distance of 99.00 feet to a point; thence South 89 degrees 38 minutes 11 seconds East, a distance of 309.00 feet to a point; thence South 00 degrees 28 minutes 17 seconds West parallel to the easterly line of said Lot No. 7, a distance of 1,661.99 feet to an existing iron stake on the southerly line of lands heretofore conveyed by Leo G. Seybold to Howard H. Ferry and Doris Ferry as described in a Warranty Deed dated July 10, 1962 and recorded in the Chautauqua County Clerk's Office on July 16, 1962 in Liber 1199 of Deeds at page 96; thence North 89 degrees 57 minutes 32 seconds West along said southerly line of Ferry, a distance of 559.30 feet to an existing iron stake on the easterly line of lands conveyed by Fred B. Straight and Lena A. Straight to Niagara, Lockport and Ontario Power Company as described in a Warranty Deed dated October 31, 1922 and recorded in said Clerk's Office on November 10, 1922 in Liber 495 of Deeds at page 64; thence North 00 degrees 29 minutes 46 seconds East along said easterly line of lands conveyed by Straight to Niagara, Lockport and Ontario Power Company, a distance of 1,747.16 feet to a an angle point therein; thence North 11 degrees 53 minutes 16 seconds East along said easterly line of lands of Niagara, Lockport and Ontario Power Company, a distance of 17.32 feet to point on said centerline of Webster Road; thence South 89 degrees 38 minutes 11 seconds East along said centerline, a distance of 245.91 feet to the point or place of beginning.

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BEGINNING at a point on the existing centerline of pavement of Webster Road (a 49.5 foot wide pubic right of way and formerly known as East Road) at its intersection with the westerly line of lands conveyed by Fred B. Straight and Lena A. Straight to Niagara, Lockport and Ontario Power Company as described in a Warranty Deed dated October 31, 1922 and recorded in said Clerk's Office on November 10, 1922 in Liber 495 of Deeds at page 64, said point being 1,388.58 feet distant westerly as measured along said centerline from a point at its

intersection with the easterly line of said Lot No. 7 (also being the division line between the Town of Pomfret on the west and the Town of Arkwright on the east); thence South 00 degrees 29 minutes 46 seconds West along said westerly line of lands conveyed by Straight to Niagara, Lockport and Ontario Power Company, a distance of 1,809.18 feet to a point on the southerly line of lands heretofore conveyed by Leo G. Seybold to Howard H. Ferry and Doris Ferry as described in a Warranty Deed dated July 10, 1962 and recorded in the Chautauqua County Clerk's Office on July 16, 1962 in Liber 1199 of Deeds at page 96; thence North 89 degrees 04 minutes 14 seconds West along said southerly line of Ferry, a distance of 983.23 to a found iron stake at the southwesterly corner thereof; thence along the easterly line of lands James W. and Judith Wilcox as described in Liber 1423 of Deeds at page 97, lands formerly owned by Josiah Messenger as described in Liber 55 of Deed at page 343 and lands formerly owned by Nelson Gorham as described in Liber 51 of Deeds at page 220 the following three (3) courses and distances: (1) North 00 degrees 20 minutes 17 seconds West, a distance of 418.56 feet to a rebar; thence (2) North 28 degrees 18 minutes 47 seconds West, a distance of 233.63 feet to a found iron stake; thence (3) North 50 degrees 03 minutes 03 seconds West, a distance of 101.64 feet to a rebar at the northeasterly corner of said lands formerly owned by Gorham; thence North 85 degrees 41 minutes 03 seconds West along said lands of Gorham, a distance of 17.52 feet to a rebar on the easterly highway boundary of New York State Route No. 60 and at the southeasterly corner of lands appropriated by The People of the State of New York by Notice of Appropriation filed in said Clerk's Office on March 7, 1963 in Liber 1212 of Deeds at page 590 and shown on Map No. 8 as Parcel No. 9; thence along said highway boundary and along the easterly boundary of said Parcel No. 9 the following two (2) courses and distances: (1) North 04 degrees 47 minutes 56 seconds West, a distance of 145.96 feet to a found concrete highway monument; thence (2) North 16 degrees 15 minutes 56 seconds West, a distance of 171.83 feet to a rebar on the southerly line of lands heretofore known as the DeForest A. Straight, premises; thence along said lands of said Deforest A. Straight the following three courses and distances: (1) South 86 degrees 48 minutes 03 seconds East, a distance of 130.05 feet to a rebar; thence (2) North 00 degrees 41 minutes 03 seconds West, a distance of 112.0 feet to a found iron stake; thence (3) North 86 degrees 48 minutes 03 seconds West, a distance of 142.64 feet to a rebar at on the easterly highway boundary of New York State Route No. 60 and at the southeasterly corner of said lands appropriated by The People of the State of New York by Notice of Appropriation filed said in Liber 1212 of Deeds at page 590 and shown on Map No. 8 as Parcel No. 9; thence along said highway boundary and along the easterly boundary of said Parcel No. 9 the following three (3) courses and distances: (1) North 01 degrees 41 minutes 32 seconds West, a distance of 342.81 feet to a point of curvature, said point being 1.6 north and 0.3 feet west of a found concrete highway monument; thence (2) along a curve to the left having a radius of 5,779.58 feet, an arc length of 276.50 feet and a chord bearing and distance of North 03 degrees 03 minutes 46 seconds West, 276.48 feet to a rebar; thence (3) North 39 degrees 26 minutes 38 seconds East, a distance of 57.50 feet to point on the existing southerly boundary of Webster Road; thence North 00 degrees 21 minutes 49 second East, a distance of 24.75 feet to a point on said centerline of Webster Road; thence South 89 degrees 38 minutes 11 seconds East along said centerline a distance of 1,269.91 feet to the point of beginning.

Parcel II

EXCEPTING AND RESERVING from Parcel I above, all that tract or parcel of land, situate in the Town of Pomfret, County of Chautauqua and State of New York; being part of Lot No. 7, Township 5 and Range 12 of the Holland Land Company's Survey; and being more particularly bounded and described as follows:

BEGINNING at a point on the existing center line of pavement of Webster Road (formerly known as East Road) at its intersection with northwesterly corner of lands conveyed to Steven St. George, hereinafter referenced, said point being 2,658.5 feet, more or less distant westerly as measured along said center line from its intersection from the easterly line of said Lot No. 7 (also being the subdivision line between the Town of Pomfret on the west and the Town of Arkwright on the east; thence South 89° 38' 11" East along said center

(88)

line, a distance of 90.0 feet to a point; thence through the lands of said St. George the following two (2) courses and distances: (1) South 01° 41' 32" East, a distance of 361.0 feet to a point; thence (2) South 99° 18' 28" West, a distance of 122.04 feet to a point on the easterly highway boundary of New York State Route No. 60 and on the easterly bounds of lands appropriated by the People of the State of New York by Notice of Appropriation filed in said Liber 1212 of Deeds at page 590 and shown on Map No. 8 as Parcel No. 9; thence along said highway boundary and along the easterly boundary of said Parcel No. 9 the following three (3) courses and distances: (1) North 01° 41' 32" West a distance of 19.79 feet to a point of curvature, said point being 106 feet north and 0.3 feet west of a found concrete highway monument; thence (2) along a curve to the left having a radius of 5,779.58 feet, an arc length of 276.50 feet and a chord bearing and length of North 03° 03' 46" West, 276.48 feet to a set rebar; thence (3) North 39° 26' 38" East, a distance of 57.50 feet to a point on the existing southerly boundary of Webster Road; thence North 00° 21" 49" East, a distance of 24.75 feet to the point or place of beginning.

For Conveyancing Only

Together with all right, title and interest of, in and to any streets and roads abutting the above described premises. Our Policy of Title Insurance includes such buildings and improvements thereon which by law constitute real property, unless specifically excepted therein.

TP-584 (7/19)

NEW YORK STATE Department of Taxation and Finance

Combined Real Estate Transfer Tax Return,

Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax

Recording office time stamp

See Form TP-584-I, Inst	ructio	ons for Form TP-	584, before completing this	form. Print or type.			
Schedule A - Inform	atio	n relating to co	onveyance			.,	
Grantor/Transferor	Name (If individual, last, first, middle initial) (mark en X if more than one grantor) Social Security number						
☐ Individual			ITERPRISES, INC.			0	10
■ Corporation	1	ing address				Social	Security number
☐ Partnership	ļ	9 Webster Road,				FILL	
☐ Estate/Trust	City		State		ZIP code	EIN	, ,
☐ Single member LLC		donia	NY		14063	0:	e member EIN or SSN
Other	Sing	le member's name	if grantor is a single member L	.LC (see instructions)		Single	e member EIN or 33N
Grantee/Transferee	Nam	ie (if individual, last, fl	irst, middle initial) ([] mark an X if ITAUQUA INDUSTRIAL DE	more than one grantee)	ICY	Socia	Security number
☐ Individual		ing address	TAOQOA INDOGTNIAL DE	VELOT WENT MOEN	101	Socia	I Security number
	1	•	STREET, SUITE 115				
Partnership	City	WEST THIRD C	State		ZIP code	EIN	
☐ Estate/Trust	1 . 1	nestown	NY		14701		52-1285016
Single member LLC			if grantee is a single member l	LLC (see instructions)		Single	member EIN or SSN
Other	July	ic mornos, o name					
Location and description	n of p	roperty conveyed	d				
Tax map designation – Section, block & lot (include dots and dashes)	(SWIS code six digits)	Street address		City, town, or vill	age	County
131.00-1-50		065889	3689 Webster Road		Pomfret		Chautauqua
Type of property convey	red (r	nark an X in applic	able box)				
1 One- to three-fam	ily ho	ouse 5	Commercial/Industrial	Date of conveyan		_	e of real property
2 Residential coope	erative	e 6 [Apartment building	conveyed which is residentia			
3 Residential condo	mini	um 7 l	Office building	11 07	2019 rea		rty0%
4 Vacant land		8 [Other	monut day	you	(s	ee instructions)
Condition of conveyance a. Conveyance of fee	,		f. Conveyance which comere change of idention ownership or organize Form TP-584.1, Schedule	ity or form of ation (attach	I. ☐ Option assig		
b. Acquisition of a con	trollin	g interest (state	1 0/1/17 00 1/17 001/10 001/10	· · ,			
percentage acquire			g. Conveyance for which previously paid will be	e claimed (attach	n. ເ≝ Leasehold g	rant	
c. Transfer of a conti	rollin	a interest (state	Form TP-584.1, Schedu	ıle G)	o. 🗌 Conveyance	of an	easement
percentage transf		•	h. Conveyance of coopera	ative apartment(s)			
d. Conveyance to co			i. Syndication	į	o. Conveyance from transfe Schedule B,	r tax cla	aimed <i>(complete</i>
'		An and the Bass of	j. Conveyance of air rig development rights	hts or	q. Conveyance and partly o	of pro	perty partly within
e. Conveyance purs foreclosure or enfiniterest (attach Form	orcer	ment of security	k. Contract assignment	,		pursua	nt to divorce or separation
For recording officer's use		Amount received		Date received			ction number
		Schedule B, Part					
1		Schedule B Part	2 \$	Í		1	

S	hedule B – Real estate transfer tax return (Tax Law, Article 31)				
_					
Pa 1	rt 1 – Computation of tax due Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, mark the exemption claimed box, enter consideration and proceed to Part 3)	1.	(00	
,	Continuing lien deduction (see instructions if property is taken subject to mortgage or lien)	2.		1	
4	Taxable consideration (subtract line 2 from line 1)	3.	(00	
	Tax: \$2 for each \$500, or fractional part thereof, of consideration on line 3	4.	(00	
,	Amount of credit claimed for tax previously paid (see instructions and attach Form TP-584.1, Schedule G)	5.			
ì	5 Total tax due* (subtract line 5 from line 4)	6.			
•	Total tax due Juditati into o nominito / minimito international intern				
p,	rt 2 – Computation of additional tax due on the conveyance of residential real property for \$1 million or more				
	Enter amount of consideration for conveyance (from Part 1, line 1)	1.			
:	2. Taxable consideration (multiply line 1 by the percentage of the premises which is residential real property, as shown in Schedule A)	2.			
	3 Total additional transfer tax due* (multiply line 2 by 1% (.01))	3.			
Tł	ert 3 – Explanation of exemption claimed on Part 1, line 1 (mark any boxes that apply) e conveyance of real property is exempt from the real estate transfer tax for the following reason: Conveyance is to the United Nations, the United States of America, New York State, or any of their instrumenta or political subdivisions (or any public corporation, including a public corporation created pursuant to agreemen with another state or Canada)	t or com	pact	\boxtimes	
b.	Conveyance is to secure a debt or other obligation		b		
c.	Conveyance is without additional consideration to confirm, correct, modify, or supplement a prior conveyance		с		
d.	. Conveyance of real property is without consideration and not in connection with a sale, including conveyances conveying realty as bona fide gifts d				
e.	Conveyance is given in connection with a tax sale		e		
f.	Conveyance is a mere change of identity or form of ownership or organization where there is no change in ben ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real p comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F	roperty	f		
g.	Conveyance consists of deed of partition	• • • • • • • • • • • • • • • • • • • •	g		
h.	Conveyance is given pursuant to the federal Bankruptcy Act		h	Ш	
i.	Conveyance consists of the execution of a contract to sell real property, without the use or occupancy of such property, without the use or occupancy of such property	roperty,	or i		
j.	Conveyance of an option or contract to purchase real property with the use or occupancy of such property whe consideration is less than \$200,000 and such property was used solely by the grantor as the grantor's persona and consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of sto in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering individual residential cooperative apartment.	residen ock an			
k.	Conveyance is not a conveyance within the meaning of Tax Law, Article 31, § 1401(e) (attach documents supporting such claim)		k		
*	The total tax (from Part 1, line 6 and Part 2, line 3 above) is due within 15 days from the date of conveyance. Ma	ke chec	k(s) payable	to	

^{*} The total tax (from Part 1, line 6 and Part 2, line 3 above) is due within 15 days from the date of conveyance. Make check(s) payable to the county clerk where the recording is to take place. For conveyances of real property within New York City, use Form TP-584-NYC. If a recording is not required, send this return and your check(s) made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, **Designated Private Delivery Services**.

Schedule C – Credit Line Mortgage Certifica	te (Tax Law, Articl	e 11)					
Complete the following only if the interest being (we) certify that: (mark an X in the appropriate box)	transferred is a fee	simple interest.					
1. ${f Z}$ The real property being sold or transferred is	not subject to an ou	itstanding credit line mortgage.					
is claimed for the following reason:	property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax of the following reason: It transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.						
to one or more of the original obligors.	or (B) to a person or e transferor or such	related by blood, marriage or adoption to the orig entity where 50% or more of the beneficial intere related person or persons (as in the case of a tra fit of the transferor)	est in such real				
c The transfer of real property is a trans	fer to a trustee in ba	nkruptcy, a receiver, assignee, or other officer of	a court.				
d The maximum principal amount secur- or transferred is not principally improv	d The maximum principal amount secured by the credit line mortgage is \$3,000,000 or more, and the real property being sold or transferred is not principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.						
Note: for purposes of determining whether the maximum principal amount secured is \$3,000,000 or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.							
e Other (attach detailed explanation).							
3. The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for following reason:							
a A certificate of discharge of the credit	line mortgage is bei	ng offered at the time of recording the deed.					
b A check has been drawn payable for transmission to the credit line mortgagee or his agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.							
4. The real property being transferred is subject to an outstanding credit line mortgage recorded in (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is No exemption from tax is claimed and the tax of is being paid herewith. (Make check payable to county clerk where deed will be recorded.)							
Signature (both the grantor(s) and grantee	(s) must sign)						
The undersigned certify that the above information attachment, is to the best of his/her knowledge, true a copy for purposes of recording the deed or other	e and complete, and	authorize the person(s) submitting such form on	n, schedule, or their behalf to receive				
Grantor signature	Title	Grantee signature	Title				
S. ST. GEORGE ENTERPRISES, INC.		COUNTY OF CHAUTAUQUA INDUSTRIAL DEVEL	LOPMENT AGENCY				
By: If the	President	By:					
Grantor signature	Title	Grantee signature	Title				

Reminder: Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you marked e, f, or g in Schedule A, did you complete Form TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place? If no recording is required, send this return and your check(s), made payable to the NYS Department of Taxation and Finance, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, Designated Private Delivery Services.

Page 4 of 4 TP-584 (7/19)		
Schedule D - Certification of exemp	tion from the payment of estimated personal i	ncome tax (Tax Law, Article 22, § 663)
	mple interest or a cooperative unit is being trans	
If the property is being conveyed by a Exemptions for nonresident transfero	referee pursuant to a foreclosure proceeding, p r(s)/seller(s), and sign at bottom.	roceed to Part 2, mark the second box under
Part 1 - New York State residents		
must sign the certification below. If one of	sferor(s)/seller(s) listed in Form TP-584, Schedule A or more transferors/sellers of the real property or coo in the space provided. If more space is needed, pho e all resident transferors/sellers.	perative unit is a resident of New York State,
Certification of resident transferor	r(s)/seller(s)	
This is to certify that at the time of the sa a resident of New York State, and therefit transfer of this real property or cooperati	ale or transfer of the real property or cooperative unit ore is not required to pay estimated personal income ve unit.	, the transferor(s)/seller(s) as signed below was at tax under Tax Law, § 663(a) upon the sale or
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
not required to pay estimated personal in the appropriate exemption below. If any required to pay estimated personal incommonder one of the exemptions below must many schedules as necessary to accommon	ate listed as a transferor/seller in Form TP-584, Scheincome tax because one of the exemptions below apone of the exemptions below applies to the transferome tax to New York State under Tax Law, § 663. Each sign in the space provided. If more space is needed amodate all nonresident transferors/sellers.	plies under Tax Law, § 663(c), mark the box of or(s)/seller(s), that transferor(s)/seller(s) is not the nonresident transferor/seller who qualifies d, photocopy this Schedule D and submit as
If none of these exemption statements a Form, or Form IT-2664, Nonresident Copersonal income tax, on Form TP-584-I, Exemption for nonresident transf		t Real Property Estimated Income Tax Payment b. For more information, see Payment of estimated
This is to certify that at the time of the sa	ale or transfer of the real property or cooperative uni esident of New York State, but is not required to pay	t, the transferor(s)/seller(s) (grantor) of this real estimated personal income tax under Tax Law,
_	ative unit being sold or transferred qualifies in total as	
(within the meaning of Inter	nal Revenue Code, section 121) from to to	Date (see instructions).
The transferor/seller is a monor additional consideration.	rtgagor conveying the mortgaged property to a mort	gagee in foreclosure, or in lieu of foreclosure with
New York, the Federal Natio	is an agency or authority of the United States of Amonal Mortgage Association, the Federal Home Loan Norivate mortgage insurance company.	erica, an agency or authority of the state of fortgage Corporation, the Government National
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

Print full name

Signature

Date

MEMORANDUM OF AGENCY LEASE

NAME AND ADDRESS OF LESSOR: COUNTY OF CHAUTAUQUA INDUSTRIAL

DEVELOPMENT AGENCY 201 West Third Street, Suite 115

Jamestown, NY 14701

NAME AND ADDRESS OF LESSEE: WELLS ENTERPRISES, INC.

1 Blue Bunny Drive Le Mars, IA 51031

DESCRIPTION OF LEASED PREMISES:

The real property including any buildings, structures or improvements affixed or attached thereto, described as follows (collectively, "Project Facility"):

SEE SCHEDULE A ATTACHED HERETO

DATE OF EXECUTION OF LEASE: As of November 1, 2019.

TERM OF LEASE: The Lease shall commence as of November 1, 2019

and shall end on December 31, 2030.

MISCELLANEOUS PROVISIONS:

The Lease provides for the sublease of the Project Facility by the Lessor and for the payment by the Lessee of rent payable pursuant to such Lease over the term of the Lease.

The Lease is available for inspection at the office of the Lessor.

The Lessee has no option to extend the term of the Lease Agreement.

This Memorandum of Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF the parties hereto have respectively executed this Memorandum of Lease as of this November 7, 2019.

COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

By:
Name: Mark Geise
Title: Administrative Director/CEO
WELLS ENTERPRISES, INC.
By:
Name:
Title:

STATE OF NEW YORK))SS:
COUNTY OF CHAUTAUQUA)
personally appeared Mark Geise, pers satisfactory evidence to be the individ acknowledged to me that he executed instrument, the individual, or the personal	, 2019, before me, a Notary Public in and for said State, onally known to me or proved to me on the basis of lual whose name is subscribed to the within instrument and the same in his capacities, and that by his signature on the on upon behalf of which the individual acted, executed the nade such appearance before the undersigned in the State of
	Notary Public
STATE OF NEW YORK)
COUNTY OF)SS:)
satisfactory evidence to be the individual acknowledged to me that he executed instrument, the individual, or the personal control of the personal con	, 2019, before me, a Notary Public in and for said State, personally known to me or proved to me on the basis of dual whose name is subscribed to the within instrument and the same in his capacities, and that by his signature on the on upon behalf of which the individual acted, executed the nade such appearance before the undersigned.
	Notary Public

Schedule A

LAND

[Insert legal description]

TP-584 (7/19)

NEW YORK STATE Department of Taxation and Finance

Combined Real Estate Transfer Tax Return,

Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax

Recording office time stamp

		2-584, before completing this	s form. Print or type.			
Schedule A - Inform					16-1-1	^ · · · · ·
Grantor/Transferor	Name (if individual, last, first, middle initial) (mark an X if more than one grantor) Social Şecurity number					Security number
Individual		COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY				Security number
★ Corporation	Mailing address	STREET SHITE 115			Journal	Geodiny number
Partnership	City	STREET, SUITE 115 State		ZIP code	EIN	
☐ Estate/Trust	Jamestown	NY		14701	-"'	52-1285016
☐ Single member LLC		ne if grantor is a single member	I 1 C. (see instructions)		Single	member EIN or SSN
Other	Oligie member s nait	to it grantor to a dirigio mombor t	LEG (BEG MAINED MAY			
Grantee/Transferee		, first, middle initial) ([] mark an X i	f more than one grantee)		Social	Security number
☐ Individual	S. ST. GEORGE E	NTERPRISES, INC.				
▼ Corporation	Mailing address				Social	Security number
☐ Partnership	3689 Webster Roa				 	
Estate/Trust	City	State		ZIP code	EIN	
☐ Single member LLC	Fredonia	NY		14063		member EIN or SSN
☐ Other	Single member's nan	ne if grantee is a single member	LLC (see instructions)		Single	member FIN or 22M
Location and description	of property convey	ed				
Tax map designation –	SWIS code	Street address	1	City, town, or viff	age	County
Section, block & lot (include dots and dashes)	(six digits)	Cacot audioso		0.13, 10.111, 0.1 1.11	~gc	,
(,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,						
424 00 4 50		3689 Webster Road		Pomfret		Chautaugua
131.00-1-50		2003 Mensiel Voad		Citilier		Onactauqua
Type of property convey	ed (mark an X in appl	icable box)				
1 One- to three-fam	ilv house 5	☑ Commercial/Industrial	Date of conveyar	nce Per	centag	e of real property
2 Residential coope		Apartment building		con	veyed	which is residential
3 Residential condominium 7		Office building		2019 rea	l proper	rty0%
4 Uvacant land	8	Other	month day	year	(56	e instructions)
Condition of conveyance	(mark all that anniv)	f. Conveyance which c	oneiste of a	I. ☐ Option assig	nment	or surrender
a. Conveyance of fee		mere change of ident	tity or form of	i. L. Option assig	Jili (Grac)	or surremas,
a. La Conveyance of let	5 IIIIO1631	ownership or organiz		m. 🗌 Leasehold a	ssianm	ent or surrender
b. Acquisition of a conf	trolling interest (state	Form TP-584.1, Schedul	e <i>r)</i>			
	d%)	g. Conveyance for which	ch credit for tax	n. 🗷 Leasehold g	rant	
, , , , , , , , , , , , , , , , , , ,	•	previously paid will b				
c. Transfer of a contr	rolling interest (state	Form TP-584.1, Schedu	шө G)	o. 🗌 Conveyance	of an e	easement
percentage transfe		h. Conveyance of cooper	ative apartment(s)	_		
			1	p. 🗌 Conveyance	for whi	ich exemption
d. Conveyance to co	operative housing	i. Syndication		schedule B,	r tax cia (Part 3	imed (complete
corporation					_	
	and the major through	j. U Conveyance of air rig development rights	ints or	q. ∐ Conveyance and partly o	⊧oτ prop utside ti	perty partiy within he state
e. U Conveyance pursi	uant to or in lieu of proement of security			· · · · · · · · ·		at to divorce or separation
	n TP-584.1, Schedule E)			s. X Other (descri	be) CC	IDA Tax Lease
For recording officer's use			Date received			ction number
	Schedule B, Par					
I	Schedule B. Par	72 \$	1	I		

A A C C I The Alice		
rt 1 – Computation of tax due Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, mark the		
exemption claimed box, enter consideration and proceed to Part 3)	1.	0 00
exemption claimed box, enter consideration and proceed to Part 3)		
Continuing lien deduction (see instructions if property is taken subject to mortgage or lien)		0 00
Taxable consideration (subtract line 2 from line 1)		0 00
Tax: \$2 for each \$500, or fractional part thereof, of consideration on line 3	5.	- 100
Amount of credit claimed for tax previously paid (see instructions and attach Form TP-584 1, Schedule G) Total tax due* (subtract line 5 from line 4)		0 00
lotal tax due" (subtract line 5 from line 4)		0,00
rt 2 – Computation of additional tax due on the conveyance of residential real property for \$1 million or more		
Enter amount of consideration for conveyance (from Part 1, line 1)	. 1.	
Enter amount of consideration for conveyance (norm and real property). Taxable consideration (multiply line 1 by the percentage of the premises which is residential real property, as shown in Schedule A).		
Total additional transfer tax due* (multiply line 2 by 1% (.01))		
Total additional transfer tax que (muniply line 2 by 1% (.01))		
e conveyance of real property is exempt from the real estate transfer tax for the following reason: Conveyance is to the United Nations, the United States of America, New York State, or any of their instrument or political subdivisions (or any public corporation, including a public corporation created pursuant to agreeme with another state or Canada)	nt or compa	ıct
Conveyance is to secure a debt or other obligation	*******	b
Conveyance is without additional consideration to confirm, correct, modify, or supplement a prior conveyance.		
Conveyance of real property is without consideration and not in connection with a sale, including conveyances		
realty as bona fide gifts		d _
Conveyance is given in connection with a tax sale		е [
Conveyance is a mere change of identity or form of ownership or organization where there is no change in be ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F	property	f
Conveyance consists of deed of partition		g [
Conveyance is given pursuant to the federal Bankruptcy Act		h 🗀
Conveyance consists of the execution of a contract to sell real property, without the use or occupancy of such the granting of an option to purchase real property, without the use or occupancy of such property	property, or	, i [
Conveyance of an option or contract to purchase real property with the use or occupancy of such property wh consideration is less than \$200,000 and such property was used solely by the grantor as the grantor's person and consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of s in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering individual residential cooperative apartment	al residence tock g an	
Conveyance is not a conveyance within the meaning of Tax Law, Article 31, § 1401(e) (attach documents supporting such claim)		<u>r</u>

^{*} The total tax (from Part 1, line 6 and Part 2, line 3 above) is due within 15 days from the date of conveyance. Make check(s) payable to the county clerk where the recording is to take place. For conveyances of real property within New York City, use Form TP-584-NYC. If a recording is not required, send this return and your check(s) made payable to the NYS Department of Taxation and Finance, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, Designated Private Delivery Services.

Schedule C	- Credit Line Mortgage Certificate	(Tax Law, Article	e 11)	
Complete the I (we) certify the	following only if the interest being tra at: (mark an X in the appropriate box)	nsferred is a fee	simple interest.	
1. The rea	al property being sold or transferred is no	ot subject to an ou	tstanding credit line mortgage.	
is clain	al property being sold or transferred is su ned for the following reason: The transfer of real property is a transfer heal property (whether as a joint tenant, a	of a fee simple in	erest to a person or persons who held a	fee simple interest in the
 t	The transfer of real property is (A) to a person one or more of the original obligors or property after the transfer is held by the the benefit of a minor or the transfer to a	(B) to a person or ransferor or such	entity where 50% or more of the benefice related person or persons (as in the cas	cial interest in such real
c 🔲 1	The transfer of real property is a transfer	to a trustee in bar	nkruptcy, a receiver, assignee, or other o	officer of a court.
d 🔲	The maximum principal amount secured or transferred is not principally improved	by the credit line on the mor will it be improved.	mortgage is \$3,000,000 or more, and the oved by a one- to six-family owner-occu	e real property being sold pied residence or dwelling.
am	te: for purposes of determining whether ounts secured by two or more credit line re information regarding these aggregat	mortgages may	oe aggregated under certain circumstan	more as described above, the ces. See TSB-M-96(6)-R for
е 🗌	Other (attach detailed explanation).			
followi	al property being transferred is presently ng reason:			
a 🔝	A certificate of discharge of the credit line	e mortgage is beir	ng offered at the time of recording the de	eed.
ь <u> </u>	A check has been drawn payable for trar satisfaction of such mortgage will be rec	nsmission to the coorded as soon as	redit line mortgagee or his agent for the it is available.	balance due, and a
(insert by the	al property being transferred is subject to liber and page or reel or other identifical mortgage is	tion of the mortga 	ge). The maximum principal amount of a from tax is claimed and the tax of	debt or obligation secured
Signature (I	ooth the grantor(s) and grantee(s)	must sign)		
attachment, is	ned certify that the above information con to the best of his/her knowledge, true a poses of recording the deed or other ins	nd complete, and	authorize the person(s) submitting such	rtification, schedule, or form on their behalf to receive
M	rd Nix	CFU	At Stol	
	Grantor signature	Title	Grantee signature	Title
COUNTY OF C	HAUTAUQUA INDUSTRIAL DEVELOPMENT	AGENCY	S. ST. GEORGE ENTERPRISES, INC	•
Ву:	Grantor signature	Title	By: Grantee signature	President Title
	CONTRACTOR OF THE CONTRACTOR O			

Reminder: Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you marked e, f, or g in Schedule A, did you complete Form TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place? If no recording is required, send this return and your check(s), made payable to the NYS Department of Taxation and Finance, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, Designated Private Delivery Services.

