SUPPLEMENTAL FINAL AUTHORIZING RESOLUTION
(Hatfield Properties, LLC/Hatfield Metal Fab, Inc. 2018 Facility)

A regular meeting of the Dutchess County Industrial Development Agency, having offices at Three Neptune Road, Poughkeepsie, New York, was convened in public session on November 12, 2020 at 8:00 a.m., local time. Because of the Novel Coronavirus (COVID-19) Emergency and State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo's Executive Order 202.1, as extended, suspending certain requirements of the Open Meetings Law, the meeting was held electronically via webinar with teleconference access made available to the public, instead of a public meeting open for the public to attend in person.

PRESENT: Timothy Dean, Chairman
Mark Doyle, Vice Chairman
Kathleen M. Bauer, Secretary/Treasurer
Alfred D. Torreggiani
Donald R. Sagliano
Ronald J. Piccone, II
Amy L. Bombardieri

ABSENT:

ALSO PRESENT: Sarah Lee, Executive Director
Marilyn Yerks, Chief Financial Officer
Donald Cappillino, Counsel
Elizabeth A. Cappillino, Counsel

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain supplemental matters pertaining to acquisition of title to, or a leasehold interest in, a certain industrial development facility (Hatfield Properties, LLC/Hatfield Metal Fab, Inc. 2018 Facility) and the leasing of the facility to Hatfield Properties, LLC for further subleasing to Hatfield Metal Fab, Inc. as more particularly described below:

RESOLUTION OF THE DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ACQUISITION, CONSTRUCTION, IMPROVEMENT, RECONSTRUCTION, REPAIR, RENOVATION, INSTALLATION, FURNISHING AND EQUIPPING OF A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY FOR HATFIELD PROPERTIES, LLC AND HATFIELD METAL FAB, INC. AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS.

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WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 335 of the Laws of 1977 of the State of New York (collectively, the "**Act**"), the Agency was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, Hatfield Properties, LLC, a New York limited liability company (the "**Company**") and Hatfield Metal Fab, Inc., a New York corporation (the "**Corporation**") submitted an application to the Agency requesting the Agency provide financial assistance ("**Financial Assistance**") for a project (the "**Project**") consisting of:

(a) the construction, improvement, reconstruction, repair, renovation, installation, furnishing and equipping of an approximately 30,000 square foot addition (the "**New Facility**") to its existing building (the "**Existing Facility**" and together with the New Facility the "**Improvements**") located on a 16.80 acre parcel located in the Town of LaGrange, County of Dutchess, State of New York, bearing Tax Map Grid No. 133400-6261-02-805774-0000 (the "**Land**"), and the acquisition and installation therein of certain equipment and personal property, not part of the Equipment (as such term is defined herein) (the "**Facility Equipment**"; and, together with the Land and the Improvements, the "**Company Facility**"), which Company Facility will be subleased and leased by the Agency to the Company, and further subleased by the Company to Hatfield Metal Fab, Inc., a business corporation, organized and existing under the laws of the State of New York (the "**Corporation**"); and

(b) the acquisition and installation of certain equipment and personal property (the "**Equipment**"; and, together with the Company Facility, the "**Facility**"), which Equipment is to be leased by the Agency to the Corporation and which Facility will be used by the Corporation for its primary use as a metal fabrication facility, including the following, as they relate to the Project Work, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection the Project Work; and (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the Project Work; and (iii) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs with respect thereto) installed or placed in, upon or under such Facility.

WHEREAS, the Agency by resolution duly adopted on February 20, 2018 (the "**Preliminary Resolution**"), decided to proceed under the provisions of the Act; and

WHEREAS, at its regular meeting on October 24, 2018 (the "**October 24, 2018 Meeting**") the Agency adopted a resolution (the "**Authorizing Resolution**") to provide the Financial Assistance for the Project; and

WHEREAS, the Corporation submitted a letter amendment to its application dated September 28, 2020 and another letter amendment dated October 28, 2020 requesting the Agency provide additional financial assistance with respect to the Facility in the form of sales and use tax exemptions in excess of the amounts previously approved by the Agency (the "**Additional Benefits**"); and

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WHEREAS, the Corporation has increased its cost estimate for the project to $4,225,680.00 based upon recently received bids by contractors and increased its estimated sales tax exemption requirement in an amount not to exceed $186,542.00;; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company consistent with the policies of the Agency, in the form of (i) exemptions from sales and use taxes in an amount not to exceed $186,542.00 in connection with the purchase or lease of equipment, building materials, services or other personal property with the respect to the Facility, and (ii) abatement of real property taxes on the Facility as set forth in the PILOT Schedule attached as Exhibit A hereof; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted by the Department of Environmental Conservation of the State of New York (the laws and regulations hereinafter collectively referred to as "**SEQRA**"), the Project has undergone an uncoordinated review under SEQRA by the Town of LaGrange Planning Board (the "**Planning Board**"), as Lead Agency under SEQRA; and

