

ASSIGNMENT & ASSUMPTION

DIMAX LLC

AND

6150 DONNER LLC

**2006 ASSIGNMENT AND ASSUMPTION AGREEMENT
DIMAX LLC PROJECT)**

with

ACKNOWLEDGMENT

thereof by

NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

Dated as of June 1, 2019

2006 ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS 2006 ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of June 1, 2019 (the "2006 Assumption Agreement"), is by **DIMAX LLC**, a limited liability company duly organized and validly existing under the laws of the State of New York, with an address of 6150 Donner Road, Pendleton, New York (the "Assignor") and **6150 DONNER LLC**, a limited liability company formed and existing under the laws of the State of New York with an address of 56 Fairlawn Drive, Amherst, New York 14226 (the "Assignee") and acknowledged by the **NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York with an address of 6311 Inducon Corporate Drive, Suite 1, Sanborn, New York 14132 (the "Agency").

RECITALS

WHEREAS, Title I of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York (the "State"); and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 569 of the Laws of 1972 of the State (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as defined below) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, the Assignor previously submitted an application to the Agency requesting financial assistance in connection with its acquisition, construction and equipping of a project; and

WHEREAS, the Project ("Project") consisted of: (A) the acquisition (or retention) by the Agency of fee title to or a leasehold interest in an approximately 8.6-acre parcel of land located on Donner Road in the Town of Pendleton, Niagara County, New York (the "Land"); (B) the construction on the Land of an approximately 35,000 square-foot building to house the Company's growing business which manufactures, assembles, warehouses and distributes vintage and classic automotive parts (the "Improvements"); and (C) the acquisition of and installation in and around the Improvements of certain machinery, equipment and items of personal property (the "Equipment" and collectively with the Land and the Improvements, the "Facility"); and

WHEREAS, by Resolution adopted on October 13, 2005, the Agency authorized the execution of certain documents with respect to the Project, dated as of August 1, 2006, between the Assignor to the Agency a certain Lease Agreement, dated as of August 1, 2006, from the Assignor to the Agency pursuant to which the Assignor leased the Improvements to the Agency (the "Existing Lease Agreement"), a certain Leaseback Agreement, dated as of August 1, 2006 from the Agency to the Assignor pursuant to which the Agency leased back the Improvements to the Assignor (the "Existing Leaseback Agreement"), a certain Payment-in-Lieu-of-Tax

Agreement, dated as of August 1, 2006, by the Agency and the Assignor (the "Existing PILOT Agreement"), pursuant to which the Assignor agreed to pay certain payments in lieu of taxes with respect to the Project; and related documents (the Existing Lease Agreement, Existing Leaseback Agreement, the Existing PILOT Agreement and related documents hereinafter collectively referred to as the "Existing Agency Documents"); and

WHEREAS, on or about March 4, 2019, the Agency received a request from the Assignor requesting the Agency's consent to the transfer of all of its assets and liabilities, including the Land, Improvements and Equipment to the Assignee, and on April 10, 2019, the Agency adopted a resolution approving this request; and

WHEREAS, in furtherance of the transfer request, the Assignee submitted an application to the Agency; and

WHEREAS, the Assignee now desires to assume all of the Assignor's rights, title, interest, duties, obligations and liabilities under the Existing Agency Documents.

NOW THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

- 1) Assignor hereby sells, assigns, transfers, conveys and sets over unto Assignee all of Assignor's rights, title, interest, duties, obligations and liability in, to and under the Existing Agency Documents.
- 2) Assignee hereby accepts such assignment, and assumes all of Assignor's rights, title, interest, duties, obligations and liability in, to and under the Existing Agency Documents, arising or accruing from and after the effective date of this Assignment and Assumption.
- 3) Assignee hereby covenants to operate and maintain the Project such that it continues to constitute a "project" under Title I of Article 18-A of the General Municipal Law of the State of New York.
- 4) Assignee hereby agrees and consents that this 2006 Assumption Agreement shall not be deemed a waiver or release of any claims or rights that the Agency may have at any time against the Assignor, and the Agency expressly agrees that any such claims or rights and the right to pursue the same at law or in equity shall be solely against the Assignee.
- 5) Assignor represents and warrants to Assignee that Assignor has fully and completely observed and performed all covenants, duties and obligations on its part to be observed or performed under the Existing Agency Documents prior to the date of this 2006 Assumption Agreement. Assignor hereby covenants and agrees to indemnify, save and hold harmless Assignee from and against any and all liabilities, claims or causes of action existing in favor of or asserted by the

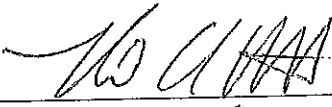
Agency, or by any third party, arising out of or related to Assignor's use or occupancy of the Project leased pursuant to the Existing Agency Documents or the Assignee's failure to perform any of its obligations arising under the Existing Agency Documents on or before the date of this 2006 Assumption Agreement.

- 6) Assignee hereby assumes and shall at all times be liable to observe and perform all of the covenants, duties and obligations under the Existing Agency Documents required to be observed or performed by the Assignor as lessee thereunder from and after the date of this 2006 Assumption Agreement. Assignee hereby covenants and agrees to indemnify, save and hold harmless Assignor from and against any and all liabilities, claims or causes of action existing in favor of or asserted by the Agency, or by any third party, arising out of or related to Assignee's use or occupancy of the Project leased pursuant to the Existing Agency Documents or the Assignor's failure to perform any of its obligations arising under the Existing Agency Documents on or after the date of this 2006 Assumption Agreement.
- 7) Assignor and Assignee hereby agree that this 2006 Assumption Agreement may be executed in one or more counterparts, each of which shall be construed as an original, and all of which together shall be deemed but a single instrument.


[Signature Page to 2006 Assignment and Assumption Agreement]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this 2006 Assumption Agreement as of the date first above written.

DIMAX LLC

By: 
Name: Richard A. McIntosh
Title: Managing Member

6150 DONNER LLC

By: 
Name: Scott Cassedy
Title: Manager

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

On the 28th day of June in the year 2019, before me, the undersigned, personally appeared **Richard A. McIntosh**, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

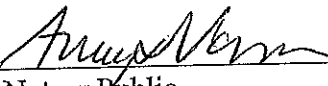


Notary Public

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

AMY J. VIGNERON
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 02/16/ 2023

On the 28th day of June in the year 2019, before me, the undersigned, personally appeared **Scott Cassety**, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

AMY J. VIGNERON
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 02/16/

AMY J. VIGNERON
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 02/16/ 2023

ACKNOWLEDGMENT OF 2006 ASSIGNMENT AND ASSUMPTION AGREEMENT
OF
ASSIGNOR'S RIGHTS UNDER THE AGENCY DOCUMENTS

The undersigned hereby acknowledges receipt of notice of the 2006 Assignment and Assumption Agreement, from DIMAX LLC (the "Assignor") to 6150 DONNER LLC (the "Assignee"), dated as of June 1, 2019 (the "2006 Assumption Agreement"), pursuant to which the Assignee assumes all of the Assignor's rights, title, interest, duties, obligations and liabilities in, to and under the Agency Documents (as defined in the 2006 Assumption Agreement). The foregoing shall not be construed, however, as a waiver or release of any claims or rights that the undersigned may have at any time against the Assignor, and the undersigned expressly reserves any such claims or rights and the right to pursue the same at law or in equity.


IN WITNESS WHEREOF, the undersigned has caused this Acknowledgment to be duly executed as of the 17th day of June, 2019.

NIAGARA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Name: Susan C. Langdon
Title: Executive Director

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

On the 17th day of June in the year 2019, before me, the undersigned, personally appeared **Susan C. Langdon**, 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
Mark J. Gabriele
Qualified in Niagara county
No. 4948558
Notary Public, State of New York
My Commission Expires 03/20/2023

PRELIMINARY RESOLUTION

PRELIMINARY RESOLUTION

(6150 Donner, LLC Project)

A regular meeting of Niagara County Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency located at 6311 Inducon Corporate Drive, Suite One, Sanborn, New York on the 13th day of March, 2019 at 9:00 a.m., local time.

The meeting was called to order by the Chairperson and, upon roll being called, the following members of the Agency were:

PRESENT:

Stephen Brady	Chairperson
Mark A. Onesi	First Vice Chairperson
Joan G. Aul	Second Vice Chairperson
Jerald I. Wolfgang	Assistant Secretary
Arthur G. Pappas	Member
William L. Ross	Member
Daryl Bodewes	Member

ABSENT:

Kevin McCabe	Secretary
Willie C. Dunn	Member

THE FOLLOWING PERSONS WERE ALSO PRESENT:

Susan C. Langdon	Executive Director
Andrea Klyczek	Assistant Director
Michael S. Dudley	Finance Manager
Caroline Caruso	Accounting Associate
Barbara A. Gill	Administrative Coordinator
Mark Gabriele, Esq.	Agency Counsel

The following resolution was offered by *Mr. Wolfgang*, seconded by *Mr. Onesi*, to wit:

Resolution No. 19-03-9.4.1

RESOLUTION OF THE NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY (i) ACCEPTING THE APPLICATION OF 6150 DONNER, LLC WITH RESPECT TO A CERTAIN PROJECT (AS MORE FULLY DEFINED BELOW) REQUESTING THE AGENCY CONSENT TO 6150 DONNER, LLC ASSIGNMENT AND ASSUMPTION OF THE EXISTING PROJECT; (ii) AUTHORIZING A PUBLIC HEARING WITH RESPECT TO THE ASSIGNMENT OF THE PROJECT; (iii) AUTHORIZING THE EXECUTIVE DIRECTOR OF THE AGENCY TO TAKE CERTAIN ACTIONS UNDER ARTICLE 8 OF THE ENVIRONMENTAL CONSERVATION LAW IN CONNECTION WITH THE PROJECT; (iv) DESCRIBING THE FORMS OF FINANCIAL ASSISTANCE BEING CONTEMPLATED BY THE AGENCY.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 569 of the Laws of 1972 of the State of New York (the "Act"), **NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency") was created with the authority and power to own, lease and sell property and to issue its bonds as authorized by the Act; and

WHEREAS, Dimax, LLC ("Dimax") is the owner of certain property located at 6150 Donner Road, in the Town of Pendleton, New York consisting of approximately 8.6 acres (the "Land"); and

WHEREAS, Dimax and the Agency previously entered into a certain Lease Agreement, Leaseback Agreement and PILOT Agreement dated August 1, 2006 relating to the construction of an approximately 35,000 square foot building located on the Land; and

WHEREAS, Dimax and the Agency previously entered into a certain Lease Agreement, Leaseback Agreement and PILOT Agreement dated June 1, 2010 relating to the construction of an approximately 28,000 square foot building located on the Land; and

WHEREAS, **6150 DONNER, LLC**, and/or an individual(s) or affiliate, subsidiary, or entity or entities formed or to be formed on its behalf (the "Company"), has submitted an application to the Agency, a copy of which is on file at the office of the Agency, requesting that the Agency approve the Assumption and Assignment of a certain project previously approved for Dimax LLC (the "Project") which previously consisted of: (A) the acquisition or retention by the Agency of fee title to, or a leasehold interest in, a parcel of land located at 6150 Donner Road in the Town of Pendleton, Niagara County, New York (the "Land"); (B) the construction of a 35,000 square foot building in 2006; along with the construction of a 28,000 square foot building in 2010. (together the "Improvements"); and (C) the acquisition and installation in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment" and collectively with the Land and the Improvements, the "Facility").

