
COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

AND

FLDDBROOK FOODS CORPORATION

UNIFORM PROJECT AGREEMENT

DATED AS OF MARCH 1, 2020

ADDRESS: 1 Ice Cream Drive &
115 West Doughty Street Extension
CITY: Dunkirk
TOWN: --
COUNTY: Chautauqua
STATE: New York

Prepared By:

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

UNIFORM PROJECT AGREEMENT

THIS UNIFORM PROJECT AGREEMENT dated as of March 1, 2020 (this "Agreement") 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 FIELDBROOK FOODS CORPORATION, a corporation organized and existing under the laws of the State of Delaware and qualified to do business in the State of New York as a foreign corporation, having an address at 1 Blue Bunny Drive, Le Mars, IA 51031 (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, Wells Enterprises, Inc., a corporation organized and existing under the laws of the State of Iowa and an Affiliate of the Company (the "Applicant") presented 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 approximately 23 parcels of land aggregating approximately 18.3 acres located at 1 Ice Cream Drive, City of Dunkirk, County of Chautauqua, New York (the "Existing Land"), (2) the renovation of the existing approximately 234,000 square foot building located on the Existing Land (collectively, the "Existing Building" and together with the Existing Land, collectively, the "Existing Facility"), together with related improvements to the Existing Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the

“Existing Facility Equipment”) necessary for the completion thereof (collectively, the “Existing Project Facility”), all of the foregoing for use by the Applicant and/or its affiliates as a manufacturing facility; (B)(1) the acquisition of an interest in an approximately 2.9 acre parcel of land located at 115 West Doughty Street Extension, City of Dunkirk, County of Chautauqua, New York (the “New Land” and together with the Existing Land, the “Land”), (2) the construction and installation of a power substation and related improvements on the New Land (collectively, the “New Improvements” and together with the New Land, the “New Facility;” the Existing Facility and the New Facility are referred to herein collectively as the “Facility”), and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the “New Facility Equipment” and together with the Existing Facility Equipment, the “Equipment”) necessary for the completion thereof (collectively, the “New Project Facility” and together with the Existing Project Facility, the “Project Facility”), all of the foregoing for use by the Applicant and/or its affiliates in connection with the operation of the Existing Project Facility; (C) 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 (D) 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; and

WHEREAS, the Administrative Director/CEO of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the “Public Hearing”) to hear all persons interested in the Project and the Financial Assistance contemplated by the Agency with respect to the Project, to be mailed on September 6, 2019 to the chief executive officer of the County of Chautauqua, New York (the “County”) and of each other affected tax jurisdiction 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 Hearing to be published on September 10, 2019 in the *Observer*, a newspaper of general circulation available to residents of the City of Dunkirk and the County; (C) caused the Public Hearing to be conducted on September 19, 2019 at 9:00 am, local time, at the Fredonia Technology Incubator, 214 Central Avenue, City of Dunkirk, 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 Applicant 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 Agreement and the other Transaction Documents (as hereinafter defined); and

WHEREAS, the Applicant has designated the Company to be the owner of the Project Facility and the recipient of the Financial Assistance and the Agency approved such designation pursuant to the Authorizing Resolution; and

WHEREAS, the Agency proposes to appoint the Company as agent of the Agency to complete the acquisition, construction, renovation, installation and equipping of the Project Facility, and the Company desires to act as agent of the Agency to complete the acquisition, construction, renovation, installation and equipping of the Project Facility, all pursuant to the terms and conditions hereinafter set forth in this Agreement and in the other Transaction Documents; and

WHEREAS, the undertaking of the Project and the granting of the Financial Assistance by the Agency to the Company and the Applicant 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 and the Applicant 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, 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 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, the Agency is not acquiring an interest in the portions of the Project Facility constituting real property at this point in time;

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 Agreement 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 Agreement.

“Administrative Fee” shall have the meaning assigned to such term in Section 5.3 of this Agreement.

“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.

“Agency Termination Agreement” means the Agency Termination of Project Agreement from the Agency to the Company pursuant to which the Agency terminates this Agreement, substantially in the form attached as Exhibit C to this Agreement.

“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 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.

“Applicant” shall have the meaning assigned to such term in the recitals to this Agreement.

“Application” shall have the meaning assigned to such term in the recitals to this Agreement.

“Authorizing Resolution” shall have the meaning assigned to such term in the recitals to this Agreement.

“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 Agreement.

“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 Agreement.

“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 Agreement 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 Agreement.

“Commissioner” means the Commissioner of Taxation and Finance of the State of New York.

“Company” means Fieldbrook Foods Corporation, a corporation organized and existing under the laws of the State of Delaware and qualified to do business in the State of New York as a foreign corporation, and its successors and assigns, to the extent permitted pursuant to this Agreement.

“Company Termination Agreement” means the Company Termination of Project Agreement between the Agency and the Company pursuant to which the Company and the Agency terminate this Agreement, substantially in the form attached as Exhibit F to this Agreement.

“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 acquisition, construction, renovation, installation and equipping of the Project Facility pursuant to Section 4.2 of this Agreement, or such earlier date as the Company shall notify the Agency as being the date of completion of the acquisition, construction, renovation, installation and equipping of the Project Facility (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 Agreement.

“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.

“Equipment” shall have the meaning assigned to such term in the recitals to this Agreement and shall include all those materials, machinery, equipment, fixtures and furnishings intended to be acquired by or on behalf of the Company as agent of the Agency using the Sales Tax Agency Agreement and/or any Sub-Agent Agency Agreement, and such substitutions and replacements therefor as may be made from time to time pursuant to this Agreement, including without limitation, all the Property described in Exhibit B attached to this Agreement.