WHEREAS, by resolution dated June 21, 2018, the Planning Board issued a Negative Declaration and Determination of Non-Significance (the "**Negative Declaration**") with the reasons for its determination stated therein; and

WHEREAS, the Agency adopted the reasoning set forth in the Negative Declaration and hereby determines that the Project will not have a "significant adverse impact" or "significant adverse effect" on the environment as defined under SEQRA; and

WHEREAS, in compliance with §859-a of the Act, the Agency on November 10, 2020 held a public hearing on the grant of financial assistance as set forth herein following publication in the *Poughkeepsie Journal* on October 27, 2020 of a notice of the public hearing; and

WHEREAS, the Company and the Corporation have agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the leasing of the Facility by the Agency to the Company.

NOW, THEREFORE, BE IT RESOLVED, by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Agency hereby finds and determines:

(a) The Agency confirms its prior determination that the Project will not have a "significant adverse impact" or "significant adverse effect" on the environment as defined under SEQRA.

Section 2. The Agency further hereby finds and determines:

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(a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(b) The Facility constitutes a "project", as such term is defined in the Act; and

(c) The public hearing held by the Agency on November 10, 2020, concerning the grant of Financial Assistance as set forth herein and the nature and location of the Facility was duly held in accordance with the laws of the State of New York, including but not limited to the giving of public notice of the meeting a reasonable time before the meeting and affording a reasonable opportunity for persons with differing views to be heard on Agency's providing the financial assistance contemplated herein and the location and nature of the Facility; and

(d) The Project Work and the leasing of the Facility to the Company and the Corporation will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Dutchess County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(e) The Project Work is reasonably necessary to induce the Company and the Corporation to maintain and expand their respective business operations in the State of New York and to discourage the Company and the Corporation from removing their respective existing facilities to a location outside the state and to preserve the competitive position of the Company and the Corporation in their respective industry; and

(f) Based upon representations of the Company and Corporation and Company and Corporation's Counsel, the Facility conforms with the local zoning laws and planning regulations of Dutchess County and all regional and local land use plans for the area in which the Facility is located; and

(g) It is desirable and in the public interest for the Agency to approve the requested Financial Assistance to this Facility; and

(h) The Company Lease will be an effective instrument whereby the Agency leases the Land and the Improvements from the Company; and

(i) The Lease Agreement will be an effective instrument whereby: (1) the Agency leases and subleases the Facility to the Company; (2) the Agency and the Company set forth the terms and conditions of their agreement regarding the Company's payments-in-lieu of real property taxes; (3) the Company agrees to comply with all Environmental Laws (as defined therein) applicable to the Facility and will indemnify and hold harmless the Agency for all liability under all such Environmental Laws; and (4) the Agency and the Company set forth the circumstances in which the Agency may recapture some or all of the benefits granted to the Company in the event any enumerated Recapture Event (as defined therein) occurs.

(j) The Equipment Lease Agreement (the "**Equipment Lease Agreement**"), dated as of November 1, 2020, will be an effective instrument whereby the Agency leases the Equipment to the Corporation; and

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(k) The Agency Compliance Agreement (the "**Agency Compliance Agreement**"), dated as of November 1, 2020, by and between the Agency and the Corporation will be an effective instrument whereby the Corporation will provide certain assurances to the Agency with respect to the Sublease Agreement.

Section 3. Subject to (i) the Company executing the Company Lease, the Lease Agreement, the Sublease Agreement and the Bill of Sale, (ii) the Corporation executing the Sublease Agreement, the Equipment Lease Agreement, and the Agency Compliance Agreement, and (iii) the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Facility satisfactory to the Agency, the Agency hereby authorizes the Company and the Corporation to proceed with the Project Work and hereby appoints the Company and the Corporation as the true and lawful agents of the Agency.

Section 4. In consequence of the foregoing, the Agency hereby determines to: (i) lease the Land and Improvements from the Company pursuant to the Company Lease, (ii) execute, deliver and perform the Company Lease, (iii) sublease and lease the Company Facility to the Company pursuant to the Lease Agreement, and (iv) execute, deliver and perform the Lease Agreement.