WHEREAS, pursuant to Article 18-A of the General Municipal Law the Agency desires to adopt a resolution describing the Project and the financial assistance that the Agency is contemplating with respect to the Project; and

WHEREAS, it is contemplated that the Agency will hold public hearings and (i) negotiate an agent agreement (the "Agent Agreement") whereby the Agency will designate the Company as its agent for the purpose of acquiring and equipping the Project, (ii) the Assignment and Assumption of a lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement"), and the payment-in-lieu-of-tax agreement (the "PILOT Agreement") with the Company, (iii) retain fee title to, leasehold or other interest in the Land, Improvements, Equipment and personal property constituting the Facility (once the Assignment and Assumption of Lease Agreement, Leaseback Agreement, and PILOT Agreement have been negotiated), and (iv) provide financial assistance to the Company in the form of sales and use tax exemptions related to the Project, consistent with the policies of the Agency, a partial real property tax abatement and a mortgage recording tax exemption; and

WHEREAS, the Agency has scheduled public hearings and provided notice of the public hearings pursuant to Section 850-a of the Act; and

WHEREAS, the Agency must determine whether the undertaking of the Project and the providing of the contemplated financial assistance with respect to the same will be in conformance with Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (said law and regulations hereinafter collectively referred to as "SEQR").

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE AGENCY AS FOLLOWS:

Section 1. The Company has presented an application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's application, the Agency hereby finds and determines that:

(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 Agency has the authority to take the actions contemplated herein under the Act; and

(C) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in Niagara County and otherwise furthering the purposes of the Agency as set forth in the Act; and

(D) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York (the "State") to another area of the State or result in the

abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located within the State; and the Agency hereby finds that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries.

Section 2. For purposes of investigating the advisability of undertaking a coordinated review under SEQRL with respect to the Project and determining whether the Project may have a "significant effect on the environment" (as such term is defined under SEQRL), the Executive Director of the Agency is hereby authorized and directed to take the following actions:

(A) To obtain an Environmental Assessment Form (the "EAF") with respect to the Project from the Company; and

(B) To review the EAF with counsel to the Agency and prepare proceedings to allow the Agency to comply with SEQRL; and

(C) To contact all other "involved agencies" with respect to the Project for the purposes of ascertaining whether they are interested in undertaking a coordinated review with respect to the Project; and

(D) Upon completion of the foregoing, to report to the Agency at its next meeting on the status of the environmental review process with respect to the Project.

Section 3. Based upon the representations and warranties made by the Company in its application for financial assistance, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to \$100,000.00, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed \$8,000.00. The Agency agrees to consider any requests by the Company for increase 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.

Pursuant to Section 875(3) of the New York General Municipal Law, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchase for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchase for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to

make purchases for the benefit of the Project, fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project. As a condition precedent of receiving sales and use tax exemption benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

Section 4. The Chairperson, Vice Chairperson and/or the Executive Director of the Agency are hereby authorized, on behalf of the Agency, to hold public hearings in compliance with the Act and negotiate (but not execute or deliver) the terms of (A) an Agent Agreement, whereby the Agency appoints the Company as its agent to assume the Project and to immediately provide sales tax exemption benefits for purchases and rentals related to the renovation and equipping of the Project, (B) Assumption of the Lease Agreement, whereby the Company leases the Facility to the Agency, (C) Assignment of the related Leaseback Agreement, conveying the Facility back to the Company, (D) Assumption of the PILOT Agreement, whereby the Company agrees to make certain payments-in-lieu-of real property taxes, and (E) related documents; *provided*, (i) the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the PILOT Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

Section 5. The Agency is hereby authorized to conduct public hearings in compliance with the Act.

Section 6. 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 and to execute and deliver all such certificates, instruments and documents, to 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 resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 7. These Resolutions shall take effect immediately upon adoption.

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

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Stephen F. Brady	[X]	[]	[]	[]
Mark A. Onesi	[X]	[]	[]	[]
Joan Aul	[X]	[]	[]	[]
Kevin McCabe	[]	[]	[]	[X]
Jerald I. Wolfgang	[X]	[]	[]	[]
Arthur G. Pappas	[X]	[]	[]	[]
Willie Dunn	[]	[]	[]	[X]
William L. Ross	[X]	[]	[]	[]
Daryl Bodewes	[X]	[]	[]	[]

The Resolutions were thereupon duly adopted.

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

I, the undersigned Assistant Secretary of Niagara County Industrial Development Agency (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on March 13, 2019 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

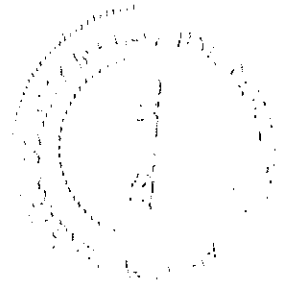
I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 13th day of March, 2019.



Jerald I. Wolfgang, Assistant Secretary



FINAL RESOLUTION

FINAL RESOLUTION
(6150 Donner, LLC Project)

A regular meeting of Niagara County Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency located at 6311 Inducon Corporate Drive, Suite One, Sanborn, New York on the 10th day of April, 2019 at 9:00 a.m., local time.

The meeting was called to order by the Chairman and, upon roll being called, the following members of the Agency were:

PRESENT:

Stephen Brady	Chairperson
Mark A. Onesi	First Vice Chairperson
Joan G. Aul	Second Vice Chairperson
Kevin McCabe	Secretary
Arthur G. Pappas	Member
William L. Ross	Member
Daryl Bodewes	Member

ABSENT:

Jerald I. Wolfgang	Assistant Secretary
Willie C. Dunn	Member

THE FOLLOWING PERSONS WERE ALSO PRESENT:

Susan C. Langdon	Executive Director
Andrea Klyczek	Assistant Director
Michael Dudley	Finance Manager
Caroline Caruso	Accounting Associate
Dmitri Liadski	Economic Developer
Barbara A. Gill	Administrative Coordinator
Mark Gabriele, Esq.	Agency Counsel

The following resolution was offered by *Mr. McCabe*, seconded by *Mr. Bodewes*, to wit:

Resolution No. 19-04-7.3.1

RESOLUTION OF THE NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY (i) ASSIGNMENT OF A CERTAIN PROJECT FOR THE BENEFIT OF 6150 DONNER, LLC AND/OR AN INDIVIDUAL(S) OR AFFILIATE, SUBSIDIARY, OR ENTITY FORMED OR TO BE FORMED ON ITS BEHALF (AS MORE FULLY DEFINED BELOW); (ii) DETERMINE THAT THE PROJECT WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT; (iii) ASSIGNMENT AND ASSUMPTION OF AN EXISTING LEASE AGREEMENT, LEASEBACK AGREEMENT, PAYMENT-IN-LIEU-OF-TAX AGREEMENT, AND RELATED DOCUMENTS; AND (iv) PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT, (B) A MORTGAGE RECORDING TAX EXEMPTION FOR THE FINANCING RELATED TO THE PROJECT.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 569 of the Laws of 1972 of the State of New York (the "Act"), **NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency") was created with the authority and power to own, lease and sell property and to issue its bonds as authorized by the Act; and

WHEREAS, Dimax, LLC ("Dimax") is the owner of certain property located at 6150 Donner Road, in the Town of Pendleton, New York consisting of approximately 8.6 acres (the "Land"); and

WHEREAS, Dimax and the Agency previously entered into a certain Lease Agreement, Leaseback Agreement and PILOT Agreement dated August 1, 2006 relating to the construction of an approximately 35,000 square foot building located on the Land; and

WHEREAS, Dimax and the Agency previously entered into a certain Lease Agreement, Leaseback Agreement and PILOT Agreement dated June 1, 2010 relating to the construction of an approximately 28,000 square foot building located on the Land; and

WHEREAS, **6150 DONNER, LLC**, and/or an individual(s) or affiliate, subsidiary, or entity or entities formed or to be formed on its behalf (the "Company"), has submitted an application to the Agency, a copy of which is on file at the office of the Agency, requesting that the Agency approve the Assumption and Assignment of a certain project previously approved for Dimax LLC (the "Project") which previously consisted of: (A) the acquisition or retention by the Agency of fee title to, or a leasehold interest in, a parcel of land located at 6150 Donner Road in the Town of Pendleton, Niagara County, New York (the "Land"); (B) the construction of a 35,000 square foot building in 2006; along with the construction of a 28,000 square foot building in 2010. (together the "Improvements"); and (C) the acquisition and installation in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment" and collectively with the Land and the Improvements, the "Facility").