“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. Equipment shall not mean any materials, machinery, equipment, fixtures or furnishings that are not acquired by or on behalf of the Company as agent of the Agency using the Sales Tax Agency Agreement and/or any Sub-Agent Agency Agreement.

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

“Existing Building” shall have the meaning assigned to such term in the recitals to this Agreement.

“Existing Facility” shall have the meaning assigned to such term in the recitals to this Agreement.

“Existing Facility Equipment” shall have the meaning assigned to such term in the recitals to this Agreement.

“Existing Land” shall have the meaning assigned to such term in the recitals to this Agreement.

“Existing Project Facility” shall have the meaning assigned to such term in the recitals to this Agreement.

“Financial Assistance” means, for purposes of this Agreement, 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 acquisition, construction, renovation, installation and equipping of the Project Facility and having a value not exceeding the Maximum Sales Tax Benefit (as hereinafter defined).

“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, the Applicant.

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

“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 Agreement or any of the other Transaction Documents, and (2) all interest accrued on any of the foregoing.

“Intercreditor Agreement” means the Intercreditor and Access Agreement of even date herewith among the Agency, Wells Fargo Bank, National Association, as agent for a group of lenders and bank product providers, and Bank of Montreal, as collateral agent for a group of secured parties, and the Applicant.

“Land” shall have the meaning assigned to such term in the recitals to this Agreement and is more particularly described in Exhibit A to this Agreement.

“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 \$5,220,000.00.

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

"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.

"New Facility" shall have the meaning assigned to such term in the recitals to this Agreement.

"New Facility Equipment" shall have the meaning assigned to such term in the recitals to this Agreement.

"New Land" shall have the meaning assigned to such term in the recitals to this Agreement.

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

"Permitted Encumbrances" means (A) Liens for taxes, assessments and utility charges, to the extent permitted by this Agreement, (B) any Lien or encumbrance on the Project Facility obtained through any Transaction Document, (C) any Lien on the Equipment pursuant to financing arrangements between the Company and any bank or other financial institution, provided that, except as set forth in the Intercreditor Agreement, such Lien on the Equipment is subordinated to the Lien of the Agency granted under the Transaction Documents pursuant to a subordination agreement in form and substance satisfactory to the Agency, and (D) any Lien or encumbrance requested by the Company in writing and consented to by the Agency, which consent may be granted or denied in the Agency's sole and absolute discretion.

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

"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 Agreement 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 Agreement).

“Premises” means the Land, together with the Existing Building and the New Improvements, 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, installation and equipping of the New 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, for purposes of this Agreement, the project being undertaken by the Agency consisting of (A) the construction and renovation of the Facility and related improvements on the Land, (B) the acquisition and installation of the Equipment, and (C) the granting of the Financial Assistance, all as more particularly described in the recitals to this Agreement.

“Project Facility” shall have the meaning assigned to such term in the recitals to this Agreement.

“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 Agreement.

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

“Recapture Event” shall have the meaning assigned to such term in Section 11.4 of this Agreement.

“Recapture of Benefits” shall have the meaning assigned to such term in Section 11.4 of this Agreement.

“Report” shall have the meaning assigned to such term in the recitals to this Agreement.

“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 Agreement.

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

“SEQRA” shall have the meaning assigned to such term in the recitals to this Agreement.

“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 Agreement.

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

“Transaction Documents” means the Bill of Sale to Agency, this Agreement, the Sales Tax Agency Agreement, the Guaranty, any Sub-Agent Agency Agreement, the Wells Transaction Documents, 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 Agreement.

“Unassigned Rights” means (A) the rights of the Agency granted pursuant to Sections 2.2, 3.1, 3.2, 4.1(B), 4.1(D), 4.1(E), 4.1(F), 4.1(G), 5.3, 6.1, 6.3, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.11, 8.13, 8.14, 9.1, 11.2, 11.4, 12.4, 12.7 and 12.9 of this Agreement, (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, 4.1, 5.3, 6.3, 8.1, 8.8, 8.11, 9.1, 10.2, 10.4, 11.2 and 11.4 of this Agreement, (C) the moneys due as Recapture of Benefits pursuant to Section 11.4 of this Agreement, (D) the right of the Agency in its own behalf to enforce the obligation of the Company to undertake and complete the acquisition, construction, renovation, installation and equipping of the Project Facility and to confirm the qualification of the Project as a “project” under the Act, and (E) the right to enforce the foregoing pursuant to Section 5.5 and Article X of this Agreement.

“Wells Transaction Documents” means (A) the Guaranty, and (B) all other instruments, agreements, certificates and documents related thereto and executed in connection therewith, and any other instrument, agreement, certificate or document supplemental thereto.

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

(A) the terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms as used in this Agreement, refer to this Agreement, 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 Agreement 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 Agreement; 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 Agreement 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 Agreement and the other Transaction Documents to which the Agency is a party.

(B) Neither the execution and delivery of this Agreement 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 Agreement 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 for Permitted Encumbrances permitted by the terms of this Agreement and the other Transaction Documents.

(D) The Agency reserves the right but shall be under no obligation to acquire an interest in the portions of the Project Facility constituting real property or to grant an exemption from real property taxes with respect to the New Facility.

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 Delaware, is qualified and authorized to do business as a foreign corporation in the State of New York and in all other jurisdictions in which its operations or ownership of its Properties so require, and has the power to enter into this Agreement 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 board of directors, the Company has been duly authorized to execute, deliver and perform this Agreement 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 Agreement or any of the other Transaction Documents.