Section 5. The Agency is hereby authorized to acquire a leasehold interest in the real property and personal property described in Exhibit A and Exhibit B, respectively, to the Lease Agreement and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 6. The form and substance of the Company Lease and the Lease Agreement (each in substantially the forms presented to the Agency and which, prior to the execution and delivery thereof, may be redated and renamed) are hereby approved.

Section 7. Recapture Provisions. The Agency shall enjoy certain recapture rights under the terms and conditions of the Lease Agreement, of which Section 5.4 relating to recapture rights is attached hereto and made a part hereof as Exhibit B, upon the occurrence of a Recapture Event as defined therein.

Section 8. Based upon the representation and warranties made by the Company and the Corporation in the Application, the Agency hereby authorizes and approves the Company and the Corporation, as its agents, to make purchases of goods and services relating to the Facility and that would otherwise be subject to New York State and local sales and use tax in an amount not to exceed $2,295,340.00, which result in New York State and local sales and use taxexemption benefits ("**sales and use tax exemption benefits**") not to exceed $186,542.00.The Agency agrees to consider any requests by the Company or the Corporation for increases to the amount of sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services, and, to the extent required, the Agency authorizes and conducts any supplemental public hearing(s).

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Section 9.

(a) The Chairman, Vice Chairman, any member of the Agency or the Executive Director are hereby authorized, on behalf of the Agency, to execute and deliver the Company Lease and the Lease Agreement and related documents, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, any member of the Agency or the Executive Director shall approve, and such other related documents as may be, in the judgment of the Executive Director and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the "**Agency Documents**"). The execution thereof by the Chairman, Vice Chairman, any member of the Agency or the Executive Director of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Vice Chairman, any member of the Agency and the Executive Director of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement). The Agency hereby appoints each Member of the Agency Counsel to serve as an Assistant Secretary of the Agency for purposes of this transaction.

Section 10. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 11. This resolution shall take effect immediately.

The following resolution was duly moved by Mark Doyle, seconded by Kathleen M. Bauer, discussed and adopted with the following members voting:

Timothy Dean, Chairman	VOTING	"Aye"
Mark Doyle, Vice Chairman	VOTING	"Aye"
Kathleen M. Bauer, Secretary/Treasurer	VOTING	"Aye"
Alfred D. Torreggiani	VOTING	"Aye"
Donald R. Sagliano	VOTING	"Aye"
Ronald J. Piccone, II	VOTING	"Aye"
Amy L. Bombardieri	VOTING	"Aye"

Adopted: November 12, 2020

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

I, the undersigned Secretary of the Dutchess County Industrial Development Agency, **DO HEREBY CERTIFY**:

That I have compared the annexed extract of the minutes of the meeting of the Dutchess County Industrial Development Agency (the "Agency"), including the resolution contained therein, held on the 12th day of November, 2020, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters herein referred to.

That the Company Lease and the Lease Agreement contained in this transcript of proceedings are each in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY, that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and that public notice of the time and place of said meeting was only given in accordance with such Article 7, except that because of the Novel Coronavirus (COVID-19) Emergency and State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo's Executive Order 202.1 issued on March 12, 2020, as extended, suspending certain requirements of the Open Meetings Law, the meeting was held electronically via webinar with teleconference access made available the public, instead of a public meeting open for the public to attend in person.

I FURTHER CERTIFY, that there was a quorum of the members of the Agency present throughout said meeting.

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

IN WITNESS WHEREOF, I have hereunto set my hand as of the 12th day of November, 2020.

Kathleen M. Bauer, Secretary

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EXHIBIT A

PILOT SCHEDULE

The amount of payments-in-lieu-of-taxes payable annually by the Company will be allocated among the Town of LaGrange, the Arlington Central School District and Dutchess County, pro-rata, based on their tax rates for the particular year.

The Company shall make payments-in-lieu of taxes in the following amounts:

Formula for Payments-In-Lieu-of-Taxes ("**PILOTs**"): Town of LaGrange, (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located), Arlington Central School District, Dutchess County and Special Districts (collectively the "**Taxing Jurisdictions**").

Section 1 - Definitions: In this PILOT Schedule, the following terms shall have the meanings specified as follows, unless the context otherwise requires:

"PILOT" shall mean the payment-in-lieu-of-taxes required hereunder to be paid by the Company to the Agency. The PILOTs are more particularly described as follows:

"Annual PILOT" shall mean the sum of PILOTs due hereunder in a PILOT year.

"Apportioned Share of the Annual PILOT" shall mean the percentage of each Annual PILOT each Taxing Jurisdiction is entitled to receive, to be determined ratably using the ratio that the Taxing Jurisdiction's tax rate bears to the total tax rate of all of the Taxing Jurisdictions, using the tax rates from the year prior to the Taxable Status Date. The Special District PILOTs shall not be apportioned nor reduced by virtue of any abatement or exemption but shall be billed with the Annual PILOT invoice.