Page 4 of 4 TP-584 (7/19)		
Schedule D - Certification of exempt	ion from the payment of estimated persona	l income tax (Tax Law, Article 22, § 663)
Complete the following only if a fee sin	nple interest or a cooperative unit is being tra	nsferred by an individual or estate or trust.
	referee pursuant to a foreclosure proceeding,	proceed to Part 2, mark the second box under
Part 1 - New York State residents		
If you are a New York State resident trans	feror(s)/seller(s) listed in Form TP-584, Schedule more transferors/sellers of the real property or con the space provided. If more space is needed, pall resident transferors/sellers.	operative unit is a resident of New York State,
Certification of resident transferor	s)/seller(s)	
This is to certify that at the time of the sale	e or transfer of the real property or cooperative ur re is not required to pay estimated personal incon	nit, the transferor(s)/seller(s) as signed below was ne tax under Tax Law, § 663(a) upon the sale or
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
not required to pay estimated personal in the appropriate exemption below. If any of required to pay estimated personal incom- under one of the exemptions below must many schedules as necessary to accomm- If none of these exemption statements at	come tax because one of the exemptions below a one of the exemptions below applies to the transfer the tax to New York State under Tax Law, § 663. Ex- sign in the space provided. If more space is need nodate all nonresident transferors/sellers.	eror(s)/seller(s), that transferor(s)/seller(s) is not ach nonresident transferor/seller who qualifies
personal income tax, on Form TP-584-I, I Exemption for nonresident transfe	page 1.	
This is to certify that at the time of the sal property or cooperative unit was a nonres § 663 due to one of the following exempt	le or transfer of the real property or cooperative u sident of New York State, but is not required to pa ions:	nit, the transferor(s)/seller(s) (grantor) of this real ny estimated personal income tax under Tax Law,
	ive unit being sold or transferred qualifies in total	as the transferor's/seller's principal residence
	al Revenue Code, section 121) from	
The transferor/seller is a mort no additional consideration.	gagor conveying the mortgaged property to a mo	rtgagee in foreclosure, or in lieu of foreclosure with
New York, the Federal Nation	s an agency or authority of the United States of Ar al Mortgage Association, the Federal Home Loan ivate mortgage insurance company.	merica, an agency or authority of the state of Mortgage Corporation, the Government National
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

Print full name

Signature

Dale

IN WITNESS WHEREOF the parties hereto have respectively executed this Memorandum of Lease as of this ____ day of October, 2019.

COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

By: Archard Dixon

Name: Richard Dixon

Title: CFO, CCI DI

S. ST. GEORGE ENTERPRISES, INC.

IN WITNESS WHEREOF the parties hereto have respectively executed this Memorandum of Lease as of this ___ day of October, 2019.

COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

By: Mame: Richard Dixon
Title: CFO, CC104

S. ST. GEORGE ENTERPRISES, INC.

By: ML Steven St. George

IN WITNESS WHEREOF the parties hereto have respectively executed this Memorandum of Lease as of this ____ day of October, 2019.

COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

Name

Title:

Kichard Pix

S. ST. GEORGE ENTERPRISES, INC.

Name: Steven St. George

IN WITNESS WHEREOF the parties hereto have respectively executed this Memorandum of Lease as of this ____ day of October, 2019.

COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

Name:

Richard P CFO, CCIPA Title:

S. ST. GEORGE ENTERPRISES, INC.

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COUNTY OF CHAUTAUQUA)
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	Notary Public
Milan K Tyler Notary Public, State of New York No. 02TY4949790 Qualified in West County Commission Expires June 12, 2013	

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	Notary Public

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (this "Agreement") is made as of the 1st day of November, 2019 (the "Effective Date") by and among S. ST. GEORGE ENTERPRISES, INC., a corporation organized and existing under the laws of the State of New York, having an address at 3689 Webster Road, P.O. Box 348, Fredonia, NY 14063 (the "Company"), STEVEN ST. GEORGE, a natural person, having an address at 3689 Webster Road, P.O. Box 348, Fredonia, NY 14063 (the "Overlandlord" and together with the Company, the "Obligors"), and the COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY, a corporate government agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an address at 201 West Third Street, Suite 115, Jamestown, NY 14701 (the "Agency").

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law of the State of New York, Chapter 24 of the Consolidated Laws of the State of New York, as amended (the "Enabling Act") authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, expand, construct, reconstruct, lease, improve, maintain, equip, furnish, and dispose of one or more projects for the purpose of promoting, developing, encouraging, and assisting in the acquisition, expansion, construction, reconstruction, improvement, maintaining, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities, and thereby advance the job opportunities, general prosperity, and economic welfare of the people of the State of New York;

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act and Chapter 71 of the 1972 Laws of New York, as amended (together with the Enabling Act, hereinafter referred to as the "Act"), the Agency, which has been created and established pursuant thereto for the benefit of the County of Chautauqua, proposes to undertake the Project described below;

WHEREAS, the Agency on behalf of the Company intends to (i) acquire a subleasehold interest in certain land more particularly described on Exhibit A attached hereto (the "Land") and the improvements that currently exist thereon; (ii) construct certain additional improvements on the Land (the "Improvements"); and (iii) acquire the equipment more particularly described on Exhibit B to the Agency Lease (as hereinafter defined) (the "Equipment") (the Land, Improvements and Equipment are hereinafter collectively referred to as the "Project" as further defined in Schedule A attached hereto);

WHEREAS, the Overlandlord is the holder of fee simple title to the Land, the existing improvements thereon and the Improvements (collectively, the "Facility");

WHEREAS, the Overlandlord leases the Facility to the Company pursuant to a Lease dated as of November 1, 2019 entered into between the Overlandlord, as lessor, and the Company, as lessee (as amended, modified, restated or replaced from time to time, the "Overlease");

WHEREAS, the Company will sublease the Facility to the Agency pursuant to a Company Lease Agreement dated as of the date hereof entered into between the Company, as sublessor, and the Agency, as sublessee (as amended, modified, restated or replaced from time to time, the "Company Lease");

WHEREAS, the Agency proposes to undertake the Project as an authorized project under the Act and to sub-sublease the interest of the Agency to the Company pursuant to an Agency Lease Agreement (Uniform Project Agreement) dated as of the date hereof entered into between the Agency, as sub-sublessor, and the Company, as sub-sublessee (as amended, modified, restated or replaced from time to time, the "Agency Lease");

WHEREAS, under the present provisions of the Act and under the present Section 412-a of the Real Property Tax Law of the State of New York, upon a proper filing, the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or under its control;

WHEREAS, the Agency's grant of real property tax exemptions is guided by its Uniform Tax Exemption Policy and Guidelines (the "UTEP") duly adopted by the members of the Agency and the Company's request for a real property tax exemption with respect to the Facility does not constitute a deviation from the Agency's UTEP;

WHEREAS, by resolution adopted by the members of the Agency on September 24, 2019 (the "Authorizing Resolution"), the Agency determined to proceed with the Project, to grant the Financial Assistance (as defined in <u>Schedule A</u>) and to enter into the "straight lease transaction" (as such quoted term is defined in the Act) contemplated by this Agreement and the other Transaction Documents (terms not defined herein are defined in the Agency Lease);

NOW, **THEREFORE**, in consideration of the premises and the payments, agreements, and covenants hereinafter contained, the Obligors and the Agency formally covenant and agree as follows:

Section 1. Tax-Exempt Status of Facility

(a) Application. The Obligors shall complete, and the Agency shall endeavor to submit to be filed, an application for tax exemption pursuant to Section 412-a of the Real Property Tax Law. Such application shall be submitted to the tax assessor of each of the various taxing entities having jurisdiction over the Facility, including without limitation, the Town of Pomfret, the County of Chautauqua, and the Fredonia Central School District (such taxing entities, and any successors thereto, being hereinafter collectively referred to as the "Taxing Entities" and individually, as a "Taxing Entity"). The Facility shall not be entitled to exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the taxable status date of such Taxing Entity occurring subsequent to the Agency becoming the

applications for tax exemption, and the acceptance of such applications by the appropriate tax assessors (such date, the "PILOT Commencement Date").

(b) RESERVED.

- (c) <u>Special Assessments</u>. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the General Municipal Law and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Agency Lease, the Obligors will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Facility.
- (d) Other Charges. If any taxes, assessments, service charges or other governmental charges become payable by the Agency or the Obligors on the rents under the Agency Lease or the Company Lease or the occupancy of or any interest of the Agency or the Obligors in the Facility or any part thereof or any personal property used in connection with the business conducted and located therein, the amount of any tax, assessment or charges shall be paid by the Obligors. Furthermore, water charges, sewer rentals, sewage treatment charges, solid waste charges and any other charges in the nature of utility charges shall be paid directly by the Obligors and shall not be credited against nor affect in any manner any payment in lieu of general real estate taxes in any year and shall be computed pursuant to the formula adopted by the relevant Taxing Entity.

Section 2. Payments.

(a) <u>Tax Payments</u>. Prior to the Facility becoming entitled to exempt status on the PILOT Commencement Date as set forth in Section 1(a) above, the applicable real estate tax levies on the Facility shall be payable in full by the Obligors to the applicable Taxing Entity.

(b) RESERVED

Obligors shall pay to the Agency for the account and benefit of each Taxing Entity during the "Term of the PILOT" (as hereinafter defined) for each Taxing Entity payments in lieu of the general real estate tax levies on the Facility ("PILOT Payments") in an amount equal to (i) the sum of (A) the Current Actual Assessed Value (as hereinafter defined) of the Land and any improvements existing thereon, and (B) the Effective Percent (outlined in Schedule B attached hereto) of the Assessed Value Increase (the difference between the Assessed Value (as hereinafter defined) and Current Actual Assessed Value), times (ii) the tax equalization rate for the applicable Taxing Entity as of the PILOT Commencement Date, times (iii) the tax rate for the applicable Taxing Entity in effect as of the PILOT Commencement Date; provided, however, that in no event shall the PILOT Payment ever be less than the general real estate tax levies on the Facility as of the Closing Date. The "Term of the PILOT" shall be from the PILOT Commencement Date until the last day of the tax fiscal year of the applicable Taxing Entity following ten (10) annual PILOT periods. If the Term of the PILOT for any Taxing Entity shall have expired while the Term of the PILOT for any other Taxing Entity shall not have expired,

the Obligors shall pay to the Agency, until the termination of this Agreement, PILOT Payments in an amount equal to the amount of the tax levies which would be payable to such Taxing Entity if the Facility was listed on the assessment rolls as fully taxable.

For purposes of the foregoing, "Current Actual Assessed Value" shall mean the assessed value of the Land and the improvements existing thereon as of the Closing Date prior to the construction of the Improvements. The "Assessed Value" shall mean the value defined by the appropriate tax assessor(s) on the Land (and the existing improvements thereon) and the Improvements thereon either during construction or on the Project as completed in accordance with the Plans and Specifications (as defined in the Agency Lease).

- Payments shall not exceed the amount the Obligors would pay under normal calculations for any period. Hence, if the general real estate tax (calculated as if the Obligors were the record owner of the Facility and the Agency held no interest therein, and the Facility were assessed at full value for purposes of taxation) otherwise due any Taxing Entity decreases due to a reduction in tax rates or otherwise below the PILOT Payments specified in Section 2(c) above, then the PILOT Payments due that Taxing Entity shall be decreased to equal the tax that would otherwise be due. If, however, a PILOT Payment has been so reduced, and the taxes that would otherwise be due subsequently increase, the PILOT Payment shall similarly increase, but not in excess of the amount specified in Section 2(c) above. Except as set forth in this paragraph, once the PILOT Payments are calculated in accordance with Section 2(c) above, such PILOT Payments shall not be reduced during the Term of the PILOT, regardless of any reduction in the underlying assessment for the Facility.
- (e) Payments to Agency. All PILOT Payments shall be made by the Obligors directly to the Agency promptly upon receipt of billings from the Agency at the address set forth in such billings, or at such other address as the Agency may specify in writing to the Obligors. It is understood that the Agency shall receive the PILOT Payments in trust for each of the Taxing Entities, and the Agency shall forward such payments to each such Taxing Entity within thirty (30) days after receipt thereof. All PILOT Payments hereunder shall be allocated among the Taxing Entities in proportion to the amount of real property and other taxes and assessments that would have been received by each Taxing Entity had the Improvements not been tax exempt due to the status of the Agency as of the Closing Date. This provision constitutes the formula for the calculation of the amounts of the PILOT Payments for each Taxing Entity as required by Section 859-a(6) of the General Municipal Law.
- (f) <u>Due Dates; Interest; and Penalties</u>. The Agency will bill the Obligors for the respective PILOT Payments as if the Facility were on the tax rolls at the time when taxes for each Taxing Entity are due. All payments are net if paid on or before the due dates listed below. If any PILOT Payment is not made on or before the due date, such payment shall be delinquent and the unpaid amount(s) shall accrue interest (and penalties) at the rates applicable to late payments of taxes for the respective Taxing Entities and as further provided in the General Municipal Law, including Section 874(5) thereof, which currently provides for a late charge equal to five (5%) percent of the unpaid amount for the first month, and for each month, or part thereof, that the payment is delinquent beyond the first month, interest shall accrue to and be

paid to the Taxing Entities on the total amount due plus an additional late charge equal to one (1%) percent per month of the total amount payable. The Obligors agree to pay all such late charges, interest and penalties when due.

As of the date of this Agreement, the due dates for the PILOT Payment are as follows:

County and Town Taxes: January 30th School Taxes: September 30th

- (g) Partial Sale; Transferee's Obligation; Apportionment of Reduction to Local Taxing Entities. During the term of this Agreement, in the event that the Agency's interest in any portion of the Facility is sold or disposed of by the Agency, the transferees thereof will thereafter pay the real property taxes on the portion of the Land (including the existing improvements thereon) and the Improvements as may be located on the portion of the Land sold as may be required by applicable law.
- (h) <u>Sale; the Obligors' Obligation</u>. In the event that the Agency terminates its interest in and/or transfers the Facility to any party other than the Company, the Obligors' obligation for PILOT Payments shall be prorated to the date of the closing of the transaction and thereupon all obligations of the Obligors for PILOT Payments shall cease, but the Agency shall take such steps with the purchaser other than the Obligors to assure that each of the Taxing Entities shall suffer no loss of revenue until the Facility can be placed back on the tax rolls and taxes levied and billed therefor.
- (i) <u>PILOT Payments after Term of the PILOT</u>. From and after the end of the Term of the PILOT, and until the Agency's interest in the Facility is conveyed to the Company pursuant to the terms of the Agency Lease and the Facility has been returned to the tax rolls as fully taxable property, the Obligors shall make PILOT Payments equal to one hundred percent (100%) of the amount of real property taxes and assessments that would have been levied and/or assessed against or with respect to the Facility as if the Facility were owned by the Obligors and the Agency were not otherwise involved in the Project.
- Section 3. <u>Jobs</u>. The Company covenants and agrees that it shall, throughout the term of this Agreement, maintain or cause to be maintained the Minimum Employment Requirement (as defined in the Agency Lease) as and when required by the Agency Lease. The Company agrees to deliver to the Agency on each annual anniversary of this Agreement a written report describing its compliance or noncompliance with the provisions of this Section 3 and to permit the Agency to audit the books and records of the Company supporting such report.
- Section 4. <u>Effective Date</u>; <u>Duration of Agreement</u>. This Agreement shall become effective upon the delivery of the Agency Lease and the Company Lease by the Company and the Agency and shall continue in effect until the earlier of (i) last day prior to the taxable status date following the final tax fiscal year of a Taxing Entity in which a PILOT Payment is payable pursuant to Section 2(c) above, or (ii) the date on which the Agency's interest in the Facility is terminated pursuant to the Agency Lease or this Agreement.

The obligations of the Obligors under this Agreement are joint and several.

Section 5. Events of Default. The following shall constitute "Events of Default" under this Agreement:

- (a) failure by the Obligors to make any payment specified herein and the continuance of such failure for a period of ten (10) days following written notice from the Agency or any Taxing Entity;
- (b) failure by the Obligors to comply with or perform any provision of this Agreement other than the payment provisions hereof and the continuance of such failure for a period of thirty (30) days following written notice thereof by the Agency to the Obligors; and/or
- (c) default in the terms of any agreement entered into between the Agency and any Obligor (beyond any applicable grace period).

Upon the occurrence and continuance of an Event of Default hereunder, the Obligors shall be required to make payments in lieu of general real estate taxes levied by the Taxing Entities on the Facility (or those portions of the Facility then exempt) as if it were owned by the Obligors and the Agency held no interest therein, such amounts to commence to be paid for the period subsequent to the date it is determined by the Agency that there is an Event of Default hereunder. In such event, the tax rate, interest and penalties shall be those then in effect in the jurisdiction(s) in which the Facility is (or those portions of the Facility then exempt are) located.

Upon the occurrence and continuance of an Event of Default hereunder, the Agency shall be entitled to sue to enforce any provision of this Agreement and to recover the payments in default from the Obligors, together with all the costs and expenses of the Agency, its successors or assigns, paid or incurred in such recovery (including court costs and attorney's fees and expenses) and interest at the rate specified in Section 2(f) above. In addition, the Agency shall have the right to terminate the Agency Lease and the Company Lease at any time.

The Agency, in enforcing payment by the Obligors of said amounts, may take whatever action and exercise any or all of the rights and remedies specified in this Agreement or any other remedy provided by law.

Each and every Event of Default shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises. The Obligors irrevocably agree that any suit, action, or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State of New York, or the courts of United States District Court for the Western District of New York, consent to the jurisdiction of each such court in any such suit, action, or proceeding, and waive any objection which it may have to the laying of the venue of any such suit, action, or proceeding in any of such courts.

No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time

and as often as may be deemed expedient by the Agency. Further, no payment by the Obligors or receipt by the Agency or a Taxing Entity of a lesser amount than the correct amount or manner of payment due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction, and the Agency and/or any Taxing Entity may accept any check or payment as made without prejudice to the right to recover the balance or pursue any other remedy in this Agreement or otherwise provided at law or in equity

In no event shall the Agency be liable to any of the Taxing Entities for the payments specified herein, whether or not the Obligors make such payments. The Obligors hereby agree to indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency from and against any such liability for such payments and against all penalties, interest, and other charges resulting from the delinquency of such payments.

Section 6. Covenants by the Agency. The Agency covenants that, unless otherwise required by law, the Agency will not enact or adopt any laws, ordinances, rules, or regulations imposing any taxes, assessments, or other charges or payments on the Project, the Overlandlord's fee interest or the Company's leasehold or sub-subleasehold interest or personal property therein, or its use or occupancy thereof or its gross receipts or income therefore, except as the Company and the Agency have herein agreed, or may agree from time to time in the future.

Section 7. <u>Notices</u>. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given, if by delivery, when delivered and, if delivered by mail, on the second day following the day on which mailed by certified mail, postage prepaid, addressed as follows:

To the Agency: County of Chautauqua Industrial Development Agency

201 West Third Street Suite 115

Jamestown, NY 14701

Attention: Administrative Director

With a copy to: Phillips Lytle LLP

201 West Third Street, Suite 205

Jamestown, NY 14701

Attention: Gregory L. Peterson, Esq.

To the Obligors: c/o S. St. George Enterprises, Inc.

3689 Webster Road, P.O. Box 348

Fredonia, NY 14063

Attention: Steven St. George

With a copy to: Biltekoff Law Office, LLC

43 Court Street, Suite 930

Buffalo, NY 14202

Attention: Robert Biltekoff, Esq.

To the Bank: Five Star Bank

100 Chestnut Street, Suite 1400

Rochester, NY 14604

Attention: Michael J. Dermady

The Agency or any Obligor may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

Section 8. <u>Assignment of Agreement</u>. This Agreement shall be binding upon the successors and assigns of the Obligors, but no assignment shall be effective to relieve the Obligors of any of their respective obligations hereunder unless expressly authorized and approved in writing by the Agency. The respective rights and obligations of the Obligors hereunder may not be assigned except in connection with a permitted assignment of the Company's interest in and to the Agency Lease. Nothing herein is intended to be for, or to inure to, the benefit of any Person other than the parties hereto and the Taxing Entities.

Section 9. <u>Independent Agreement</u>. Notwithstanding any other provision of this Agreement, including the recitals hereof, the parties agree that the Agency Lease and Company Lease executed between the parties hereto shall be separate and independent documents from this Agreement, and irrespective of whether any provision of this Agreement or the entirety hereof shall be held invalid or unenforceable by any court of competent jurisdiction, the Agency Lease and the Company Lease shall be construed, interpreted, and otherwise regarded separate and apart from this Agreement. The parties hereto specifically note that the considerations and terms provided for in this Agreement and provided for in the Agency Lease and the Company Lease are the only considerations and terms for which the parties hereto have executed this Agreement.

- Section 10. <u>Amendments</u>. This Agreement may not be modified, amended, supplemented, or changed without the written consent of the Agency, the Obligors and any Taxing Entity which is affected by the amendment.
- Section 11. <u>Severability</u>. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- Section 12. <u>Prior Agreements</u>; <u>Counterparts</u>. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, whether written or oral, among the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- Section 13. <u>Delivery of Agreement</u>. The Agency agrees to use its best efforts to deliver to each Taxing Entity a copy of this Agreement within fifteen (15) days after its execution by the Agency.

Section 14. <u>Applicable Law</u>. This Agreement shall be governed and construed under the internal laws of the State of New York, as the same may be in effect from time to time, without regard to principles of conflicts of law.

Section 15. <u>WAIVER OF JURY TRIAL</u>. THE AGENCY AND EACH OBLIGOR HEREBY WAIVES THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING IN CONNECTION WITH THIS AGREEMENT.

Section 16. <u>Representations</u>. The Obligors (a) hereby certify, under penalty of perjury, that each Obligor is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations, and (b) hereby represent and warrant that the Project is in substantial compliance with all provisions of the Act, including, but not limited to, the provisions of Section 859-a and 862(1) thereof.

[Remainder of This Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Agency and the Obligors have executed this Agreement as of the date first above written.

COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

Bv:

Name: Richard Pixor

Title: CFO CCIPA

S. ST. GEORGE ENTERPRISES, INC.

 $\mathbf{R}\mathbf{v}$

Name: Steven St. George

Title: President

STEVEN ST. GEORGE

SCHEDULE A

PROJECT

The "Project" is: (A)(1) the acquisition of an interest in an approximately 70 acre parcel of land located at 3689 Webster Road, Fredonia, Town of Pomfret, County of Chautauqua, New York (the "Land"), (2) the construction of an approximately 19,999 square foot addition to an existing approximately 23,000 square foot building (collectively, the "Building" and together with the Land, collectively, the "Facility"), together with related improvements to the Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the "Equipment") necessary for the completion thereof (collectively, the "Project Facility"), all of the foregoing for use by the Company and/or its affiliates as an inventory and heavy equipment storage facility; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes, mortgage recording taxes and sales and use taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency.

AFFIDAVIT OF COMPANY

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

I, the undersigned, Steven St. George, as President of S. St. George Enterprises, Inc. (the "Company"), do hereby depose and state as follows:

- The County of Chautauqua Industrial Development Agency (the "Agency") may 1. rely on the contents of this Affidavit in proceeding with the closing of the 2019 St. George Enterprises Project, consisting of: (A)(1) the acquisition of an interest in an approximately 70 acre parcel of land located at 3689 Webster Road, Fredonia, Town of Pomfret, County of Chautauqua, New York (the "Land"), (2) the construction of an approximately 19,999 square foot addition to an existing approximately 23,000 square foot building (collectively, the "Building" and together with the Land, collectively, the "Facility"), together with related improvements to the Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the "Equipment") necessary for the completion thereof (collectively, the "Project Facility"), all of the foregoing for use by the Company and/or its affiliates as an inventory and heavy equipment storage facility; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes and sales and use taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency.
- 2. On or about August 15, 2019, the Company delivered an application for financial assistance (as supplemented and amended to date, the "Application") to the Agency for consideration of the Project.
- 3. The scope of the Project has not varied significantly from the description published in the Notice of Public Hearing attached hereto as Schedule A.
- 4. The total cost of the Project, as of the date of this Affidavit, is estimated to be at least \$765,000.
- 5. There has been no significant change or variation in the Project from the information contained in the Application, other than as set forth on Schedule B attached hereto and made a part hereof.
- 6. The Company is not contemplating instituting bankruptcy, insolvency or any similar proceedings against itself.

7. As of the date hereof, there has been no material adverse change in the business, condition, property or prospects (financial or otherwise) of the Company from the information contained in the Application.

IN WITNESS WHEREOF, the undersigned has executed this Affidavit as of the _____ day of November, 2019.

S. ST. GEORGE ENTERPRISES, INC.

Name: Steven St. George

Title: President

Sworn to before me this / of November, 2019.

Notary Public

Milan K Tyler
Notary Public, State of New York
No. 02TY4949790
Qualified in West County
Commission Expires June 12, 20

SCHEDULE A

NOTICE

OF PUBLIC HEARING

See Attached

NOTICE OF PUBLIC HEARING NOTICE 1S HEREBY GIVEN that the County of

Chautauqua Industrial Development Agency (the "Agency"), will hold a public hearing on September 19, 2019 at 10:00 am, local time, at Town of Pomfret Offices, 9. Day Street, Fredonie, Town of Pomfret, County of Chautauqua, New York, pursuant to Section 359-a of the General Municipal Law, as amended (the "Act"). The purpose of the public hearing is to provide an opportunity for all interested parties to present their views with respect to the "Project" (as defined below) both orally and in writing. A representative of the Agency will accept any comments that are made either orally or in writing at the above stated place and time and provide a reasonable summary of the Same to the

mary of the same to the Agency's members. S. St. George Enterprises, Inc. (the "Applicant") requested by application for financial assistance (the "Application") that the Agency consider undertaking a project (the "Project") that consists of

(A)(1) the acquisition or an interest in an approximately 70 acre parcel of land located at 3689 Webster Road, Fredonia, Town of Pomfret, County of Chautauqua, New York (the "Land"), (2) the construction of an approximately 19,999 square tool addition to an existing approximately 23,000 square tool building (collectively, the "Building" and together with the Land; collectively, the "Facility"); together with related improvements to the Land, and (3) the acquisition of certain furniture, fixtures; machinery and equipment (the "Equipment") indecessary for the family indecessary

for the completion thereof (collectively, the "Project Facility"), all of the foregoing for use by the Applicant and/or, lie affiliates as an inventory and heavy equipment storage facility. (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions for partial exemptions from real property taxes and sales and use taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant and agreed upon by the Applicant and agreed upon by the Applicant and agreed upon by the Applicant and agreed upon by

the Agency.

The Project Facility would be initially owned, operated and/or managed by the Applicant or such other entity(ies) as may be designated by the Applicant and agreed upon by the Agency.

designated by the Applicant and agreed upon by the Agency. Subject to applicable law, copies of the Application, including an analysis of the costs and benefits of the Project, are available for review by the public online at www.ccida.com, or at the offices of the Agency located at 201 Wast Third Street, Suite 115, Jamestown, NY 14701 and 214 Central Avenue, Suite-124, Dundrik, NY 14048 by appointment. To schedule an appointment, or for additional assistance, contact the Agency at (716) 661-8900, Dated: September 2019

2019 COUNTY OF CHAUTAUGUA I NDUSTRIAL DEVELOPMENT AGENCY

AGENCE |
By:
Mark Geise
Administrative
Director/CEO
0-165785 September 10,
2019-Adv.

AFFIDAVIT OF PUBLICATION

State of New York

County of Chautauqua

City of Dunkirk

Sheila McWillson, being duly sworn, deposes and says that she is the Principal Clerk, for Ogden Newspapers of New York Inc. the publisher of The OBSERVER, a daily newspaper published in the City of Dunkirk, Chautauqua County, State of New York, and that a notice of which the annexed is a printed copy, was inserted and published in said newspaper on the following dates

September 10, 2019

Signed Mulli Mulli Sheila McWillson

Signed before me this 10th day of September 2019

The state of the s

Notary Public (

BARBARA J. MUSSO
Notary Public. State of New York
Qualified in Chautauqua County
My Commission Expires

SEP 1 8 2019

SCHEDULE B

VARIATIONS IN THE PROJECT

None

BILL OF SALE

TO

COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

S. ST. GEORGE ENTERPRISES, INC., a New York corporation, having an address of 3689 Webster Road, P.O. Box 348, Fredonia, NY 14063 (the "Grantor"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from the COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having an office for the transaction of business located at 201 West Third Street, Suite 115, Jamestown, NY 14701 (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee, and its successors and assigns, all right, title and interest of the Grantor in and to the materials, machinery, equipment, fixtures and furnishings which are described in Exhibit A attached hereto (the "Equipment"), whether now owned or hereafter acquired by the Grantor, which Equipment is located or intended to be located on certain real property (the "Land") located at 3689 Webster Road, Fredonia, Town of Pomfret, County of Chautauqua, State of New York, which Land is more particularly described on Schedule A attached hereto.

TO HAVE AND TO HOLD the same unto the Grantee, and its successors and assigns, forever, and the said Grantor, for itself, its successors and assigns, covenants and agrees to and with the Grantee, its successors and assigns, to warrant and defend the sale of said Equipment hereby made unto the Grantee, its successors and assigns against the claims and demands of every and all persons whomsoever.

[Signature Page Follows]

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by its duly authorized officer and dated as of the 7 day of November, 2019.