(B) Neither the execution and delivery of this Agreement 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 Agreement 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, (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 undertaking and completion of the acquisition, construction, renovation, installation and equipping of the Project Facility by the Company as agent of the Agency and the operation of the Project Facility by the Company will not result in the removal of a facility or plant of the Company or the Applicant 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 the Applicant located in the State (other than within the County). 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, subject to applicable bankruptcy, insolvency, reorganization, moratorium, capital impairment, recognition of judgments or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(E) The Project Facility constitutes a commercial facility and the Project 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 Agreement 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 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 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 gross negligence or willful misconduct 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. 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 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 the 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 undertaking of the Project by the Agency 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.

(M) The Company shall (i) maintain or cause to be maintained not less than four hundred eighty-eight (488) full-time equivalent, private sector jobs as described in the Application throughout the term of this Agreement, (ii) create or cause to be created at least thirteen (13) 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 Agreement, (iii) create or cause to be created at least an additional twenty-one (21) 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 Agreement, (iv) create or cause to be created at least an additional twenty-four (24) 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 Agreement, and (v) create or cause to be created at least twenty (20) 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 Agreement, be located at the Project Facility (collectively, the "Minimum Employment Requirement").

(N) The funds available to the Company are sufficient to pay all costs in connection with the undertaking and completion of the acquisition, construction, renovation, installation and equipping of the Project Facility.

(O) The Company is not a Prohibited Person, the Guarantor is not a Prohibited Person, no Affiliate of the Company or the Guarantor is a Prohibited Person and no member, manager, director or shareholder of the Company or the Guarantor is a Prohibited Person.

(P) Neither this Agreement, 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 or the 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 Agreement 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 Agreement, continue to be owned solely by the Applicant.

(S) The Project Facility is located entirely within the boundaries of the City of Dunkirk, County of Chautauqua, State of New York, is not located within the boundaries of any

other incorporated village or city, and is located only within the City of Dunkirk Central School District.

(T) The total cost of the Project is at least \$87,000,000.

(U) The Company has not 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 from executing and delivering this Agreement or any other Transaction Document. 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 this Agreement or any other Transaction Document would constitute a default or an event of default.

(V) Neither the Company, nor the Guarantor nor any Affiliate of the Company or the 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 Agreement or any other Transaction Document upon an agreement of understanding for a commission or percentage, brokerage or contingent fee.

(W) 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 Bill of Sale to Agency, the Company has conveyed or will convey to the Agency all of its right, title and interest in and to the Equipment for the purpose of undertaking and completing the acquisition, construction, renovation, installation and equipping of the Project Facility. The Company hereby represents and warrants that it has good and valid fee or leasehold title to the Premises, free and clear from all Liens (except Permitted Encumbrances), and agrees that the Company will defend (with counsel selected by the Agency), indemnify and hold the Agency harmless from any expense or liability due to any defect in title thereto; provided that such expense or liability is not incurred or does not result solely from the gross negligence or willful misconduct of the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees.

(B) The Company and the Agency acknowledge that the Project Facility and the interest therein conveyed to the Agency pursuant to the Transaction Documents 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 Agreement and the other Transaction Documents, including, without limitation, (i) the Company's obligation to undertake and complete the acquisition, construction, renovation, installation and equipping of 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 Agreement 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 by the Company as a manufacturing 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 Agreement to the contrary notwithstanding, the Company shall be liable at all times for all risk, loss and damage with respect to the Project Facility.

SECTION 3.3 RESERVED.

SECTION 3.4 RESERVED.

SECTION 3.5 RESERVED.

ARTICLE IV
UNDERTAKING AND COMPLETION OF THE PROJECT FACILITY

SECTION 4.1 UNDERTAKING OF THE PROJECT FACILITY.

(A) The Company shall, on behalf of the Agency, promptly acquire, construct, renovate, install and equip 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 Agreement, construct any new structure on the Land (other than the New Improvements) 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.

(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 that are or were purchased utilizing the sales and use tax exemption granted pursuant to this Agreement 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 that are purchased utilizing the sales and use tax exemption granted pursuant to this Agreement 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 Agreement.

(E) The Agency hereby appoints the Company, and the Company hereby 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 undertake and complete the acquisition, construction, renovation, installation and equipping of 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 undertaking and completion of 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 Agreement, (3) to

pay all fees, costs and expenses incurred in undertaking and completing the acquisition, construction, renovation, installation and equipping of the Project Facility from funds made available therefor in accordance with this Agreement, 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 Project 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 required by Applicable Laws applying to or affecting the conduct of work on the Project Facility 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 in all material respects, and the Company will defend (with counsel selected by the Agency), 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; provided that fees, expenses, fines and penalties are not incurred or do not result solely from the gross negligence or willful misconduct of the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees. 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.

(H) The Company agrees, for the benefit of the Agency, to undertake and complete the acquisition, construction, renovation, installation and equipping of the Project Facility and to pay all such sums as may be required in connection therewith. Title to portions of the Equipment acquired and installed utilizing the sales and use tax exemption granted pursuant to this Agreement shall immediately upon such acquisition or installation vest in the Agency. 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 Equipment.

(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 Agreement.

(J) The Company covenants and agrees to make or cause to be made a total investment in the Project Facility as of the Scheduled Completion Date in an amount not less than \$78,300,000.00 (which represents the product of (1) 0.90 and (2) the sum of \$87,000,000.00 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 reasonably requested by the Agency pursuant to this Section 4.1 and will

reasonably 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.