WHEREAS, pursuant to Article 18-A of the General Municipal Law the Agency desires to adopt a resolution describing the Project and the financial assistance that the Agency is contemplating with respect to the Project; and

WHEREAS, on March 13, 2019, the Agency adopted a resolution (the "Preliminary Resolution") accepting the Application and directing that a public hearing be held; and

WHEREAS, it was contemplated that the Agency would hold a public hearing and (i) negotiate an agent agreement (the "Agent Agreement") whereby the Agency will designate the Company as its agent for the purpose of acquiring, constructing and equipping the Project, (ii) negotiate the assumption and assignment of a lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement"), payment-in-lieu-of-tax agreement (the "PILOT Agreement") with the Company, (iii) take or retain fee title to, leasehold or other interest in the Land, Improvements, Equipment and personal property constituting the Facility (once the Lease Agreement, Leaseback Agreement, and PILOT Agreement have been negotiated), and (iv) provide financial assistance to the Company in the form of sales and use tax exemptions and a mortgage recording tax exemption for financing related to the Project, consistent with the policies of the Agency, a partial real property tax abatement; and

WHEREAS, on the 1st day of April, 2019, at 2:45 p.m. at the Pendleton Town Hall in Lockport, New York, the Agency held a public hearing with respect to the Project and the proposed financial assistance being contemplated by the Agency (the "Public Hearing") whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views. A copy of the Minutes of the Public Hearing along with the Notice of Public Hearing published and forwarded to the affected taxing jurisdictions prior to said Public Hearing are attached hereto as Exhibit A;

WHEREAS, the Company has submitted to the Agency a Short Environmental Assessment Form (the "EAF") in compliance with Article 8 of the Environmental Conservation Law and Regulations adopted pursuant thereto by the Department of Environmental Conservation of the State (collectively, "SEQR") with respect to the Project, a copy of which is attached hereto as Exhibit B.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE AGENCY AS FOLLOWS:

Section 1. The Company has presented an application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's application, the Agency hereby finds and determines that:

(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 Agency has the authority to take the actions contemplated herein under the Act; and

(C) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities and retaining existing jobs in Niagara County and otherwise furthering the purposes of the Agency as set forth in the Act; and

(D) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located within the State; and the Agency hereby finds that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries.

(E) The Project involves an "unlisted action" (as said quoted term is defined under SEQR). The review is "uncoordinated" (as said quoted term is defined under SEQR). Based upon the review by the Agency of the Short Environmental Assessment Form (the "EAF") and related documents delivered by the Company to the Agency and other representations made by the Company to the Agency in connection with the Project, the Agency hereby finds that (i) the Project will result in no major impacts and, therefore, is one which may not cause significant damage to the environment; (ii) the Project will not have a "significant effect on the environment" (as said quoted term is defined under SEQR) ; and (iii) no "environmental impact statement" (as said quoted term is defined under SEQR) need be prepared for this action. This determination constitutes a "negative declaration" (as said quoted term is defined under SEQR) for purposed of SEQR. The Agency's findings are incorporated in Part II of the EAF.

Section 2. Subject to the Company executing an Agent Agreement by and between the Agency and the Company and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency; (i) to acquire, construct and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; provided, however, the Agent Agreement shall expire on the date as indicated in the Agent Agreement (*unless extended for good cause by the Executive Director of the Agency*).

Section 3. Pursuant to Section 875(3) of the New York General Municipal Law, the Agency may recover or recapture from the company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the company, its against, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, constants, subcontractors, or any other party

authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project. As a condition precedent of receiving sales and use tax exemption benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

Section 4. The Agency hereby confers on the Company in connection with the Project certain benefits, exemptions and other financial assistance consisting of: (a) an exemption benefit from all New York State and local sales and use tax exemption benefits for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction or equipping of the Facility, (b) an exemption benefit from mortgage recording tax, and (c) a partial abatement from real property taxes benefit conferred through a certain Payment in Lieu of Tax Agreement. The Agency will provide the Company with Project incentives totaling \$289,835.00, comprised of real property tax exemption benefits, in the estimated amount of \$268,275.00, sales and use tax exemption benefits of approximately \$8,000.00, and mortgage recording exemption benefits of \$13,560.00. To effectuate this Resolution, the Chairman, Vice Chairman and/or the Executive Director of the Agency are hereby authorized, on behalf of the Agency, to negotiate and execute (A) the Lease Agreement whereby the Company leases the Project to the Agency, (B) the related Leaseback Agreement conveying the Project back to the Company, and (C) the PILOT Agreement with real property tax exemption benefits; provided (i) the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the PILOT Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

Section 5. 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 and to execute and deliver all such certificates, instruments and documents, to 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 resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 6. These Resolutions shall take effect immediately upon adoption.

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

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Stephen F. Brady	[X]	[]	[]	[]
Mark Onesi	[X]	[]	[]	[]
Joan G. Aul	[X]	[]	[]	[]
Kevin McCabe	[X]	[]	[]	[]
Jerald I. Wolfgang	[]	[]	[]	[X]
Arthur G. Pappas	[X]	[]	[]	[]
William L. Ross	[X]	[]	[]	[]
Willie C. Dunn	[]	[]	[]	[X]
Daryl Bodewes	[X]	[]	[]	[]

The Resolutions were thereupon duly adopted.

EXHIBIT A

Niagara County Industrial Development Agency

March 14, 2019

Richard E. Updegrove
County Manager
59 Park Avenue
Lockport, New York 14094

Wm. Keith McNall, Chairman
Niagara County Legislature
175 Hawley Street
Lockport, New York 14094

Mr. John Shoemaker, Director
Niagara County Real Property
59 Park Avenue
Lockport, New York 14094

Joseph Miller, President
Board of Education
Starpoint Central School District
4353 Mapleton Road
Lockport, NY 14094

Dr. Sean M. Croft, Superintendent
Starpoint Central School District
4353 Mapleton Road
Lockport, NY 14094

Kelli Coughlin, Assessor
Town of Pendleton
6570 Campbell Blvd.
Lockport, NY 14094

Joel Maerten, Supervisor
Town of Pendleton
6570 Campbell Blvd.
Lockport, NY 14094

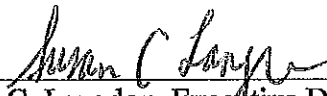
Re: 6150 Donner LLC

Ladies and Gentlemen:

On **April 1, 2019, at 2:45 p.m. local time**, at the Pendleton Town Hall, 6570 Campbell Boulevard, Lockport, New York 14094, the Niagara County Industrial Development Agency (the "Agency") will conduct a public hearing regarding the above-referenced project. Attached is a copy of the Notice of Public Hearing describing the project and the financial assistance contemplated by the Agency. The Notice has been submitted to the Lockport Union Sun & Journal for publication.

You are welcome to attend such hearing at which time you will have an opportunity to review the project application and present your views, both orally and in writing, with respect to the project. The public hearing is being conducted pursuant to Section 859-a of the General Municipal Law. We are providing this notice to you, pursuant to General Municipal Law Section 859-a, as the chief executive officer of an affected tax jurisdiction within which the project is located.

NIAGARA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY



Susan C. Langdon, Executive Director

**NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY
NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Article 18-A of the New York General Municipal Law will be held by the Niagara County Industrial Development Agency (the "Agency") on the **1st day of April, 2019 at 2:45 p.m.**, local time, at the Pendleton Town Hall, 6570 Campbell Boulevard, Lockport, New York 14094, in connection with the following matter:

6150 DONNER, LLC, and/or an individual(s) or affiliate, subsidiary, or entity or entities formed or to be formed on its behalf (the "Company"), has submitted an application to the Agency, a copy of which is on file at the office of the Agency, requesting that the Agency approve the Assumption and Assignment of a certain project previously approved for Dimax LLC (the "Project") which previously consisted of: (A) the acquisition or retention by the Agency of fee title to, or a leasehold interest in, a parcel of land located at 6150 Donner Road in the Town of Pendleton, Niagara County, New York (the "Land"); (B) the construction of a 35,000 square foot building in 2006; along with the construction of a 28,000 square foot building in 2010. (together the "Improvements"); and (C) the acquisition and installation in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment" and collectively with the Land and the Improvements, the "Facility").

The Agency will acquire or retain title to, or a leasehold interest in the Facility and consent to the Assignment and Assumption of the project by the Company. The Company will operate the Facility during the remaining term of the lease. At the end of the lease term, the Company will purchase the Facility from the Agency, or if the Agency holds a leasehold interest, the leasehold interest will be terminated. The Agency contemplates that it will provide financial assistance (the "Financial Assistance") to the Company in the form of sales and use tax exemptions, partial real property tax abatement and a mortgage tax exemption consistent with the policies of the Agency.


A representative of the Agency will be at the above-stated time and place to present a copy of the Company's application and hear and accept written and oral comments from all persons with views in favor of or opposed to or otherwise relevant to the proposed Financial Assistance.

This public hearing is being conducted in accordance with Subdivision 2 of Section 859-a of the New York General Municipal Law.

DATED: March 14, 2019

NIAGARA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____


Susan C. Langdon
Executive Director

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NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

PUBLIC HEARING FOR 6150 DONNER, LLC

April 1, 2019

2:45 P.M.

Taken at: Town of Pendleton Town Hall

1 PRESENT: SUSAN LANGDON,
2 Executive Director,
3 Niagara County Industrial
 Development Agency.
 Appearing as Hearing Officer.

4 REPORTED BY: DAWN M. SITERS,
5 Court Reporter.

6
7 ATTENDANCE NOTED ON ATTACHED SHEET.

8
9 MS. LANGDON: Welcome. This
10 public hearing is now open. It is 2:47 p.m.

11 My name is Susan Langdon. I'm the
12 Executive Director of the Niagara County Industrial
13 Development Agency, and I have been designated by
14 the Agency to be the hearing officer to conduct this
15 public hearing.

16 We are here to hold the public
17 hearing on 6150 Donner, LLC and/or individuals or
18 affiliates, subsidiaries or entities formed, or to
19 be formed, on its behalf. The transcript of this
20 hearing will be reviewed and considered by the
21 Agency in determination of this project. Notice of
22 this hearing appeared in the Niagara Gazette on
23 March 16, 2019.

1 The proposed project includes the
2 assignment and assumption of PILOTS for a facility
3 located at 6150 Donner Road in the Town of Pendleton.