S. ST. GEORGE ENTERPRISES, INC.

Name: Steven St. George

Title President

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

On the 7th day of November, 2019, before me, a Notary Public in and for said State, personally appeared Steven St. George, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacities, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Milan K Tyler
Notary Public, State of New York
No. 02TY4949790
Qualified in West County
Commission Expires June 12, 20

Notary Public

Exhibit A

EQUIPMENT

All equipment, fixtures, machines, building materials and items of personal property and all appurtenances (A) acquired, constructed and/or intended to be installed and/or to be acquired, constructed or installed in connection with the acquisition, construction, renovation, installation and equipping of the 2019 St. George Enterprises Project (the "Project") of the County of Chautauqua Industrial Development Agency (the "Agency") located on the real property described on Exhibit A hereto (the "Land"), said Project to be acquired, constructed and installed by S. St. George Enterprises, Inc. (the "Company") pursuant to an agency lease agreement (uniform project agreement) dated as of October 1, 2019 (the "Agency Lease Agreement") by and between the Agency and the Company and (B) now or hereafter attached to, contained in or used in connection with the Land or placed on any part thereof, though not attached thereto, including but not limited to the following:

- (1) Pipes, screens, fixtures, heating, fencing, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators and other lunch room facilities, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors and machinery; and
- (2) Together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

Schedule A

LAND

[Insert legal description]

CHICAGO TITLE INSURANCE COMPANY

Schedule A

COMMITMENT FOR TITLE INSURANCE

No: 1913-7318EC

LEGAL DESCRIPTION

Parcel I

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Pomfret, County of Chautauqua and State of New York; being part of Lot No. 7 Township 5 and Range 12 of the Holland Land Company's Survey; and being more particularly bounded and described as follows:

COMMENCING at a point on the existing centerline of pavement of Webster Road (a 49.5 foot wide pubic right of way and formerly known as East Road) at its intersection with the northwesterly corner of lands conveyed by Howard H. Ferry and Doris J. Ferry to James R. Decker and Christine L. Decker as described in a Warranty Deed dated June 14, 2000 and filed in the Chautauqua County Clerk's Office on July 10, 2000 in Liber 2445 of Deeds at page 584, said point being 249 feet distant westerly as measured along said centerline from its intersection with the easterly line of said Lot No. 7 (also being the division line between the Town of Pomfret on the west and the Town of Arkwright on the east); thence North 89 degrees 38 minutes 11 seconds West along said centerline, a distance of 840.25 feet to a point, said point being at the principle point of beginning of the parcel of land hereinafter described; thence South 00 degrees 21 minutes 49 seconds West, a distance of 99.00 feet to a point; thence South 89 degrees 38 minutes 11 seconds East, a distance of 309.00 feet to a point; thence South 00 degrees 28 minutes 17 seconds West parallel to the easterly line of said Lot No. 7, a distance of 1,661.99 feet to an existing iron stake on the southerly line of lands heretofore conveyed by Leo G. Seybold to Howard H. Ferry and Doris Ferry as described in a Warranty Deed dated July 10, 1962 and recorded in the Chautauqua County Clerk's Office on July 16, 1962 in Liber 1199 of Deeds at page 96; thence North 89 degrees 57 minutes 32 seconds West along said southerly line of Ferry, a distance of 559.30 feet to an existing iron stake on the easterly line of lands conveyed by Fred B. Straight and Lena A. Straight to Niagara, Lockport and Ontario Power Company as described in a Warranty Deed dated October 31, 1922 and recorded in said Clerk's Office on November 10, 1922 in Liber 495 of Deeds at page 64; thence North 00 degrees 29 minutes 46 seconds East along said easterly line of lands conveyed by Straight to Niagara, Lockport and Ontario Power Company, a distance of 1,747.16 feet to a an angle point therein; thence North 11 degrees 53 minutes 16 seconds East along said easterly line of lands of Niagara, Lockport and Ontario Power Company, a distance of 17.32 feet to point on said centerline of Webster Road; thence South 89 degrees 38 minutes 11 seconds East along said centerline, a distance of 245.91 feet to the point or place of beginning.

ALSO ALL THAT TRACT OR PARCEL OF LAND, situate in the same Town, County and State, and same Holland Land Company Lot, Township and Range; and being more particularly bounded and described as follows:

BEGINNING at a point on the existing centerline of pavement of Webster Road (a 49.5 foot wide pubic right of way and formerly known as East Road) at its intersection with the westerly line of lands conveyed by Fred B. Straight and Lena A. Straight to Niagara, Lockport and Ontario Power Company as described in a Warranty Deed dated October 31, 1922 and recorded in said Clerk's Office on November 10, 1922 in Liber 495 of Deeds at page 64, said point being 1,388.58 feet distant westerly as measured along said centerline from a point at its

intersection with the easterly line of said Lot No. 7 (also being the division line between the Town of Pomfret on the west and the Town of Arkwright on the east); thence South 00 degrees 29 minutes 46 seconds West along said westerly line of lands conveyed by Straight to Niagara, Lockport and Ontario Power Company, a distance of 1,809.18 feet to a point on the southerly line of lands heretofore conveyed by Leo G. Seybold to Howard H. Ferry and Doris Ferry as described in a Warranty Deed dated July 10, 1962 and recorded in the Chautauqua County Clerk's Office on July 16, 1962 in Liber 1199 of Deeds at page 96; thence North 89 degrees 04 minutes 14 seconds West along said southerly line of Ferry, a distance of 983.23 to a found iron stake at the southwesterly corner thereof; thence along the easterly line of lands James W. and Judith Wilcox as described in Liber 1423 of Deeds at page 97, lands formerly owned by Josiah Messenger as described in Liber 55 of Deed at page 343 and lands formerly owned by Nelson Gorham as described in Liber 51 of Deeds at page 220 the following three (3) courses and distances: (1) North 00 degrees 20 minutes 17 seconds West, a distance of 418.56 feet to a rebar; thence (2) North 28 degrees 18 minutes 47 seconds West, a distance of 233.63 feet to a found iron stake; thence (3) North 50 degrees 03 minutes 03 seconds West, a distance of 101.64 feet to a rebar at the northeasterly corner of said lands formerly owned by Gorham; thence North 85 degrees 41 minutes 03 seconds West along said lands of Gorham, a distance of 17.52 feet to a rebar on the easterly highway boundary of New York State Route No. 60 and at the southeasterly corner of lands appropriated by The People of the State of New York by Notice of Appropriation filed in said Clerk's Office on March 7, 1963 in Liber 1212 of Deeds at page 590 and shown on Map No. 8 as Parcel No. 9; thence along said highway boundary and along the easterly boundary of said Parcel No. 9 the following two (2) courses and distances: (1) North 04 degrees 47 minutes 56 seconds West, a distance of 145.96 feet to a found concrete highway monument; thence (2) North 16 degrees 15 minutes 56 seconds West, a distance of 171.83 feet to a rebar on the southerly line of lands heretofore known as the DeForest A. Straight, premises; thence along said lands of said Deforest A. Straight the following three courses and distances: (1) South 86 degrees 48 minutes 03 seconds East, a distance of 130.05 feet to a rebar; thence (2) North 00 degrees 41 minutes 03 seconds West, a distance of 112.0 feet to a found iron stake; thence (3) North 86 degrees 48 minutes 03 seconds West, a distance of 142.64 feet to a rebar at on the easterly highway boundary of New York State Route No. 60 and at the southeasterly corner of said lands appropriated by The People of the State of New York by Notice of Appropriation filed said in Liber 1212 of Deeds at page 590 and shown on Map No. 8 as Parcel No. 9; thence along said highway boundary and along the easterly boundary of said Parcel No. 9 the following three (3) courses and distances: (1) North 01 degrees 41 minutes 32 seconds West, a distance of 342.81 feet to a point of curvature, said point being 1.6 north and 0.3 feet west of a found concrete highway monument; thence (2) along a curve to the left having a radius of 5,779.58 feet, an arc length of 276.50 feet and a chord bearing and distance of North 03 degrees 03 minutes 46 seconds West, 276.48 feet to a rebar; thence (3) North 39 degrees 26 minutes 38 seconds East, a distance of 57.50 feet to point on the existing southerly boundary of Webster Road; thence North 00 degrees 21 minutes 49 second East, a distance of 24.75 feet to a point on said centerline of Webster Road; thence South 89 degrees 38 minutes 11 seconds East along said centerline a distance of 1,269.91 feet to the point of beginning.

Parcel II

EXCEPTING AND RESERVING from Parcel I above, all that tract or parcel of land, situate in the Town of Pomfret, County of Chautauqua and State of New York; being part of Lot No. 7, Township 5 and Range 12 of the Holland Land Company's Survey; and being more particularly bounded and described as follows:

BEGINNING at a point on the existing center line of pavement of Webster Road (formerly known as East Road) at its intersection with northwesterly corner of lands conveyed to Steven St. George, hereinafter referenced, said point being 2,658.5 feet, more or less distant westerly as measured along said center line from its intersection from the easterly line of said Lot No. 7 (also being the subdivision line between the Town of Pomfret on the west and the Town of Arkwright on the east; thence South 89° 38' 11" East along said center

line, a distance of 90.0 feet to a point; thence through the lands of said St. George the following two (2) courses and distances: (1) South 01° 41' 32" East, a distance of 361.0 feet to a point; thence (2) South 99° 18' 28" West, a distance of 122.04 feet to a point on the easterly highway boundary of New York State Route No. 60 and on the easterly bounds of lands appropriated by the People of the State of New York by Notice of Appropriation filed in said Liber 1212 of Deeds at page 590 and shown on Map No. 8 as Parcel No. 9; thence along said highway boundary and along the easterly boundary of said Parcel No. 9 the following three (3) courses and distances: (1) North 01° 41' 32" West a distance of 19.79 feet to a point of curvature, said point being 106 feet north and 0.3 feet west of a found concrete highway monument; thence (2) along a curve to the left having a radius of 5,779.58 feet, an arc length of 276.50 feet and a chord bearing and length of North 03° 03' 46" West, 276.48 feet to a set rebar; thence (3) North 39° 26' 38" East, a distance of 57.50 feet to a point on the existing southerly boundary of Webster Road; thence North 00° 21" 49" East, a distance of 24.75 feet to the point or place of beginning.

For Conveyancing Only

Together with all right, title and interest of, in and to any streets and roads abutting the above described premises. Our Policy of Title Insurance includes such buildings and improvements thereon which by law constitute real property, unless specifically excepted therein.

COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

GENERAL CERTIFICATE

This certificate is made in connection with the execution by the County of Chautauqua Industrial Development Agency (the "Agency") of the Agency Lease (as hereinafter defined) and any other document to be executed by the Agency (collectively, the "Agency Documents") in connection with the undertaking by the Agency of a project (the "Project") on behalf of S. St. George Enterprises, Inc. (the "Company"), consisting of the following (known as the 2019 St. George Enterprises Project): (A)(1) the acquisition of an interest in an approximately 70 acre parcel of land located at 3689 Webster Road, Fredonia, Town of Pomfret, County of Chautauqua, New York (the "Land"), (2) the construction of an approximately 19,999 square foot addition to an existing approximately 23,000 square foot building (collectively, the "Building" and together with the Land, collectively, the "Facility"), together with related improvements to the Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the "Equipment") necessary for the completion thereof (collectively, the "Project Facility"), all of the foregoing for use by the Company and/or its affiliates as an inventory and heavy equipment storage facility; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes and sales and use taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency.

Capitalized terms used herein which are not otherwise defined herein shall have the meanings ascribed to them in the Agency Lease Agreement (Uniform Project Agreement) dated as of November 1, 2019 (the "Agency Lease") between the Agency and the Company, except that, for purposes of this certificate, (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this certificate and not as of any future date, and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

THE UNDERSIGNED, BEING THE [] OF THE AGENCY,
HERERY CERTIFIES THAT:	

1. The Agency is an industrial development agency duly established under Chapter 1030 of the Laws of 1969 of the State of New York (the "State") constituting Title I of Article 18-A of the New York 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"), and is a corporate governmental agency constituting a public benefit corporation of the State.

enabling Act being hereinafter collectively referred to as the "Act"), and is a corporate governmental agency constituting a public benefit corporation of the State.

- 2. The Agency (A) has full legal power and authority to own its properties, conduct its business, and execute, deliver and perform its obligations under each of the Agency Documents and (B) has taken all actions and obtained all approvals required in connection therewith by the Act and any other applicable laws and regulations.
- 3. The execution, delivery and performance of all agreements, certificates and documents required to be executed, delivered and performed by the Agency in order to carry out, give effect to and consummate the transactions contemplated by the Agency Documents have been duly authorized by all necessary action of the Agency. No authorization for the execution, delivery or performance of the Agency Documents by the Agency has been repealed, revoked or rescinded.
- 4. The execution, delivery and performance of the Agency Documents, the consummation of the transactions therein contemplated and compliance with the provisions of each by the Agency do not and will not (A) violate the Act or the by-laws of the Agency, (B) require consent under (which has not heretofore been received) or result in a breach of or default under any credit agreement, purchase agreement, indenture, mortgage, deed of trust, commitment, guaranty, lease or other agreement or instrument to which the Agency is a party or by which the Agency may be bound or affected, or (C) conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court, domestic or foreign, having jurisdiction over the Agency or any of the property of the Agency.
- 5. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to our knowledge, threatened against or affecting the Agency (nor, to our knowledge, any basis therefor), wherein an unfavorable decision, ruling or finding would adversely affect (A) the validity or the enforceability of the Agency Documents or the transactions contemplated therein, or (B) the existence or organization of the Agency.
- 6. Attached hereto as <u>Exhibit A</u> is a true, correct and complete copy of the resolutions duly adopted by the Agency on September 24, 2019 authorizing and approving (A) the acquisition, construction, renovation, installation and equipping of the Project, and (B) the execution and delivery of the Agency Lease and the other Agency Documents.
- 7. The resolutions attached hereto as <u>Exhibit A</u> were duly adopted at a meeting of the Agency duly called and held, and at which a quorum was present and acting throughout, and such resolutions are in full force and effect and have not been modified or amended in any respect.
- 8. Attached hereto as <u>Exhibit B</u> is a copy of the notice of public hearing relating to the public hearing held with respect to the Project (the "Public Hearing"), which

notice was mailed to the chief executive officer of each taxing jurisdiction in which the Project is located.

- 9. Attached hereto as <u>Exhibit C</u> is an affidavit of publication of notice of public hearing relating to the Public Hearing, which notice was published by the *Jamestown Post Journal*.
- 10. Attached hereto as <u>Exhibit D</u> is the Report of the Public Hearing held with respect to the Project pursuant to Section 859-a of the Act.
- 11. 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 (collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Agency on September 24, 2019 (the "SEQR Resolution"), the Agency issued its Statement of Findings with respect to the Project. Attached as Exhibit E is a copy of the SEQR Resolution.
- atisfied all of the conditions on its part to be performed and satisfied by the terms of the Agency Documents on or prior to the Closing Date.
- of each member, officer and employee of the Agency having the power or duty to (A) negotiate, prepare, authorize or approve such document or authorize or approve payment thereunder, (B) audit bills or claims thereunder, or (C) appoint an officer or employee who has any of the powers or duties set forth above, as to whether or not such member, officer or employee has an interest (as defined pursuant to Article 18 of the General Municipal Law) in the Agency Lease, and upon information and belief, as a result of such inquiry, no such member, officer or employee has any such interest in the Agency Lease.

IN WITNESS WHEREOF, I have hereunto set my signature on behalf of the Agency and have affixed the seal of the Agency as of this **22** day of October, 2019.

COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

DEVELOPMENT AGENCY

Name: Richard Olivon

Title: CFO, CCIDA

EXHIBIT A AUTHORIZING RESOLUTION

EXHIBIT B NOTICE OF PUBLIC HEARING

September 3, 2019

CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND FIRST CLASS MAIL

Mr. George Borrello, Chautauqua County Executive

Mr. Donald Stegar, Town of Pomfret Supervisor

Ms. Allison Dispense, Town of Pomfret Clerk

Mr. Robert M Scudder, District 3 Legislator

Mr. Jeffrey A Sortisio, Fredonia Central School Superintendent

Mr. Brian Aldrich, Fredonia Central School Board President

Ms. Jeanette LoBella, CCIDA Administrative Assistant

Ms. Sheila Edwards, The Observer Classified Coordinating Manager

NOTICE OF PUBLIC HEARING REGARDING A PROPOSED PROJECT AND FINANCIAL ASSISTANCE

Ladies and Gentlemen:

Notice is hereby given that the County of Chautauqua Industrial Development Agency (the "Agency") will hold a public hearing on September 19, 2019 at 10:00 am, local time, at Town of Pomfret Offices, 9 Day Street, Fredonia, Town of Pomfret, County of Chautauqua, New York, pursuant to Section 859-a of the General Municipal Law, as amended (the "Act"). The purpose of the public hearing is to provide an opportunity for all interested parties to present their views with respect to the "Project" (as defined below) both orally and in writing. A representative of the Agency will accept any comments that are made either orally or in writing at the above-stated place and time and provide a reasonable summary of the same to the Agency's members.

S. St. George Enterprises, Inc. (the "Applicant") requested by application for financial assistance (the "Application") that the Agency consider undertaking a project (the "Project") that consists of the following:

(A)(1) the acquisition of an interest in an approximately 0.5 acre parcel of land located at 3689 Webster Road, Fredonia, Town of Pomfret, County of Chautauqua, New York (the "Land"), (2) the construction of an approximately 19,999 square foot addition to an existing approximately 23,000 square foot building (collectively, the "Building" and together with the Land, collectively, the "Facility"), together with related improvements to the Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the "Equipment") necessary for the completion thereof (collectively, the "Project Facility"), all of the foregoing for use by the Applicant and/or its affiliates as an inventory and heavy equipment storage facility; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes, mortgage recording taxes and sales and use taxes

(collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity(ies) as may be designated by the Applicant and agreed upon by the Agency.

The Project Facility would be initially owned, operated and/or managed by the Applicant or such other entity(ies) as may be designated by the Applicant and agreed upon by the Agency.

Subject to applicable law, copies of the Application, including an analysis of the costs and benefits of the Project, are available for review by the public online at www.ccida.com, or at the offices of the Agency located at 201 West Third Street, Suite 115, Jamestown, NY 14701 and 214 Central Avenue, Suite 124, Dunkirk, NY 14048 by appointment. To schedule an appointment, or for additional assistance, contact the Agency at (716)661-8900.

Dated: September 3, 2019

COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

Mark Geise

Administrative Director/CEO

EXHIBIT C

AFFIDAVIT OF PUBLICATION

NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that the County of

Chautauqua: Industrial Development Agency (the "Agency"), will hold a public nearing on September 19, 2019 at 10:00 am, local time; at Town of Pomfret Offices, 9 Day Street, Fredonia, Town of Pomfret, County of Chautauqua, New York, pursuant to Section 855-a of the General Municipal Law, as amended (the "Act"). The purpose, of the public hearing is to provide an opportunity for all interested parties to present their views with respect to the "Project." (as defined below) both orally and in writing. A representative of the Agency will accept any comments that are made either orally or in writing at the above-stated place and time and provide a reasonable summary of the same to the

mary of the same to the Agency's members. S. St. George Enterprises, inc. (the "Applicant") requested by application for inancial: assistance (the "Application") that he Agency consider undertaking a project (the "Project") that consists of

(A)(1) the acquisition of an interest in an approximately 70 acre parcel of land located at 3689 Webster Road, Fredonia, Town of Pomfret, County of Chautauqua, New York (the "Land"), (2) the construction of an approximately 19,999 square foot addition to an existing approximately 23,000 square foot building (collectively, the "Building" and together with the Land; and collectively, the "Facility" together with related improvements to the Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment"), necessary for the completion thereof

for the completion thereof (collectively, the "Project Facility"), all of the foregoing for use by the Applicant and/or its affiliates as an inventory and heavy equipment storage facility; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or spartial exemptions from real property taxes, mortgage recording taxes and sales and use taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), ilcense or sale of the Project Facility to the Applicant or suich other entity(ies) as may be designated by the Applicant and agreed upon by the Agency.

the Agency.

The Project Facility would be initially owned; operated and/or managed by the Applicant or such other entity(les) as may be designated by the Applicant, and agreed upon by the Agency.

2019 COUNTY OF CHAUTAUGUA! NDUSTRIAL DEVELOPMENT AGENCY

By: Mark Geise Administrative Director/CEO O-165785 September 10, 2019-Adv.

AFFIDAVIT OF PUBLICATION

State of New York

County of Chautaugua

City of Dunkirk

Sheila McWillson, being duly sworn, deposes and says that she is the Principal Clerk, for Ogden Newspapers of New York Inc. the publisher of The OBSERVER, a daily newspaper published in the City of Dunkirk, Chautauqua County, State of New York, and that a notice of which the annexed is a printed copy, was inserted and published in said newspaper on the following dates

September 10, 2019

Signed Mousilan Mousilan Sheila McWillson

Signed before me this 10th day of September 2019

Notary Public (

BARBARA J. MUSSO
Notary Public, State of New York
Qualified in Chautauqua County
My Commission Expires

SEP 1 8 2019

EXHIBIT D REPORT OF PUBLIC HEARING

PUBLIC HEARING

TOWN OF POMFRET, TOWN OF POMFRET

OFFICES

9 DAY ST.

FREDONIA, NY 14063

10:00AM

S. ST. GEORGE ENTERPRISES, INC.

Attendance:

Linda Burns, CCIDA Project Manager

Rosie Strandburg, CCIDA Executive Assistant

Dan Pacos, Pomfret resident and member of the Pomfret Planning Board

Donald Steger, Town of Pomfret Supervisor

HEARING OFFICER: Hello. My name is Linda Burns. I am a Business Development Manager at the County of Chautauqua Industrial Development Agency (the "Agency").

Accompanying me today is Rosie Strandburg from the CCIDA in Jamestown, Office Manager for the Agency.

Members of the Agency authorized me to hold this public hearing pursuant to section 859-a of the New York General Municipal Law, as amended. Today is September 19, 2019 and the time is now 10:00 a.m. We are at the Town of Pomfret Offices, 9 Day Street, Fredonia, Town of Pomfret, County of Chautauqua, New York.

This is a public hearing pursuant to Section 859-a of the New York General Municipal Law, as amended. The Agency has received an application for financial assistance in connection with the following matter:

S. St. George Enterprises, Inc. (the "Applicant") requested by application for financial assistance (the "Application") that the Agency consider undertaking a project (the "Project") that consists of the following: (A)(1) the acquisition of an interest in an approximately 70 acre parcel of land located at 3689 Webster Road, Fredonia, Town of Pomfret, County of Chautauqua, New York (the "Land"), (2) the construction of an approximately 19,999 square foot addition to an existing approximately 23,000 square foot building (collectively, the "Building" and together with the Land, collectively, the "Facility"), together with related improvements to the Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the "Equipment") necessary for the completion thereof (collectively, the "Project Facility"), all of the foregoing for use by the Applicant and/or its affiliates as an inventory and heavy equipment storage facility; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial

exemptions from real property taxes, mortgage recording taxes and sales and use taxes; and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity(ies) as may be designated by the Applicant and agreed upon by the Agency.

The Project Facility would be initially owned, operated and/or managed by the Applicant or such other entity or entities as may be designated by the Applicant and agreed upon by the Agency.

The Applicant (or such other designated entity or entities) would receive financial assistance from the Agency in the form of potential exemptions or partial exemptions from real property taxes, mortgage recording taxes and sales and use taxes (hereinafter, collectively, the "Financial Assistance").

Copies of the Application, including an analysis of the costs and benefits of the Project, are available for review by the public online at www.ccida.com, or at the offices of the Agency by appointment.

The purpose of this hearing is to provide an opportunity for all interested parties from the public to present their views, both orally and in writing, with respect to the Agency's involvement in this Project and the Financial Assistance proposed in the Application. I am here collecting comments on behalf of the Agency, not the Applicant. I cannot address any of the specifics of the Project itself; that is the responsibility of the Applicant. During the course of this public hearing, the Agency will be unable to respond to comments or questions. The Agency will, however, transcribe all of the comments made by those interested in the Agency's proposed involvement with the Project and the Financial Assistance proposed in the Application and provide that transcription to the Agency's members.

Notice of this public hearing was mailed to the Chief Executive Officer of each affected tax jurisdiction on September 3, 2019 and published in the *Observer* on September 10, 2019.

Is there anyone wishing to be heard with respect to the Project or the Financial Assistance

proposed in the Application?

Dan Pacos: As far the exemptions proposed, that would be on real property taxes and only the

addition?

Hearing Officer: Correct

Dan Pacos: As far as the sales and use taxes, is that for materials purchased for the addition and

the furniture and equipment, I'm assuming that would be the county portion of sales tax?

Hearing Officer: It is for the 8% tax, so it is including NY State and it is for the addition.

Dan Pacos: Do you have a site plan for the project that would show what they are proposing to

do?

Hearing Officer: We have renderings on our website of the addition that you can view.

Dan Pacos: What is that website?

Hearing Officer: www.CCIDA.com

Don Steger: Will you be entering in to a PILOT agreement?

Hearing Officer: We will.

Don Steger: Will the Town have any input in the PILOT?

Hearing Officer: The Town can make comment orally or in writing, we are also recording this

today. Any comments, orally or in writing, will be presented to our Board of Directors next

Tuesday. You are welcome to come to the Board meeting or present any questions or comments

prior to that.

Don Steger: Is there any predicted term of the PILOT?

Hearing Officer: Standard 10 year PILOT.

Dan Pacos: Ordinarily what I have seen are a certain percentages are exempted, maybe is starts with a 90% exemption and trickles down to zero. Do you know what that schedule would look like?

Hearing Officer: Yes and that is posted on our website as well. It is over 10 years and it does start at 90% and at the end goes down to zero. It is roughly 75% benefit over the 10 years.

Dan Pacos: Do you have any estimate what the full assessment on the addition would be?

Hearing Officer: We don't. Typically what we use is the cost of the project as the estimate of what the increase in assessment would be.

HEARING OFFICER: On behalf of the Agency, I would like to thank the members of the public for attending this public hearing and for their comments with respect to the Agency's proposed involvement with the Project and the Financial Assistance proposed in the Application. It is now 10:08 a.m. I now call this hearing to a close.

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EXHIBIT E SEQR RESOLUTION

S. ST. GEORGE ENTERPRISES, INC. COMPANY GENERAL CERTIFICATE

This certificate is made in connection with the execution by S. St. George Enterprises, Inc. (the "Company") of the Agency Lease (as hereinafter defined) and the other Transaction Documents (as defined in the Agency Lease) in connection with the undertaking by the County of Chautauqua Industrial Development Agency (the "Agency"), a public benefit corporation created pursuant to 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"), of a project (the "Project") consisting of the following: (A)(1) the acquisition of an interest in an approximately 70 acre parcel of land located at 3689 Webster Road, Fredonia, Town of Pomfret, County of Chautauqua, New York (the "Land"), (2) the construction of an approximately 19,999 square foot addition to an existing approximately 23,000 square foot building (collectively, the "Building" and together with the Land, collectively, the "Facility"), together with related improvements to the Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the "Equipment") necessary for the completion thereof (collectively, the "Project Facility"), all of the foregoing for use by the Company and/or its affiliates as an inventory and heavy equipment storage facility; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes and sales and use taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency.

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agency Lease Agreement (Uniform Project Agreement) dated as of November 1, 2019 (the "Project Agreement") between the Company and the Agency except that, for purposes of this certificate, (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this certificate and not as of any future date, and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

THE UNDERSIGNED, AS SECRETARY OF THE COMPANY, HEREBY CERTIFIES AS FOLLOWS:

- 1. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of New York.
- 2. The Transaction Documents have been duly authorized, executed and delivered by the Company and have not been amended, modified or rescinded, remain in full force and effect and are the binding and enforceable obligations of the Company enforceable in accordance with their terms except as such enforceability may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally.

accordance with their terms except as such enforceability may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally.

- 3. No Event of Default specified in any of the Transaction Documents has occurred and no event which with notice or lapse of time or both would become such an Event of Default has occurred and is continuing.
- 4. The Company has complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied by the terms of the Transaction Documents at or prior to the Closing Date.
- 5. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before any court, public board or body pending or, to our knowledge, threatened against or affecting the Company wherein an unfavorable decision, ruling or finding would adversely affect (A) the validity or the enforceability of the Transaction Documents or the transactions contemplated therein, or (B) the existence or organization of the Company.
- 6. Attached hereto as <u>Exhibit A</u> is a true, correct and complete copy of the Certificate of Incorporation, as amended, of the Company, which Certificate in full force and effect on and as of the Closing Date, without modification or amendment in any respect.
- 7. Attached hereto as Exhibit B is a true, correct and complete copy of the By-Laws of the Company, which By-Laws are in full force and effect on and as of the Closing Date, without modification or amendment in any respect.
- 8. Attached hereto as <u>Exhibit C</u> is a true, correct and complete copy of the Unanimous Written Consent in Lieu of Resolutions of the Directors of the Company authorizing the execution, delivery and performance of the Agency Lease and the other Transaction Documents.
- 9. Attached hereto as Exhibit D is a true, correct and complete copy of the New York Secretary of State of New York certificate of good standing, which reflects that the Company is in good standing in the State of New York.
- 10. Attached hereto as <u>Exhibit E</u> is a true, correct and complete copy of the Franchise Tax Report from the New York Department of Taxation and Finance, which reflects that the Company owes no franchise taxes, reports or returns.
- As of the Closing Date, there has been no material adverse change in the business, condition, property or prospects (financial or otherwise) of the Company since the date of the Company's application to the Agency.

IN WITNESS WHEREOF, I have hereunto set my signature on behalf of the Company as of this <u>7</u> day of November, 2019.

S. ST. GEORGE ENTERPRISES, INC.

By: Mame: Steven St. George

Title: Secretary

EXHIBIT A CERTIFICATE OF INCORPORATION

CERTIFICATE OF INCORPORATION

s. St. GEORGE ENTERPRISES, INC. UNDER SECTION 402 OF THE BUSINESS CORPORATION LAW

1212

I, the undersigned, being of the age of twenty-one years or over, acting as sole incorporator of a corporation under the New York Business Corporation Law, do hereby adopt the following certificate of incorporation for such corporation:

ARTICLE I CORPORATE NAME.

The name of the corporation is S. ST, GEORGE ENTERPRISES, INC.

ARTICLE II CORPORATE PURPOSE

The purpose for which it is formed is:

(a) To engage in the business of a gasoline service station. To import, buy, or otherwise acquire, own, hold, use, export, sell, or otherwise dispose of, gasoline, kerosene, lubricating oils and greases, antifreezes, tires, batteries, and all other supplies and accessories necessary or convenient for servicing automobiles and other vehicles and automotive equipment, and generally to do all things customarily done by gasoline service stations, including, without limitation, servicing, repairing, lubricating, washing, waxing, and polishing automobiles and other vehicles.

To sell gasoline for use by all motor vehicles.

(b) To take, buy, exchange, lease or otherwise acquire real estate and interests therein, and to hold, own, operate, control, maintain, rent out, manage and control directly, or through ownership of stock in any other corporation and any and all kinds of buildings, stores, offices, warehouses, mills, shops, factories, machinery and plants, and any and all other structures and erections which may at any time be necessary, useful or advantageous for the purpose of this corporation.