(A) The Company will proceed with due diligence to acquire and install the Equipment in accordance with Section 4.1 of this Agreement 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 at all times continue its operations in the Project Facility. The Company covenants to diligently prosecute its application for any required building permits for the Project Facility. Completion of the acquisition, 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 and installation of the Equipment 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 Facility (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 Project 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 acquisition, construction, renovation, installation and equipping of 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 undertaking and completion of the acquisition, construction, renovation, installation and equipping 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 TERM AND AMOUNTS PAYABLE

SECTION 5.1 RESERVED.

SECTION 5.2 DURATION OF THE TERM. The term of this Agreement shall commence on the Closing Date and shall expire and terminate at 12:00 a.m. on the earlier to occur of (1) December 31, 2030 (the "Stated Expiration Date"), or (2) the date that this Agreement shall terminate pursuant to Article X or Article XI hereof.

SECTION 5.3 PROJECT PAYMENTS AND OTHER AMOUNTS PAYABLE.

(A) The Company shall pay on the date of execution and delivery of this Agreement, as the basic project payments due hereunder: (1) the sum of \$1.00, (2) all reasonable and documented fees and expenses of counsel to the Agency and Special Counsel to date with respect to the Project, and (3) all other reasonable and documented costs and expenses incurred by the Agency in connection with the transactions contemplated by this Agreement and the other Transaction Documents.

(B) The Company agrees to pay or cause to be paid to the Agency the following fees: (1) an Agency administrative fee in the amount of \$306,250.00, with respect to the Project, payable in four (4) equal installments each in the amount of \$76,562.50, the first installment payable on the Closing Date and the remaining installments payable on or before the first, second and third anniversaries of the Closing Date, 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 Agreement.

(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 and documented 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 undertaking the Project or in

connection with the carrying out of the Agency's duties and obligations under this Agreement or any of the other Transaction Documents, and any other reasonable and documented fee or expense of the Agency with respect to the Project Facility or any of the Transaction Documents, the payment of which is not otherwise provided for under this Agreement.

(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.

(A) The obligations of the Company to make the payments required by this Agreement 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 Agreement, or terminate this Agreement (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 acquisition, construction, renovation, installation and equipping of the Project Facility, 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 Agreement.

(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 Agreement, 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 Agreement, 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 Agreement 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 as agent of the Agency 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 thereof (collectively, the "Collateral"), as security for payment of the project payments and all other payments and obligations of the Company hereunder, and the Agency is authorized to file financing statements with respect to such Collateral without the Company executing the same. Subject to the Intercreditor Agreement, if an Event of Default shall occur under this Agreement or any other Transaction Document, the Agency shall have, in addition to any and all other rights and remedies set forth in this Agreement, and may exercise without demand, any and all 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.

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 Agreement, (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 Equipment or this Agreement. 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) The Company has given or will give or cause to be given all notices required by Applicable Laws applying to or affecting the operation of the Project Facility and has complied or will comply or cause compliance with all Applicable Laws applying to or affecting the operation of the Project Facility in all material respects, and the Company will defend (with counsel selected by the Agency), 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; provided that such fees, expenses, fines and penalties are not incurred or do not result solely from the gross negligence or willful misconduct of the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees.

(C) Any provision of this Agreement to the contrary notwithstanding, the Company shall not construct any new building or structure on the Land (other than the New Improvements) or any addition to any existing building on the Land, without the prior written consent of the Agency, which consent may be withheld in the Agency's sole and absolute discretion.

SECTION 6.2 RESERVED.

SECTION 6.3 INSURANCE REQUIRED.

(A) During the term of this Agreement, 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 Equipment 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 Equipment, 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 undertaking of the Project.

(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 Agreement), 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 sole and absolute 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 6.3(A)(3) 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.

(B) Additional Provisions Regarding Insurance. All insurance required by 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 Agreement.

(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.

(3) Each of the policies evidencing the insurance required by this Section 6.3 of this Agreement 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 RESERVED.

SECTION 6.5 RESERVED.

ARTICLE VII RESERVED

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 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 Agreement 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, shareholders, directors, 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 Agreement, 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 solely from the gross negligence or willful misconduct 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 Agreement.

(C) Notwithstanding any other provisions of this Agreement, 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 Agreement 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 Agreement. 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 Agreement, 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, which consent shall not be unreasonably withheld. Notwithstanding the foregoing sentence, the Company may merge its wholly-owned subsidiaries into the Company upon reasonable prior written notice to the Agency but without obtaining the consent of the Agency, provided that (i) the Company is the surviving entity of such merger, (ii) no such subsidiary is a Prohibited Person, and (iii) the Company provides written evidence reasonably satisfactory to the Agency that the net worth of the Company immediately following such merger would not be less than the net worth of the Company immediately prior to such merger. 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 Guarantor and/or the Company'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 Agreement 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 the end of each fiscal year of the Company, 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 29th.

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 Agreement, 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 (other than the Equipment to the extent permitted under this Agreement) 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 Equipment 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 Equipment.

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 (including, without limitation, the Applicant), 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 Agreement, 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 Agreement, 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 (including, without limitation, the Applicant), 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 Agreement, 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 Agreement, (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 Agreement 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 Agreement; (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.

(C) The Company agrees to furnish to the Agency within fifteen (15) days 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 Agreement 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.

(D) Pursuant to Section 874(8) of the Act, the Company agrees to file annually (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 Agreement 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) With respect to any period in which the Company (and the contractors and subcontractors engaged by the Company and approved by the Agency as its agents) receives a sales tax exemption benefit under the authority granted to the Company pursuant to Section 4.1(E) of this Agreement, the Company agrees to furnish to the Agency, on request, an opinion of a certified public accountant to the effect that such accountant has audited the claiming of such exemption from sales and use taxes by the Company (and the contractors and subcontractors engaged by the Company and approved by the Agency as its agents) for the preceding calendar year, and has reviewed the terms and provisions of the Sales Tax Agency Agreement and of this Section 8.11, and has further audited the Quarterly Sales Tax Reports for the preceding calendar year, and that such Quarterly Sales Tax Reports were properly prepared and accurately reflect the matters certified therein.