4 The proposed financial assistance
5 contemplated by the Agency includes New York State
6 and local sales and use tax exemption benefits and
7 mortgage recording tax exemption benefits in
8 compliance with the Agency's uniform tax exemption
9 policy.

10 Written comments may also be
11 delivered to the Agency at 6311 Inducon Corporate
12 Drive, Suite One, Sanborn, New York 14132 until the
13 comment period closes on April 5, 2019.

14 If anyone is interested in making
15 a comment, please raise your hand, state your name
16 and address. If you are representing a company,
17 please identify the company.

18 Does anyone wish to speak?

19 Okay. There being no one wishing
20 to speak, I will close the hearing. It is now 2:49
21 p.m. Thank you very much.

22 (The hearing was concluded at 2:49 p.m.)

23 * * * *

**SIGN IN SHEET
PUBLIC HEARING**

April 1, 2019
at Town of Pendleton Town Hall

regarding:

**6150 Donner LLC and/or Individual(s) or Affiliate(s), Subsidiary(ies), or Entity(ies)
formed or to be formed on its behalf**

Project Location: 6150 Donner Road, Town of Pendleton

Name	Company and/or Address	X box to speak/ comment
Kelli Caughlin	Town of Pendleton	
JOHN SHOEMAKER	NCRPTS	

EXHIBIT B

ST-60



IDA Appointment of Project Operator or Agent For Sales Tax Purposes

ST-60

(1/18)

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

For IDA use only

IDA information

Name of IDA Niagara County Industrial Development Agency			IDA project number (use OSC numbering system for projects after 1998) 2903 19-08
Street address 6311 Inducon Corporate Drive - Suite One			Telephone number (716) 278-8760
City Sanborn	State NY	ZIP code 14132-9099	Email address (optional)

Project operator or agent information

Name of IDA project operator or agent 6150 Donner LLC		Mark an X in the box if directly appointed by the IDA: <input checked="" type="checkbox"/>	Employer identification or Social Security number 16-1039343
Street address 56 Fairlawn Drive		Telephone number (716) 480-8242	Primary operator or agent? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
City Amherst	State NY	ZIP code 14226	Email address (optional)

Project information

Name of project 6150 Donner LLC Project			
Street address of project site 6150 Donner Road			
City Lockport	State NY	ZIP code 14094	Email address (optional)
Purpose of project the renovation of a 35,000 square foot building; along with the renovation of a 28,000 square foot addition.			

Description of goods and services intended to be exempted from New York State and local sales and use taxes Goods and services used to construct a 35,000 square foot building in 2006; along with goods and services used to construct a 28,000 square foot building in 2010.			
Date project operator or agent appointed (mmdyy) 041019	Date project operator or agent status ends (mmdyy) 123120	Mark an X in the box if this is an extension to an original project: <input type="checkbox"/>	
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: 100,000.00		Estimated value of New York State and local sales and use tax exemption provided: 8,000.00	

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer or employee signing on behalf of the IDA Susan C. Langdon		Print title Executive Director	
Signature 		Date 6/17/19	Telephone number (716) 278-8760

Instructions

When to file

An IDA must file this form within 30 days of the date they appoint any project operator or other person as agent of the IDA, for purposes of extending any sales and use tax exemptions.

Requirements to file

The IDA must file a separate form for each person it appoints as agent, whether directly or indirectly, and regardless of whether the person is the primary project operator or agent. If the IDA authorizes a project operator or agent to appoint other persons as agent of the IDA, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the date of the new agent's appointment. The IDA should not file this form for a person hired to work on an IDA project if that person is not appointed as agent of the IDA. The IDA should not file this form if they do not extend any sales or use tax exemption benefits for the project.

If an IDA modifies a project, such as by extending it beyond its original completion date, or by increasing or decreasing the amount of sales and use tax exemption benefits authorized for the project, they must, within 30 days of the change, file a new form with the new information.

If the information on this form changes

If an IDA amends, revokes, or cancels the appointment of an agent, or if an agent's appointment becomes invalid for any reason, the IDA, within 30 days, must send a letter to the address below for filing this form, indicating that the appointment has been amended, revoked, or cancelled, or is no longer valid, and the effective date of the change. They must attach to the letter a copy of the form it originally filed. The IDA should not send a letter for a form that is not valid merely because the *Completion date of project* has passed.

Mailing instructions

Mail completed form to:

NYS TAX DEPARTMENT
IDA UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227-0866

Private delivery services – See Publication 55, *Designated Private Delivery Services*.

Privacy notification

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

Need help?



Visit our website at www.tax.ny.gov

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

Telephone assistance

Sales Tax Information Center:	518-485-2889
To order forms and publications:	518-457-5431
Text Telephone (TTY) or TDD equipment users	Dial 7-1-1 for the New York Relay Service

PILOT

NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

6150 DONNER LLC

**AMENDED AND RESTATED 2006
PAYMENT-IN-LIEU-OF-TAX AGREEMENT**

Relating to the Premises located at
6150 Donner Road in the
Town of Pendleton, Niagara County, New York

SBL #: 137.00-2-20.2

Affected Tax Jurisdictions:
Niagara County
Town of Pendleton
Lockport City School District

Dated as of June 1, 2019

**AMENDED AND RESTATED 2006
PAYMENT-IN-LIEU-OF-TAX AGREEMENT**

THIS AMENDED AND RESTATED 2006 PAYMENT-IN-LIEU-OF-TAX AGREEMENT (the "Amended and Restated PILOT"), is made as of the 1st day of June, 2019, by and between NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its offices at 6311 Inducon Corporate Drive, Suite One, Sanborn, New York 14132 (the "Agency"), and 6150 DONNER LLC, a New York limited liability company, duly authorized to conduct its business in the State of New York, with offices at 56 Fairlawn Drive, Amherst, New York 14221 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 569 of the Laws of 1972 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York (the "State"); and

WHEREAS, by resolution duly adopted by the Agency on October 13, 2005, the Agency designated and appointed Dimax LLC ("Dimax") to act as its agent for the purpose of undertaking a certain project (the "Project") consisting of: (A) the acquisition (or retention) by the Agency of fee title to or a leasehold interest in an approximately 8.6-acre parcel of land located on Donner Road in the Town of Pendleton, Niagara County, New York (the "Land"); (B) the construction on the Land of an approximately 35,000 square-foot building to house the Company's growing business which manufactures, assembles, warehouses and distributes vintage and classic automotive parts (the "Improvements"); and (C) the acquisition of and installation in and around the Improvements of certain machinery, equipment and items of personal property (the "Equipment" and collectively with the Land and the Improvements, the "Facility"); and

WHEREAS, to assist Dimax in the acquisition, construction and equipping of the Facility, the Agency and Dimax executed and delivered the following documents: (i) lease agreement between Dimax and Agency, dated as of August 1, 2006; (ii) a leaseback agreement, between Agency and Dimax, dated as of August 1, 2006 and (iii) a Payment-in-Lieu-of-Tax Agreement between the Agency and Dimax, dated August 1, 2006; and

WHEREAS, Dimax has transferred its interest in and to the Facility to the Company and has assigned its interest in, and the Company has assumed Dimax's interest in and to, the Facility pursuant to that certain Assignment and Assumption Agreement, dated on or about the date hereof (the "2006 Assignment and Assumption Agreement"); and

WHEREAS, the Agency and the Company have entered into an amended lease agreement ("2006 Amended Lease Agreement") and amended leaseback agreement ("2006 Amended Leaseback Agreement") both dated on or about the date hereof, whereby Dimax was replaced by the Company on those documents; and

WHEREAS, the Agency and the Company now desire to amend and restate the payment-in-lieu-of-tax agreement to reflect the assignment of to the Company; and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, other than special ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments-in-lieu-of-taxes by the Company to the Agency for the benefit of Niagara County (the "County"), the Town of Pendleton (the "Town"), and the Lockport City School District (the "School District" and, collectively with the County and Town, the "Affected Tax Jurisdictions").

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

Section I – Payment-in-lieu-of Ad Valorem Taxes:

Section 1.1 A. The Facility shall continue to be exempt from Real Estate Taxes including the 2020 Town and County tax year and the 2019/2020 School tax year. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the City, County and School. After giving written notice to the Agency, the Company may in good faith contest any denial of the exemption, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes except to the extent that such denial results solely from the failure of the Agency to file the exemption application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

B. Payee. As long as the Agency has fee title to or leasehold or other interest in the Facility, the Company agrees to continue to pay annually to the Affected Tax Jurisdictions as a payment-in-lieu-of-taxes, on or before March 1 of each calendar year for County and City taxes and on or before October 1 of each calendar year for School taxes (collectively, the "Payment Date"), an amount equal to the PILOT Payment, as described on Schedule A attached hereto.

The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are not on the tax rolls.

1.2 Allocation. To the extent the Agency receives any PILOT payment, the Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific different allocation.

1.3 Tax Rates. For purposes of determining the allocation of the Total PILOT Payment among the Affected Tax Jurisdictions, the Agency shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County, City and special district purposes, the tax rates used to determine the allocation of the Total PILOT Payment shall be the tax rates relating to the calendar year which includes the PILOT payment due date. For school district purposes, the tax rates used to determine the PILOT payment shall be the rate relating to the school year which includes the PILOT payment due date.

1.4 Valuation of Future Additions to the Facility: If there shall be a future addition to the Facility constructed or added in any manner after the date of this Amended and Restated PILOT, the Company shall notify the Agency of such future addition ("Future Addition"). The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the Agency may thereafter request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the Total PILOT Payment. The Agency shall notify the Company of any proposed increase in the Total PILOT Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Additions made by the Agency, then and in that event that valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the increased PILOT payment until a different Total PILOT Payment shall be established. If a lesser Total Annual Payment is determined in any proceeding or by subsequent agreement of the parties, the Total PILOT Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the next succeeding PILOT payment(s).