Law Offices

PELLETTER, McKELVEY

& PELLETTER

271 Central Avenue

Silver Creek, N.T. 14136

716 - 934-2600

- (c) To sell, assign and transfer, convey, lease or otherwise alienate or dispose of, and to mortgage or otherwise encumber the lands, buildings, real and personal property the corporation wherever situated, and any and all legal and equitable interests therein.
- (d) To purchase, sell at wholesale and retail, lease, manufacture, deal in and deal with every kind of goods, wares, and merchandise, and every kind of personal property, including patents and patent rights, chattels, easements, privileges and franchises which may lawfully be purchased, sold, produced or dealt in by corporations formed under the Business Corporation Law of the State of New York.
- (e) To purchase, acquire, hold and dispose of the stock, bonds, and other evidences of indebtedness of any corporation, domestic or foreign, and to issue in exchange therefor its stocks, bonds or other obligations, and to exercise in respect thereof all the rights, powers, and privileges of individual owners, including the right to vote thereon; and to aid in any manner permitted by law any corporation of which any bonds or other securities or evidences of indebtedness or stocks are held by this corporation, and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds or other securities or evidences of indebtedness or stock.
- objects and powers in furtherence and not in limitation of the general powers conferred by the laws of the State of New York. and it is hereby expressly provided that the foregoing and following enumeration of specific powers shall not be held to limit or restrict in any manner the powers of this corporation, and that this corporation may do all and everything necessary suitable or proper for the accomplishment of any of the purposes or objects.

Law Offices

PELLETTER, MCKELVE-& PELLETTER 271 Central Avenue Silver Creek, N.Y. 1413 716-934-2600

Page 2

hereinabove enumerated either alone or in association with other corporations, firms, or individuals, to the same extent and as fully as individuals might or could do as principals, agents, contractors, or otherwise.

ARTICLE III CORPORATE OFFICES

The office of the corporation is to be licated at 80 Water Street, Fredonia, Chautauqua County, New York 14063.

ARTICLE IV CAPITALIZATION

The total number of shares that may be issued is 200, all of which are to be without par value.

ARTICLE V DESIGNATION OF AGENT FOR PROCESS

The Secretary of State is designated as the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process served against the corporation is 80 Water Street, Fredonia, New York 14063.

ARTICLE VI DURATION OF CORPORATION

The duration of this corporation is to be perpetual:

IN WITNESS WHEREOF, I have made, subscribed, and acknowledged this - certificate this 20th day of June, 1987.

STEVEN ST. GEORĜE. 311 Water Street Fredonia, New York 14063

STATE OF NEW YORK COUNTY OF CHAUTAUQUA)

On this 20th day of June, 1987, before me, personally appeared the subscriber, STEVEN ST. GEORGE, known to me to be the same person described in and who executed the within instrument, and he acknowledged to me that he

Thomas H. McKelvey

Notary Public

Page 3

Law Offices PELLETTER, MCKELVEY A PELLETTER

271 Central Avenue liver Creek, N.Y 14138 716 - 934-2600

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EXHIBIT B

BY-LAWS

BYLAWS

OF

S. ST. GEORGE ENTERPRISES, INC.

ARTICLE I

SHAREHOLDERS

1. Annual Meeting

A meeting of the shareholders shall be held annually for the election of directors and the transaction of other business on such date in each year as may be determined by the Board of Directors, but in no event later than 100 days after the anniversary of the date of incorporation of the Corporation.

2. Special Meetings

Special meetings of the shareholders may be called by the Board of Directors, Chairman of the Board or President and shall be called by the Board upon the written request of the holders of record of a majority of the outstanding shares of the Corporation entitled to vote at the meeting requested to be called. Such request shall state the purpose or purposes of the proposed meeting. At such special meetings the only business which may be transacted is that relating to the purpose or purposes set forth in the notice thereof.

3. Place of Meetings

Meetings of the shareholders shall be held at such place within or outside of the State of New York as may be fixed by the Board of Directors. If no place is so fixed, such meetings shall be held at the principal office of the Corporation.

4. Notice of Meetings

Notice of each meeting of the shareholders shall be given in writing and shall state the place, date and hour of the meeting and the purpose or purposes for which the meeting is

called. Notice of a special meeting shall indicate that it is being issued by or at the direction of the person or persons calling or requesting the meeting.

If, at any meeting, action is proposed to be taken which, if taken, would entitle objecting shareholders to receive payment for their shares, the notice shall include a statement of that purpose and to that effect.

A copy of the notice of each meeting shall be given, personally or by first class mail, not less than ten nor more than sixty days before the date of the meeting, to each shareholder entitled to vote at such meeting. If mailed, such notice shall be deemed to have been given when deposited in the United States mail, with postage thereon prepaid, directed to the shareholder at such shareholder's address as it appears on the record of the shareholders, or, if the shareholder shall have filed with the Secretary of the Corporation a written request that notices to the shareholder be mailed to some other address, then directed to the shareholder at such other address.

When a meeting is adjourned to another time or place, it shall not be necessary to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken. At the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. However, if after the adjournment the Board of Directors fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record on the new record date entitled to notice under this Section 4.

5. Waiver of Notice

Notice of a meeting need not be given to any shareholder who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any shareholder at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by such .

6. Inspectors of Election

The Board of Directors, in advance of any shareholders' meeting, may appoint one or more inspectors to act at the meeting or any adjournment thereof. If inspectors are not so appointed, the person presiding at a shareholders' meeting may, and on the request of any shareholder entitled to vote thereat shall, appoint two inspectors. In case any person appointed fails to appear or act, the vacancy may be filled by appointment in advance of the meeting by the Board or at the meeting by the person presiding thereat. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of such inspector at such meeting with strict impartiality and according to the best of his or her ability.

The inspectors shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, and the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote at the meeting, count and tabulate all votes, ballots or consents, determine the result thereof, and do such acts as are proper to conduct the election or vote with fairness to all shareholders. On request of the person presiding at the meeting, or of any shareholder entitled to vote thereat, the inspectors shall make a report in writing of any challenge, question or matter determined by them and shall execute a certificate of any fact found by them. Any report or certificate made by them shall be prima facie evidence of the facts stated and of any vote certified by them.

7. List of Shareholders at Meetings

A list of the shareholders as of the record date, certified by the Secretary or any Assistant Secretary or by a transfer agent, shall be produced at any meeting of the shareholders upon the request thereat or prior thereto of any shareholder. If the right to vote at any meeting is challenged, the inspectors of election, or the person presiding thereat, shall require such list of the shareholders to be produced as evidence of the right of the persons challenged to vote at such meeting, and all persons who appear from such list to be shareholders entitled to vote thereat may vote at such meeting.

8. Qualification of Voters

Unless otherwise provided in the Certificate of Incorporation, every shareholder of record shall be entitled at every meeting of the shareholders to one vote for every share standing in its name on the record of the shareholders.

Treasury shares as of the record date and shares held as of the record date by another domestic or foreign corporation of any kind, if a majority of the shares entitled to vote in the election of directors of such other corporation is held as of the record date by the Corporation, shall not be shares entitled to vote or to be counted in determining the total number of outstanding shares.

Shares held by an administrator, executor, guardian, conservator, committee or other fiduciary, other than a trustee, may be voted by such fiduciary, either in person or by proxy, without the transfer of such shares into the name of such fiduciary. Shares held by a trustee may be voted by the trustee, either in person or by proxy, only after the shares have been transferred into the name of the trustee or into the name of the trustee's nominee.

Shares standing in the name of another domestic or foreign corporation of any type or kind may be voted by such officer, agent or proxy as the bylaws of such corporation may provide, or, in the absence of such provision, as the board of directors of such corporation may determine.

No shareholder shall sell his or her vote, or issue a proxy to vote, to any person for any sum of money or anything of value except as permitted by law.

9. Quorum of Shareholders

The holders of a majority of the shares of the Corporation issued and outstanding and entitled to vote at any meeting of the shareholders shall constitute a quorum at such meeting for the transaction of any business, provided that when a specified item of business is required to be voted on by a class or series, voting as a class, the holders of a majority of the shares of such class or series shall constitute a quorum for the transaction of such specified item of business.

When a quorum is once present to organize a meeting, it is not broken by the subsequent withdrawal of any shareholders.

The shareholders who are present in person or by proxy and who are entitled to vote may, by a majority of votes cast, adjourn the meeting despite the absence of a quorum.

10. Proxies

Every shareholder entitled to vote at a meeting of the shareholders, or to express consent or dissent without a meeting, may authorize another person or persons to act for the shareholder by proxy.

Every proxy must be signed by the shareholder or its attorney. No proxy shall be valid after the expiration of eleven months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the shareholder executing it, except as otherwise provided by law.

The authority of the holder of a proxy to act shall not be revoked by the incompetence or death of the shareholder who executed the proxy, unless before the authority is exercised written notice of an adjudication of such incompetence or of such death is received by the Secretary or any Assistant Secretary.

11. Vote or Consent of Shareholders

Directors, except as otherwise required by law, shall be elected by a plurality of the votes cast at a meeting of shareholders by the holders of shares entitled to vote in the election.

Whenever any corporate action, other than the election of directors, is to be taken by vote of the shareholders, it shall, except as otherwise required by law, be authorized by a majority of the votes cast at a meeting of shareholders by the holders of shares entitled to vote thereon.

Whenever shareholders are required or permitted to take any action by vote, such action may be taken without a meeting on written consent, setting forth the action so taken, signed by the holders of all outstanding shares entitled to vote thereon. Written consent thus given by the holders of all

outstanding shares entitled to vote shall have the same effect as an unanimous vote of shareholders.

12. Fixing the Record Date

For the purpose of determining the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or to express consent to or dissent from any proposal without a meeting, or for the purpose of determining shareholders entitled to receive payment of any dividend or the allotment of any rights, or for the purpose of any other action, the Board of Directors may fix, in advance, a date as the record date for any such determination of shareholders. Such date shall not be less than ten nor more than sixty days before the date of such meeting, nor more than sixty days prior to any other action.

When a determination of shareholders of record entitled to notice of or to vote at any meeting of shareholders has been made as provided in this Section, such determination shall apply to any adjournment thereof, unless the Board of Directors fixes a new record date for the adjourned meeting.

ARTICLE II

BOARD OF DIRECTORS

1. Power of Board and Qualification of Directors

The business of the Corporation shall be managed by the Board of Directors. Each director shall be at least eighteen years of age.

2. Number of Directors

The number of directors constituting the entire Board of Directors shall be the number, not less than one nor more than ten, fixed from time to time by a majority of the total number of directors which the Corporation would have, prior to any increase or decrease, if there were no vacancies, provided, however, that no decrease shall shorten the term of an incumbent director. Until otherwise fixed by the directors, the number of directors constituting the entire Board shall be one.

3. Election and Term of Directors

At each annual meeting of shareholders, directors shall be elected to hold office until the next annual meeting and until their successors have been elected and qualified or until their death, resignation or removal in the manner hereinafter provided.

4. Quorum of Directors and Action by the Board

A majority of the entire Board of Directors shall constitute a quorum for the transaction of business, and, except where otherwise provided herein, the vote of a majority of the directors present at a meeting at the time of such vote, if a quorum is then present, shall be the act of the Board.

Any action required or permitted to be taken by the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board or the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consent thereto by the members of the Board or committee shall be filed with the minutes of the proceedings of the Board or committee.

5. Meetings of the Board

An annual meeting of the Board of Directors shall be held in each year directly after the annual meeting of shareholders. Regular meetings of the Board shall be held at such times as may be fixed by the Board. Special meetings of the Board may be held at any time upon the call of the President or any two directors.

Meetings of the Board of Directors shall be held at such places as may be fixed by the Board for annual and regular meetings and in the notice of meeting for special meetings. If no place is so fixed, meetings of the Board shall be held at the principal office of the Corporation. Any one or more members of the Board of Directors may participate in meetings by means of a conference telephone or similar communications equipment.

No notice need be given of annual or regular meetings of the Board of Directors. Notice of each special meeting of the Board shall be given to each director either by mail not

later than noon, New York time, on the third day prior to the meeting or by telegram, written message or orally not later than noon, New York time, on the day prior to the meeting. Notices are deemed to have been properly given if given: by mail, when deposited in the United States mail; by telegram at the time of filing; or by messenger at the time of delivery. Notices by mail, telegram or messenger shall be sent to each director at the address designated by the director for that purpose, or, if none has been so designated, at the last known residence or business address of the director.

Notice of a meeting of the Board of Directors need not be given to any director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to any director.

A notice, or waiver of notice, need not specify the purpose of any meeting of the Board of Directors.

A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of any adjournment of a meeting to another time or place shall be given, in the manner described above, to the directors who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other directors.

6. Resignations

Any director of the Corporation may resign at any time by giving written notice to the Board of Directors or to the President or to the Secretary of the Corporation. Such resignation shall take effect at the time specified therein; and unless otherwise specified therein the acceptance of such resignation shall not be necessary to make it effective.

7. Removal of Directors

Any one or more of the directors may be removed for cause by action of the Board of Directors. Any or all of the directors may be removed with or without cause by vote of the shareholders.

8. Newly Created Directorships and Vacancies

Newly created directorships resulting from an increase in the number of directors and vacancies occurring in the Board of Directors for any reason except the removal of directors by shareholders may be filled by vote of a majority of the directors then in office, although less than a quorum exists. Vacancies occurring as a result of the removal of directors by shareholders shall be filled by the shareholder. A director elected to fill a vacancy shall be elected to hold office for the unexpired term of his or her predecessor.

9. Executive and Other Committees of Directors

The Board of Directors, by resolution adopted by a majority of the entire Board, may designate from among its members an executive committee and other committees each consisting of three or more directors and each of which, to the extent provided in the resolution, shall have all the authority of the Board, except that no such committee shall have authority as to the following matters: (a) the submission to shareholders of any action that needs shareholders' approval; (b) the filling of vacancies in the Board or in any committee; (c) the fixing of compensation of the directors for serving on the Board or on any committee; (d) the amendment or repeal of the bylaws, or the adoption of new bylaws; (e) the amendment or repeal of any resolution of the Board which, by its term, shall not be so amendable or repealable; or (f) the removal or indemnification of directors.

The Board of Directors may designate one or more directors as alternate members of any such committee, who may replace any absent member or members at any meeting of such committee.

Unless a greater proportion is required by the resolution designating a committee, a majority of the entire authorized number of members of such committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members present at a meeting at the time of such vote, if a quorum is then present, shall be the act of such committee.

Each such committee shall serve at the pleasure of the Board of Directors.

10. Compensation of Directors

The Board of Directors shall have authority to fix the compensation of directors for services in any capacity.

11. Interest of Directors in a Transaction

Unless shown to be unfair and unreasonable as to the Corporation, no contract or other transaction between the Corporation and one or more of its directors, or between the Corporation and any other corporation, firm, association or other entity in which one or more of the directors are directors or officers, or are financially interested, shall be either void or voidable, irrespective of whether such interested director or directors are present at a meeting of the Board of Directors, or of a committee thereof, which authorizes such contract or transaction and irrespective of whether his, her or their votes are counted for such purpose. In the absence of fraud any such contract and transaction conclusively may be authorized or approved as fair and reasonable by: (a) the Board of Directors or a duly empowered committee thereof, by a vote sufficient for such purpose without counting the vote or votes interested director or directors (although such interested director or directors may be counted in determining the presence of a quorum at the meeting which authorizes such contract or transaction), if the fact of such common directorship, officership or financial interest is disclosed or known to the Board or committee, as the case may be; or (b) the shareholders entitled to vote for the election of directors, if such common directorship, officership or financial interest is disclosed or known to such shareholders.

Notwithstanding the foregoing, no loan, except advances in connection with indemnification, shall be made by the Corporation to any director unless it is authorized by vote of the shareholders without counting any shares of the director who would be the borrower or unless the director who would be the borrower is the sole shareholder of the Corporation.

ARTICLE III

OFFICERS

1. Election of Officers

The Board of Directors, as soon as may be practicable after the annual election of directors, shall elect a President, a Secretary, and a Treasurer, and from time to time may elect or appoint such other officers as it may determine. Any two or more offices may be held by the same person. The Board of Directors may also elect one or more Vice Presidents, Assistant Secretaries and Assistant Treasurers.

2. Other Officers

The Board of Directors may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

3. Compensation

The salaries of all officers and agents of the Corporation shall be fixed by the Board of Directors.

4. Term of Office and Removal

Each officer shall hold office for the term for which such officer is elected or appointed, and until a successor has been elected or appointed and qualified. Unless otherwise provided in the resolution of the Board of Directors electing or appointing an officer, the term of office shall extend to and expire at the meeting of the Board following the next annual meeting of shareholders. Any officer may be removed by the Board with or without cause, at any time. Removal of an officer without cause shall be without prejudice to the officer's contract rights, if any, and the election or appointment of an officer shall not of itself create contract rights.

5. President

The President shall be the chief executive officer of the Corporation, shall have general and active management of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. The President shall also preside at all meetings of the shareholders and the Board of Directors.

The President shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation.

6. Vice Presidents

The Vice Presidents, in the order designated by the Board of Directors, or in the absence of any designation, then in the order of their election, during the absence or disability of or refusal to act by the President, shall perform the duties and exercise the powers of the President and shall perform such other duties as the Board of Directors shall prescribe.

7. Secretary and Assistant Secretaries

The Secretary shall attend all meetings of the Board of Directors and all meetings of the shareholders and record all the proceedings of the meetings of the Corporation and of the Board of Directors in a book to be kept for that purpose, and shall perform like duties for the standing committees when required. The Secretary shall give or cause to be given, notice of all meetings of the shareholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or President, under whose supervision the Secretary shall be. The Secretary shall have custody of the corporate seal of the Corporation and the Secretary, or an Assistant Secretary, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the Secretary's signature or by the signature of such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by such officer's signature.

The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order designated by the Board of Directors, or in the absence of such designation then in the order of their election, in the absence of the Secretary or in the event of the Secretary's inability or refusal to act, shall

perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

8. Treasurer and Assistant Treasurers

The Treasurer shall have the custody of the corporate funds and securities; shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation; and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors.

The Treasurer shall disburse the funds as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his or her transactions as Treasurer and of the financial condition of the Corporation.

If required by the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office of Treasurer, and for the restoration to the Corporation, in the case of the Treasurer's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in the possession or under the control of the Treasurer belonging to the Corporation.

The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order designated by the Board of Directors, or in the absence of such designation, then in the order of their election, in the absence of the Treasurer or in the event of the Treasurer's inability or refusal to act, shall perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

9. Books and Records

The Corporation shall keep: (a) correct and complete books and records of account; (b) minutes of the proceedings of

the shareholders, Board of Directors and any committees of directors; and (c) a current list of the directors and officers and their residence addresses. The Corporation shall also keep at its office in the State of New York or at the office of its transfer agent or registrar in the State of New York, if any, a record containing the names and addresses of all shareholders, the number and class of shares held by each and the dates when they respectively became the owners of record thereof.

The Board of Directors may determine whether and to what extent and at what times and places and under what conditions and regulations any accounts, books, records or other documents of the Corporation shall be open to inspection, and no creditor, security holder or other person shall have any right to inspect any accounts, books, records or other documents of the Corporation except as conferred by statute or as so authorized by the Board.

10. Checks, Notes, etc.

All checks and drafts on, and withdrawals from the Corporation's accounts with banks or other financial institutions, and all bills of exchange, notes and other instruments for the payment of money, drawn, made, endorsed, or accepted by the Corporation, shall be signed on its behalf by the person or persons thereunto authorized by, or pursuant to resolution of, the Board of Directors.

ARTICLE IV

CERTIFICATES AND TRANSFERS OF SHARES

1. Forms of Share Certificates

The share of the Corporation shall be represented by certificates, in such forms as the Board of Directors may prescribe, signed by the President or a Vice President and the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer. The shares may be sealed with the seal of the Corporation or a facsimile thereof. The signatures of the officers upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent or registered by a registrar other than the Corporation or its employee. In case any officer who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer

before such certificate is issued, it may be issued by the Corporation with the same effect as if such officer were in office at the date of issue.

Each certificate representing shares issued by the Corporation shall set forth upon the face or back of the certificate, or shall state that the Corporation will furnish to any shareholder upon request and without charge, a full statement of the designation, relative rights, preferences and limitations of the shares of each class of shares, if more than one, authorized to be issued and the designation, relative rights, preferences and limitations of each series of any class of preferred shares authorized to be issued so far as the same have been fixed, and the authority of the Board of Directors to designate and fix the relative rights, preferences and limitations of other series.

Each certificate representing shares shall state upon the face thereof: (a) that the Corporation is formed under the laws of the State of New York; (b) the name of the person or persons to whom issued; and (c) the number and class of shares, and the designation of the series, if any, which such certificate represents.

2. Transfers of Shares

Shares of the Corporation shall be transferable on the record of shareholders upon presentment to the Corporation of a transfer agent of a certificate or certificates representing the shares requested to be transferred, with proper endorsement on the certificate or on a separate accompanying document, together with such evidence of the payment of transfer taxes and compliance with other provisions of law as the Corporation or its transfer agent may require.

3. Lost, Stolen or Destroyed Share Certificates

No certificate for shares of the Corporation shall be issued in place of any certificate alleged to have been lost, destroyed or wrongfully taken, except, if and to the extent required by the Board of Directors upon: (a) production of evidence of loss, destruction or wrongful taking; (b) delivery of a bond indemnifying the Corporation and its agents against any claim that may be made against it or them on account of the alleged loss, destruction or wrongful taking of the replaced

certificate or the issuance of the new certificate; (c) payment of the expenses of the Corporation and its agents incurred in connection with the issuance of the new certificate; and (d) compliance with other such reasonable requirements as may be imposed.

ARTICLE V

OTHER MATTERS

1. Corporate Seal

The Board of Directors may adopt a corporate seal, alter such seal at pleasure, and authorize it to be used by causing it or a facsimile to be affixed or impressed or reproduced in any other manner.

2. Fiscal Year

The fiscal year of the Corporation shall be the twelve months ending December 31st, or such other period as may be fixed by the Board of Directors.

3. Amendments

Bylaws of the Corporation may be adopted, amended or repealed by vote of the holders of the shares at the time entitled to vote in the election of any directors. Bylaws may also be adopted, amended or repealed by the Board of Directors, but any bylaws adopted by the Board may be amended or repealed by the shareholders entitled to vote thereon as herein above provided.

If any bylaw regulating an impending election of directors is adopted, amended or repealed by the Board of Directors, there shall be set forth in the notice of the next meeting of shareholders for the election of directors the bylaw so adopted, amended or repealed, together with a concise statement of the changes made.

EXHIBIT C RESOLUTIONS OF DIRECTORS

S. ST. GEORGE ENTERPRISES, INC.

(a New York corporation)

<u>Unanimous Written Consent of Directors</u> in Lieu of Meeting

The undersigned, being all-the Directorssole Director of S. ST. GEORGE ENTERPRISES, INC., a New York corporation (the "Company"), DODOES HEREBY CONSENT to the taking of the following action in lieu of a meeting of the Board of Directors thereof, and DODOES HEREBY ADOPT the following resolutions by unanimous written consent pursuant to Section 708(b) of the Business Corporation Law of the State of New York:

WHEREAS, the Company submitted an application for financial assistance (the "Application") to the County of Chautauqua Industrial Development Agency (the "Agency"), which Application requested that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the acquisition of an interest in an approximately 70 acre parcel of land located at 3689 Webster Road, Fredonia, Town of Pomfret, County of Chautauqua, New York (the "Land"), (2) the construction of an approximately 19,999 square foot addition to an existing approximately 23,000 square foot building (collectively, the "Building" and together with the Land, collectively, the "Facility"), together with related improvements to the Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the "Equipment") necessary for the completion thereof (collectively, the "Project Facility"), all of the foregoing for use by the Company and/or its affiliates as an inventory and heavy equipment storage facility; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes, mortgage recording taxes and sales and use taxes; and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency;

NOW, THEREFORE, it is

RESOLVED, that the Company is hereby authorized to enter into a "straight lease" transaction with the Agency for the Project; and it is further

RESOLVED, that any officer of the Company, including, without limitation, the President of the Company, is hereby authorized and directed to execute and deliver, on behalf of the Company, an agency lease agreement, installment sale agreement or other form of project agreement, a payment in lieu of taxes agreement, and any and all certificates, documents, instruments and agreements related thereto or contemplated thereby, on such terms and conditions as the officer executing the same deems necessary or appropriate, such determination to be conclusively evidenced by his or her execution and delivery of the same; and it is further

RESOLVED, that any officer of the Company, including, without limitation, the President of the Company, is hereby authorized and directed to do and perform or cause to be done and performed all such acts, deeds and things, and to make, execute and deliver, or cause to be made, executed and delivered, all such agreements, undertakings, documents, instruments and certificates in the name or on behalf of the Company, as such officer may deem necessary or appropriate to effectuate or carry out fully the purpose and intent of the foregoing resolutions, such determination to be conclusively evidenced by his or her execution and delivery of the same; and it is further

RESOLVED, that the actions of any officer of the Company, including, without limitation, the President of the Company, in connection with acquiring, constructing, renovating, installing and equipping the Project Facility, acquiring or disposing of any interest therein, or any part thereof, or incurring indebtedness with respect thereto heretofore for the account of the Company, or in assigning or pledging any of the Company's property for the payment thereof, or in doing any act authorized by these Resolutions, are hereby ratified, confirmed and approved; and it is further

RESOLVED, that the Secretary of the Company is hereby authorized to certify copies of these Resolutions and affix thereto the seal of the Company, to certify the names of the present officers of the Company, together with specimens of their respective signatures, and to affix the seal of the Company to any document requiring such affixation.

etober, 2019.		

EXHIBIT D NEW YORK CERTIFICATE OF GOOD STANDING

State of New York Department of State } ss:

I hereby certify, that the Certificate of Incorporation of S. ST. GEORGE ENTERPRISES, INC. was filed on 07/15/1987, with perpetual duration, and that a diligent examination has been made of the Corporate index for documents filed with this Department for a certificate, order, or record of a dissolution, and upon such examination, no such certificate, order or record has been found, and that so far as indicated by the records of this Department, such corporation is an existing corporation.



WITNESS my hand and the official seal of the Department of State at the City of Albany, this 01st day of October two thousand and nineteen.

Braden C Hydra

Brendan C Hughes
Executive Deputy Secretary of State

EXHIBIT E FRANCHISE TAX REPORT

Wednesday, October 02, 2019

SN: 423321 RN:

Corporate Tax Search

BILTEKOFF LAW OFFICE LLC.

43 COURT STREET SUITE 930 BUFFALO, NY 14202 Attention:

Articles 9, 9-A, 13, 13-A, 32, and 33.

Reference ID

Corporation name: S. ST. GEORGE ENTERPRISES, INC.

Incorp Date

Filing period

Termination date

Termination type

07/15/1987

December

According to our records, tax liens exist for the periods below.

Franchise tax returns are missing for the period(s) ended:

None

Franchise tax payments are past due for period(s) ended:

None

Other fees due

License fee (Article 9, section 181):

Maintenance fee for period (s) ended:

Lien Provision

The tax shall become a lien on the date the return is required to be filed (without regard to any extension of time for filing the return), except that such tax shall become a lien not later than the date the taxpayer ceases to be subject to the tax or to exercise its franchise or to do business in New York State in a corporate or organized capacity. A dissolved corporation that continues to conduct business shall also be subject to the tax imposed by this article.

Need help?



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

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



Telephone assistance

Corporation Tax Information Center: (518) 485-6027

To order forms and publications:

(518) 457-5431



Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at (518) 485-5082. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.



Department of Taxation and Finance

IDA Appointment of Project Operator or Agent For Sales Tax Purposes

ST-60

The industrial development agency or authority (IDA) **must** submit this form within **30 days** of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

For IDA use only

DA information							
Name of IDA			IDA project number (use OSC numbering system for projects after 1998)				
COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGEN			Y 09	9-24-19-04			
Street address				elephone number			
201 WEST THIRD STREET, SUITE 115			(716) 661-890	0		
City	State	ZIP code	E	mail address (option	al)		
JAMESTOWN	NY	14701					
	tion						
Project operator or agent informa Name of IDA project operator or agent	ition	Mark	an X in the I	box if directly	Employe	r identification or Soci	al Security num
S. ST. GEORGE ENTERPRISES, INC.		appoir	nted by the	IDA:			
Street address			Te	elephone number	1	Primary operato	r or agent?
3689 Webster Road			(716) 672-2488	3	Yes 2	S No L
City	State	ZIP code	E	mail address (optior	ial)		
Fredonia	NY	14063					
Fredoriia	1	11000					
Project information							
Name of project							
2019 St. George Enterprises Project				-			
Street address of project site							
3689 Webster Road					1		
	State	ZIP code	1 5	Email address (optional)			
City			1				
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City Fredonia Purpose of project The acquisition and installation of furnitule heavy equipment storage facility located heavy endings and services intended to be exemple.	NY ure, fixtures, mad at 3689 Webst	chinery and er Road, Fro	equipme redonia, T	use taxes	, County	of Chautauqua,	New York
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New York State Department of Taxation and Finance

New York State Sales and Use Tax

IDA Agent or Project Operator Exempt Purchase Certificate Effective for projects beginning on or after June 1, 2014

Thie	certificate	is not valid	unless a	II entries	have bee	n completed.