(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 undertaking of the Project:

"This [contract, agreement, lease, invoice, bill or purchase order] is being entered into by [] (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 Fieldbrook Foods Corporation (the "Company") consisting in part of the acquisition, construction, renovation, installation and equipping of

a manufacturing facility located at 1 Ice Cream Drive and 115 West Doughty Street Extension, City of Dunkirk 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 acquisition, construction, renovation, installation and equipping of the Project Facility. The capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary for completion of the acquisition, construction, renovation, installation and equipping of the Project Facility 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”).

(I) The Company agrees to provide a completed Form ST-123, *IDA Agent or 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 Project. 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 Agreement. 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 Agreement, 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 Agreement (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 Agreement, or (iv) in a manner that violates the provisions of this Section 8.11 or any other provision of this Agreement or any provision of the Sales Tax Agency Agreement or any 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 Agreement, 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 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; provided that such liability is not incurred or does not result solely from the gross negligence or willful misconduct of the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees.

(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 Agreement and, if applicable, its activities and efforts to recover, receive or otherwise obtain State Sales and Use Taxes pursuant to the terms of this Agreement, 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 Agreement 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 ninety (90) days after the end of each fiscal year, the Company shall deliver to the Agency the financial statements of the Company and the Applicant 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 29th.

SECTION 8.14 ANTI-TERRORISM LAWS.

(A) General. 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) Blocked Person or Transactions. 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) Trading with the Enemy. The Company is not engaged, nor does it intend to engage, in any business or activity prohibited by the Trading with the Enemy Act.

(E) OFAC and Patriot Act. The Company represents, warrants, covenants and 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 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 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 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 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 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 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; provided that such costs are not incurred or do not result solely from the gross negligence or willful misconduct of the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees

ARTICLE IX ASSIGNMENTS; LEASING; MERGER OF THE AGENCY

SECTION 9.1 ASSIGNMENT OF THIS AGREEMENT.

This Agreement 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 may be granted or withheld in the Agency's sole and absolute discretion, 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 Agreement 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 Agreement 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 Agreement 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 LEASING. The Company shall not sell, lease, sublease, sub-sublease, assign, transfer or otherwise dispose of all or any part of its interest in the Project Facility without the prior written consent of the Agency, which consent may be granted or withheld in the Agency's sole and absolute discretion, 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, leasing, 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, leasing, 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, leasing, assignment or transfer.

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

SECTION 10.1 EVENTS OF DEFAULT DEFINED.

(A) The following shall be "Events of Default" under this Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Agreement, 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 Agreement 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 Agreement (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 (including, without limitation, under any Wells 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.

(5) The Company shall conceal, remove or permit to be concealed or removed 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.

(6) (a) The filing by the Company (as debtor) of a voluntary petition under 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 Equipment and the failure of the Company to remove such Lien, whether by the payment of money, the securing of a bond or otherwise, within fifteen (15) 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 Agreement.

(10) If any certificate, statement, representation, warranty or financial statement made to the Agency by or on behalf of the Company or the 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 or the Guarantor, as the case may be.

(11) Any loss or impairment of the Agency's interest in and to the Project Facility, or any part thereof.

(12) The Company, the 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.

(13) Any assignment of this Agreement, in whole or in part, in violation of the terms of this Agreement.

(14) If any of the events enumerated in clauses (4) through (7) of this Section 10.1(A) shall happen to the Guarantor.

(15) The Company or the 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 Guaranty.

(16) If the Company fails to maintain or fails to cause to be maintained the Minimum Employment Requirement at any time during the term of this Agreement.

(17) 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 Agreement.

(18) 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 Agreement 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 Agreement 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 Agreement, 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, 4.1(F), 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 Agreement or any of the other Transaction Documents, including, without limitation, any resulting Recapture of Benefits under Section 11.4 of this Agreement; or

(2) terminate this Agreement and/or convey to the Company all the Agency's right, title and interest in and to the Equipment. The termination of this Agreement shall be effected by the execution and delivery of the Agency Termination Agreement (an unexecuted copy of which is attached hereto as Exhibit C) and conveyance of the Agency's right, title and interest in and to the Equipment shall be effected by the execution and delivery of the Bill of Sale to Company. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from any such termination. The Company hereby waives delivery and acceptance of such Agency Termination Agreement 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

(3) bring an action for damages, injunction or specific performance; or

(4) 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 Agreement; or

(5) 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 Agreement.

(B) No action taken pursuant to this Section 10.2 shall relieve the Company from its obligations to make all payments required by this Agreement 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 Agreement 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 Agreement 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. The Company shall have the option to terminate this Agreement 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 Agreement as contained in this Section 11.1 separate and apart from a permitted assignment of this Agreement pursuant to Section 9.1 of this Agreement without the prior written consent of the Agency.

SECTION 11.2 OBLIGATIONS UPON TERMINATION.

(A) Contemporaneously with the termination of this Agreement 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 Agreement 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 Equipment 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 Agreement and the conveyance of the Agency's right, title and interest in and to the Equipment shall be effected by the execution and delivery by the Agency of (1) the Bill of Sale to Company (an unexecuted copy of which is attached hereto

as Exhibit D) and (3) the Company Termination of Agreement (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 Bill of Sale to Company and/or the Company Termination of Agreement, and all schedules thereto, together with all other necessary documentation, and to forward same to the Agency at least fifteen (15) days prior to the date that this Agreement is to be terminated and the Agency's interest in the Equipment 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 this Agreement.