1.5 Period of Benefits. The tax benefits provided for herein shall be deemed to include (i) the School tax through the 2021/2022 School tax year, and (ii) the County and Town tax through the 2022 County and Town tax year. This Amended and Restated 2006 PILOT shall expire on **December 31, 2022**; provided, however, the Company shall pay the 2022/2023 School tax bill and the 2023 County and Town tax bills on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this Amended and Restated 2006 PILOT executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b of the New York Real

Property Tax Law ("RPTL"). It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

Section II - Special Assessments and Service Charges.

2.1 Special assessments and service charges against the real property are separate from general taxes and general assessments and will not be considered in calculating the PILOT payments. The Company shall pay all special assessments and charges levied against the real property as if the Agency did not have an interest in the project.

Section III - Transfer of Facility.

3.1 In the event that the 2006 Amended Lease Agreement and the 2006 Amended Leaseback Agreements are terminated in accordance therewith, and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section I herein, or this Amended and Restated 2006 PILOT terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

Section IV - Assessment Challenges.

4.1 The Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Facility, with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this Amended and Restated 2006 PILOT, as if and to the same extent as if the Company were the owner of the Facility.

4.3 The Company shall (i) cause the appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply tax rates to the respective assessments as if the Facility were owned by the Company, (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

Section V - Changes in Law.

5.1 To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

Section VI - Events of Default.

6.1 The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section I hereof within thirty (30) days of the Payment Date (the "Delinquency Date"); (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; or (iii) the occurrence and continuance of any events of default under the 2006 Amended Leaseback Agreement after any applicable cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the General Municipal Law and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

6.2 If payments pursuant to Section I hereof are not made by the Delinquency Dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows. With respect to payments to be made pursuant to Section I hereof, if said payment is not received by the Delinquency Date defined in Section 6.1 herein, Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

Section VII - Assignment.

7.1 No portion of any interest in this Amended and Restated 2006 PILOT may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency, which shall not be unreasonably withheld or delayed.

Section VIII - Miscellaneous.

8.1 This Amended and Restated 2006 PILOT may be executed in any number of counterparts each of which shall be deemed an original and all of which together shall constitute a single instrument.

8.2 All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Agency: Niagara County Industrial Development Agency
6311 Inducon Corporate Drive
Suite One
Sanborn, New York 14132
Attn: Executive Director

With Copy To: Gabriele & Berrigan PC
800 Main Street, 4th Floor
Niagara Falls, New York 14301
Attention: Mark J. Gabriele, Esq.

To the Company: 6150 Donner LLC
56 Fairlawn Drive
Amherst, New York 14221
Attn: Scott Cassety, Manager

With Copy To: Cohen & Lombardo, PC
4140 Sheridan Drive, Suite 3
Amherst, New York 14221
Attn: Amy Vigneron, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

8.3 This Amended and Restated 2006 PILOT shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Niagara County, New York.

8.4 Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. Neither

member of the Agency nor any person executing this Amended and Restated 2006 PILOT on its behalf shall be liable personally under this Amended and Restated 2006 PILOT. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Amended and Restated 2006 PILOT.

8.5 The parties hereto recognize that the purpose of the Project is to create or retain permanent private sector jobs in the Town of Pendleton and Niagara County, New York. Accordingly, the parties hereto have agreed that the existence of this Amended and Restated 2006 PILOT shall bear a direct relationship to the success or lack of success of the Project in achieving this goal. Therefore, by each January 1 during the term of this Amended and Restated 2006 PILOT, the Company shall file with the Agency an affidavit indicating the average number of full time equivalent employees (1820 hours equaling one full time equivalent employee) employed at the Facility.


8.6 This document may be executed in one or more counterparts, each of which shall be construed as an original, and all of which together shall be deemed but a single instrument.

[Remainder of Page Intentionally Left Blank]


[Signature Page to Amended and Restated 2006 PILOT]

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated 2006 PILOT as of the day and year first above written.

NIAGARA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Name: Susan C. Langdon
Title: Executive Director

6150 DONNER LLC

By: 
Name: Scott Cassely
Title: Manager

SCHEDULE A

to Amended and Restated 2006 Payment-in-Lieu-of-Tax Agreement by and between the
Niagara County Industrial Development Agency
 and
6150 Donner LLC

<u>PILOT Year</u>	<u>County/Town Year</u>	<u>School Year</u>	<u>Percentage of Normal Tax</u>
Year 1	2008	2007/2008	20%
Year 2	2009	2008/2009	20%
Year 3	2010	2009/2010	30%
Year 4	2011	2010/2011	30%
Year 5	2012	2011/2012	40%
Year 6	2013	2012/2013	40%
Year 7	2014	2013/2014	40%
Year 8	2015	2014/2015	40%
Year 9	2016	2015/2016	40%
Year 10	2017	2016/2017	50%
Year 11	2018	2017/2018	50%
Year 12	2019	2018/2019	50%
Year 13	2020	2019/2020	50%
Year 14	2021	2020/2021	50%
Year 15	2022	2021/2022	50%
Year 16 and thereafter	2023	2022/2023	100%

The payments in lieu of taxes to be paid by the Company to the Affected Tax Jurisdiction pursuant to the terms of this Payment-in-Lieu-of-Tax Agreement shall be computed separately for each Affected Tax Jurisdiction as follows:

1. First, determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Affected Tax Jurisdiction if the Land was owned by the Company and not the Agency by multiplying the (a) Assessed Value of the Land as determined by the appropriate Assessor by (b) the tax rate or rates of such Affected Tax Jurisdiction that would be applicable to the Land if the Land was owned by the Company and not the Agency.
2. In each tax year during the term of this Agreement, commencing on the first tax year following the date on which the Land shall be assessed as exempt on the assessment roll of any Affected Tax Jurisdiction, the amount payable by the Company to the Affected Tax Jurisdiction as a payment in lieu of property tax with respect to the Land shall be an

amount equal to 100% of the Normal Tax due each Affected Tax Jurisdiction with respect to the Land for such tax year.

3. Next, determine the Normal Tax which would be payable to each Affected Tax Jurisdiction if the Improvements and any portion of the Equipment assessable as real property were owned by the Company and not the Agency by multiplying the (a) Assessed Value of the Improvements and such assessable Equipment as determined by the appropriate Assessor by (b) the tax rate or rates of such Affected Tax Jurisdiction that would be applicable to the Improvements and such assessable Equipment if the Improvements and such assessable Equipment was owned by the Company and not the Agency
4. In each tax year during the term of this Agreement, commencing on the first tax year following the date on which the Improvements and such assessable Equipment shall be assessed as exempt on the assessment roll of any Affected Tax Jurisdiction, the amount payable by the Company to the Affected Tax Jurisdiction as a payment in lieu of property tax with respect to the Improvements and such assessable Equipment shall be an amount equal to the applicable percentage of the Normal Tax due each Affected Tax Jurisdiction with respect to the Improvements and such assessable Equipment for such tax year, as shown in the table, above.
5. The Total PILOT Payment to be made by the Company to the Affected Tax Jurisdictions shall equal the sum of Number (2) and Number (4), above, for each tax year during the term of this Agreement.



NYS BOARD OF REAL PROPERTY SERVICES

RP-412-a (1/95)

INDUSTRIAL DEVELOPMENT AGENCIES
APPLICATION FOR REAL PROPERTY TAX EXEMPTION
(Real Property Tax Law, Section 412-a and General Municipal Law, Section 874)

1. INDUSTRIAL DEVELOPMENT AGENCY (IDA)

Name Niagara County Industrial Development Agency
Street 6311 Inducon Corporate Drive - Suite One
City Sanborn, New York 14132-9099
Telephone no. Day (716) 278-8760
Evening ()
Contact Susan C. Langdon
Title Executive Director

2. OCCUPANT (IF OTHER THAN IDA)

(If more than one occupant attach separate listing)

Name 6150 Donner LLC
Street 56 Fairlawn Drive
City Amherst New York 14226
Telephone no. Day (716) 480-8242
Evening ()
Contact Scott Cassety
Title Manager

3. DESCRIPTION OF PARCEL

a. Assessment roll description (tax map no./roll year)
137.00-2-20.2
b. Street address
6150 Donner Road
c. City, Town or Village Pendleton

d. School District Lockport City School District
e. County Niagara
f. Current assessment \$2,725,000.00
g. Deed to IDA (date recorded; liber and page)
Memo of Lease dated August 1, 2006

4. GENERAL DESCRIPTION OF PROPERTY (if necessary, attach plans or specifications)

a. Brief description (include property use) Industrial
b. Type of construction assumption of project
c. Square footage 35,000
d. Total cost 0.00
e. Date construction commenced November, 2005
f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA) December 31, 2022

5. SUMMARIZE AGREEMENT (IF ANY) AND METHOD TO BE USED FOR PAYMENTS TO BE MADE TO MUNICIPALITY REGARDLESS OF STATUTORY EXEMPTION

(Attach copy of the agreement or extract of the terms relating to the project).

a. Formula for payment See Amended and Restated PILOT Agreement
b. Projected expiration date of agreement December 31, 2022

c. Municipal corporations to which payments will be made

	Yes	No
County <u>Niagara</u>	<input type="checkbox"/>	<input type="checkbox"/>
Town/City <u>Pendleton</u>	<input type="checkbox"/>	<input type="checkbox"/>
Village _____	<input type="checkbox"/>	<input type="checkbox"/>
School District <u>Lockport City SD</u>	<input type="checkbox"/>	<input type="checkbox"/>

d. Person or entity responsible for payment

Name 6150 Donner LLC
 Title Attn: Scott Cassety
 Address 56 Fairlawn Drive,
Amherst, New York 14226
 Telephone 716-220-8468

e. Is the IDA the owner of the property? Yes/No (circle one)
If "No" identify owner and explain IDA rights or interest in an attached statement. Leasehold interest

6. Is the property receiving or has the property ever received any other exemption from real property taxation? (check one) Yes No

If yes, list the statutory exemption reference and assessment roll year on which granted:
exemption IDA PILOT assessment roll year 2007

7. A copy of this application, including all attachments, has been mailed or delivered on June 2019 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

CERTIFICATION

I, Susan C. Langdon, Executive Director _____ of _____
 Name Title
Niagara County Industrial Development Agency hereby certify that the information
 Organization
 on this application and accompanying papers constitutes a true statement of facts.