Note: To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt

rom tax. See Form FT-123, IDA Agent or Project Operator Exem	Name of agent or project operator					
value of Selies	S. ST. GEORGE ENTERPRISES, INC.					
	Street address	,				
Street address	3689 Webster Road, P.O. Box 34	8				
Tity town or village State ZIP code	City, town, or village	State	ZIP code			
City, town, or village State ZIP code	Fredonia	N	Y 14063			
	Agent or project operator sales tax ID numl	per (see instructions)			
	Agont of project operator					
Mark an X in one: Single-purchase certificate B	lanket-purchase certificate (valid only	for the projec	t listed below)			
o the seller:		415 - 4 415 - 11	24 or agent			
ou must identify the project on each bill and invoice for such pu	rchases and indicate on the bill or invi	oice that the it	JA or agent			
r project operator of the IDA was the purchaser.						
project epotetic transfer						
Project information		_				
certify that I am a duly appointed agent or project operator of the name the following IDA project and that such purchases qualify as exempt fr	d IDA and that I am purchasing the tangiblom sales and use taxes under my agreem	e personal prop ent with the IDA	erty or services for us			
Name of IDA						
COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT A	GENCY		A			
Name of project	IDA projec	ct number (use OS				
2019 ST. GEORGE ENTERPRISES PROJECT		09-24-	19-04			
Street address of project site						
3689 Webster Road		State	ZIP code			
City, town, or village		NY	14063			
Town of Pomfret	Enter the date that agent or project o	perator				
Enter the date that you were appointed agent or			/ 31 / 20			
project operator (mm/dd/yy) 11 / 01 / 1	Status etias (iiiii)					
Exempt purchases						
(Mark an X in boxes that apply)						
A. Tangible personal property or services (other that installed in a qualifying motor vehicle) used to compare the compared to the compar	an utility services and motor vehicles or complete the project, but not to operate	r tangible pers the completed	onal property project			
	s 400 Language alaptricity	rofrigoration	or steam)			
B. Certain utility services (gas, propane in contain	ers of 100 pounds or more, electricity,	reingeration,	or steam,			
used to complete the project, but not to operate	the completed project					
C. Motor vehicle or tangible personal property inst	alled in a qualifying motor vehicle					
statements and issue this exemption certificate with the knowledge that apply to a transaction or transactions for which I tendered this documen may constitute a felony or other crime under New York State Law, punis document is required to be filed with, and delivered to, the vendor as agont the state of the state o	this document provides extended that the trand that willfully issuing this document we hable by a substantial fine and a possible tent for the Tax Department for the purpose of prosecution of offenses. I also	ith the intent to jail sentence. I se of Tax Law so understand the	evade any such tax understand that this ection 1838 and is at the Tax Departmer			
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Certification: I certify that the above statements are true, complete, and statements and issue this exemption certificate with the knowledge that apply to a transaction or transactions for which I tendered this documen may constitute a felony or other crime under New York State Law, punis document is required to be filed with, and delivered to, the vendor as agreemed a document required to be filed with the Tax Department for the is authorized to investigate the validity of tax exclusions or exemptions of Signature of purchaser or purchaser's representative (include title and relationship) Type or print the name, title, and relationship that appear in the signature box Steven St. George, President	this document provides extended that the trand that willfully issuing this document we hable by a substantial fine and a possible tent for the Tax Department for the purpose of prosecution of offenses. I also	ith the intent to jail sentence. I se of Tax Law so understand the	evade any such tax understand that this ection 1838 and is at the Tax Departmen is document.			

Instructions

To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

Agent or project operator sales tax ID number — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter **N/A**.

Industrial development agencies and authorities (IDAs) are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.

Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1 Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, Contractor Exempt Purchase Certificate, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- A. Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- B. Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- C. Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- · A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your Certificate of Authority, if you are required to be registered as a vendor. See TSB-M-09(17)S, Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability, for more information.

To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You **must** identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- · accepted in good faith,
- · in your possession within 90 days of the transaction; and
- · properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

Privacy notification

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

Need help?



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

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

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Sales Tax Information Center:
To order forms and publications:

(518) 485-2889 (518) 457-5431

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

(518) 485-5082

SALES TAX AGENCY AGREEMENT

November 1, 2019

S. St. George Enterprises, Inc. 3689 Webster Road, P.O. Box 348 Fredonia, NY 14063

Re: County of Chautauqua Industrial Development Agency 2019 St. George Enterprises Project

Ladies and Gentlemen:

The County of Chautauqua Industrial Development Agency (the "Agency") and S. St. George Enterprises, Inc. (the "Company") agree as follows:

- 1. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, including the acquisition of property, is exempt from the imposition of any New York State or Chautauqua County sales and use tax. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required.
- 2. Pursuant to a resolution adopted by the Agency on September 24, 2019 (the "Authorizing Resolution") and an Agency Lease Agreement (Uniform Project Agreement), dated as of October 1, 2019 (as amended, modified, supplemented or restated, the "Agency Lease Agreement"), between the Agency and the Company, the Agency has authorized the Company to act as its agent to acquire, construct, renovate, install and equip a commercial facility in Chautauqua County, New York, consisting of: (A)(1) the acquisition of an interest in an approximately 70 acre parcel of land located at 3689 Webster Road, Fredonia, Town of Pomfret, County of Chautauqua, New York (the "Land"), (2) the construction of an approximately 19,999 square foot addition to an existing approximately 23,000 square foot

building (collectively, the "Building" and together with the Land, collectively, the "Facility"), together with related improvements to the Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the "Equipment") necessary for the completion thereof (collectively, the "Project Facility"), all of the foregoing for use by the Company and/or its affiliates as an inventory and heavy equipment storage facility.

3. As agent for the Agency, the Company agrees that each contract, agreement, lease, invoice, bill or purchase order entered into by the Company as agent for the Agency in connection with the acquisition, construction, renovation, installation or equipping of the Project Facility shall include language in substantially the following form:

"This [contract, agreement, lease, invoice, bill or purchase order] is being entered into by S. ST. GEORGE ENTERPRISES, INC. (the "Agent"), as approved agent for and on behalf of the County of Chautauqua Industrial Development Agency (the "Agency") in connection with a certain project (the "Project") of the Agency for S. St. George Enterprises, Inc. (the "Company") consisting in part of the acquisition, construction, renovation, installation and equipping of an inventory and heavy equipment storage facility located at 3689 Webster Road, Fredonia, Town of Pomfret, County of Chautauqua, New York (the "Premises") and the acquisition of certain capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary for the completion of the Project. The capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary for completion of the Project which are the subject of this [contract, agreement, lease, invoice, bill or purchase order] shall be exempt from the sales and use taxes levied by the State of New York and the County of Chautauqua if effected in accordance with the terms and conditions set forth in the attached Sales Tax Agency Agreement of the Agency, and the Agent hereby represents that this [contract, agreement, lease, invoice, bill or purchase order] is in compliance with the terms of the Sales Tax Agency Agreement. This [contract, agreement, lease, invoice, bill or purchase order] is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. execution or acceptance of this [contract, agreement, lease, invoice, bill or purchase order], the [vendor, lessor, licensor, contractor or subcontractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.."

4. The acquisition of capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary for the completion of the Project Facility (collectively, the "Property") shall be exempt from sales and use taxes levied by the State of New York and the County of Chautauqua on the condition that (i) such items of Property are separately identifiable property of the Agency, and

- (ii) each item of Property shall have a useful life of one year or more, and shall solely be for the use of the Company at and in the Project Facility, and for no other entity and at no other location, and shall be effected by and at the sole cost of the Company. The exemption provided pursuant to Section 4.1(E) and 8.11 of the Agency Lease Agreement shall not apply to the acquisition of: (i) inventory, (ii) rolling stock, (iii) any item of personalty having a useful life of less than one (1) year or which shall not constitute a tangible capital asset, (iv) plants, shrubs, trees, flowers, or lawns, (v) fine art or other similar decorative items, or (vi) motor vehicles, including any cars, trucks, vans or buses that are licensed by the Department of Motor Vehicles or other similar agency for use on public highways or streets.
- 5. The Agency shall have no liability or performance obligations under any contract, agreement, lease, invoice, bill or purchase order entered into by the Company, as agent for the Agency pursuant to Sections 4.1(E) and 8.11 of the Agency Lease Agreement, and in the event liability should arise under any such contract, agreement, lease, invoice, bill, or purchase order, the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, lease, invoice, bill or purchase order in any manner and to any extent whatsoever, and the Company shall be the sole party liable thereunder.
- 6. By execution of its acceptance of the terms of this Agreement, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of this Agreement by the Company is and will be strictly for the purposes above stated.
- 7. Until the earliest of (i) December 31, 2020, (ii) the completion of the Project as provided in the Agency Lease Agreement, (iii) the receipt by the Company of the Maximum Sales Tax Benefit (as defined in the Agency Lease Agreement), or (iv) the termination of the Agency Lease Agreement and/or revocation of the appointment of the Company as agent of the Agency (the earliest to occur of the foregoing, the "Termination Date"), all vendors, lessors, licensors, contractors and subcontractors are hereby authorized to rely on a Form ST-123 (as defined in Paragraph 11 hereof) prepared by the Company or sub-agent and issued to such vendor, lessor, licensor, contractor or subcontractor pursuant to Paragraph 11 hereof as evidence that purchases and leases of Property, and improvement and installation contracts relating to the acquisition, construction, renovation, installation and equipping of the Project Facility (but not the operation thereof), to the extent effected by the Company, as agent for the Agency, are exempt from all New York State and Chautauqua County sales and use taxes.
- 8. Any vendor, lessor, licensor, contractor or subcontractor that does not collect otherwise applicable sales or use tax in reliance upon this Agreement and the Form ST-123 issued by the Company or sub-agent to such vendor, lessor, licensor, contractor or subcontractor, shall be deemed to have acknowledged and agreed to the provisions of Paragraph 3 hereof regardless of whether or not the provisions thereof are inserted in the contract, agreement, lease, invoice, bill or purchase order entered into with the Company.
- 9. This Agreement and the Form ST-123 issued by the Company or subagent to a vendor, lessor, licensor, contractor or subcontractor are provided solely for the purposes described herein and therein. No other principal/agent relationship is intended or may be implied or inferred from this Agreement or the issuance of such Form ST-123.
- 10. The exemption from sales and use taxes provided under the Agency Lease Agreement is granted subject to the requirements of Section 875 of the General Municipal Law,

which requirements are incorporated herein by reference, and the Company agrees to such requirements as a condition precedent to receiving the exemption from sales and use taxes.

The Company agrees to provide a completed Form ST-123, IDA Agent or Project Operator Exempt Purchase Certificate (each, a "Form ST-123"), to each vendor, lessor, licensor, contractor or subcontractor from which the Company purchases and/or leases Property, or with which the Company enters into an improvement or installation contract relating to the acquisition, construction, renovation, installation and equipping of the Project Facility. All vendors, lessors, licensors, contractors and subcontractors are authorized to rely on such completed Form ST-123 as evidence that purchases and leases of Property, and improvement and installation contracts relating to the acquisition, construction, renovation, installation and equipping of the Project Facility (but not the operation thereof), to the extent effected by the Company as agent for the Agency pursuant to Section 3.2(b) of the Agency Lease Agreement, are exempt from all New York State and Chautauqua County sales and use taxes. The Company agrees to provide the Agency with a copy of each such Form ST-123 within ten (10) days after the delivery of such form to the vendor, lessor, licensor, contractor or subcontractor.

The signature of a representative of the Company where indicated below will indicate that the Company has accepted the terms hereof.

> COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

Name:

Title: CFO, CCIDA

ACCEPTED AND AGREED TO BY:

S. ST. GEORGE ENTERPRISES, INC.

Name: Steven St. George

Title: President

GUARANTY

THIS GUARANTY dated as of November 1, 2019 (this "Guaranty") is given by STEVEN ST. GEORGE (individually or collectively, as the context may require, the "Guarantor") to the COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at 201 West Third Street, Suite 115, Jamestown, NY 14701 (the "Agency") for the 2019 Gleason Road Project (the "Project").

WITNESSETH:

WHEREAS, the Agency 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, as amended from time to time, 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 manufacturing, industrial and commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, S. St. George Enterprises, Inc. (the "Company") requested by application (the "Application") that the Agency consider undertaking a project (the "Project") that consists of the following: (A)(1) the acquisition of an interest in an approximately 70 acre parcel of land located at 3689 Webster Road, Fredonia, Town of Pomfret, County of Chautauqua, New York (the "Land"), (2) the construction of an approximately 19,999 square foot addition to an existing approximately 23,000 square foot building (collectively, the "Building" and together with the Land, collectively, the "Facility"), together with related improvements to the Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the "Equipment") necessary for the completion thereof (collectively, the "Project Facility"), all of the foregoing for use by the Company and/or its affiliates as an inventory and heavy equipment storage facility; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes, mortgage recording taxes and sales and use taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase),

WHEREAS, the members of the Agency have determined that (A) the granting of the Financial Assistance by the Agency to the Company is necessary to induce the Company to proceed with the Project, and (B) there is a likelihood that the Project would not be undertaken but for the granting of the Financial Assistance by the Agency to the Company; and

WHEREAS, the Agency proposes to undertake the Project as an authorized project under the Act pursuant to an agency lease agreement (uniform project agreement) dated as of the date hereof entered into between the Agency and the Company (as amended, modified, restated or replaced from time to time, the "Agency Lease"); and

WHEREAS, Steven St. George is the owner of one hundred percent (100%) of the beneficial interests in the Company and will derive a direct benefit from the granting of the Financial Assistance to the Company; and

WHEREAS, it is a condition to the Agency's agreement to undertake the Project that each Guarantor guaranty the timely and proper payment and performance of the Company under the Agency Lease and the other Transaction Documents (as defined in the Agency Lease);

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the Guarantor does hereby represent, warrant, guaranty and agree with the Agency as follows:

ARTICLE I DEFINITIONS

- Section 1.1 DEFINITIONS. Capitalized terms used herein and not otherwise defined herein shall have the same meanings assigned to such terms in the Agency Lease.
- Section 1.2 ACCOUNTING PRINCIPLES. Where the character or amount of any asset or liability or item of income or expense is required to be determined or consolidated or other accounting computation is required to be made for the purposes of this Guaranty, such determination, consolidation or computation shall be made in accordance with generally accepted accounting principles at the time in effect, to the extent applicable, except where such principles are inconsistent with the requirements of this Guaranty.
- Section 1.3 DIRECTLY OR INDIRECTLY. Where any provision of this Guaranty refers to action to be taken by any Person, or which provision prohibits any Person from taking certain action, such provision shall be applicable whether such action is to be taken or is not to be taken directly or indirectly by such Person.

ARTICLE II REPRESENTATIONS, WARRANTIES AND COVENANTS

- Section 2.1 REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE GUARANTOR. The Guarantor makes the following representations, warranties and covenants as the basis for the undertakings on his part herein contained:
- (A) No consent or approval (governmental or otherwise) or the taking of any action is required as a condition to the validity or enforceability of this Guaranty or any of the other Transaction Documents.
- Neither the execution and delivery of this Guaranty or any of the other (B) Transaction Documents to which the Guarantor is a party, the consummation of the transactions contemplated hereby and thereby, nor the fulfillment of or compliance with the provisions of this Guaranty or the other Transaction Documents to which the Guarantor is a party will (1) conflict with or result in a breach of any of the terms, conditions or provisions of any restriction, order, judgment, agreement, document or instrument to which the Guarantor is a party or by which the Guarantor or any of the Guarantor's Property is bound, or constitute a default by the Guarantor under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon the Project Facility under the terms of any of the foregoing, other than the Permitted Encumbrances, (2) conflict with or result in a violation of Applicable Laws, (3) require consent or approval (which has not been heretofore received and provided to the Agency) under any agreement or instrument to which the Guarantor is a party or by which the Guarantor or any of the Guarantor's Property may be bound or affected, or (4) require consent or approval (which has not been heretofore obtained and provided to the Agency) under or conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any Governmental Authority having jurisdiction over the Guarantor or any of the Property of the Guarantor.
- (C) The Transaction Documents to which the Guarantor is a party constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid, legal and binding obligations of the Guarantor, enforceable in accordance with their respective terms.

(D) RESERVED.

- (E) There are no actions, suits, investigations or proceedings of or before any Governmental Authority, pending or threatened against the Guarantor or any of the Guarantor's Property which (i) either in any case or in the aggregate, if adversely determined, would materially, adversely affect the condition, financial or otherwise, of the Guarantor, or (ii) question the validity of this Guaranty or any of the Transaction Documents or any action to be taken in connection with the transactions contemplated thereby.
- (F) To the best of the Guarantor's knowledge, Guarantor is not in default with respect to any order, writ, injunction or decree of any Governmental Authority, nor is the Guarantor in violation of any law, statute or regulation, domestic or foreign, to which the Guarantor or any of the Guarantor's Property is subject.

- (G) The funds available to the Company are sufficient to pay all costs in connection with the acquisition, construction, renovation, installation and equipping of the Project Facility.
- (H) The Guarantor is not a Prohibited Person, no Affiliate of the Guarantor, and no trustee, shareholder, director, manager or member, if applicable, of the Guarantor is a Prohibited Person.
- (I) To the best of the Guarantor's knowledge, neither this Guaranty nor any other Transaction Document nor any other document, certificate, agreement or instrument furnished by the Guarantor contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading.
- (J) The Guarantor is the sole owner of the Company and the undertaking of the Project by the Agency, the granting of the Financial Assistance and the assumption by the Guarantor of this obligations hereunder will result in a financial benefit to the Guarantor.
- (K) The Guarantor is solvent and the Guarantor has not filed for bankruptcy or reorganization nor has the Guarantor taken any action to achieve protection from their creditors. In addition, no proceeding has been commenced against the Guarantor in bankruptcy or reorganization by the Guarantor's creditors, or to promote the interests of the creditors against the Guarantor.

ARTICLE III COVENANTS AND AGREEMENTS

Section 3.1 GUARANTY OF PAYMENT AND PERFORMANCE.

- (A) The Guarantor hereby irrevocably and unconditionally guaranties to the Agency (1) the full and prompt payment of all moneys or rents due under or pursuant to the Agency Lease and any other sums or amounts payable under or pursuant to any of the Transaction Documents, when and as the same shall become due, and (2) the complete, prompt and timely performance and observance by the Company of its obligations under the Agency Lease and the other Transaction Documents (collectively, the "Guaranteed Obligations").
- (B) This Guaranty is intended by the Guarantor to be an evidence of indebtedness of the Guarantor to the Agency within the meaning of 12 U.S.C. 24(7) and a primary obligation of the Guarantor to pay the sums payable by the Company under each of the Transaction Documents.
- (C) All payments by the Guarantor shall be made in immediately available funds, upon written notice by the Agency to the Guarantor of the Company's default and failure of the Company to cure such default within the applicable notice and/or cure period, if any, by wire transfer or other form of payment satisfactory to the Agency, in lawful money of the United

States of America as, at the time of payment, shall be legal tender for the payment of public and private debts.

- (D) Each and every default in payment of any sum payable by the Company under any of the Transaction Documents shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder by the Agency as each cause of action arises.
- (E) The Guarantor shall pay to the Agency all fees and reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Agency in the administration of this Guaranty, or any amendment hereto, or in the protection of its rights or in pursuit of its remedies in respect of this Guaranty.
- Section 3.2 OBLIGATIONS UNCONDITIONAL. The obligations of the Guarantor under this Guaranty shall be absolute, unconditional and shall remain in full force and effect until each and every one of the Guaranteed Obligations shall have been irrevocably paid and/or performed in full, and such obligations shall not be affected, modified or impaired by any state of facts or the happening from time to time of any event, including, without limitation, any of the following, whether or not with notice to or the consent of the Company and/or of the Guarantor:
- (A) the invalidity, irregularity, illegality or unenforceability of, or any defect in, (1) the Agency Lease, (2) any other Transaction Document, or (3) any collateral security for any thereof;
- (B) any present or future law or order of any government (de jure or de facto) or of any agency thereof purporting to reduce, amend or otherwise affect the Agency Lease, any other Transaction Documents or any other obligation or right of the Guarantor or any other obligor, or to vary any terms of payment;
- (C) any claim of immunity on behalf of the Agency or any other obligor or with respect to any Property of the Agency;
- (D) the waiver, compromise, extension, settlement, release or termination of any or all of the obligations, covenants or agreements of any party under the Agency Lease or any of the other Transaction Documents;
- (E) the occurrence of, or the failure to give notice to the Guarantor of the occurrence of, an Event of Default under any Transaction Document;
- (F) the transfer, assignment or mortgaging, or the purported or attempted transfer, assignment or mortgaging, of all or any part of the interest of the Agency or the Company in the Project Facility, or any failure of or defect in the Agency's or the Company's respective interests in the Project Facility;
- (G) the release, sale, exchange, surrender or other change in any security for payment of any obligation under any of the Transaction Documents;

- (H) the modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in the Agency Lease or any other Transaction Document:
- (I) the taking of, or the failure to take, any action by the Agency, the Company and/or the Guarantor;
- (J) any failure, omission or delay on the part of the Agency or any other Person to enforce, assert or exercise any right, power or remedy conferred in this Guaranty or any other Transaction Document;
- (K) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, marshaling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization or other similar proceedings affecting the Company, the Guarantor or the Agency or any of the assets of any of them, or any allegation or any contest of the validity of the Transaction Documents in any such proceedings;
- (L) any event or action that would, in the absence of this Section 3.2, result in the release or discharge of the Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guaranty;
- (M) the default or failure of the Guarantor fully to perform any of the Guarantor's obligations set forth in this Guaranty; or
- (N) any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a surety or a guaranty.
- Section 3.3 WAIVER BY THE GUARANTOR. The Guarantor hereby waives diligence, presentment, demand for payment, filing of claims with a court in the event of bankruptcy of the Agency or any other Person; protest; notice of reliance on this Guaranty by the Agency, or of dishonor or non-payment of any such liabilities; and any other notice and all demands whatsoever.
- Section 3.4 NO SET-OFF BY THE GUARANTOR. No set-off, counterclaim, reduction or diminution of an obligation, or any defense of any kind or nature which the Guarantor has or may have against the Agency or any other party shall be available hereunder to the Guarantor with respect to a claim under this Guaranty. The Guarantor acknowledges that no oral or other agreements, understandings, representations, or warranties exist with respect to this Guaranty or with respect to the obligations of the Guarantor under this Guaranty.
- Section 3.5 WAIVER OF JURY TRIAL. THE AGENCY AND THE GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES EACH RIGHT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF THIS GUARANTY.

Section 3.6 NATURE OF GUARANTY. This Guaranty is a guaranty of payment and performance and not of collection, and the Guarantor hereby waives any right to require that any action be brought against any other party or to require that resort be had to any security or to any balance of any fund or credit held by the Agency prior to the Agency proceeding under this Guaranty. If at any time any payment of any amount payable by the Guarantor and guaranteed by the Guarantor pursuant to Section 3.1 hereof is rescinded or is otherwise required to be restored or returned upon the insolvency, bankruptcy or reorganization of the Guarantor's obligations hereunder with respect to such payment shall be reinstated as though such payment had been due but not made at such time.

Section 3.8 HOLD HARMLESS PROVISIONS.

- The Guarantor hereby releases the Agency and its members, officers, (A) agents (other than the Company), attorneys, servants and employees, past, present and future, from, agrees that the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, shall not be liable for, and agrees to indemnify, defend (with counsel selected by the Agency and reasonably acceptable to the Guarantor) and hold the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, harmless from and against, any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Agency's undertaking the Project, including, but not limited to: (1) liability for loss or damage to Property or bodily injury to or death of any and all Persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project or the Project Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Project Facility, and (2) liability arising from or expense incurred by the Agency's acquiring, constructing, equipping, installing, owning or leasing the Project Facility, including, without limiting the generality of the foregoing, (i) all liabilities or claims arising as a result of the Agency's obligations under the Agency Lease or any of the other Transaction Documents or the enforcement of or defense of validity of any provision of any of the Transaction Documents, and (ii) all liabilities or claims arising as a result of the Agency's involvement in the Project or the granting of the Financial Assistance, (3) all liabilities and expenses arising from the failure or alleged failure of the Project Facility, the Company or the Company's members, managers, officers, agents, attorneys, servants or employees to comply with Applicable Laws, including, without limitation, any claim that the Agency aided or abetted in such failure or alleged failure to comply with Applicable Laws, (4) all claims arising from the exercise by the Company of the authority conferred on it pursuant to Section 4.1(E) of the Agency Lease, and (5) all causes of action and reasonable attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing; provided that such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Agency are not incurred or do not result from the intentional wrongdoing or gross negligence of the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees.
- (B) In the event of any claim against the Agency or its members, officers, agents (other than the Company), attorneys, servants or employees by any employee of the

Guarantor or any contractor of the Guarantor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Guarantor hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Guarantor or such contractor under workers' compensation laws, disability benefits laws or other employee benefit laws.

- (C) Notwithstanding any other provisions of this Guaranty, the obligations of the Guarantor pursuant to this Section 3.8 shall remain in full force and effect after the termination or expiration of this Guaranty until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all reasonable expenses, charges and costs incurred by the Agency or its members, officers, agents (other than the Company), attorneys, servants or employees, past, present or future, relating thereto.
- Section 3.9 AGREEMENT TO PROVIDE INFORMATION. The Guarantor agrees, whenever reasonably requested by the Agency, to promptly provide and certify or cause to be provided and certified such information concerning the Guarantor or their respective finances, operations and affairs and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by Applicable Laws or other governmental regulation.
- Section 3.10 NO SUBROGATION. No payment hereunder by the Guarantor shall entitle the Guarantor by subrogation to the rights of the Agency to any payment by any other obligor or out of the property of any other obligor, except for payment and performance in full of the Guaranteed Obligations.

ARTICLE IV EVENTS OF DEFAULT

- Section 4.1 EVENTS OF DEFAULT DEFINED. An "Event of Default" shall exist if any of the following occurs:
- (A) the Guarantor defaults in the payment or performance of any Guaranteed Obligation and such default continues for more than fifteen (15) days after written notice thereof has been given to the Guarantor by the Agency;
- (B) the Guarantor fails to observe and perform any covenant, condition or agreement on its part to be performed under Section 3.1(E) or Section 3.9 hereof and such failure continues for a period of thirty (30) days after receipt by the Guarantor of written notice specifying the nature of such default or failure from the Agency;
- (C) the Guarantor fails to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 4.1(A) or (B) above) and (i) continuance of such failure for a period of thirty (30) days after receipt by the

Guarantor of written notice specifying the nature of such default or failure from the Agency, or (ii) if by reason of the nature of such default or failure the same can be remedied, but not within the said thirty (30) days, the Guarantor fails to proceed with reasonable diligence after receipt of said notice to cure the same or fail to continue with reasonable diligence its efforts to cure the same or fail to cure the same within sixty (60) days of receipt of said notice;

- (D) the Guarantor shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or all or a substantial part of the Guarantor's property, (ii) admit in writing the Guarantor's inability, or be generally unable, to pay the Guarantor's debts as such debts generally become due, (iii) make a general assignment for the benefit of the Guarantor's creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against the Guarantor in a voluntary case under the Federal Bankruptcy Code, (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;
- (E) a proceeding or case shall be commenced in any court of competent jurisdiction against the Guarantor seeking (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Guarantor or of all or any substantial part of the Guarantor's assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of ninety (90) days; or any order for relief against the Guarantor shall be entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect);
- (F) any representation or warranty made (i) by the Company in the Application and related materials submitted to the Agency for approval of the Project or the transactions contemplated by this Guaranty, or (ii) by the Company in the Agency Lease or in any other Transaction Document, or (iii) by the Guarantor herein or in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, that shall prove to be false, misleading or incorrect in any material respect as of the date made; or
- (G) there shall occur an "Event of Default" under the Agency Lease or any other Transaction Document or under any Permitted Encumbrance.
- Section 4.2 REMEDIES ON DEFAULT. If an Event of Default exists, the Agency may proceed to enforce the provisions hereof and to exercise any other rights, powers and remedies available to the Agency. The Agency, in its sole discretion, shall have the right to proceed first and directly against the Guarantor without proceeding against or exhausting any other remedies which it may have and without resorting to any other security held by the Agency.

Section 4.3 WAIVER AND NOTICE.

- (A) No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty now or hereafter existing at law or in equity or by statute.
- (B) No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time as often as may be deemed expedient.
- (C) In order to entitle the Agency to exercise any remedy reserved to it in this Guaranty, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Guaranty.
- (D) In the event any provision contained in this Guaranty shall be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.
- (E) No waiver, amendment, change, alteration, release, discharge, modification or termination of this Guaranty shall be established by conduct, custom or course of dealing.

ARTICLE V MISCELLANEOUS

Section 5.1 NOTICES.

- (A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given on the earlier of (a) five (5) Business Days after being sent to the applicable address stated below by registered or certified mail, return receipt requested, or two (2) Business Days after being sent by nationally recognized overnight courier service, or (b) the date on which delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.
- (B) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE GUARANTOR:

Steven St. George P.O. Box 348 Fredonia, NY 14063 WITH A COPY TO: Biltekoff Law Office, LLC 43 Court Street, Suite 930 Buffalo, NY 14202 Attention: Robert Biltekoff, Esq.

IF TO THE AGENCY:

County of Chautauqua Industrial Development Agency 201 West Third Street, Suite 115 Jamestown, NY 14701 Attn: Administrative Director

WITH A COPY TO:

Phillips Lytle LLP 201 West Third Street, Suite 205 Jamestown, NY 14701 Attn: Gregory L. Peterson, Esq.

- (C) The Agency and the Guarantor may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.
- Section 5.2 BINDING EFFECT. This Guaranty shall inure to the benefit of the Agency and the Guarantor and shall be binding upon the Agency, the Guarantor and, as permitted by this Guaranty, their respective successors and assigns.
- Section 5.3 SEVERABILITY. If any one or more of the covenants or agreements provided herein on the part of the Agency or the Guarantor to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be held void, voidable, invalid or unenforceable by a court of competent jurisdiction, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Guaranty.
- Section 5.4 AMENDMENT. This Guaranty may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the Guarantor hereto and the Agency.

- Section 5.5 DATE OF GUARANTY. The date of this Guaranty shall be for reference purposes only and shall not be construed to imply that this Guaranty was executed on the date first above written. This Guaranty was executed and delivered on the Closing Date.
- Section 5.6 EXECUTION OF COUNTERPARTS. This Guaranty may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- Section 5.7 APPLICABLE LAW. This Guaranty shall be governed by and construed in accordance with the applicable laws of the State of New York, as in effect from time to time, without regard to its principles of conflicts of law.
- Section 5.8 SECTION HEADINGS NOT CONTROLLING. The headings of the several sections in this Guaranty have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Guaranty.

Section 5.9 NO RECOURSE; SPECIAL OBLIGATION.

- (A) The obligations and agreements of the Agency contained herein and in the other Transaction Documents and any other instrument or document executed in connection therewith or herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company), servant or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company), servants and employees, past, present and future, of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.
- (B) The obligations and agreements of the Agency contained herein and therein shall not constitute or give rise to an obligation of the State of New York, the County of Chautauqua or any city, town, school district or village within which the Project Facility is located, and neither the State of New York, the County of Chautauqua, nor any such city, town, school district or village, shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).
- (C) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) business days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take

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longer than ten (10) business days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten (10) business day period) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company), attorneys, servants or employees, past, present or future, shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, against all liability expected to be incurred as a result of compliance with such request.

Section 5.10 SERVICE OF PROCESS; VENUE.

Each Guarantor represents that it is subject to service of process in the State of New York and covenants that it will remain so subject so long as this Guaranty shall be in effect. If for any reason the Guarantor should cease to be so subject to service of process in the State of New York, the Guarantor hereby designates and appoints, without power of revocation, Rob Biltekoff, Esq., c/o Biltekoff Law Office, LLC, 43 Court Street, Suite 930, Buffalo, NY 14202, as its agent for service of process upon whom may be served all process, pleadings, notices or other papers which may be served upon the Guarantor as a result of any of their respective obligations under this Guaranty; provided, however, that the serving of such process, pleadings, notices or other papers shall not constitute a condition to the Guarantor's obligations hereunder.