(D) This Agreement shall survive the transfer of the Equipment 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 (excluding contingent indemnification obligations for which no claim has been asserted), 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 and the transfer of title to the Equipment back to the Company.

SECTION 11.3 RESERVED.

SECTION 11.4 RECAPTURE OF AGENCY BENEFITS.

(A) It is understood and agreed by the parties to this Agreement that the Agency is entering into this Agreement 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"): one hundred per cent (100%) of the Benefits (as defined below).

(B) The term "Benefits", in this Section 11.4, shall mean the Agency's calculation of, collectively, the amount of any exemption from sales and use taxes granted to the Company pursuant to this Agreement.

(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, 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 Agreement or any other Transaction Document (including, without limitation, any Wells 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 shall have sold, leased, subleased, sub-subleased, assigned, transferred or otherwise disposed of all or any part of its interest in the Project Facility in violation of this Agreement; 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 Agreement; or
- (8) The Company elects to voluntarily terminate this Agreement 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 or the Applicant.

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: Fieldbrook Foods Corporation
1 Blue Bunny Drive
Le Mars, IA 51031
Attention: Tom Anderson

With a copy to: Wright, Wright & Hampton
525 Fairmount Avenue
Jamestown, NY 14701
Attention: Tad Wright, Esq.

(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 Agreement 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 Agreement, 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 Agreement.

SECTION 12.4 AMENDMENT. This Agreement 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 Agreement 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 Agreement 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, 4.1, 5.3, 5.4, 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, 4.1(F), 6.1, 8.1 and 12.9(C) hereof shall survive the termination of this Agreement, 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 Agreement 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 Agreement 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 Agreement.

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 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; provided that such liability is not incurred or does not result solely from the gross negligence or willful misconduct of the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees, 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 AGREEMENT. The obligation of the Company to make the payments specified in this Agreement shall be absolutely net to the Agency without any abatement, recoupment, diminution, reduction, deduction, counterclaim, set-off or offset whatsoever, so that this Agreement 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 AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT.

SECTION 12.12 PRIOR AGREEMENTS. This Agreement 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 Agreement 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, Tad Wright, Esq., c/o Wright, Wright & Hampton, 525 Fairmount Avenue, Jamestown, NY 14701, 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 Agreement; provided, however, that the serving of such process, pleadings, notices or other papers shall not constitute a condition to the Company's obligations hereunder.

(B) The Company irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of this Agreement 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 Agreement 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.

(A) At all times during the term of this Agreement, the Company shall not 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 AGREEMENT. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was executed and delivered on March 13, 2020.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Agency and the Company have caused this Agreement 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**

By: 
Richard E. Dixon
Chief Financial Officer

FIELDBROOK FOODS CORPORATION

By: _____
Name: Jeremy Pinkerman
Title: Chief Financial Officer

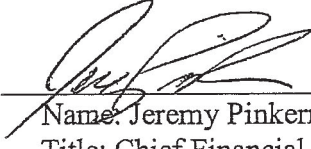
[Signature Page to Uniform Project Agreement]

IN WITNESS WHEREOF, the Agency and the Company have caused this Agreement 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**

By: _____
Richard E. Dixon
Chief Financial Officer

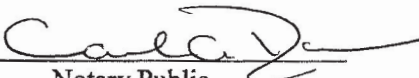
FIELDBROOK FOODS CORPORATION

By:  _____
Name: Jeremy Pinkerman
Title: Chief Financial Officer

[Signature Page to Uniform Project Agreement]

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

On the 12th day of March, 2020, before me, the undersigned, a notary public in and for said state, personally appeared Mark Geise, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

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

CAROL A. RASMUSSEN, #01RA4901681
Notary Public, State of New York
Qualified in Chautauque County
My Commission Expires July 20, 2021

On the ____ day of March, 2020, before me, the undersigned, a notary public in and for said state, personally appeared Jeremy Pinkerman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

[Acknowledgment Page to Uniform Project Agreement]

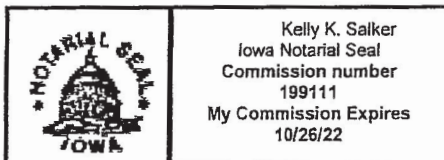
STATE OF NEW YORK)
) ss.:
COUNTY OF CHAUTAUQUA)

On the ____ day of March, 2020, before me, the undersigned, a notary public in and for said state, personally appeared Mark Geise, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

Iowa
STATE OF ~~NEW YORK~~)
) ss.:
COUNTY OF *Plymouth*)

On the 17th day of March, 2020, before me, the undersigned, a notary public in and for said state, personally appeared Jeremy Pinkerman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Kelly K. Salker

Notary Public

[Acknowledgment Page to Uniform Project Agreement]

EXHIBIT A
DESCRIPTION OF THE LAND

1 Ice Cream Drive, City of Dunkirk, County of Chautauqua, New York

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 2020 Fieldbrook Foods 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 Fieldbrook Foods Corporation (the "Company") as agent of the Agency pursuant to a uniform project agreement dated as of March 1, 2020 (the "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 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 AGENCY TERMINATION OF PROJECT AGREEMENT

WHEREAS, FIELDBROOK FOODS CORPORATION (the "Company"), as agent, and the County of Chautauqua Industrial Development Agency (the "Agency"), entered into a uniform project agreement dated as of March 1, 2020 (the "Project Agreement") pursuant to which, among other things, the Agency authorized the Company to undertake the Project (as defined in the Project Agreement) as agent of the Agency; and

WHEREAS, pursuant to Section 10.2 of the Project Agreement, upon the occurrence of an Event of Default (as defined in the Project Agreement), the Agency has the right, inter alia, to terminate the Project Agreement; and

WHEREAS, an Event of Default has occurred under the Project Agreement or another Transaction Document;

NOW, THEREFORE, the Agency hereby terminates the Project Agreement as of the date hereof. The execution of this Agency Termination of Project 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 or 12.7 of the Project Agreement.