6/17/19

Date


 Signature

FOR USE BY ASSESSOR

1. Date application filed _____
2. Applicable taxable status date _____
- 3a. Agreement (or extract) date _____
- 3b. Projected exemption expiration (year) _____
4. Assessed valuation of parcel in first year of exemption \$ _____
5. Special assessments and special as valorem levies for which the parcel is liable: _____

Date

Assessor's signature

412a



INDUSTRIAL DEVELOPMENT AGENCIES
APPLICATION FOR REAL PROPERTY TAX EXEMPTION
(Real Property Tax Law, Section 412-a and General Municipal Law, Section 874)

1. INDUSTRIAL DEVELOPMENT AGENCY (IDA)

Name Niagara County Industrial Development Agency
Street 6311 Inducon Corporate Drive - Suite One
City Sanborn, New York 14132-9099
Telephone no. Day (716)278-8760
Evening ()
Contact Susan C. Langdon
Title Executive Director

2. OCCUPANT (IF OTHER THAN IDA)

(If more than one occupant attach separate listing)

Name 6150 Donner LLC
Street 56 Fairlawn Drive
City Amherst New York 14226
Telephone no. Day (716)480-8242
Evening ()
Contact Scott Cassety
Title Manager

3. DESCRIPTION OF PARCEL

a. Assessment roll description (tax map no./roll year)
137.00-2-20.2
b. Street address
6150 Donner Road
c. City, Town or Village Pendleton

d. School District Lockport City School District
e. County Niagara
f. Current assessment \$2,725,000.00
g. Deed to IDA (date recorded; liber and page)
Memo of Lease dated August 1, 2006

4. GENERAL DESCRIPTION OF PROPERTY (if necessary, attach plans or specifications)

a. Brief description (include property use) Industrial
b. Type of construction assumption of project
c. Square footage 35,000
d. Total cost 0.00
e. Date construction commenced November, 2005
f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA) December 31, 2022

5. SUMMARIZE AGREEMENT (IF ANY) AND METHOD TO BE USED FOR PAYMENTS TO BE MADE TO MUNICIPALITY REGARDLESS OF STATUTORY EXEMPTION

(Attach copy of the agreement or extract of the terms relating to the project).

a. Formula for payment See Amended and Restated PILOT Agreement

b. Projected expiration date of agreement December 31, 2022

c. Municipal corporations to which payments will be made

	Yes	No
County <u>Niagara</u>	<input type="checkbox"/>	<input type="checkbox"/>
Town/City <u>Pendleton</u>	<input type="checkbox"/>	<input type="checkbox"/>
Village _____	<input type="checkbox"/>	<input type="checkbox"/>
School District <u>Lockport City SD</u>	<input type="checkbox"/>	<input type="checkbox"/>

d. Person or entity responsible for payment

Name 6150 Donner LLC
 Title Attn: Scott Cassety
 Address 56 Fairlawn Drive,
Amherst, New York 14226

e. Is the IDA the owner of the property? Yes/No (circle one)
If "No" identify owner and explain IDA rights or interest in an attached statement. Leasehold interest

Telephone 716-220-8468

6. Is the property receiving or has the property ever received any other exemption from real property taxation? (check one) Yes No

If yes, list the statutory exemption reference and assessment roll year on which granted:
exemption IDA PILOT assessment roll year 2007

7. A copy of this application, including all attachments, has been mailed or delivered on June 2019 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

CERTIFICATION

I, Susan C. Langdon, Executive Director of
 Name Title
Niagara County Industrial Development Agency hereby certify that the information
 Organization

on this application and accompanying papers constitutes a true statement of facts.

6/17/19
Date

Susan C. Lang
Signature

FOR USE BY ASSESSOR

1. Date application filed _____
2. Applicable taxable status date _____
- 3a. Agreement (or extract) date _____
- 3b. Projected exemption expiration (year) _____
4. Assessed valuation of parcel in first year of exemption \$ _____
5. Special assessments and special as valorem levies for which the parcel is liable:

Date

Assessor's signature

**SALES TAX
EXEMPTION
LETTER**

Niagara County Industrial Development Agency

June 18, 2019

6150 Donner LLC
6150 Donner Road
Lockport, New York 14094

**Re: 6150 Donner LLC -- Sales Tax Exemption Letter
Expiring December 31, 2020**

Ladies and Gentlemen:

Pursuant to a resolution duly adopted on April 10, 2019, the **Niagara County Industrial Development Agency** (the "Agency") appointed **6150 Donner LLC** (the "Company") its true and lawful agent to undertake a certain project (the "Project") consisting of: (A) the acquisition or retention by the Agency of fee title to, or a leasehold interest in, a parcel of land located at 6150 Donner Road in the Town of Pendleton, Niagara County, New York (the "Land"); (B) the renovation of a 35,000 square foot building and the renovation of a 28,000 square foot building addition, (together the "Improvements"); and (C) the acquisition and installation in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment" and collectively with the Land and the Improvements, the "Facility").

This appointment includes, and this letter evidences, authority to purchase on behalf of the Agency all materials to be incorporated into and made an integral part of the Facility and the following activities as they relate to any renovation, erection and completion of any buildings, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of such buildings: (1) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the renovation and equipping, (2) all purchases, rentals, uses or consumption of supplies, materials, utilities and services of every kind and description used in connection with the renovation and equipping, and (3) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs), installed or placed in, upon or under such building or facility, including all repairs and replacements of such property.

This agency appointment includes the power to delegate such agency, in whole or in part to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses including but not limited to the individuals and entities described on Schedule A attached hereto. The Company shall have the right to amend Schedule A from time to time and shall be responsible for maintaining an accurate list of all parties acting as agent for the Agency. **The Company hereby agrees to complete "IDA Appointment of Project Operator or Agent For Sales Tax Purposes" (Form**

ST-60) for itself and each agent, subagent, contractor, subcontractor, contractors or subcontractors of such agents and subagents and to such other parties as the Company chooses who provide materials, equipment, supplies or services and execute said form as agent for the Agency (or have the general contractor, if any or other designated subagent execute) and forward said form to the State Department of Taxation and Finance within thirty (30) days of appointment. Failure to comply with these requirements may result in loss of sales tax exemptions for the Facility.

In exercising this appointment, the Company and/or Project Operator should give the supplier or vendor "IDA Agent or Operator Exempt Purchase Certificate" (NYS Form ST-123) to show that the Company and/or Project Operator is acting as agent for the Agency. The supplier or vendor should identify the Facility on each bill or invoice and indicate thereon that the Agency or Agent or Project Operator of the Agency was the purchaser. The Company's agents, subagents, contractors and subcontractors should give the supplier or vendor a copy of this letter to show that the Company, its agents, subagents, contractors and subcontractors are each acting as agent for the Agency. The supplier or vendor should identify the Facility on each bill or invoice and indicate thereon which of the Company, its agents, subagents, contractors and subcontractors acted as agent for the Agency in making the purchase. In order to be entitled to use this exemption, your contractor should present to the supplier or other vendor of materials for the Facility, a completed "Contractor Exempt Purchase Certificate" (NYS Form ST-120.1), checking box "(a)" and "(d)".

In addition, General Municipal Law §874(8) requires you to file an Annual Statement with the New York State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (Form ST-340) regarding the value of sales and use tax exemptions you, your agents, consultants or subcontractors have claimed pursuant to the agency we have conferred on you with respect to this project. The penalty for failure to file such statement is the removal of your authority to act as our agent. Upon each such annual filing, the Company shall, within thirty (30) days of each filing, provide a copy of the same to the Agency; provided, however, in no event later than February fifteen (15th) of each year.

The agency created by this letter is limited to the Facility, and will expire on December 31, 2020; *provided, however,* the exemption for leases executed prior to said date shall continue through the term or extended term of said lease and any acquisition of said leased property. You may apply to extend this agency authority by showing good cause.

This letter is being issued pursuant to the Agent and Financial Assistant and Project Agreement, dated June 1, 2019, by and between the Agency and the Company (the "Agent Agreement"). All agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project should be aware of the Agent Agreement and obtain a copy thereof.

This letter is provided for the sole purpose of securing exemption from New York State Sales and Use Taxes for this project only. No other principal/agent relationship is intended or may be implied or inferred by this letter.

With respect to registered vehicles acquired by the Company in name of the Agency, the Agency shall transfer title to such vehicles immediately back to the Company, or as soon thereafter as reasonably practicable; and any personal property acquired by the Company in the name of the Agency shall be located in the Town of Pendleton, New York, except for temporary periods during ordinary use.

Except to the extent of bond proceeds (to the extent bonds are issued by the Agency with respect to the Project), the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder. By acceptance of this letter, the vendor hereby acknowledges the limitations on liability described herein.

Very truly yours,

NIAGARA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Name: Susan C. Langdon
Title: Executive Director

SCHEDULE A

LIST OF APPOINTED AGENTS¹

1. _____
2. _____
3. _____
4. _____

¹ FOR EACH AGENT APPOINTED BY THE COMPANY, A FORM ST-60 MUST BE COMPLETED AND FILED WITH NYS DEPARTMENT OF TAXATION AND FINANCING INDICATING SUCH AGENT OF THE COMPANY.

**AGENT &
FINANCIAL
ASSISTANCE
AND PROJECT
AGREEMENT**

AGENT AND FINANCIAL ASSISTANCE AND PROJECT AGREEMENT

THIS AGENT AND FINANCIAL ASSISTANCE AND PROJECT AGREEMENT (hereinafter, the "Agent Agreement"), made as of the 1st day of June, 2019, by and between the **NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, with offices at 6311 Inducon Corporate Drive, Suite One, Sanborn, New York 14132 (the "Agency"), and **6150 DONNER LLC**, a New York limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 56 Fairlawn Drive, Amherst, New York 1414226 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 569 of the Laws of 1972 of the State of New York pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, Dimax LLC previously submitted an application ("the Application") to the Agency, requesting the Agency's assistance with respect to a certain project (the "Project") consisting of: (A) the acquisition or retention by the Agency of fee title to, or a leasehold interest in, a parcel of land located at 6150 Donner Road in the Town of Pendleton, Niagara County, New York (the "Land"); (B) the construction of a 35,000 square foot building in 2006; along with the construction of a 28,000 square foot building in 2010. (together the "Improvements"); and (C) the acquisition and installation in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment" and collectively with the Land and the Improvements, the "Facility").