The Guarantor irrevocably and unconditionally (a) agrees that any suit, (B) action or other legal proceeding arising out of this Guaranty or the other Transaction Documents may be brought in the courts of record of the State of New York in Chautauqua County or the courts of the United States, Western District of New York; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; and (c) waives any objection which they may have to the laying of venue of any such suit, action or proceeding in any of such courts. For such time as this Guaranty is in effect, the Guarantor's agents designated above shall accept and acknowledge in the Guarantor's behalf service of any and all process in any such suit, action or proceeding brought in any such court. The Guarantor agrees and consents that any such service of process upon such agents and written notice of such service to the Guarantor in the manner set forth in Section 5.1 hereof shall be taken and held to be valid personal service upon the Guarantor whether or not the Guarantor shall then be doing, or at any time shall have done, business within the State of New York and that any such service of process shall be of the same force and validity as if service were made upon the Guarantor according to the laws governing the validity and requirements of such service in the State of New York, and waive all claim of

error by reason of any such service. Such agents shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the Guarantor or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Guarantor.

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IN WITNESS WHEREOF, the Guarantor has executed this Guaranty as of the day and year first above written.

STEVEN ST. GEORGE

STA	TE OF NEW YORK)) SS.:
COU	NTY OF CHAUTAUQUA)
on th instru signa	d for said state, personally appear the basis of satisfactory evidence the iment and acknowledged to m	of November, 2019, before me, the undersigned, a Notary Public ared Steven St. George, personally known to me or proved to me e to by the individual whose name is subscribed to the within e that he executed the same in his capacities, and that by his vidual, or the persons upon behalf of which the individual acted,
	Milan K Tyler Notary Public, State of New York No. 02TY4949790 Qualified in West County Commission Expires June 12, 201↑	Notáry Public

ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT

THIS ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT, dated as of November 1, 2019 (this "Agreement"), is given by the persons, firms and corporations identified as Indemnitors at the end of this Agreement (each, an "Indemnitor" and, collectively, the "Indemnitors"), to COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at 201 West Third Street, Suite 115, Jamestown, NY 14701 (the "Agency").

WITNESSETH:

WHEREAS, 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 New York, as amended (the "Enabling Act") authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to promote, develop, encourage and assist in the acquiring, renovating, construction, reconstruction, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, among others, including industrial pollution control facilities, and to thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, in accordance with the provisions of the Enabling Act, the Agency was established pursuant to Chapter 71 of the 1972 Laws of the State of New York, as amended, constituting Section 895-h of the New York General Municipal Law (said Chapter and the Enabling Act, each as amended from time to time, collectively, the "Act"), for the benefit of the County of Chautauqua and its inhabitants; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, renovate, construct, reconstruct and install one or more "projects" (as defined in the Act), or to cause said projects to be acquired, renovate, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, S. ST. GEORGE ENTERPRISES, INC. (the "Company") submitted an application for financial assistance (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the acquisition of an interest in an approximately 70 acre parcel of land located at 3689 Webster Road, Fredonia, Town of Pomfret, County of Chautauqua, New York (the "Land"), (2) the construction of an approximately 19,999 square foot addition to an existing approximately 23,000 square foot building (collectively, the "Building" and together with the Land, collectively, the "Facility"), together with related improvements to the Land, and (3) the

acquisition of certain furniture, fixtures, machinery and equipment (the "Equipment") necessary for the completion thereof (collectively, the "Project Facility"), all of the foregoing for use by the Company and/or its affiliates as an inventory and heavy equipment storage facility; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes, mortgage recording taxes and sales and use taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, Steven St. George (the "Overlandlord"), who holds fee title to the Land, proposed that the Company be the lessee of the Project Facility and the Agency has approved such proposal; and

WHEREAS, Agency financial assistance is necessary to provide employment in, and is beneficial for the economy of, the County of Chautauqua, New York, and is reasonably necessary to induce the Company to proceed with the Project; and

WHEREAS, immediately prior to the execution and delivery of this Agreement, the Company will execute and deliver or cause to be executed and delivered to the Agency (A) a certain company lease agreement of even date herewith (as the same may be amended, modified, supplemented or restated from time to time) (the "Company Lease") between the Company and the Agency, which conveys to the Agency a subleasehold interest in and to the Land, and (B) a certain bill of sale from the Company to the Agency, which conveys to the Agency all right, title and interest of the Company in and to the Equipment; and

WHEREAS, the Agency proposes to appoint the Company as agent of the Agency to undertake the acquisition, construction, renovation, installation and equipping of the Project Facility, to sublease the Project Facility from the Company and to sub-sublease the Project Facility to the Company, and the Company desires to act as agent of the Agency to undertake the acquisition, construction, renovation, installation and equipping of the Project Facility, and to sub-sublease the Project Facility from the Agency, all pursuant to the terms and conditions set forth in that certain Agency Lease Agreement (Uniform Project Agreement) of even date herewith (as the same may be amended, modified, supplemented or restated from time to time, the "Agency Lease Agreement") between the Agency and the Company; and

WHEREAS, it is a condition to the Agency's agreement to accept an interest in and to the Project Facility and to undertake the Project that the Indemnitors enter into this Agreement;

NOW, THEREFORE, in consideration of the foregoing and to induce the Agency to accept an interest in the Project Facility and to undertake the Project, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Indemnitors hereby covenant and agree with the Agency as follows:

1. <u>DEFINITIONS</u>. All capitalized terms used in this Agreement and not heretofore defined shall have the meanings set forth below. All capitalized terms used herein and not

otherwise defined herein shall have the meanings assigned to such terms in the Agency Lease Agreement.

- (a) <u>Disposal</u> means the intentional or unintentional abandonment, discharge, deposit, injection, dumping, spilling, leaking, storing, burning, thermal destruction or placing of any substance so that it or any of its constituents may enter the Environment. The term "Disposal" also includes the thermal destruction of the Hazardous Substance and the burning of such as fuel for the purpose of recovering usable energy.
- (b) <u>Environment</u> means any water including but not limited to surface water and ground water or water vapor; any land including land surface or subsurface; river, stream, lake or other sediments, air; fish, wildlife, plants; and all other natural resources or environmental media.
- (c) Environmental Laws mean all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the Environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or Disposal of Hazardous Substances and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.
- (d) <u>Environmental Permits</u> mean licenses, permits, approvals, authorizations, notices, consents or registrations required by any applicable Environmental Laws and all applicable judicial and administrative orders in connection with ownership, lease, purchase, transfer, closure, use and/or operation of the Project Facility and/or as may be required for the storage, treatment, generation, transportation, processing, handling, removal, cleanup, maintenance, production or Disposal of Hazardous Substances, or for the sale, transfer or conveyance of the Project Facility.

(e) [Intentionally Omitted].

(f) <u>Hazardous Substance(s)</u> means any substance (i) the presence of which requires investigation or remediation under any Environmental Law; or (ii) which is or becomes defined as a "hazardous waste", "hazardous substance", "toxic substance", pollutant or contaminant under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. Section 9601 ct seq.) and/or the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.) as amended and/or the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801 et seq.) and/or the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et seq.), and/or Articles 15 or 27 of the New York State Environmental Conservation Law, or any other applicable Environmental Law or any regulations promulgated under any of the foregoing; or (iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of New York or any political subdivision thereof; or (iv) the presence of which on the Project Facility causes or threatens to cause a nuisance upon the Project Facility or to adjacent properties or poses or threatens to pose a hazard

to the health or safety of persons on or about the Project Facility; or (v) which contains gasoline, diesel fuel or other petroleum hydrocarbons; or (vi) which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation.

- (g) <u>Improvements</u> mean any buildings, structures and other improvements (if any) presently or hereafter located on the Land, including, without limitation, the Equipment.
- (h) <u>Indemnitee</u> means the Agency, its successors and assigns, and their respective officers, directors, members, employees, agents, representatives, attorneys, contractors and subcontractors, past, present and future.
- (i) <u>Indemnitors</u> has the meaning given to such term in the preamble to this Agreement.
- (j) <u>Release</u> has the same meaning given to that term in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, as amended (42 U.S.C. Section 9601, et seq.) and the regulations promulgated thereunder. The term "Release" also includes Disposal, but is not subject to an exclusion for acts done in full compliance with an Environmental Permit.
- 2. <u>REPRESENTATIONS AND WARRANTIES</u>: The Indemnitors each represent and warrant to the Agency that:
 - (a) Neither the Project Facility nor, to the best of their knowledge, information and belief, any property adjacent to or within the immediate vicinity of the Project Facility is being or has been used for the storage, treatment, generation, transportation, processing, handling, production or Disposal of any Hazardous Substance or as a landfill or other waste disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products other than in accordance with all applicable Environmental Laws and Environmental Permits.
 - (b) Underground storage tanks are not and have not been located on the Project Facility, except as set forth in Schedule B hereto.
 - (c) To the best of their knowledge, information and belief, the Project Facility and Environment on, at, from and surrounding the Project Facility, including, without limitation, the soil, subsoil, bedrock, surface water, sediment and groundwater of the Project Facility are free of any Hazardous Substances beyond any legally permitted levels.
 - (d) To the best of their knowledge, information and belief, there has been no Release nor is there the threat of a Release on, at or from the Project Facility, or any property adjacent to or within the immediate vicinity of the Project Facility which through soil, subsoil, bedrock, surface water or groundwater or vapor migration or intrusion could come to be located on the Project Facility, and the

Indemnitors have not received any form of notice or inquiry from any federal, state or local governmental agency or authority, any operator, tenant, subtenant, licensee, permitee or occupant of the Project Facility or any property adjacent to or within the immediate vicinity of the Project Facility or any other person with regard to a Release or the threat of a Release on, at or from the Project Facility or any property adjacent to or within the immediate vicinity of the Project Facility.

- (e) All presently required Environmental Permits have been obtained and are in full force and effect.
- (f) To the best of their knowledge, information and belief, no event has occurred with respect to the Project Facility that, with the passage of time or the giving of notice, or both, would constitute a violation of any applicable Environmental Law or non-compliance with any Environmental Permit.
- (g) To the best of their knowledge, there are no Environmental Laws, Environmental Permits, agreements, consent orders, decrees, judgments, license or permit conditions or other orders or directives of any federal, state or local court, governmental agency or authority relating to the past, present or future ownership, use, operation, sale, transfer or conveyance of the Project Facility which require any change in the present condition of the Project Facility or any work, repairs, construction, containment, clean-up, investigations, studies, removal or other remedial action or capital expenditures with respect to the Project Facility.
- (h) To the best of their knowledge, there are no actions, suits, claims or proceedings, pending or threatened, which could cause the incurrence of expenses or costs of any name or description or which seek money damages, injunctive relief, remedial action or any other remedy that arise out of, relate to or result from (i) a violation or alleged violation of any applicable Environmental Law or non-compliance or alleged non-compliance with any Environmental Permit, (ii) the presence of any Hazardous Substance or a Release or the threat of a Release on, at or from the Project Facility or any property adjacent to or within the immediate vicinity of the Project Facility or (iii) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Project Facility or the ownership, use, operation, sale, transfer or conveyance thereof.

3. <u>COVENANTS</u>: The Indemnitors covenant and agree with the Agency as follows:

(a) The Indemnitors shall keep, and shall use their best efforts to cause all operators, tenants, subtenants, licensees, permitees, invitees, visitors and occupants of the Project Facility to keep, the Project Facility free of all Hazardous Substances and shall not cause or knowingly permit the Project Facility or any part thereof to be used for the storage, treatment, generation, transportation, processing, handling, production or Disposal of any Hazardous Substances.

- (b) The Indemnitors shall comply with, and shall use commercially reasonable efforts to cause all operators, tenants, subtenants, licensees, permitees, invitees, visitors and occupants of the Project Facility to comply with, all applicable Environmental Laws, and shall obtain and comply with, and shall use commercially reasonable efforts to cause all operators, tenants, subtenants, licensees, permitees, invitees and occupants of the Project Facility to obtain and comply with, all Environmental Permits.
- (c) The Indemnitors shall not cause or knowingly permit any change to be made in the present or intended use of the Project Facility which would (i) involve the storage, treatment, generation, transportation, processing, handling, production or Disposal of any Hazardous Substance other than in accordance with all applicable Environmental Laws, or the use of the Project Facility as a landfill or other waste disposal site or for military, manufacturing or industrial purposes, or other than as permitted by law for the storage of petroleum or petroleum based products, (ii) violate any applicable Environmental Law, (iii) constitute non-compliance with any Environmental Permit, or (iv) increase the risk of a Release.
- (d) The Indemnitors shall promptly provide the Agency with a copy of all written notifications which any of them gives or receives with respect to any past or present Release or the threat of a Release on, at or from the Project Facility or any property adjacent to or within the immediate vicinity of the Project Facility of which they are aware.
- (e) The Indemnitors shall undertake and complete all investigations, studies, sampling and testing and all removal and other remedial actions necessary to contain, remove and clean up, in accordance with, and to the extent required by, all applicable Environmental Laws and all Environmental Permits, all Hazardous Substances that are determined to be present at the Project Facility.
- (f) The Indemnitors shall at all times upon reasonable prior notice allow the Agency and its officers, employees, agents, representatives, contractors and subcontractors reasonable access to the Project Facility for the purposes of ascertaining site conditions, including, but not limited to, subsurface conditions, at the Indemnitors' sole cost and expense.
- (g) If at any time the Agency obtains any evidence or information which reasonably suggests that potential environmental problems may exist at the Project Facility, the Agency may, after discussion with the Indemnitors, require that a full or supplemental environmental inspection and audit report with respect to the Project Facility of a scope and level of detail satisfactory to the Agency be prepared by an environmental engineer or other qualified person acceptable to the Agency, at the Indemnitors' expense. Said audit may include a physical inspection of the Project Facility, a visual inspection of any property adjacent to

or within the immediate vicinity of the Project Facility, personal interviews and a review of all Environmental Permits. If the Agency requires, such inspection shall also include a records search and/or subsurface testing for the presence of Hazardous Substances in the soil, subsoil, bedrock, surface water and/or groundwater or other environmental media. Any such subsurface test shall be undertaken so as to minimize the disruption of the Indemnitors' operations and damage to the Project Facility and the Improvements thereon. If said audit report indicates the presence of any Hazardous Substance or a Release or the threat of a Release on, at or from the Project Facility, the Indemnitors shall promptly undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean-up and other remedial actions.

- (h) Attached hereto as <u>Schedule C</u> is a complete list of all Environmental Permits presently required for the ownership, use or operation of the Project Facility and the businesses located thereon. The Indemnitors agree to notify the Agency of any additions, deletions, withdrawal or modifications of any Environmental Permits and the list thereof. Upon written request of the Agency, the Indemnitors shall furnish the Agency true and complete copies of all Environmental Permits.
- INDEMNIFICATION PROVISIONS: The Indemnitors hereby jointly and severally, absolutely and unconditionally, covenant and agree, at their sole cost and expense, to indemnify, protect, defend (with attorneys selected by each such Indemnitee), and save harmless each and every Indemnitee from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or reasonable expenses (including, without limitation, reasonable attorneys' and experts' fees for attorneys and experts selected by the Indemnitee, expenses and disbursements) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against any Indemnitee relating to, resulting from or arising out of (a) the use of the Project Facility for the storage, treatment, generation, transportation, processing, handling, production or Disposal of any Hazardous Substance or as a landfill or other waste disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products, (b) the presence or claimed presence of any Hazardous Substance or a Release or the threat of a Release on, at or from the Project Facility, (c) the failure to promptly undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean-up and other remedial actions with respect to a Release or the threat of a Release on, at or from the Project Facility or properties in the vicinity of the Project Facility, (d) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Project Facility or the ownership, use, operation, sale, transfer or conveyance thereof, (e) a violation of any applicable Environmental Law, (f) non-compliance with any Environmental Permit, (g) a material misrepresentation or inaccuracy in any representation or warranty or a material breach of or failure to perform any covenant made by the Indemnitors in this Agreement or by the Company in Section 3.3 of the Agency Lease Agreement, (h) off-site environmental liability arising out of off-site disposal of Hazardous Substances located at, on or under the

Project Facility, and (i) the designation by the New York State Department of Environmental Conservation, the United States Environmental Protection Agency or any other governmental authority of the Agency as a party responsible or potentially responsible for the remediation of any condition on or at the Project Facility or properties in the vicinity of the Project Facility, except those arising solely a result of the gross negligence or willful misconduct of the Agency, or its contractors, employees, officers, directors or agents (other than the Company) (collectively, the "Indemnified Matters").

The liability of the Indemnitors to each Indemnitee hereunder shall be perpetual and shall survive, and shall in no way be limited, abridged, impaired or otherwise affected, by (i) any amendment or modification of any of the Transaction Documents, (ii) any extensions of time for payment or performance required by any of the Transaction Documents, (iii) the release of any Indemnitor, any guarantor of any of the indebtedness associated with the Project, or any other person, from the performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Transaction Documents or this Agreement by operation of law or the Agency's voluntary act or otherwise, (iv) the invalidity or unenforceability of any of the terms or provisions of the Transaction Documents, (v) any exculpatory provision contained in any of the Transaction Documents, (vi) any applicable statute of limitations, (vii) any investigation or inquiry conducted by or on the behalf of the Agency or any other Indemnitee or any information which the Agency or any other Indemnitee may have or obtain with respect to the environmental or ecological condition of the Project Facility, (viii) the sale, transfer or conveyance of all or part of the Project Facility, (ix) the dissolution or liquidation of any Indemnitor, (x) the death or legal incapacity of any Indemnitor, (xi) the release or discharge, in whole or in part, of any Indemnitor in any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding, (xii) any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of any Indemnitor under this Agreement or under any other Transaction Document, (xiii) the expiration or termination of the Agency Lease Agreement or any other Transaction Document, or (xiv) the reconveyance of the Project Facility or any interest therein by the Agency to the Company or any other person, whether in accordance with the terms of the Agency Lease Agreement, by foreclosure or deed in lieu of foreclosure, sale or otherwise.

The indemnification agreement contained herein is wholly independent of and in addition to any indemnification agreement heretofore given to the Agency or any other Indemnitee, as part of the Project or otherwise.

5. NO LIABILITY OF AGENCY: The Indemnitors agree that the Agency shall not be liable in any way for the completeness or accuracy of any environmental report or the information contained therein. The Indemnitors agree that the Agency has no duty to warn any Indemnitor or any other person or entity about any actual or potential environmental contamination or other problem that may have become apparent or will become apparent to the Agency, and are otherwise innocent of any liability whatsoever under any Environmental Law which may arise as a result of the Project Facility or the Agency's interest therein.

- 6. <u>GOVERNING LAW</u>. This Agreement shall be governed by, construed in accordance with and enforceable under the laws of the State of New York, as the same may be in effect from time to time, without regard to principles of conflicts of law.
- 7. <u>COUNTERPARTS</u>: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. Said counterparts shall constitute but one and the same instrument and shall be binding upon each of the undersigned as fully and completely as if all had signed the same instrument.
- 8. <u>NOTICES</u>: All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given on the earlier of (1) three (3) Business Days after being sent to the applicable address stated below by registered or certified mail, return receipt requested, or two (2) Business Days after being sent by nationally recognized overnight courier service, or (2) the date on which delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

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

IF TO THE INDEMNITORS:

c/o S. St. George Enterprises, Inc. 3689 Webster Road, P.O. Box 348 Fredonia, NY 14063
Attention: Steven St. George

WITH A COPY TO:

Biltekoff Law Office, LLC 43 Court Street, Suite 930 Buffalo, NY 14202 Attention: Robert Biltekoff, Esq.

IF TO THE AGENCY:

County of Chautauqua Industrial Development Agency 201 West Third Street, Suite 115 Jamestown, NY 14701 Attn: Administrative Director

WITH A COPY TO:

Phillips Lytle LLP 201 West Third Street, Suite 205 Jamestown, NY 14701 Attn: Gregory L. Peterson, Esq. The Agency and the Indemnitors may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

- 9. <u>SUCCESSORS AND ASSIGNS</u>: This Agreement shall be binding upon the Indemnitors and their respective successors, assigns, executors, administrators, legal representatives, distributees and fiduciaries, and all subsequent owners of the Project Facility, and shall inure to the benefit of each Indemnitee.
- 10. WAIVER OF TRIAL BY JURY. THE PARTIES HEREBY EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY ON ANY CAUSE OF ACTION DIRECTLY OR INDIRECTLY INVOLVING THE TERMS, COVENANTS OR CONDITIONS OF THIS AGREEMENT OR THE PROJECT FACILITY, OR ANY MATTERS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

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STATE OF NEW YORK	
) SS.:
COUNTY OF CHAUTAUQUA)
Public in and for said state, person proved to me on the basis of satisfacthe within instrument and acknowled	ay of November, 2019, before me, the undersigned, a Notary ally appeared Steven St. George, personally known to me or tory evidence to by the individual whose name is subscribed to ged to me that he executed the same in his capacity, and that by individual, or the person upon behalf of which the individual

Milan K Tyler Notary Public, State of New York No. 02TY4949790 Qualified in West County Commission Expires June 12, 2015 IN WITNESS WHEREOF, the Indemnitors have caused this Agreement to be duly executed as of the day and year first above written.

INDEMNITORS:

S. ST. GEORGE ENTERPRISES, INC.

By: Mame: Steven St. George

Title: President

STEVEN ST GEORGE

SCHEDULE A

(Land Description)

CHICAGO TITLE INSURANCE COMPANY

Schedule A

COMMITMENT FOR TITLE INSURANCE

No: 1913-7318EC

LEGAL DESCRIPTION

Parcel I

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Pomfret, County of Chautauqua and State of New York; being part of Lot No. 7 Township 5 and Range 12 of the Holland Land Company's Survey; and being more particularly bounded and described as follows:

COMMENCING at a point on the existing centerline of pavement of Webster Road (a 49.5 foot wide pubic right of way and formerly known as East Road) at its intersection with the northwesterly corner of lands conveyed by Howard H. Ferry and Doris J. Ferry to James R. Decker and Christine L. Decker as described in a Warranty Deed dated June 14, 2000 and filed in the Chautauqua County Clerk's Office on July 10, 2000 in Liber 2445 of Deeds at page 584, said point being 249 feet distant westerly as measured along said centerline from its intersection with the easterly line of said Lot No. 7 (also being the division line between the Town of Pomfret on the west and the Town of Arkwright on the east); thence North 89 degrees 38 minutes 11 seconds West along said centerline, a distance of 840.25 feet to a point, said point being at the principle point of beginning of the parcel of land hereinafter described; thence South 00 degrees 21 minutes 49 seconds West, a distance of 99.00 feet to a point; thence South 89 degrees 38 minutes 11 seconds East, a distance of 309.00 feet to a point; thence South 00 degrees 28 minutes 17 seconds West parallel to the easterly line of said Lot No. 7, a distance of 1,661.99 feet to an existing iron stake on the southerly line of lands heretofore conveyed by Leo G. Seybold to Howard H. Ferry and Doris Ferry as described in a Warranty Deed dated July 10, 1962 and recorded in the Chautauqua County Clerk's Office on July 16, 1962 in Liber 1199 of Deeds at page 96; thence North 89 degrees 57 minutes 32 seconds West along said southerly line of Ferry, a distance of 559.30 feet to an existing iron stake on the easterly line of lands conveyed by Fred B. Straight and Lena A. Straight to Niagara, Lockport and Ontario Power Company as described in a Warranty Deed dated October 31, 1922 and recorded in said Clerk's Office on November 10, 1922 in Liber 495 of Deeds at page 64; thence North 00 degrees 29 minutes 46 seconds East along said easterly line of lands conveyed by Straight to Niagara, Lockport and Ontario Power Company, a distance of 1,747.16 feet to a an angle point therein; thence North 11 degrees 53 minutes 16 seconds East along said easterly line of lands of Niagara, Lockport and Ontario Power Company, a distance of 17.32 feet to point on said centerline of Webster Road; thence South 89 degrees 38 minutes 11 seconds East along said centerline, a distance of 245.91 feet to the point or place of beginning.

ALSO ALL THAT TRACT OR PARCEL OF LAND, situate in the same Town, County and State, and same Holland Land Company Lot, Township and Range; and being more particularly bounded and described as follows:

BEGINNING at a point on the existing centerline of pavement of Webster Road (a 49.5 foot wide pubic right of way and formerly known as East Road) at its intersection with the westerly line of lands conveyed by Fred B. Straight and Lena A. Straight to Niagara, Lockport and Ontario Power Company as described in a Warranty Deed dated October 31, 1922 and recorded in said Clerk's Office on November 10, 1922 in Liber 495 of Deeds at page 64, said point being 1,388.58 feet distant westerly as measured along said centerline from a point at its

intersection with the easterly line of said Lot No. 7 (also being the division line between the Town of Pomfret on the west and the Town of Arkwright on the east); thence South 00 degrees 29 minutes 46 seconds West along said westerly line of lands conveyed by Straight to Niagara, Lockport and Ontario Power Company, a distance of 1,809.18 feet to a point on the southerly line of lands heretofore conveyed by Leo G. Seybold to Howard H. Ferry and Doris Ferry as described in a Warranty Deed dated July 10, 1962 and recorded in the Chautauqua County Clerk's Office on July 16, 1962 in Liber 1199 of Deeds at page 96; thence North 89 degrees 04 minutes 14 seconds West along said southerly line of Ferry, a distance of 983.23 to a found iron stake at the southwesterly corner thereof; thence along the easterly line of lands James W. and Judith Wilcox as described in Liber 1423 of Deeds at page 97, lands formerly owned by Josiah Messenger as described in Liber 55 of Deed at page 343 and lands formerly owned by Nelson Gorham as described in Liber 51 of Deeds at page 220 the following three (3) courses and distances: (1) North 00 degrees 20 minutes 17 seconds West, a distance of 418.56 feet to a rebar; thence (2) North 28 degrees 18 minutes 47 seconds West, a distance of 233.63 feet to a found iron stake; thence (3) North 50 degrees 03 minutes 03 seconds West, a distance of 101.64 feet to a rebar at the northeasterly corner of said lands formerly owned by Gorham; thence North 85 degrees 41 minutes 03 seconds West along said lands of Gorham, a distance of 17.52 feet to a rebar on the easterly highway boundary of New York State Route No. 60 and at the southeasterly corner of lands appropriated by The People of the State of New York by Notice of Appropriation filed in said Clerk's Office on March 7, 1963 in Liber 1212 of Deeds at page 590 and shown on Map No. 8 as Parcel No. 9; thence along said highway boundary and along the easterly boundary of said Parcel No. 9 the following two (2) courses and distances: (1) North 04 degrees 47 minutes 56 seconds West, a distance of 145.96 feet to a found concrete highway monument; thence (2) North 16 degrees 15 minutes 56 seconds West, a distance of 171.83 feet to a rebar on the southerly line of lands heretofore known as the DeForest A. Straight, premises; thence along said lands of said Deforest A. Straight the following three courses and distances: (1) South 86 degrees 48 minutes 03 seconds East, a distance of 130.05 feet to a rebar; thence (2) North 00 degrees 41 minutes 03 seconds West, a distance of 112.0 feet to a found iron stake; thence (3) North 86 degrees 48 minutes 03 seconds West, a distance of 142.64 feet to a rebar at on the easterly highway boundary of New York State Route No. 60 and at the southeasterly corner of said lands appropriated by The People of the State of New York by Notice of Appropriation filed said in Liber 1212 of Deeds at page 590 and shown on Map No. 8 as Parcel No. 9; thence along said highway boundary and along the easterly boundary of said Parcel No. 9 the following three (3) courses and distances: (1) North 01 degrees 41 minutes 32 seconds West, a distance of 342.81 feet to a point of curvature, said point being 1.6 north and 0.3 feet west of a found concrete highway monument; thence (2) along a curve to the left having a radius of 5,779.58 feet, an arc length of 276.50 feet and a chord bearing and distance of North 03 degrees 03 minutes 46 seconds West, 276.48 feet to a rebar; thence (3) North 39 degrees 26 minutes 38 seconds East, a distance of 57.50 feet to point on the existing southerly boundary of Webster Road; thence North 00 degrees 21 minutes 49 second East, a distance of 24.75 feet to a point on said centerline of Webster Road; thence South 89 degrees 38 minutes 11 seconds East along said centerline a distance of 1,269.91 feet to the point of beginning.

Parcel II

EXCEPTING AND RESERVING from Parcel I above, all that tract or parcel of land, situate in the Town of Pomfret, County of Chautauqua and State of New York; being part of Lot No. 7, Township 5 and Range 12 of the Holland Land Company's Survey; and being more particularly bounded and described as follows:

BEGINNING at a point on the existing center line of pavement of Webster Road (formerly known as East Road) at its intersection with northwesterly corner of lands conveyed to Steven St. George, hereinafter referenced, said point being 2,658.5 feet, more or less distant westerly as measured along said center line from its intersection from the easterly line of said Lot No. 7 (also being the subdivision line between the Town of Pomfret on the west and the Town of Arkwright on the east; thence South 89° 38' 11" East along said center

line, a distance of 90.0 feet to a point; thence through the lands of said St. George the following two (2) courses and distances: (1) South 01° 41' 32" East, a distance of 361.0 feet to a point; thence (2) South 99° 18' 28" West, a distance of 122.04 feet to a point on the easterly highway boundary of New York State Route No. 60 and on the easterly bounds of lands appropriated by the People of the State of New York by Notice of Appropriation filed in said Liber 1212 of Deeds at page 590 and shown on Map No. 8 as Parcel No. 9; thence along said highway boundary and along the easterly boundary of said Parcel No. 9 the following three (3) courses and distances: (1) North 01° 41' 32" West a distance of 19.79 feet to a point of curvature, said point being 106 feet north and 0.3 feet west of a found concrete highway monument; thence (2) along a curve to the left having a radius of 5,779.58 feet, an arc length of 276.50 feet and a chord bearing and length of North 03° 03' 46" West, 276.48 feet to a set rebar; thence (3) North 39° 26' 38" East, a distance of 57.50 feet to a point on the existing southerly boundary of Webster Road; thence North 00° 21" 49" East, a distance of 24.75 feet to the point or place of beginning.

For Conveyancing Only

Together with all right, title and interest of, in and to any streets and roads abutting the above described premises. Our Policy of Title Insurance includes such buildings and improvements thereon which by law constitute real property, unless specifically excepted therein.