IN WITNESS WHEREOF, the Agency has signed this Agency Termination of Project Agreement and caused same to be dated as of the ___ day of _____, ____.

COUNTY OF CHAUTAUQUA
INDUSTRIAL DEVELOPMENT
AGENCY

By: _____
Authorized Officer

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 appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

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 appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

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 FIELDBROOK FOODS CORPORATION, a corporation organized and existing under the laws of the State of Delaware and qualified to do business in the State of New York as a foreign corporation, having an office for the transaction of business at 1 Blue Bunny Drive, Le Mars, IA 51031 (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 parcels of land (the "Land") located at 1 Ice Cream Drive and 115 West Doughty Street Extension, City of Dunkirk, 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.

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by the officer described below on the date indicated beneath the signature of such officer and dated as 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 appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures) on the instrument, the individuals), or the person upon behalf of which the individuals) acted, executed the instrument.

Notary Public

EXHIBIT E
FORM OF SALES TAX AGENCY AGREEMENT

See Attached

SALES TAX AGENCY AGREEMENT

March 13, 2020

Fieldbrook Foods Corporation
1 Blue Bunny Drive
Le Mars, IA 51031

Re: County of Chautauqua Industrial Development Agency
2020 Fieldbrook Foods Project

Ladies and Gentlemen:

The County of Chautauqua Industrial Development Agency (the "Agency") and Fieldbrook Foods Corporation (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 a Uniform Project Agreement, dated as of March 1, 2020 (as amended, modified, supplemented or restated, the "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 manufacturing facility on behalf of the Company and Wells Enterprises, Inc., a corporation organized and existing under the laws of the State of Iowa and an affiliate of the Company (the "Applicant"), consisting of the following: (A)(1) the acquisition of an interest in approximately 23 parcels of land aggregating approximately 18.3 acres located at 1 Ice Cream Drive, City of Dunkirk, County of Chautauqua, New York (the "Existing Land"), (2) the renovation of the existing approximately 234,000 square foot building located on the Existing Land (collectively, the "Existing Building" and together with the Existing Land, collectively, the "Existing Facility"), together with related improvements to the Existing Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the "Existing Facility Equipment") necessary for the completion thereof (collectively, the "Existing Project Facility"), all of the foregoing for use by the Applicant and/or its affiliates as a manufacturing facility; (B)(1) the acquisition of an interest in an approximately 2.9 acre parcel of land located at 115 West Doughty Street Extension, City of Dunkirk, County of Chautauqua, New York (the "New Land" and together with the Existing Land, the "Land"), (2) the construction and installation of a

power substation and related improvements on the New Land (collectively, the "New Improvements" and together with the New Land, the "New Facility;" the Existing Facility and the New Facility are referred to herein collectively as the "Facility"), and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the "New Facility Equipment" and together with the Existing Facility Equipment, the "Equipment") necessary for the completion thereof (collectively, the "New Project Facility" and together with the Existing Project Facility, the "Project Facility"), all of the foregoing for use by the Applicant and/or its affiliates in connection with the operation of the Existing Project 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 [] (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 Fieldbrook Foods Corporation (the "Company") consisting in part of the acquisition, construction, renovation, installation and equipping of a manufacturing facility located at 1 Ice Cream Drive and 115 West Doughty Street Extension, City of Dunkirk 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 acquisition, construction, renovation, installation and equipping of the Project Facility. The capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary for completion of the acquisition, construction, renovation, installation and equipping of the Project Facility 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 exemption provided pursuant to Section 4.1(E) and 8.11 of the 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 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 Sales Tax Agency Agreement, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of this Sales Tax Agency 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 Agreement, (iii) the receipt by the Company of the Maximum Sales Tax Benefit (as defined in the Agreement), or (iv) the termination of the 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 Sales Tax Agency 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 Sales Tax Agency Agreement and the Form ST-123 issued by the Company or 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 Sales Tax Agency Agreement or the issuance of such Form ST-123.

10. The exemption from sales and use taxes provided under the 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.

11. 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 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: Richard E. Dixon
Title: Chief Financial Officer

ACCEPTED AND AGREED TO BY:

FIELDBROOK FOODS CORPORATION

By: _____
Name: Jeremy Pinkerman
Title: Chief Financial Officer

EXHIBIT F

COMPANY TERMINATION OF PROJECT AGREEMENT

WHEREAS, Fieldbrook Foods Corporation (the "Company") and the County of Chautauqua Industrial Development Agency (the "Agency") entered into a project agreement dated as of March 1, 2020 (the "Project Agreement") pursuant to which, among other things, the Agency authorized the Company to undertake the Project (as defined in the Project Agreement) as agent of the Agency; and

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

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

NOW, THEREFORE, it is hereby agreed that the Project Agreement has terminated as of the dated date hereof; provided, however, that, as provided in Section 12.7 of the Project Agreement, certain obligations of the Company shall survive the termination of the Project Agreement, and the execution of this company termination of project 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 Project Agreement.