WHEREAS, pursuant to a certain 2006 Assignment and Assumption Agreement of even date herewith, among the Company's predecessor in interest, the Company and the Agency, the Company's predecessor in interest assigned to the Company of its right, title and interest in and to the 2006 Lease Agreement and the 2006 Leaseback Agreement; and

WHEREAS, pursuant to a certain 2010 Assignment and Assumption Agreement of even date herewith, among the Company's predecessor in interest, the Company and the Agency, the Company's predecessor in interest assigned to the Company of its right, title and interest in and to the 2010 Lease Agreement and the 2010 Leaseback Agreement; and

WHEREAS, by Resolution adopted on April 10, 2019 (the "Resolution"), the Agency authorized the Company to act as its agent for the purposes of undertaking the Project subject to the Company entering into this Agent Agreement; and

WHEREAS, by its Resolution, the Agency has conferred on the Company in connection with the Project certain benefits, exemptions and other financial assistance consisting of: (a) an exemption benefit from all New York State and local sales and use tax exemption benefits for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction or equipping of the Facility, and (b) an exemption benefit from mortgage recording tax, (collectively, the sales

and use tax exemption benefit, and the mortgage recording tax benefit are hereinafter collectively referred to as the "Financial Assistance"); and

WHEREAS, pursuant to and in accordance with Sections 859-a and 874 of the Act, the Agency requires, as a condition and as an inducement for it to provide any Financial Assistance, that the Company enter into this Agent Agreement for the purposes of, among other things, to govern administration of and provide assurances with respect to the provision and recapture of said Financial Assistance upon the terms herein set forth; and

WHEREAS, this Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company; and

WHEREAS, no agent status in favor of the Company or any subagent thereof, nor any amount of Financial Assistance shall be provided to the Company by the Agency prior to the effective date of this Agent Agreement.

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Purpose of Project and Scope of Agency. The purpose of the Agency's provision of Financial Assistance with respect to the Project is to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project facility to advance job opportunities, health, general prosperity and economic welfare of the people of the County of Niagara, and to specifically promote the investment commitment, employment commitment, and other commitments of the Company contained herein and within the Company's Application.

Pursuant to the Resolution, the Agency has appointed the Company as agent to undertake the Project, as defined herein and within the Resolution. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Resolution to acts reasonably related to the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation thereof in and around the Facility. Pursuant to the Resolution and this Agent Agreement, the Company has the power to delegate such agency, in whole or in part, to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses including but not limited to the individuals and entities described on Schedule A attached hereto (collectively, the "Subagent"). The Company shall have the right to amend Schedule A from time to time and shall be responsible for maintaining an accurate list of all parties acting as agent for the Agency. The Company's right to appoint subagents is expressly conditioned upon updating of Schedule A, hereto, along with the timely filing of Form ST-60 (non-primary) for each subagent, with such updated Schedule A and a copy of and proof of filing of such ST-60 (non-primary) being immediately filed with the Agency. The right of the Company and all duly appointed subagents to act as agent of the Agency shall expire on December 31, 2020, unless extended as contemplated by the Resolution. The aggregate amount of work performed by the Company and

all subagents as agent for the Agency shall not exceed the amounts identified in Section 2(h)(i) of this Agreement.

All contracts entered into by the Company and all subagents thereof as agent for the Agency shall include the language contained within Schedule B, hereto. **Failure by the Company and/or any subagent thereof to include such language shall disqualify the agent status and sales tax exemptions derived by virtue of this Agent Agreement. The Company, for itself and on behalf of all duly appointed subagents, hereby agrees that all contracts entered into by the Company and any subagents thereof shall be available to the Agency for inspection and confirmation of the foregoing mandatory language.**

2. Representations and Covenants of the Company. The Company makes the following representations and covenants in order to induce the Agency to proceed with the Project/Facility:

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, has the authority to enter into this Agent Agreement, and has duly authorized the execution and delivery of this Agent Agreement.

(b) To the best of the Company's knowledge, neither the execution and delivery of this Agent Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agent Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The Facility and the operation thereof will conform with all applicable zoning, planning, and building laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (c).

(d) To the best of the Company's knowledge, without investigation or inquiry, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Agent Agreement.

(e) The Company covenants that the Facility will comply in all material respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) that the Company will take all reasonable and

prudent steps to prevent a known unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, with removal of any asbestos from the Facility in compliance with applicable laws being permitted; (iv) that no underground storage tanks will be located on the Facility except as permitted by applicable laws, and (v) that, to the best of the Company's knowledge without investigation or inquiry, no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company upon receiving any information or notice contrary to the representations contained in this Section shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents (except the Company), representatives, successors, and assigns from and against any and all claims, demands, damages, third-party out-of-pocket costs, orders, liabilities, penalties, and expenses (including reasonable outside attorneys' fees) related in any way to any material violation of the covenants or failure to be accurate of the material representations contained in this Section. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility after the Company's failure to undertake such performance of due diligence or environmental audit within thirty (30) days of receipt of written notice from the Agency of Company's failure to perform such due diligence or environmental audit, the Company agrees to pay the reasonable, third-party, out-of-pocket expenses of same to the Agency upon demand.

(f) Any personal property acquired by the Company in the name of the Agency shall be located in the City of Niagara Falls, New York, except for temporary periods during ordinary use.

(g) In accordance with Section 875(3) of the New York General Municipal Law, the policies of the Agency, and the Resolution, the Company covenants and agrees that it may be subject to a Recapture Event Determination (as hereinafter defined) resulting in the potential recapture and/or termination of any and all Financial Assistance, as described below, if the Company receives, or any duly appointed subagents receives any Financial Assistance from the Agency, and it is determined by the Agency that:

(1) the Company or its Subagents, if any, authorized to make purchases for the benefit of the Project is not entitled to the sales and use tax exemption benefits; or

(2) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company or its Subagents, if any; or

(3) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or

(4) the Company has made a material false or misleading statement, or omitted any material information which, if included, would have rendered any information in the

application or supporting documentation false or misleading in any material respect, on its application for Financial Assistance; or

(5) the Company fails to meet and maintain the thresholds and requirements representing certain material terms and conditions, all as further defined below, being the purposes to be achieved by the Agency with respect to its determination to provide Financial Assistance to the Project and required by the Agency to be complied with and adhered to, as evidenced by submission, as so required by the Agency, of written confirmation certifying and confirming on an annual basis beginning in the first year in which Financial Assistance is so claimed, through the conclusion of the later of either: (i) two (2) years following the construction completion date or (ii) the termination of this Agent Agreement (said date hereinafter referred to as the "Project Completion Date" and the time period so referenced being hereinafter defined as the "Material Terms and Conditions Monitoring Period") confirming those items and conditions in respect to job creation and retention and capital investment.

In order to certify and verify the foregoing, the Company shall provide annually, to the Agency, a certified statement and documentation: i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the financial assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the project location, (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created, and (iii) such other information, as so requested from time to time, to enable the Agency to assess the progress of the Project toward achieving the investment, job retention, job creation, or other objectives of the Project indicated in the Application for Financial Assistance.

The Company shall annually complete and submit to the Agency the Annual Employment and Financial Assistance Certification Report in the form attached hereto as **Exhibit F**. In addition, Company shall complete and submit to the Agency upon the completion of construction the Final Project Cost and Financing Report in the form attached hereto as **Exhibit G**. **Failure by the Company to complete and submit said forms to the Agency by February 15 of each applicable year during the Material Terms and Conditions Monitoring Period shall constitute an Event of Default hereunder, whereby the Agency, in its sole and absolute discretion, may terminate this Agreement and undertake a Recapture Event Determination.**

The findings made by the Agency with respect to Section 2(g)(1), (2), (3) and/or (4) and/or failure to provide the written confirmation as required by Section 2(g)(5) with respect to the thresholds and requirements as identified in Section 2(g)(5), above, and/or failure to meet the thresholds and requirements as identified in Section 2(g)(5) above, may potentially be determined by the Agency, in accordance with the Agency's "Recapture Policy", to constitute a failure to comply with Section 875(3) of the New York General Municipal Law, and/or a failure to comply with a material term or condition to use property or services or Agency Financial Assistance in the manner approved by the Agency in connection with the Project, and/or a failure

to comply with the Agency's policies and Resolution (collectively, findings and determinations made as described herein with respect to Section 2(g)(1), (2), (3) and/or (4) and/or the failure under Section 2(g)(5) to submit the required certification and/or the failure to meet the required thresholds and requirements as specified in Section 2(g)(5) are hereby defined as a "Recapture Event Determination"). If the Agency makes a Recapture Event Determination, the Company agrees and covenants that it will (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s). The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner and/or local taxing authorities may assess and determine the Financial Assistance due from the Company, together with any relevant penalties and interest due on such amounts.

(h) In accordance with the Resolution and the Cost-Benefit Analysis (the "CBA") disclosed by the Agency at its public hearing for the Project (the "Public Hearing"), the Company further: (i) covenants that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$100,000.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 2(g) of this Agent Agreement, cannot exceed \$8,000.00, and (ii) confirms that real property tax abatement benefits to be provided to the Company shall conform to those disclosed within the CBA at the Public Hearing for the Project, a copy of such CBA is attached hereto as Exhibit D.

(i) The Company further covenants and agrees to complete "IDA Appointment of Project Operator or Agent For Sales Tax Purposes" (NYS Form ST-60), in the form attached hereto as Exhibit A, for each Subagent, if any, and such other parties as the Company chooses who provide materials, equipment, supplies or services and forward said form to the State Department of Taxation and Finance within thirty (30) days of appointment.