SCHEDULE B (Underground Storage Tanks)

None

SCHEDULE C (Environmental Permits)

NYSDEC Petroleum Bulk Storage Certificate (PBS Number 9-601764) issued 12/15/17

DLLOW INSTRUCTIONS (front and back) CAREFULLY L NAME & PHONE OF CONTACT AT FILER [optional] 3. SEND ACKNOWLEDGMENT TO: (Name and Address) Biltekoff Law Office, LLC 43 Court St., Suite 930 Buffalo, NY 14202, USA					
Biltekoff Law Office, LLC 43 Court St., Suite 930					
Biltekoff Law Office, LLC 43 Court St., Suite 930					
		THE ABOVE SPA	CE IS FO	R FILING OFFICE US	E ONLY
DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a ORGANIZATION'S NAME S. ST. GEORGE ENTERPRISES, INC.	1a or 1b) - do not abbreviate or com	bine names			
			1,400,0	1000	Lei (CEIV
1b. INDIVIDUAL'S LAST NAME	FIRST NAME		MIDDLE	NAME	SUFFIX
MAILING ADDRESS 3689 Webster Road, P.O. Box 348	CITY Fredonia		STATE	POSTAL CODE 14063	COUNTRY
SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR OCOP.	1f. JURISDICTION OF ORGAINEW YORK	NIZATION	1g. ORGANIZATIONAL ID #, if any NONE		×Ν
ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only on 28, ORGANIZATION'S NAME	ne debtor name (2a or 2b) - do not ab	breviate or combine i	names		
R 2b. INDIVIDUAL'S LAST NAME	FIRST NAME		MIDDLE	NAME	SUFFIX
MAILING ADDRESS	CITY		STATE	POSTAL CODE	COUNTRY
S. SEE INSTRUCTIONS ADD'L INFO RE 2e. TYPE OF ORGANIZATION ORGANIZATION DEBTOR	21 JURISDICTION OF ORGA	NIZATION	2g. ORGA	I NNIZATIONAL ID #, if any	
SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGN 3a. ORGANIZATION'S NAME County of Chautauqua industrial Deve	OR S/P) - insert only one secured pa	arty name (3a or 3b)			
38. ORGANIZATION'S NAME. COUNTY OF CHAUTAUGUS INCUSURAL DEVE	nopment Agency				
3b. INDIVIDUAL'S LAST NAME	FIRST NAME		MIDDLE NAME		SUFFIX
: MAILING ADDRESS 201 West Third Street, Suite 115	CITY Jamestown		STATE NY	POSTAL CODE 14701	COUNTRY USA

ALTERNATIVE DESIGNATION (if applicable):	LESSEE/LESSOR CONSIG	NEE/CONSIGNOR BAILE	E/BAILOR SELLER/BUYER	AG, LIEN	NON-UCCFILING
This FINANCING STATEMENT is to be filed (for	or record) (or recorded) in the REAL		ARCH REPORT(S) on Debtor(s) [optional]	All Debtors	Debtor 1 Debtor 2
OPTIONAL FILER REFERENCE DATA NYSOS -					

C FINANCING	STATEMENT				
LOW INSTRUCTIONS	(front and back) CAREFULLY				
NAME & PHONE OF CO	ONTACT AT FILER [optional]				
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SEND ACKNOWLEDGE	MENT TO: (Name and Address)				
Phillips Lytle					
	ird Street, Suite 205				
Jamestown,	NY 14701				
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				we errier He	E ONLY
			PACE IS FO	R FILING OFFICE US	EONET
	LLLEGAL NAME - insert only one debtor name (1a or 1b)	- do not abbreviate or combine names			
1a. ORGANIZATION'S NA					
S. ST. GEORG	E ENTERPRISES, INC.	FIRST NAME	MIDDLE	JAME	SUFFIX
16. INDIVIDUAL'S LAST N	AME	FIRST NAME	WIDDLE WATE		
		CITY	STATE	POSTAL CODE	COUNTRY
MAILING ADDRESS			I		USA
689 Webster Road	d, P.O. Box 348	Fredonia	NY 10 OPG	14063 ANIZATIONAL ID#, if any	JUSA
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Not Applicable	DEBTOR Corp.	NEW YORK			IV IN
	R'S EXACT FULL LEGAL NAME - Insert only <u>one</u> d	lebtor name (2a or 2b) - do not abbreviate or combi	ne names		
2a, ORGANIZATION'S NA	4ME				
2b. INDIVIDUAL'S LAST	NAME	FIRST NAME	MIDDLE	NAME	SUFFIX
20. INDIVIDUALS LAST	MAINE		ļ		
1		CITY	STATE	POSTAL CODE	COUNTRY
MAILING ADDRESS		10111			
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SEE INSTRUCTIONS	ORGANIZATION I		1		П
Not Applicable	DEBTOR				
SECURED PARTY'S [38, ORGANIZATION'S N	NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/	P) - insert only one secured party name (3a or 3b)			
[
3b. INDIVIDUAL'S LAST	utauqua Industrial Development Aş	FIRST NAME	MIDDLE	NAME	SUFFIX
36. INDIVIDUAL'S LAST	NAME	1 100 1 100 100 100 100 100 100 100 100			
MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTR
	0 14 116		NY	14701	USA
B1 West Third St	reet, Suite 115	Jamestown	1141	THU	
	CNT the following colleters!				
This FINANCING STATEM	chinery, equipment, trade fixtures, f	m ,	mal athan	angible neverne	Inconsets

approximately 19,999 square foot addition to the existing approximately 20,000 square foot building on the real property at 3689 Webster Road, Fredonia, Town of Pomfret, County of Chautauqua, New York. All capitalized terms in the foregoing sentence shall have the meaning ascribed thereto in Article 9 of the Uniform Commercial Code

5 ALTERNATIVE DESIGNATION (if applicable): [LESSEE/LESSOR CONSIGNOR BAILLEPARCOR DELECTION	ON-UCC FILING
6. This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL [7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) All Debtors Debtor [Industrial Records] [Industrial Records] [Ind	or 1 Debtor 2
8. OPTIONAL FILER REFERENCE DATA	

RP-412-a (1/95)



NYS DEPARTMENT OF TAXATION & FINANCE OFFICE OF REAL PROPERTY TAX SERVICES

INDUSTRIAL DEVELOPMENT AGENCIES

APPLICATION FOR REAL PROPERTY TAX EXEMPTION

(Real Property Tax Law, Section 412-a and General Municipal Law, Section 874)

1. <u>INDUSTRIAL DEVELOPMENT AGENCY (IDA)</u>	2. OCCUPANT (IF OTHER THAN IDA) (If more than one occupant attach separate listing)
Name COUNTY OF CHAUTAUQUA IDA	Name S. ST. GEORGE ENTERPRISES, INC.
Street 201 WEST THIRD STREET, SUITE 115	Street 3689 Webster Road, P.O. Box 348
City JAMESTOWN, NY 14701	City Fredonia, NY 14063
Telephone no. Day (716)661-8900	Telephone no. Day (716)672-2488
Evening ()	Evening ()
Contact MARK GEISE	Contact Steve St. George
Title ADMINISTRATIVE DIRECTOR/CEO	Title Tresident
3. <u>DESCRIPTION OF PARCEL</u> a. Assessment roll description (tax map no.,/roll year) 131.00-1-50	
b. Street address 3689 Webster Road	e. County CHAUTAUQUA
	f. Current assessment
c. City, Town or Village Pomfret	 g. Deed to IDA (date recorded; liber and page) Memo of Lease to be recorded
GENERAL DESCRIPTION OF PROPERTY a. Brief description (include property use) Construction 23,000 square foot building	(if necessary, attach plans or specifications) ion of 19,999 square foot addition to an existing
b. Type of construction Steel, concrete	
c. Square footage 42,999	f. Projected expiration of exemption (i.e. date when property is no longer
d. Total cost <u>\$765,000</u>	possessed, controlled, supervised or under the jurisdiction of IDA)
e. Date construction commenced TBD	12/31/2030
5. SUMMARIZE AGREEMENT (IF ANY) AND ME MADE TO MUNICIPALITY REGARDLESS OF (Attach copy of the agreement or extract a. Formula for payment SEE ATTACHED PILOT AG	STATUTORY EXEMPTION of the terms relating to the project).

V	Theur 16	6		, K CFU of
*	Name			Title
	1 1001110	Day 1		Title
Coun	1 1001110	Develor	ment Ac	gency hereby certify that the information
Coun		Develop	ment Ag	hereby certify that the information
	Organization			
n this	application and accompanying	ng pape	rs consti	tutes a true statement of facts.
	, /			
1	1/07/19			N Richard Dixon
_//	Dote			K:chand Dixon Signature
	Date			Signature
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			<u>CEI</u>	RTIFICATION
			CTPI	OTTETA TIAN
the cl	hief executive official of eac	h munic	cipality v	vithin which the project is located as indicated in Item 3.
. A co	ppy of this application, includ	ing an	attacinine	ints, has been maned of derivered on 7777777 (date)
A co	my of this application includ	ling all	attachme	ents, has been mailed or delivered on ////3//9 (date)
				././.
exe	mption		a	ssessment roll year
Ifv	as list the statutory evernting	n refer	ence and	assessment roll year on which granted:
	•			
	(check one)	res 🖭	No	
. is the				received any other exemption from real property taxation?
¥ .1				
-22 -32				CCIDA HOLDS LEASEHOLD INTEREST
in ar	n attached statement.		_	
If "N	No" identify owner and expla	in IDA	rights of	r interest Telephone 716-672-2488
. Is th	e IDA the owner of the prop	erty? 🛘	Yes &	No (check one)
Scho	ol District	_ 💆	U	340, Fredoma, 141 14003
V IIIa	al District	Z		348, Fredonia, NY 14063
Villa	ge			Address 3689 Webster Road, P.O. Box
Town	nty n/City	<u>2</u>	П	
	nty			Title
Cour		Yes	No	Name Steve St. George
Cour	ade			NY Charle Cl Canada

REVISION NUMBER:

DSTETLER



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 10/24/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # BR-632443	CONTACT NAME:				
awley Construction Solutions	PHONE (A/C, No, Ext): (716) 849-8618 FAX (A/C, No): (716)	849-8291			
lô1 Délaware Avenue Buffalo, NY 14202	E-MAIL ADDRESS:				
	INSURER(S) AFFORDING COVERAGE	NAIC#			
	INSURER A : Wesco Insurance Company	25011			
NSURED	INSURER B : Security National Insurance Co	19879			
S St George Enterprises Inc.	INSURER C: Endurance American Insurance Company	10641			
PO Box 348	INSURER D : Hartford Fire Insurance Co	19682			
Fredonia, NY 14063	INSURER E :				
	INSURER F:				

CERTIFICATE NUMBER: COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES, LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

		ISIONS AND CONDITIONS OF SUCH	POLICI	IES.	LIMITS SHOWN MAY HAVE BE	EN REDUCED BY	PAID CLAIMS.			
INSR LTR	-	TYPE OF INSURANCE	ADDL S	WVD	POLICY NUMBER	(MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMIT	<u>s</u>	
A	X	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	\$	1,000,000
		CLAIMS-MADE X OCCUR	x		WPP1204126-06	10/1/2019	10/1/2020	DAMAGE TO RENTED PREMISES (Es occurrence)	\$	300,000
	X	Contractual	``					MED EXP (Any one person)	\$	10,000
								PERSONAL & ADV INJURY	\$	1,000,000
	GEN	N'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$	2,000,000
		POLICY X PRO: X LOC						PRODUCTS - COMP/OP AGG	\$	2,000,000
		OTHER:						EBL AGGREGATE	\$	2,000,000
A	AUT	OMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	\$	1,000,000
	X	ANY AUTO	X		WPP1825146-00	10/1/2019	10/1/2020	BODILY INJURY (Per person)	\$	
		OWNED SCHEDULED AUTOS						BODILY INJURY (Per accident)	\$	
	X	HIRED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	\$	
									\$	
A	X	UMBRELLA LIAB X OCCUR						EACH OCCURRENCE	\$	5,000,000
		EXCESS LIAB CLAIMS-MADE	X		WUM1562301-00	10/1/2019	10/1/2020	AGGREGATE	\$	5,000,000
		DED X RETENTION\$ 10,000							\$	
В	WOF	KERS COMPENSATION						X PER OTH-		
	ANY	PROPRIETOR/PARTNER/EXECUTIVE	N/A		SWC1260898	10/1/2019	10/1/2020	E.L. EACH ACCIDENT	\$	1,000,000
		idatory in NH)						E.L. DISEASE - EA EMPLOYEE	\$	1,000,000
	If ye	s, describe under CRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	\$	1,000,000
C		ess Liability			ELD30000794601	10/1/2019	10/1/2020	\$5mm Occ/\$5mm Agg		
D	Inst	tallation/BR			01UU M JX8882	10/1/2019	10/1/2020	Ded \$1,000		400,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Re: Buildings at 3689 Webster Road, Fredonia, NY

Additional Insured and Waiver of Subrogation coverage shown above and marked with an X. Terms set forth as evidenced by the attached endorsement(s) identified on the ACORD 101

County of Chautauqua Industrial Development Agency is additional insured on a primary and non-contributory basis with respect to the general liability, automobile and umbrella when required by written contract. 30 days notice of cancellation applies under the general liability, automobile and umbrella in favor of the the certificate holder.

CERTIFICATE HOLDER	CANCELLATION			
County of Chautauqua industrial Development Agency 201 3rd Street, Suite 115	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.			
Jamestown, NY 14701	AUTHORIZED REPRESENTATIVE			

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LOC#: 0



ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Licen Lawley Construction Solutions	se # BR-632443	NAMED INSURED S St George Enterprises Inc. PO Box 348
POLICY NUMBER		Fredonia, NY 14063
SEE PAGE 1		
CARRIER	NAIC CODE	
SEE PAGE 1	SEE P 1	EFFECTIVE DATE: SEE PAGE 1

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM, FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

When required by executed written contract the following endorsements apply:

General Liability:

CG 20 38 04 13 Additional Insured - Owners, Lessees Or Contractors - Automatic Status for Other Parties when required in written Construction Agreement

CG 20 01 04 13 Primary and Noncontributory - Other Insurance Condition

CG 20 37 04 13 Additional Insured - Owners, Lessees or Contractors - Completed Operations

GL990078 09 12 Broadened Coverage for Contractors

CG 25 03 05 09 Designated Construction Project(s) General Aggregate Limit

CG 20 26 04 13 Additional Insured - Designated Person or Organization

Auto:

CA990187 10 13 Business Auto Coverage Expansion Endorsement

Umbrella:

CU990001 02 14 Following Form Endorsement

CU 22 40 12 04 Primary and Non-Contributing Insurance (Third Party)

CU 24 03 09 00 Waiver of Transfer of Rights of Recovery Against Others To Us

CU 22 30 12 04 Per Project Aggregate

Excess:

EXL 0203 08/13 Excess Liability Coverage Follow Form

EXL 1351 08/17 Primary Non-Contributory Endorsement

EXL 6092 08-13 Waiver of Subrogation

WC

WC 00 03 13 04 84 Waiver of Our Right to Recover from Others

POLICY NUMBER: WUM1562301 00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY CHANGES

This endorsement modifies insurance provided under the following:

COMMERCIAL LIABILITY UMBRELLA COVERAGE PART

Effective Date of Change: 10/1/2019					
_	e Endorsement No.: 1				
Name	Insured: S St George Enterprises, Inc				
The following item(s):					
	Insured's Name		Insured's Mailing Ad	ddress	
	Policy Number		Company		
	Effective/Expiration Date		Insured's Legal Stat	tus/Business of Insured	
	Payment Plan		Premium Determina	ation	
	Additional Interested Parties:		Coverage Forms ar	nd Endorsements	
	Limits/Exposures		Self-Insured Retent	ion	
	Covered Property/Located Description		Classification/Class	Codes	
	Rates		Underlying Insurance	ce	
is (are	changed to read {See Additional Page(s)}:	*************	 	The second secon	
(,				
The above amendments result in a change in the premium as follows:					
	NO CHANGES TO BE ADJUSTED AT AUDIT		ADDITIONAL PREMI	_	
	AI AODII	\$	0.00	\$	
Endorsement Effective: 10/1/2019 Co			Countersigned By:		
	10/1/2013			Jeffry for	
Nomed Insured C St Coords Enterprises Inc				(Authorized Depresentation)	
Maille	Insured: S St George Enterprises, Inc			(Authorized Representative)	

POLICY CHANGES ENDORSEMENT DESCRIPTION			
??CU0204 30 DAY NOTICE OF CANCELLATION IS ADDED FOR:			
County of Chautauqua Industrial Development Agency			
201 3RD St, Suite 115			
Jamestown, NY 14701			
Jamestown, NT 14701			

POLICY NUMBER: WUM1562301 00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EARLIER NOTICE OF CANCELLATION PROVIDED BY US

This endorsement modifies insurance provided under the following:

COMMERCIAL LIABILITY UMBRELLA COVERAGE PART

SCHEDULE

Number Of Days' Notice	30

(If no entry appears above, information required to complete this Schedule will be shown in the Declarations as applicable to this endorsement.)

For any statutorily permitted reason other than nonpayment of premium, the number of days required for notice of cancellation, as provided in Paragraph 2. of either the **Cancellation** Common Policy Condition or as amended by an applicable state cancellation endorsement, is increased to the number of days shown in the Schedule above.

Policy Change

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY CHANGES

		Number : 1		
POLICY NUMBER WPP1204126 06	POLICY CHANGES EFFECTIVE 10/1/2019	COMPANY Wesco Insurance Company		
NAMED INSURED S St George Enterprises Inc	AUTHORIZED REPRESENTATIVE Jeffrey Leo			
COVERAGE PARTS AFFECTED General Liability	D			
	CHANGE \$25.00 Additional Premium			
CG20260413 ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION IS ADDED FOR County of Chautauqua Industrial Development Agency 201 3RD St, Suite 115 Jamestown, NY 14701				
CG0224 30 DAY NOTICE OF CANCELLATION FOR: County of Chautauqua Industrial Development Agency 201 3RD St, Suite 115 Jamestown, NY 14701				
Change in Tax Premium (Includ	ed in Total):			

Authorized Representative Signature

POLICY NUMBER: WPP1204126 06

Number of Days' Notice 30

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EARLIER NOTICE OF CANCELLATION PROVIDED BY US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART LIQUOR LIABILITY COVERAGE PART POLLUTION LIABILITY COVERAGE PART PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

(If no entry appears above, information required to complete this Schedule will be shown in the Declarations as applicable to this endorsement.)

For any statutorily permitted reason other than nonpayment of premium, the number of days required for notice of cancellation, as provided in paragraph 2. of either the CANCELLATION Common Policy Condition or as amended by an applicable state cancellation endorsement, is increased to the number of days shown in the Schedule above.

POLICY NUMBER: WPP1204126 06

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s): County of Chautauqua Industrial Development Agency 201 3RD St, Suite 115 Jamestown, NY 14701

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A. Section II Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - In the performance of your ongoing operations; or
 - 2. In connection with your premises owned by or rented to you.

However:

- The insurance afforded to such additional insured only applies to the extent permitted by law; and
- If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- 1. Required by the contract or agreement; or
- 2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY CHANGES

Policy Change Number: 2

		Number : 2						
POLICY NUMBER WPP1825146 00	POLICY CHANGES EFFECTIVE 10/1/2019	COMPANY Wesco Insurance Company						
NAMED INSURED S St George Enterprises Inc	AUTHORIZED REPRESENTATIVE Jeffrey Leo							
COVERAGE PARTS AFFECTED								
CHANGE \$0.00 Additional Premium								
THE RESERVE OF THE POLICY PLEASE PERSON FOR THE POLICY PROPERTY.								

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY. EARLIER NOTICE OF CANCELLATION PROVIDED BY US

This endorsement modifies insurance provided under the following: Business Auto

SCHEDULE Number of Days' Notice 30

(If no entry appears above, information required to complete this Schedule will be shown in the Declarations as applicable to this endorsement.)

For any statutorily permitted reason other than nonpayment of premium, the number of days required for notice of cancellation, as provided in paragraph 2. of either the CANCELLATION Common Policy Condition or as amended by an applicable state cancellation endorsement, is increased to the number of days shown in the Schedule above.

FOR: County of Chautauqua Industrial Development Agency 201 3RD St, Suite 115 Jamestown, NY 14701

Authorized Representative Signature

BILTEKOFF LAW OFFICE, LLC

Robert A. Biltekoff, Member 716-748-7314 rob@biltekoffllc.com

Admitted in NY and MA

November 7, 2019

County of Chautauqua Industrial Development Agency 201 West Third Street, Suite 115 Jamestown, NY 14701

Re: County of Chautauqua Industrial Development Agency

Tax Lease/PILOT Transaction 2019 St. George Enterprises Project

Ladies and Gentlemen:

We have acted as counsel to S. ST. GEORGE ENTERPRISES, INC., a corporation organized under the laws of the State of New York (the "Company"), in connection with the preparation, execution and delivery by the Company of the following documents (collectively, the "Company Documents"):

- (1) a certain Company Lease Agreement dated as of November 1, 2019 (the "Company Lease") by and between the Company, as sublessor, and the County of Chautauqua Industrial Development Agency (the "Agency"), as sublessee, pursuant to which the Company will sublease to the Agency the Company's leasehold interest in the Project Facility (as defined below);
- (2) a certain Agency Lease Agreement (Uniform Project Agreement) dated as of November 1, 2019 (the "Agency Lease") by and between the Agency, as sub-sublessor, and the Company, as sub-sublessee, pursuant to which the Agency will sub-sublease to the Company the Agency's subleasehold interest in the Project Facility (as defined below);

- (3) a certain Payment in Lieu of Taxes Agreement dated as of November 1, 2019, (the "PILOT Agreement") by and among the Company, Steven St. George (the "Guarantor") and the Agency, pursuant to which the Company and the Guarantor will make certain payments in lieu of taxes with respect to the Project Facility to the Agency;
- (4) a certain Environmental Compliance and Indemnification Agreement dated as of November 1, 2019 (the "Environmental Indemnification") from the Company and the Guarantor in favor of the Agency;
- (5) a certain Sales Tax Agency Agreement dated the date hereof (the "Sales Tax Agreement") between the Company and the Agency; and
- various other documents, instruments and agreements required by the Agency to be (6)executed by the Company; all in connection with the undertaking by the Agency of a project (the "Project") consisting of: (A)(1) the acquisition of an interest in an approximately 70 acre parcel of land located at 3689 Webster Road, Fredonia, Town of Pomfret, County of Chautauqua, New York (the "Land"), (2) the construction of an approximately 19,999 square foot addition to an existing approximately 20,000 square foot building (collectively, the "Building" and together with the Land, collectively, the "Facility"), together with related improvements to the Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the "Equipment") necessary for the completion thereof (collectively, the "Project Facility"), all of the foregoing for use by the Company and/or its affiliates as an inventory and heavy equipment storage facility; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes, mortgage recording taxes and sales and use taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency.

Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Agency Lease.

We have also represented the Guarantor in connection with the execution and delivery by the Guarantor of the PILOT Agreement, the Environmental Indemnification and a certain Guaranty dated as of November 1, 2019 made by the Guarantor in favor of the Agency (collectively, the "Guarantor Documents").

We have examined certificates of the Company's representatives and executed counterparts of the Company Documents and the Guarantor Documents. We have also examined such statutes, court decisions, proceedings and other documents as we have considered necessary or appropriate in the circumstances to render the following opinions.

As to questions of fact material to our opinion, I have relied upon the representations and warranties made by the Company in the Company Documents and upon one or more certificates of officers of the Company. Whenever the phrase "to the best of our knowledge" is used in this opinion, it refers to Robert A. Biltekoff's actual knowledge obtained from our representation of the Company, inquiries of responsible officers of the Company made in connection with this opinion, and the review of our files with respect to the Company, but no further investigation or review has been conducted.

We understand that with respect to title matters concerning the Premises (as defined in the Agency Lease), you will be relying on the title insurance commitment issued to you by Chicago Title Insurance Company, Policy No. 1913-7318EC with an effective date of November 7, 2019. I have not made any investigation of, and do not express an opinion as to, any matters of title to or the description of any property (whether real, personal or mixed) or priority of liens.

Based on the foregoing, it is our opinion that:

- 1. Each of the Company Documents has been duly executed and delivered by an authorized representative of the Company and is a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as provided in Paragraphs 6 and 7 below.
- 2. Each of the Guarantor Documents has been duly executed and delivered by the Guarantor and is a legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, except as provided in Paragraphs 6 and 7 below
- 3. The execution and delivery by the Company of the Company Documents, the compliance with the provisions thereof and the consummation of the transactions contemplated therein do not and will not (A) conflict with or constitute on the part of the Company a breach of or default under the Company's Certificate of Incorporation or By-Laws, (B) to our knowledge, require consent under (which has not heretofore been received), or result in a breach or default of any indenture, mortgage, deed of trust, loan or credit agreement or other agreement or instrument to which the Company is a party or by which it or any of its property may be bound or affected for which a valid consent has not been secured and provided to the Agency; nor is any approval or any action by any governmental authority or agency required in connection with the Company's execution, delivery or performance thereof.
- 4. The execution and delivery by the Guarantor of the Guarantor Documents, the compliance with the provisions thereof and the consummation of the transactions contemplated therein do not and will not, to our knowledge, require consent under (which has not heretofore been received), or result in a breach or default of any indenture, mortgage, deed of trust, loan or credit agreement or other agreement or instrument to which the Guarantor is a party or by which the Guarantor or any of the Guarantor's property may be bound or affected for which a valid consent has not been secured and provided to the Agency; nor is any approval or any action by any governmental authority or agency required in connection with the Guarantor's execution, delivery or performance thereof
- 5. To our knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened against, or affecting, the Company or the Guarantor, wherein an unfavorable decision, ruling or finding would adversely affect, in a material

fashion, the Company, the Guarantor, the Project Facility, the validity or enforceability against the Company of the Company Documents or the validity or enforceability against the Guarantor of the Guarantor Documents.

- 6. Any opinion concerning the validity, binding effect or enforceability of any document against the Company or the Guarantor (A) means that (1) such document constitutes an effective contract under applicable law, and (2) such document is not invalid in its entirety under applicable law because of a specific statutory prohibition or public policy, and is not subject in its entirety to a contractual defense under applicable law, and (3) subject to the following sentence, some remedy is available under applicable law if the person concerning whom such opinion is given is in material default under such document, but (B) does not mean that (1) any particular remedy is available under applicable law upon such material default or (2) every provision of such document will be upheld or enforced in any or each circumstance by a court applying applicable law.
- 7. Furthermore, the validity, binding effect or enforceability against the Company of any of the Company Documents and against the Guarantor of any of the Guarantor Documents may be limited or otherwise affected by (A) any applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar statute, rule, regulation or other law affecting the enforcement of creditors' rights and remedies generally or (B) the unavailability of, or any limitation on the availability of, any particular right or remedy (whether in a proceeding in equity or law) because of the discretion of a court or because of any equitable principle or requirement as to commercial reasonableness, conscionability, or good faith.

I am licensed to practice law in the State of New York, and I do not purport to be an expert on, or to express any opinion herein concerning any law other than the State of New York and the federal laws of the United States.

This opinion is rendered solely for your benefit in connection with the matters set forth above, and may not be relied upon by any other person.

This opinion is limited to the matters set forth herein. No opinion may be inferred or implied beyond the matters expressly stated herein, and this opinion must be read in conjunction with the substance, limitations, exceptions, qualifications set forth in this letter.

This opinion is rendered as of the date hereof, and no opinion is expressed as to matters referred to herein on any subsequent date.

Very truly yours,

Robert A. Biltekoff

cc: Steven St. George

BILTEKOFF LAW OFFICE, LLC

Robert A. Biltekoff, Member 716-748-7314 rob@biltekoffllc.com

Admitted in NY and MA

November 7, 2019

County of Chautauqua Industrial Development Agency 201 West Third Street, Suite 115 Jamestown, NY 14701

Re: County of Chautauqua Industrial Development Agency
Tax Lease/PILOT Transaction
2019 St. George Enterprises Project

Ladies and Gentlemen:

We have acted as counsel to S. ST. GEORGE ENTERPRISES, INC., a corporation organized under the laws of the State of New York (the "Company"), in connection with the preparation, execution and delivery by the Company of the following documents (collectively, the "Company Documents"):

- (1) a certain Company Lease Agreement dated as of November 1, 2019 (the "Company Lease") by and between the Company, as sublessor, and the County of Chautauqua Industrial Development Agency (the "Agency"), as sublessee, pursuant to which the Company will sublease to the Agency the Company's leasehold interest in the Project Facility (as defined below);
- (2) a certain Agency Lease Agreement (Uniform Project Agreement) dated as of November 1, 2019 (the "Agency Lease") by and between the Agency, as sub-sublessor, and the Company, as sub-sublessee, pursuant to which the Agency will sub-sublease to the Company the Agency's subleasehold interest in the Project Facility (as defined below);

- (3) a certain Payment in Lieu of Taxes Agreement dated as of November 1, 2019, (the "PILOT Agreement") by and among the Company, Steven St. George (the "Guarantor") and the Agency, pursuant to which the Company and the Guarantor will make certain payments in lieu of taxes with respect to the Project Facility to the Agency;
- (4) a certain Environmental Compliance and Indemnification Agreement dated as of November 1, 2019 (the "Environmental Indemnification") from the Company and the Guarantor in favor of the Agency;
- (5) a certain Sales Tax Agency Agreement dated the date hereof (the "Sales Tax Agreement") between the Company and the Agency; and
- various other documents, instruments and agreements required by the Agency to be (6) executed by the Company; all in connection with the undertaking by the Agency of a project (the "Project") consisting of: (A)(1) the acquisition of an interest in an approximately 70 acre parcel of land located at 3689 Webster Road, Fredonia, Town of Pomfret, County of Chautauqua, New York (the "Land"), (2) the construction of an approximately 19,999 square foot addition to an existing approximately 20,000 square foot building (collectively, the "Building" and together with the Land, collectively, the "Facility"), together with related improvements to the Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the "Equipment") necessary for the completion thereof (collectively, the "Project Facility"), all of the foregoing for use by the Company and/or its affiliates as an inventory and heavy equipment storage facility; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes, mortgage recording taxes and sales and use taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency.

Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Agency Lease.

We have also represented the Guarantor in connection with the execution and delivery by the Guarantor of the PILOT Agreement, the Environmental Indemnification and a certain Guaranty dated as of November 1, 2019 made by the Guarantor in favor of the Agency (collectively, the "Guarantor Documents").