IN WITNESS WHEREOF, the Company and the Agency have signed this company termination of project agreement and caused same to be dated as of the ____ day of _____, ____.

[_____]

By: _____
Authorized Officer

COUNTY OF CHAUTAUQUA INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Authorized Officer

STATE OF)
) ss.:
COUNTY OF)

On the ____ day of _____, in the year _____, before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

STATE OF)
) ss.:
COUNTY OF)

On the ____ day of _____, in the year _____, before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

EXHIBIT G
FORMS OF ANNUAL
EMPLOYMENT REPORT

EMPLOYMENT PLAN STATUS REPORT

COMPANY NAME: _____

ADDRESS: _____

TYPE OF BUSINESS: _____

CONTACT PERSON: _____

TELEPHONE NUMBER: _____

			Number Filled	
Occupation	Number of New Jobs	Number Listed ¹	Community Services Division Applicants	Job Training Partnership Act eligible persons

Form of then current Annual Monitoring Questionnaire to be attached
--

^{1/} With local Jobs Service Division and local service delivery office created pursuant to the Job Training Partnership Act.

EXHIBIT H

RESERVED

EXHIBIT I

INVOICE RIDER
(Complete and Attach to Invoice)

I, _____, the
_____ of _____
certify that I am a duly appointed agent of the County of Chautauqua Industrial
Development Agency ("Agency") and that I am purchasing the tangible personal
property or services for use in the following Agency Project and that such purchases
qualify as exempt from sales and use taxes under the Uniform Project Agreement,
dated as of March 1, 2020, by and between the Agency and Fieldbrook Foods
Corporation.

Name of the Project: 2020 Fieldbrook Foods Project

Street address of the Project Site: 1 Ice Cream Drive & 115 West Doughty
Street Extension, Dunkirk, NY.

IDA OSC project number: _____

EXHIBIT J

SALES TAX SUB-AGENCY AGREEMENT

Effective as of [_____] , 2020

NAME OF SUBCONTRACTOR _____

ADDRESS _____

ADDRESS _____

Attn: [POINT OF CONTACT/RESPONSIBLE PARTY]__

Re: County of Chautauqua Industrial Development Agency
(2020 Fieldbrook Foods Project) _____

Ladies and Gentlemen:

The County of Chautauqua Industrial Development Agency (the "Agency"), Fieldbrook Foods Corporation (the "Company"), [**CONTRACTOR**] (the "Contractor"), and [**SUBCONTRACTOR**] (collectively, the "Sub -Agent") 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 a Uniform Project Agreement, dated as of March 1, 2020 (as amended, modified, supplemented or restated, the "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 manufacturing facility on behalf of the Company and Wells Enterprises, Inc., a corporation organized and existing under the laws of the State of Iowa and an affiliate of the Company (the "Applicant"), consisting of the following: (A)(1) the acquisition of an interest in approximately 23 parcels of land aggregating approximately 18.3 acres located at 1 Ice Cream Drive, City of Dunkirk, County of Chautauqua, New York (the "Existing Land"), (2) the renovation of the existing approximately 234,000 square foot building located on the Existing

Land (collectively, the "Existing Building" and together with the Existing Land, collectively, the "Existing Facility"), together with related improvements to the Existing Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the "Existing Facility Equipment") necessary for the completion thereof (collectively, the "Existing Project Facility"), all of the foregoing for use by the Applicant and/or its affiliates as a manufacturing facility; (B)(1) the acquisition of an interest in an approximately 2.9 acre parcel of land located at 115 West Doughty Street Extension, City of Dunkirk, County of Chautauqua, New York (the "New Land" and together with the Existing Land, the "Land"), (2) the construction and installation of a power substation and related improvements on the New Land (collectively, the "New Improvements" and together with the New Land, the "New Facility," the Existing Facility and the New Facility are referred to herein collectively as the "Facility"), and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the "New Facility Equipment" and together with the Existing Facility Equipment, the "Equipment") necessary for the completion thereof (collectively, the "New Project Facility" and together with the Existing Project Facility, the "Project Facility"), all of the foregoing for use by the Applicant and/or its affiliates in connection with the operation of the Existing Project 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 being entered into by [] (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 Fieldbrook Foods Corporation (the "Company") consisting in part of the acquisition, construction, renovation, installation and equipping of a manufacturing facility located at 1 Ice Cream Drive and 115 West Doughty Street Extension, City of Dunkirk 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 acquisition, construction, renovation, installation and equipping of the Project Facility. The capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary for completion of the acquisition, construction, renovation, installation and equipping of the Project Facility 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 acquisition, construction, renovation, installation and equipping 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 Sections 4.1(E) and 8.11 of the 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 Sections 4.1(E) and 8.11 of the Agreement, or by the Sub-Agent, as sub-agent 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 Sales Tax Sub-Agency Agreement, the Sub-Agent agrees to accept the terms hereof and represents and warrants to the Agency that the use of this Sales Tax Sub-Agency Agreement by the Sub-Agent is and will be strictly for the purposes above stated.

7. Until the earliest of (i) [____], 20[___], (ii) the completion of the acquisition, construction, renovation, installation and equipping of the Project Facility 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 Sales Tax Sub-Agency 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 Sales Tax Sub-Agency 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 Sales Tax Sub-Agency 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.

11. The Sub-Agent 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 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 Sections 4.1(E) and 8.11 of the 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:

[COMPANY_____]

By: _____

[NAME OF CONTRACTOR_____]

By: _____
Name:
Title:

[NAME OF SUBCONTRACTOR_____]

By: _____
Name:
Title:

Taxpayer ID Number: _____