"County PILOT" shall mean the Dutchess County's Apportioned Share of the Annual PILOT due on February 28 of each year.

"School District PILOT" shall mean the Arlington Central School District's Apportioned Share of the Annual PILOT due on October 1 of each year.

"Town PILOT" shall mean the Town of LaGrange's Apportioned Share of the Annual PILOT due on February 28 of each year.

"Special Districts PILOTs" shall mean the PILOTs for the LaGrange Fire District and Mapleview Water District.

"PILOT Year" shall mean the first tax year following the Taxable Status Date after the Completion Date. For example, if the Completion Date was prior to March 1, 2022, the Initial PILOT Year would include the

2022/2023 School District PILOT, the
2023 County PILOT, the

2023 Town PILOT, the
2023 LaGrange Fire District PILOT, and the
2023 Mapleview Water District PILOT, (collectively the "**Initial PILOT Year**") shall become due, and annually thereafter for a total of ten (10) years in accordance with the Schedule of PILOT Payments.

"Schedule of Exemptions and Calculation of PILOTs" – Special District PILOTs shall be equal to the full amount of taxes that would have been levied upon the Facility and Additional Facilities if the Facility and Additional Facilities were owned by the Company and the Agency had no ownership interest. For the County PILOT, the Town PILOT and the School District PILOT, the PILOT shall be equal to the full amount of taxes that would have been levied upon the Facility and Additional Facilities, up to an assessed value of $1,675,000.00 if the Facility and Additional Facilities were owned by the Company and the Agency had no ownership interest. If the assessed value exceeds $1,675,000.00, the County PILOT, Town PILOT and the School District PILOT shall be increased by an amount equal to the amount of taxes that would have been levied upon the Facility and Additional Facilities on that excess amount but reduced by the following exemption percentage:

PILOT Year	**Exemption Percentage**
1	100%
2	100%
3	100%
4	55%
5	55%
6	55%
7	45%
8	35%
9	25%
10	15%
thereafter	0%

"Taxable Status Date" shall mean March 1 of each year. For School District PILOTs, Taxable Status Date shall mean March 1 of the year the PILOTs are due. For County, Town and Special District PILOTs, Taxable Status Date shall mean March 1 of the year prior to the PILOTs being due.

Section 2 - Billing, Apportionment and Distribution of PILOTs

After Taxable Status Date each year the Agency shall determine the Annual PILOT, the Apportioned Share of the Annual PILOT and the School District Annual PILOT. The Agency shall send an invoice to the Company for the Annual PILOT. Once received by the Agency, the PILOTs shall be distributed to the appropriate Taxing Jurisdiction timely in accordance with law.

EXHIBIT B

EXCERPT FROM LEASE AGREEMENT

Section 5.4 Recapture of Agency Benefits.

(a) It is understood and agreed by the parties hereto that the Agency is entering into this Lease Agreement in order to provide financial assistance to the Company for the Facility and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees as follows:

(i) If there shall occur a Recapture Event prior to the Completion Date or within the first (1st) or second (2nd) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, one hundred percent (100%) of the Recaptured Benefits (as defined below); and

(ii) If there shall occur a Recapture Event during the third (3rd) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, ninety percent (90%) of the Recaptured Benefits; and

(iii) If there shall occur a Recapture Event during the fourth (4th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, eighty percent (80%) of the Recaptured Benefits; and

(iv) If there shall occur a Recapture Event during the fifth (5th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, seventy percent (70%) of the Recaptured Benefits; and

(v) If there shall occur a Recapture Event during the sixth (6th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, sixty percent (60%) of the Recaptured Benefits; and

(vi) If there shall occur a Recapture Event during the seventh (7th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, fifty percent (50%) of the Recaptured Benefits; and

(vii) If there shall occur a Recapture Event during the eighth (8th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, forty percent (40%) of the Recaptured Benefits; and

(viii) If there shall occur a Recapture Event during the ninth (9th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, thirty percent (30%) of the Recaptured Benefits; and

(ix) If there shall occur a Recapture Event during the tenth (10th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, twenty percent (20%) of the Recaptured Benefits; and

(x) If there shall occur a Recapture Event during the eleventh (11th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, ten percent (10%) of the Recaptured Benefits; and

(xi) If there shall occur a Recapture Event during the twelfth (12th) year after the Completion Date, the Company shall not be obligated to pay to the Agency, or to the State of New York, any of the Recaptured Benefits; and

(b) The term "**Recaptured Benefits**" shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Agency's participation in the transaction contemplated by this Lease Agreement including, but not limited to, the amount equal to 100% of:

(i) Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Agent pursuant to the Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility (the "**Company Sales Tax Savings**"); and

(ii) real property tax abatements granted pursuant to Section 5.1 hereof (the "**Real Property Tax Abatements**");

which Recaptured Benefits from time to time shall upon the occurrence of a Recapture Event in accordance with the provisions of subsection (c) below and the declaration of a Recapture Event by notice from the Agency to the Company be payable directly to the Agency or the State of New York if so directed by the Agency within thirty (30) days after such notice.