We have examined certificates of the Company's representatives and executed counterparts of the Company Documents and the Guarantor Documents. We have also examined such statutes, court decisions, proceedings and other documents as we have considered necessary or appropriate in the circumstances to render the following opinions.

As to questions of fact material to our opinion, I have relied upon the representations and warranties made by the Company in the Company Documents and upon one or more certificates of officers of the Company. Whenever the phrase "to the best of our knowledge" is used in this opinion, it refers to Robert A. Biltekoff's actual knowledge obtained from our representation of the Company, inquiries of responsible officers of the Company made in connection with this opinion, and the review of our files with respect to the Company, but no further investigation or review has been conducted.

We understand that with respect to title matters concerning the Premises (as defined in the Agency Lease), you will be relying on the title insurance commitment issued to you by Chicago Title Insurance Company, Policy No. 1913-7318EC with an effective date of November 7, 2019. I have not made any investigation of, and do not express an opinion as to, any matters of title to or the description of any property (whether real, personal or mixed) or priority of liens.

Based on the foregoing, it is our opinion that:

- 1. Each of the Company Documents has been duly executed and delivered by an authorized representative of the Company and is a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as provided in Paragraphs 6 and 7 below.
- 2. Each of the Guarantor Documents has been duly executed and delivered by the Guarantor and is a legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, except as provided in Paragraphs 6 and 7 below
- 3. The execution and delivery by the Company of the Company Documents, the compliance with the provisions thereof and the consummation of the transactions contemplated therein do not and will not (A) conflict with or constitute on the part of the Company a breach of or default under the Company's Certificate of Incorporation or By-Laws, (B) to our knowledge, require consent under (which has not heretofore been received), or result in a breach or default of any indenture, mortgage, deed of trust, loan or credit agreement or other agreement or instrument to which the Company is a party or by which it or any of its property may be bound or affected for which a valid consent has not been secured and provided to the Agency; nor is any approval or any action by any governmental authority or agency required in connection with the Company's execution, delivery or performance thereof.
- 4. The execution and delivery by the Guarantor of the Guarantor Documents, the compliance with the provisions thereof and the consummation of the transactions contemplated therein do not and will not, to our knowledge, require consent under (which has not heretofore been received), or result in a breach or default of any indenture, mortgage, deed of trust, loan or credit agreement or other agreement or instrument to which the Guarantor is a party or by which the Guarantor or any of the Guarantor's property may be bound or affected for which a valid consent has not been secured and provided to the Agency; nor is any approval or any action by any governmental authority or agency required in connection with the Guarantor's execution, delivery or performance thereof
- 5. To our knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened against, or affecting, the Company or the Guarantor, wherein an unfavorable decision, ruling or finding would adversely affect, in a material

fashion, the Company, the Guarantor, the Project Facility, the validity or enforceability against the Company of the Company Documents or the validity or enforceability against the Guarantor of the Guarantor Documents.

- 6. Any opinion concerning the validity, binding effect or enforceability of any document against the Company or the Guarantor (A) means that (1) such document constitutes an effective contract under applicable law, and (2) such document is not invalid in its entirety under applicable law because of a specific statutory prohibition or public policy, and is not subject in its entirety to a contractual defense under applicable law, and (3) subject to the following sentence, some remedy is available under applicable law if the person concerning whom such opinion is given is in material default under such document, but (B) does not mean that (1) any particular remedy is available under applicable law upon such material default or (2) every provision of such document will be upheld or enforced in any or each circumstance by a court applying applicable law.
- 7. Furthermore, the validity, binding effect or enforceability against the Company of any of the Company Documents and against the Guarantor of any of the Guarantor Documents may be limited or otherwise affected by (A) any applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar statute, rule, regulation or other law affecting the enforcement of creditors' rights and remedies generally or (B) the unavailability of, or any limitation on the availability of, any particular right or remedy (whether in a proceeding in equity or law) because of the discretion of a court or because of any equitable principle or requirement as to commercial reasonableness, conscionability, or good faith.

I am licensed to practice law in the State of New York, and I do not purport to be an expert on, or to express any opinion herein concerning any law other than the State of New York and the federal laws of the United States.

This opinion is rendered solely for your benefit in connection with the matters set forth above, and may not be relied upon by any other person.

This opinion is limited to the matters set forth herein. No opinion may be inferred or implied beyond the matters expressly stated herein, and this opinion must be read in conjunction with the substance, limitations, exceptions, qualifications set forth in this letter.

This opinion is rendered as of the date hereof, and no opinion is expressed as to matters referred to herein on any subsequent date.

Very truly yours,

Robert A. Biltekoff

A L hull

cc: Steven St. George

ALTA Standard Form (1966)

Chicago Title Insurance Company

Providing Title Related Services Since 1847

COMMITMENT FOR TITLE INSURANCE

CHICAGO TITLE INSURANCE COMPANY, a corporation of Nebraska, herein called the Company, for a valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefore; all subject to the provisions of Schedules A and B and to the Conditions and Stipulations which are hereby incorporated by reference and are made a part of the Commitment.

This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of this Commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate six (6) months after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company.

IN WITNESS WHEREOF, Chicago Title Insurance Company has caused this Commitment to be signed and sealed as of the effective date of Commitment shown in Schedule A, the Commitment to become valid when countersigned by an authorized signatory.

Redated:

Robert A. Biltekoff By:

Issued By: Biltekoff Law Office, LLC

43 Court St., Suite 930 Buffalo, NY 14202

716-748-7314

Chicago Title Insurance Company

Countersigned

File Number: | 1913-7318EC

ALTA 6-17-06 OWNERS COVERAGE

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, CHICAGO TITLE INSURANCE COMPANY, a Nebraska Corporation (The Company), insures as of date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

- 1. Title being vested other than as stated in Schedule A.
- 2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
- (a) A defect in the Title caused by
- (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation:
- (ii) failure of any person or Entity to have authorized a transfer or conveyance;
- (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
- (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
- (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
- (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
- (vii) a defective judicial or administrative proceeding.
- (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
- 3. Unmarketable Title.
- 4. No right of access to and from the Land.
- The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
- (a) the occupancy, use, or enjoyment of the Land;
- (b) the character, dimensions, or location of any improvement erected on the Land:
- (c) the subdivision of land; or
- (d) environmental protection if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

- 6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
- 7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
- 8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
- 9. Title being vested other than as stated in Schedule A or being defective (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as show in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
- (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
- (i) to be timely, or
- (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
- 10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that yests Title as shown in Schedule A
- 11 Any statutory lien for services, labor, or materials furnished prior to the date hereof, and which has now gained or which may hereafter gain priority over the estate or interest of the insured as shown in Schedule A of this policy.

EXCLUSIONS FROM COVERAGE - OWNERS

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

- 1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating t
- (i) the occupancy, use, or enjoyment of the Land;
- (ii) the character, dimensions, or location of any improvement erected on the Land:
- (iii) the subdivision of land; or
- (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
- 1. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
- 2. Defects, liens, encumbrances, adverse claims, or other matters

- (a) created, suffered, assumed, or agreed to by the Insured Claimant;
- (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
- (c) resulting in no loss or damage to the Insured Claimant;
- (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or (e) resulting in loss or damage that would not have been sustained if the
- Insured Claimant had paid value for the Title.
- 4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
- (a) a fraudulent conveyance or fraudulent transfer, or
- (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
- 5. Any lien on the Title for real estate taxes, assessments, water charges or sewer rents imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A

Provision is made in the rate manual of this company filed with the Superintendent of Insurance of the State of New York for continuation of liability to grantees of insured in certain specific circumstances only. In no circumstance provided for in this sub-section shall this company be deemed to have insured the sufficiency of instrument of conveyance or to have assumed any liability for the sufficiency of any proceedings after the date of this policy.

Schedule A

COMMITMENT FOR TITLE INSURANCE

No: 1913-7318EC

This report is not a title insurance policy! Please read it carefully. The report may set forth exclusions under the title insurance policy and may not list all liens, defects, and encumbrances affecting title to the property. You should consider this information carefully.

Effective Date: 10/4/2019

1. Policy or Policies to be issued:

OWNER'S POLICY

ALTA OWNERS

(6/17/2006)

\$100,000.00

Proposed Insured:

County of Chautauqua Industrial Development Agency (Leasehold)

LOAN POLICY 1

ALTA LOAN

(6/17/2006)

Proposed Insured:

2. The estate or interest in the land described or referred to herein and which is covered by this Commitment is:

FEE SIMPLE

and at the Effective Date of this Commitment is vested in:

Parcel I: Steven St. George; Exception Parcel II (for information only): Howard H. Ferry and Doris J. Ferry, husband and wife and Doris Jane Ferry, individually, as to life use and Steven St. George, remainderman by Warranty Deed made by Leo G. Seybold to Howard H. Ferry and Doris Ferry, his wife, dated July 10, 1962 and recorded July 16, 1962 in Liber 1199 of Deeds, page 96, by Warranty Deed made by Howard H. Ferry and Doris J. Ferry, husband and wife and Doris Jane Ferry, individually to Steven St. George, dated June 17, 2008 and recorded June 30, 2008 in Liber 2655 of Deeds at page 449 and by Quit Claim Deed made by Howard H. Ferry and Doris J. Ferry, husband and wife and Doris Jane Ferry, individually to Steven St. George, dated December 4, 2008 and recorded December 16, 2008 in Liber 2668 of Deeds at page 798.

3. The land referred to in this Commitment is known as:

Address:

3689 Webster Road

City/Town:

Pomfret

County:

Chautauqua

State:

NY

Lot No:

7

Subdivision:

Insured Owners/Borrowers: County of Chautauqua Industrial Development Agency

Schedule A

COMMITMENT FOR TITLE INSURANCE

No: 1913-7318EC

LEGAL DESCRIPTION

Parcel I

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Pomfret, County of Chautauqua and State of New York; being part of Lot No. 7 Township 5 and Range 12 of the Holland Land Company's Survey; and being more particularly bounded and described as follows:

COMMENCING at a point on the existing centerline of pavement of Webster Road (a 49.5 foot wide pubic right of way and formerly known as East Road) at its intersection with the northwesterly corner of lands conveyed by Howard H. Ferry and Doris J. Ferry to James R. Decker and Christine L. Decker as described in a Warranty Deed dated June 14, 2000 and filed in the Chautauqua County Clerk's Office on July 10, 2000 in Liber 2445 of Deeds at page 584, said point being 249 feet distant westerly as measured along said centerline from its intersection with the easterly line of said Lot No. 7 (also being the division line between the Town of Pomfret on the west and the Town of Arkwright on the east); thence North 89 degrees 38 minutes 11 seconds West along said centerline, a distance of 840.25 feet to a point, said point being at the principle point of beginning of the parcel of land hereinafter described; thence South 00 degrees 21 minutes 49 seconds West, a distance of 99.00 feet to a point; thence South 89 degrees 38 minutes 11 seconds East, a distance of 309.00 feet to a point; thence South 00 degrees 28 minutes 17 seconds West parallel to the easterly line of said Lot No. 7, a distance of 1,661.99 feet to an existing iron stake on the southerly line of lands heretofore conveyed by Leo G. Seybold to Howard H. Ferry and Doris Ferry as described in a Warranty Deed dated July 10, 1962 and recorded in the Chautauqua County Clerk's Office on July 16, 1962 in Liber 1199 of Deeds at page 96; thence North 89 degrees 57 minutes 32 seconds West along said southerly line of Ferry, a distance of 559.30 feet to an existing iron stake on the easterly line of lands conveyed by Fred B. Straight and Lena A. Straight to Niagara, Lockport and Ontario Power Company as described in a Warranty Deed dated October 31, 1922 and recorded in said Clerk's Office on November 10, 1922 in Liber 495 of Deeds at page 64; thence North 00 degrees 29 minutes 46 seconds East along said easterly line of lands conveyed by Straight to Niagara, Lockport and Ontario Power Company, a distance of 1,747.16 feet to a an angle point therein; thence North 11 degrees 53 minutes 16 seconds East along said easterly line of lands of Niagara, Lockport and Ontario Power Company, a distance of 17.32 feet to point on said centerline of Webster Road; thence South 89 degrees 38 minutes 11 seconds East along said centerline, a distance of 245.91 feet to the point or place of beginning.

ALSO ALL THAT TRACT OR PARCEL OF LAND, situate in the same Town, County and State, and same Holland Land Company Lot, Township and Range; and being more particularly bounded and described as follows:

BEGINNING at a point on the existing centerline of pavement of Webster Road (a 49.5 foot wide pubic right of way and formerly known as East Road) at its intersection with the westerly line of lands conveyed by Fred B. Straight and Lena A. Straight to Niagara, Lockport and Ontario Power Company as described in a Warranty Deed dated October 31, 1922 and recorded in said Clerk's Office on November 10, 1922 in Liber 495 of Deeds at page 64, said point being 1,388.58 feet distant westerly as measured along said centerline from a point at its

intersection with the easterly line of said Lot No. 7 (also being the division line between the Town of Pomfret on the west and the Town of Arkwright on the east); thence South 00 degrees 29 minutes 46 seconds West along said westerly line of lands conveyed by Straight to Niagara, Lockport and Ontario Power Company, a distance of 1,809.18 feet to a point on the southerly line of lands heretofore conveyed by Leo G. Seybold to Howard H. Ferry and Doris Ferry as described in a Warranty Deed dated July 10, 1962 and recorded in the Chautauqua County Clerk's Office on July 16, 1962 in Liber 1199 of Deeds at page 96; thence North 89 degrees 04 minutes 14 seconds West along said southerly line of Ferry, a distance of 983.23 to a found iron stake at the southwesterly corner thereof; thence along the easterly line of lands James W. and Judith Wilcox as described in Liber 1423 of Deeds at page 97, lands formerly owned by Josiah Messenger as described in Liber 55 of Deed at page 343 and lands formerly owned by Nelson Gorham as described in Liber 51 of Deeds at page 220 the following three (3) courses and distances: (1) North 00 degrees 20 minutes 17 seconds West, a distance of 418.56 feet to a rebar; thence (2) North 28 degrees 18 minutes 47 seconds West, a distance of 233.63 feet to a found iron stake; thence (3) North 50 degrees 03 minutes 03 seconds West, a distance of 101.64 feet to a rebar at the northeasterly corner of said lands formerly owned by Gorham; thence North 85 degrees 41 minutes 03 seconds West along said lands of Gorham, a distance of 17.52 feet to a rebar on the easterly highway boundary of New York State Route No. 60 and at the southeasterly corner of lands appropriated by The People of the State of New York by Notice of Appropriation filed in said Clerk's Office on March 7, 1963 in Liber 1212 of Deeds at page 590 and shown on Map No. 8 as Parcel No. 9; thence along said highway boundary and along the easterly boundary of said Parcel No. 9 the following two (2) courses and distances: (1) North 04 degrees 47 minutes 56 seconds West, a distance of 145.96 feet to a found concrete highway monument; thence (2) North 16 degrees 15 minutes 56 seconds West, a distance of 171.83 feet to a rebar on the southerly line of lands heretofore known as the DeForest A. Straight, premises; thence along said lands of said Deforest A. Straight the following three courses and distances: (1) South 86 degrees 48 minutes 03 seconds East, a distance of 130.05 feet to a rebar; thence (2) North 00 degrees 41 minutes 03 seconds West, a distance of 112.0 feet to a found iron stake; thence (3) North 86 degrees 48 minutes 03 seconds West, a distance of 142.64 feet to a rebar at on the easterly highway boundary of New York State Route No. 60 and at the southeasterly corner of said lands appropriated by The People of the State of New York by Notice of Appropriation filed said in Liber 1212 of Deeds at page 590 and shown on Map No. 8 as Parcel No. 9; thence along said highway boundary and along the easterly boundary of said Parcel No. 9 the following three (3) courses and distances: (1) North 01 degrees 41 minutes 32 seconds West, a distance of 342.81 feet to a point of curvature, said point being 1.6 north and 0.3 feet west of a found concrete highway monument; thence (2) along a curve to the left having a radius of 5,779.58 feet, an arc length of 276.50 feet and a chord bearing and distance of North 03 degrees 03 minutes 46 seconds West, 276.48 feet to a rebar; thence (3) North 39 degrees 26 minutes 38 seconds East, a distance of 57.50 feet to point on the existing southerly boundary of Webster Road; thence North 00 degrees 21 minutes 49 second East, a distance of 24.75 feet to a point on said centerline of Webster Road; thence South 89 degrees 38 minutes 11 seconds East along said centerline a distance of 1,269.91 feet to the point of beginning.

Parcel II

EXCEPTING AND RESERVING from Parcel I above, all that tract or parcel of land, situate in the Town of Pomfret, County of Chautauqua and State of New York; being part of Lot No. 7, Township 5 and Range 12 of the Holland Land Company's Survey; and being more particularly bounded and described as follows:

BEGINNING at a point on the existing center line of pavement of Webster Road (formerly known as East Road) at its intersection with northwesterly corner of lands conveyed to Steven St. George, hereinafter referenced, said point being 2,658.5 feet, more or less distant westerly as measured along said center line from its intersection from the easterly line of said Lot No. 7 (also being the subdivision line between the Town of Pomfret on the west and the Town of Arkwright on the east; thence South 89° 38' 11" East along said center

line, a distance of 90.0 feet to a point; thence through the lands of said St. George the following two (2) courses and distances: (1) South 01° 41' 32" East, a distance of 361.0 feet to a point; thence (2) South 88° 18' 28" West, a distance of 122.04 feet to a point on the easterly highway boundary of New York State Route No. 60 and on the easterly bounds of lands appropriated by the People of the State of New York by Notice of Appropriation filed in said Liber 1212 of Deeds at page 590 and shown on Map No. 8 as Parcel No. 9; thence along said highway boundary and along the easterly boundary of said Parcel No. 9 the following three (3) courses and distances: (1) North 01° 41' 32" West a distance of 19.79 feet to a point of curvature, said point being 106 feet north and 0.3 feet west of a found concrete highway monument; thence (2) along a curve to the left having a radius of 5,779.58 feet, an arc length of 276.50 feet and a chord bearing and length of North 03° 03' 46" West, 276.48 feet to a set rebar; thence (3) North 39° 26' 38" East, a distance of 57.50 feet to a point on the existing southerly boundary of Webster Road; thence North 00° 21" 49" East, a distance of 24.75 feet to the point or place of beginning.

For Conveyancing Only

Together with all right, title and interest of, in and to any streets and roads abutting the above described premises. Our Policy of Title Insurance includes such buildings and improvements thereon which by law constitute real property, unless specifically excepted therein.

Schedule B, Section 1

COMMITMENT FOR TITLE INSURANCE

No: 1913-7318EC

REQUIREMENTS

Matters to be disposed of at or prior to closing.

See Schedule B

CHICAGO	TITLE	INSUR	ANCE	COMP	ANY
CHICAGO		TIADOIA		C_{1111}	TITI

Schedule B, Exceptions

COMMITMENT FOR TITLE INSURANCE

No: 1913-7318EC

EXCEPTIONS

The Owner's Policy will be subject to the mortgage, if any, shown on Schedule B, Section 1 hereof. Schedule B of the Policy or Policies to be issued will contain exceptions to the following matters unless they are taken care of to our satisfaction:

The Company and its policy issuing agents are required by Federal law to collect additional information about certain transactions in specified geographic areas in accordance with the Bank Secrecy Act. If this transaction is required to be reported under a Geographic Targeting Order issued by FinCEN, the Company or its policy issuing agent must be supplied with a completed ALTA Information Collection Form ("ICF") prior to closing the transaction contemplated herein.

Mortgages returned herewith and set forth herein. (2 - see below)

- Rights and claims of parties in possession not shown of record, at towards only without right or option to purchase
- Unpaid water charges, if any.
- Any state of facts an inspection of premises would disclose. 6.
- Findings, if any, upon continuation of The Chautauqua Abstract Co. No. 676848 dated October 4, 2019. 7.
- New York Real Property Tax Law Sections 302 and 520 may affect the real estate tax liability if the premises described in 8. Schedule "A" have a tax exemption. Pursuant to the Real Property Tax Law, the exemption of the premises from taxation terminates immediately upon the acquisition of title by a non-exempt entity. The premises shall be taxed pro rata for the unexpired term of that taxable year and subsequent thereon at the full valuation without benefit of such tax exemption.
- Notice: Please be aware that due to the conflict between federal and state laws concerning the cultivation, distribution, manufacture or sale of marijuana, the Company is not able to close or insure any transaction involving Land that is associated with these activities.
- New York State Insurance Law requires compliance with the following: 10.
- (A) The Memorandum of Ancillary Charges must be executed by the applicant and returned to Chicago Title upon receipt of the title commitment:
- (B) The Good Faith Estimate must be furnished to the applicant or their representative;
- (C) The Final Statement must be given to the applicant at closing.
- Proof of payment of 2019 County Tax. SBL# 131.00-1-50 (part of) 11.
- Proof of payment of 2019-2020 School Tax. SBL# 131.00-1-50 (part of) 12.
- **/**13. Survey made by GPI Engineering and Surveying, LLP, Job No. 01-08-05E, dated October 30, 2019, Parcel I shown as improved by buildings and barn and exception Parcel II shown as improved by a dwelling and subject to the following exceptions:
- Variations between the lines of fences and the lines of record title.
- Overhead wires and utility poles crossing the Land.

- c. Various easements and rights of way crossing the Land north-south.
- d. Billboard located in westerly portion of the land near Route 60.
- e. Water well in westerly portion of the Land.
- 14. Rights of others than the insured in and to the parts of the premises lying within Webster Road.
- 15. The Insured Land is identified as tax parcel SBL: 131.00-1-50, which SBL includes additional land not insured hereunder.
- 16. Easement granted to Niagara, Lockport and Ontario Power Company by instrument dated March 26, 1940, and recorded July 13, 1940, in Liber 508 of Deeds, at page 323.
- Oil and Gas Lease granted to Republic Light, Heat & Power Co., Inc. by instrument dated April 17, 1951, and recorded May 8, 1951, in Liber 901 of Deeds, at page 84.
- 18. Notice of Appropriation dated November 18, 1982, and recorded June 23, 1953, in Liber 958 of Deeds, at page 381.
- 19. Notice of Appropriation dated September 23, 1958, and recorded September 23, 1958, in Liber 1111 of Deeds, at page 463.
- 20. Easement granted to New York Telephone Company by instrument dated July 2, 1962, and recorded July 19, 1962, in Liber 1199 of Deeds, at page 212.
- 21. Notice of Appropriation dated November 1, 1962, and recorded November 1, 1962, in Liber 1206 of Deeds, at page 487.
- 22. Easement recorded in Liber 465 of Deeds at page 135 as contained in Warranty Deed dated April 20, 1972 and recorded April 27, 1972 in Liber 1423 of Deeds at page 97.
- Oil and Gas Lease granted to Flint Oil and Gas Inc. by instrument dated September 3, 1974, and recorded September 5, 1974, in Liber 1522 of Deeds, at page 290.
- 24. Right of Way Agreement granted to Niagara, Lockport and Ontario Power Company by instrument dated April 3, 1940, and recorded July 12, 1940, in Liber 661 of Deeds, at page 4.
- Easement recorded in Liber 495 of Deeds at page 64 as contained in Warranty Deed recorded in Liber 687 of Deeds at page 137.
- 26. Easement granted to Frost Gas Company by instrument dated June 12, 1920, and recorded in Liber 472 of Deeds, at page 16.
- 27. Easement recorded in Liber 507 of Deeds at page 357 as contained in Warranty Deed recorded in Liber 687 of Deeds at page 137.
- 28. Right of Way Agreement granted to Niagara, Lockport and Ontario Power Company by instrument dated May 14, 1940, and recorded July 13, 1940, in Liber 508 of Deeds, at page 321.
- 29. Superseding Notice of Appropriation dated February 11, 1963, and recorded March 7, 1963, in Liber 1212 of Deeds, at page 590.
- 30. Grant of Easement granted to Niagara Mohawk Power Corporation by instrument dated November 11, 2008, and recorded December 11, 2008, in Liber 2668 of Deeds, at page 519.
- 31. Right of Way Agreement granted to National Fuel Gas Distribution Corporation by instrument dated December 4, 2008, and recorded December 11, 2008, in Liber 2668 of Deeds, at page 463.
- 32. Easement by Order, Index No. K1-2015-262, filed March 23, 2015.
- Easement granted to New York Telephone Company by instrument recorded July 19, 1962, in Liber 1199 of Deeds, at page 220.

- B4. Easement dated April 2, 1975 and recorded April 11, 1975 in Liber 1555 of Deeds at page 287.
- Building Loan Agreement, dated January 1, 1753, filed December 16, 2008, between Manufacturers and Traders Trust 35. Company, lender and Steven St. George, borrower.
- Mortgage in the amount of \$975,000.00 and interest made by Steven St. George to Manufacturers and Traders Trust 36. Company dated December 16, 2008 and recorded December 16, 2008 in the Chautauqua County Clerk's Office in Liber 3064 of Mortgages at page 608.

NOTE: This mortgage was assigned to Five Star Bank by an Assignment of Mortgage dated February 2, 2015, and recorded on February 25, 2015 in Instrument No. MT2015001491.

Gap Mortgage in the amount of \$16,058.60 and interest made by Steven St. George to Five Star Bank dated February 24, 2015 and recorded February 25, 2015 in the Chautauqua County Clerk's Office in Instrument No. MT2015001492.

NOTE: The above mortgages at 36 and 37 were consolidated and modified so as to constitute a single lien of \$700,000.00 and interest, by agreement dated February 24, 2015, and recorded on February 25, 2015, in MT2015001493.

- Assignment of Rents and Leases made by Steven St. George to Five Star Bank dated February 24, 2015 and recorded 38. February 25, 2015 in Instrument No. MT2015001494.
- Terms, covenants, conditions and agreements contained in the lease between the County of Chautauqua Industrial Development Agency and Steven St. George.

WITH REGARD THERETO:

- A copy of the lease must be submitted to the Company for consideration prior to closing.
- The lease or a memorandum thereof must be recorded.

Endorse newto:

1. Land same at survey

2. Standard New York 3. Walver OF Arbitration

4. IDA Beneficial Ownership

5. Lease hold

Conditions and Stipulations

- 1. The term "mortgage," when used herein, shall include charge, mortgage, deed of trust, trust deed, or other security instrument.
- 2. If the proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
- 3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
- 4. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

No: 1913-7318EC

County of Chautauqua Industrial Development Agency 201 West Third Street, Suite 115 Jamestown, NY 14701

1-60549

November 7, 2019

IN ACCOUNT WITH

PHILLIPS LYTLE LLP
ATTORNEYS AT LAW

201 WEST THIRD STREET, SUITE 205, JAMESTOWN, NEW YORK 14701-4907
FAX (716) 664-4230
(716) 664-3906
TAX IDENTIFICATION NUMBER 16 0505790

		,	
RE: County of Chautauqua Industrial Development Agency S St. George - Tax Lease/PILOT 00638.00749			
FOR SERVICES RENDERED to date in connection with the tax lease transaction with S. St. George Enterprises, Inc., including attention to structure and real estate issues and IDA approval; drafting and negotiating applicable documents; and preparation for and attendance at closing.		·	
Current Fees		<u>\$15,000</u>	<u>00</u>



CHAUTAUQUA COUNTY CLERK

LARRY BARMORE



Receipt

Receipt Date: 11/12/2019 03:13:40 PM

RECEIPT # 201906259953

Recording Clerk: AH Cash Drawer: CASH1

Rec'd Frm: CHAUTAUQUA ABSTRACT COMPANY

CHRIS

Instr#: DE2019007469
DOC: MEMO OF LEASE

DEED STAMP: TT2020001982 OR Party: ST GEORGE STEVEN

EE Party: S ST GEORGE ENTERPRISES INC

Recording Fees
Cover Page \$5.00
Recording Fee \$45.00
Cultural Ed \$14.25
Records Management - County
Records Management - State \$4.75
TP584 \$5.00

Transfer Tax

Transfer Tax \$0.00

DOCUMENT TOTAL: ---> \$75.00

Instr#: DE2019007470 DOC: MEMO OF LEASE

DEED STAMP: TT2020001983

OR Party: S ST GEORGE ENTERPRISES INC

EE Party: COUNTY OF CHAUTAUQUA
INDUSTRIAL DEVELOPMENT AGENCY

Recording Fees

Cover Page \$5.00

Recording Fee \$50.00

Cultural Ed \$14.25

Records Management - County \$1.00

Records Management - State \$4.75

TP584 \$5.00

Transfer Tax \$0.00

DOCUMENT TOTAL: ---> \$80.00

Instr#: DE2019007471 DOC: MEMO OF LEASE

DEED STAMP: TT2020001984

OR Party: COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

EE Party: S ST GEORGE ENTERPRISES INC

Recording Fees	
Cover Page	\$5.00
Recording Fee	\$50.00
Cultural Ed	\$14.25
Records Management - County	\$1.00
Records Management - State	\$4.75
TP584	\$5.00

Transfer Tax \$0.00

DOCUMENT TOTAL: ---> \$80.00

Instr#: UC2019000239 DOC: UCC 1 -STANDARD

OR Party: S ST GEORGE ENTERPRISES INC

EE Party: COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

Recording Fees

UCC Filing \$40.00

DOCUMENT TOTAL: ---> \$40.00

Receipt Summary
Document Count: 4

TOTAL RECEIPT: ---> \$275.00
TOTAL RECEIVED: ---> \$275.00

CASH BACK: ---> \$0.00

PAYMENTS

Check # 1646 -> \$275.00

BILTEKOFF LAW OFFICE LLC

TITLE COMPANY RECEIPT FOR DOCUMENTS

The undersigned hereby acknowledges receipt of the following documents, in recordable form (together with the appropriate tax returns and affidavits), and agrees to promptly record same in the Real Property Records of the Office of the County Clerk of Chautauqua County, New York, in the order listed below:

- Memorandum of Lease between Steven St. George (the "Overlandlord") and S. 1. St. George Enterprises, Inc. (the "Company");
- Memorandum of Company Lease between the Agency and the Company; 2.
- Memorandum of Agency Lease between the Agency and the Company. 3.

In addition, the undersigned acknowledges receipt of the following documents and agrees to file such documents as set forth below:

- UCC-1 Financing Statement naming the Company, as debtor, and CCIDA, as (a) secured party, to be filed with the Office of the County Clerk, Chautauqua County, New York (indexed in the real estate records);
- UCC-1 Financing Statement naming the Company, as debtor, and CCIDA, as (b) secured party, to be filed with the New York Secretary of State.

Dated: November 7, 2019

By: Name: Rober A Bilhuser
Title: Athrey | Exercity Counsel