(c) The term "**Recapture Event**" shall mean any of the following events:

(1) The occurrence and continuation of an Event of Default under this Lease Agreement (other than as described in clause (4) below or in subsections (d) or (e) below) which remains uncured beyond any applicable notice and/or grace period, if any, provided hereunder; or

(2) The Facility shall cease to be a "project" within the meaning of the Act, as in effect on the Closing Date, through the act or omission of the Company; or

(3) The sale of the Facility or closure of the Facility and/or departure of the Company from Dutchess County, except as due to casualty, condemnation or force majeure as provided in subsection (e) below or as provided in Section 9.3 hereof; or

(4) Failure of the Company to create or cause to be maintained at least ninety percent (90%) of the number of FTE jobs at the Facility as provided in Section 8.11 of the Lease Agreement, which failure is not reflective of the business conditions of the Company or the subtenants of the Company, including without limitation loss of major sales, revenues, distribution or other adverse business developments and/or local, national or international economic conditions, trade issues or industry wide conditions; or

(5) Any significant deviations from the Project Application Information which would constitute a significant diminution of the Company's activities in, or commitment to Dutchess County, New York; or

(6) The Company receives Sales Tax Savings in connection with the Project Work in excess of the Maximum Company Sales Tax Savings Amount; provided, however, that the foregoing shall constitute a Recapture Event with respect to such excess Sales Tax Savings only. It is further provided that failure to repay the Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recapture Benefits.

(d) Provided, however, if a Recapture Event has occurred due solely to the failure of the Company to create or cause to be maintained the number of FTEs at the Facility as provided in Section 8.11 hereof in any Tax Year but the Company has created or caused to be maintained at least 90% of such required number of FTEs for such Tax Year, then in lieu of recovering the Recaptured Benefits provided above, the Agency may, in its sole discretion, adjust the PILOT Payments due hereunder on a pro rata basis so that the amounts payable will be adjusted upward retroactively for such Tax Year by the same percentage as the percentage of FTEs that are below the required FTE level for such Tax Year. Such adjustments to the PILOT Payments may be made each Tax Year until such time as the Company has complied with the required number of FTEs pursuant to Section 8.11 hereof.

(e) Furthermore, notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a result of (i) a "force majeure" event (as more particularly defined in Section 10.1(b) hereof), (ii) a taking or condemnation by governmental authority of all or part of the Facility, or (iii) the inability or failure of the Company after the Facility shall have been destroyed or damaged in whole or in part (such occurrence a "**Loss Event**") to rebuild, repair, restore or replace the Facility to substantially its condition prior

to such Loss Event, which inability or failure shall have arisen in good faith on the part of the Company or any of its affiliates so long as the Company or any of its affiliates have diligently and in good faith using commercially reasonable efforts pursued the rebuilding, repair, restoration or replacement of the Facility or part thereof.

(f) The Company covenants and agrees to furnish the Agency with written notification (i) within sixty (60) days of the end of each Tax Year the number of FTEs located at the Facility for such Tax Year, and (ii) within thirty (30) days of actual notice of any facts or circumstances which would likely lead to a Recapture Event or constitute a Recapture Event hereunder. The Agency shall notify the Company of the occurrence of a Recapture Event hereunder, which notification shall set forth the terms of such Recapture Event.

(g) In the event any payment owing by the Company under this Section shall not be paid on demand by the Agency, such payment shall bear interest from the date of such demand at a rate equal to one percent (1%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, until the Company shall have made such payment in full, together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above).

(h) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred with the recovery of all amounts due under this Section 5.4, from amounts received by the Agency pursuant to this Section 5.4.

(i) The Company acknowledges that Section 5.4 is intended to reflect the Agency's "Policy on Maintaining Performance Based Incentives (MPBI)" a copy of which is attached hereto as Exhibit G and made a part hereof. In the event of a conflict between the provisions of Section 5.4 and the provisions set forth on Exhibit G, the provisions set forth on Exhibit G shall control.