(j) The Company acknowledges and agrees that all purchases made in furtherance of the Project shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (NYS Form ST-123, and NYS Form ST-120.1 copies of which are attached hereto as Exhibits B-1 and B-2 respectively, and it shall be the responsibility of the Company (and not the Agency) to complete NYS Form ST-123 and NYS Form ST-120.1. The Company acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Company acknowledges and agrees that the bill or invoice should state, "I, 6150 DONNER LLC, certify that I am a duly appointed agent of the NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY and that I am purchasing the tangible personal property or services for use in the 6150 DONNER LLC Project located at 6150 Donner Road, Lockport, New York in the Town of Pendleton, New York, IDA Project Number 2903-19-08. For convenience purposes, in the instance where the vendor does not print on each invoice the

acknowledgment as described in the prior sentence, an "Invoice Rider" (a copy of which is attached hereto as Exhibit B-3) can be utilized for record keeping purposes.

(k) The Company further covenants and agrees to file an annual statement with the State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (NYS Form ST-340, a copy of which is attached hereto as Exhibit C) regarding the value of sales and use tax exemptions the Company and its Subagents, if any, have claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with General Municipal Law Section 874(8). The Company further covenants and agrees that it will, within thirty (30) days of each filing, provide a copy of same to the Agency; provided, however, in no event later than February 15th of each year. The Company understands and agrees that the failure to file such annual statement will result in the removal of the Company's authority to act as agent for the Agency.

(l) The Company acknowledges and agrees that, except to the extent of bond proceeds (to the extent bonds are issued by the Agency with respect to the Project), the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder.

(m) The Company covenants and agrees that at all times during the Material Terms and Conditions Monitoring Period, it will (i) maintain its existence and not dissolve, (ii) continue to be a limited liability company subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business in the State, (iii) not liquidate, wind-up or dissolve or otherwise sell, assign, or dispose of all or substantially all of its property, business or assets. This Agreement may not be assigned in whole or part without the prior written consent of the Agency

(n) The Company confirms and acknowledges under the penalty of perjury that, to the best of its knowledge, as of the date hereof, the Company, as owner, occupant, or operator of the Project receiving Financial Assistance from the Agency in connection with the Project, is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations. The Company agrees that it will, throughout the term of this Agent Agreement, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof. Notwithstanding the foregoing, the Company may in good faith contest the validity of the applicability of any requirement of the nature referred to this Section 2(n). In such event, the Company, with the prior written consent of the Agency (which shall not be unreasonably conditioned, delayed or withheld) may fail to comply with the requirement or requirements so

contested during the period of such contest and any appeal therefrom unless the Agency shall notify the Company that it must comply with such requirement or requirements.

3. Hold Harmless Provision. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, directors, members, officers, employees, agents (except the Company), representatives, successors and assigns harmless from and against, any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or breach by the Company of this Agent Agreement or (ii) liability arising from or third-party, out-of-pocket expense incurred by the Agency's financing, acquiring, constructing, rehabilitating, renovating, equipping, owning and leasing of the Equipment or of the Facility, including without limiting the generality of the foregoing, all causes of action and reasonable outside attorneys' fees and any other third-party, out-of-pocket expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective executive director, directors, members, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any of its respective executive director, directors, members, officers, agents or employees or any other person or entity to be indemnified.

4. Insurance Required. At all times throughout the term of the Leaseback Agreement, including without limitation during any period of construction of the Facility, the Company shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company; or as an alternative to the foregoing the Company may insure the Facility under a blanket insurance policy or policies covering not only the Facility but other properties as well, provided a periodic appraisal is performed and provided to the Agency.

(b) Worker's compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or 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 Facility.

Insurance against loss or losses from liabilities imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 5.2 hereof) and arising from personal injury and death or damage to the property of others

caused by any accident or occurrence, with limits of not less than **\$1,000,000** per accident or occurrence on account of personal injury, including death resulting therefrom, and **\$1,000,000** per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workmen's compensation law; and a blanket excess liability policy in the amount not less than **\$3,000,000**, protecting the Company against any loss or liability or damage for personal injury or property damage.

Additional Provisions Respecting Insurance.

(c) All insurance required by Section 3.4(a) hereof shall name the Agency as a named insured and all other insurance required by Section 3.4 above shall name the Agency as an additional insured. All insurance 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. 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. All policies evidencing such insurance shall provide for (i) payment of the losses of the Company and the Agency as their respective interest may appear, and (ii) at least thirty (30) days' written notice of the cancellation thereof to the Company and the Agency to the extent permitted by the applicable policy with the Company to provide proof of continuing insurance as required hereby on request by the Agency.

(d) All such certificates of insurance of the insurers that such insurance is in force and effect, shall be deposited with the Agency on or before the commencement of the term of this Leaseback Agreement. Prior to expiration of the policy evidenced by said certificates, the Company shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Leaseback Agreement.

(e) Within one hundred twenty (120) days after the end of each of its fiscal years, the Company shall file with the Agency a certificate of the Company to the effect that the insurance it maintains with respect to the Project complies with the provisions of this Article III and that duplicate copies of all policies or certificates thereof have been filed with the Agency and are in full force and effect.

5. Additional Provisions Respecting Insurance. (a) 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. All policies evidencing such insurance shall provide for payment of the losses of the Company and the Agency as their respective interests may appear. The Company shall cause all contractors and agents of the Company undertaking the Project to carry and provide evidence of insurance as required within Section 4(a) and 4(b) of this Agreement, with the Agency named as an additional insured.

(b) All such certificates of insurance of the insurers indicating that such insurance is in force and effect, and all policies (if applicable), shall be deposited with the

Agency on the date hereof. At least thirty (30) days prior to expiration of the policy evidenced by said certificates, the Company shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agent Agreement.

6. This Agent Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

7. All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, or by a nationally-recognized overnight courier, addressed as follows:

To the Agency: Niagara County Industrial Development Agency
6311 Inducon Corporate Drive, Suite One
Sanborn, New York 14132

With a copy to: Gabriele & Berrigan P.C.
800 Main Street, 4th Floor, Suite B
Niagara Falls, New York 14304
Attn: Mark J. Gabriele, Esq.

To the Company: 6150 Donner LLC
56 Fairlawn Drive
Amherst, New York 14226
Attn: Scott Cassety, Manager

With a copy to: Cohen & Lombardo, P.C.
4140 Sheridan Drive
Amherst, New York 14221
Attn: Amy Vigneron, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

8. This Agent Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Niagara County, New York.

9. The warranties, representations, obligations and covenants of the Company under this Agent Agreement shall be absolute and unconditional and shall remain in full force and effect during the term of this Agent Agreement, shall be deemed to have been relied upon by the Agency, and shall survive the delivery and termination of this Agent Agreement to the Agency,

regardless of any investigation made by the Agency. This Agent Agreement shall survive any termination or expiration of the Leaseback Agreement as described below.

10. The parties are contemplating that unless the Agency and Company enter into a Lease Agreement (the "Lease Agreement"), and related Leaseback Agreement (the "Leaseback Agreement"), the Company agrees not to take title to any real property as agent for the Agency. The Agency will provide the Company with a bill of sale (a form of which is attached hereto as **Exhibit E**) which sells, transfers and delivers unto the Company and its successors and assigns, all Equipment which were acquired and installed and/or are to be acquired and installed by the Company as agent for the Agency pursuant to this Agent Agreement which Equipment is located or intended to be located within and used exclusively in furtherance of the operations of the Facility.

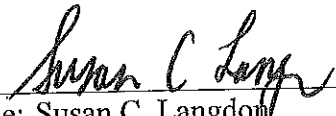
11. By executing this Agent Agreement, the Company covenants and agrees to pay all third-party, out-of-pocket fees, costs and expenses incurred by the Agency for (a) reasonable outside legal services, including but not limited to those provided by the Agency's outside bond/transaction counsel, (b) other reasonable and necessary consultants retained by the Agency, if any, in connection with the Project; and (c) with respect to Agency's enforcement of any event of default or failure to comply with the terms of this Agent Agreement (including reasonable outside attorney fees). The Company further covenants and agrees that the Company is liable for payment to the Agency of all charges referred to above, as well as all other actual third-party, out-of-pocket costs and expenses incurred by the Agency in undertaking the Project notwithstanding the occurrence of any of (i) the Company's withdrawal, abandonment, cancellation or failure to pursue the Project; (ii) the inability of the Agency or the Company to procure the services of one or more financial institutions to provide financing for the Project; or (iii) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.

(Remainder of page intentionally left blank)

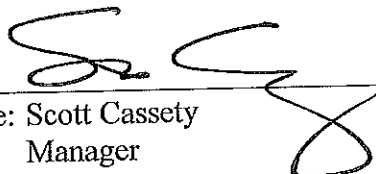
[Signature Page to Agent and Financial Assistance and Project Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agent Agreement as of the day and year first above written.

**NIAGARA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: Susan C. Langdon
Title: Executive Director


6150 DONNER LLC

By: 
Name: Scott Cassety
Title: Manager

[Acknowledgment Page to Agent and Financial Assistance and Project Agreement]

State of New York)
County of Niagara) ss.:

On the 17th day of June in the year 2019, before me, the undersigned, personally appeared **Susan C. Langdon**, 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
Qualified in Niagara county
No. 4948558
Notary Public, State of New York
My Commission Expires 03/20/2023

State of New York)
County of Niagara) ss.:
Erie

On the 28th day of June in the year 2019, before me, the undersigned, personally appeared **Scott Cassety**, 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
AMY J. VIGNERON
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 03/16/ 2023

SCHEDULE A

LIST OF APPOINTED AGENTS¹

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

¹ FOR EACH AGENT APPOINTED BY THE COMPANY, A NYS FORM ST-60 MUST BE COMPLETED AND FILED BY THE COMPANY WITH THE NYS DEPARTMENT OF TAXATION AND FINANCE IDA UNIT INDICATING THE APPOINTMENT OF SUCH AGENT OF THE COMPANY.

SCHEDULE B

MANDATORY AGENT AND SUBAGENT CONTRACT LANGUAGE

"This contract is being entered into by **6150 DONNER LLC** (the "Agent"), as agent for and on behalf of the **NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency"), in connection with a certain project of the Agency for the benefit of **6150 DONNER LLC**, consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in certain premises located at 6150 Donner Road, Lockport, New York 14094 in the Town of Pendleton, New York (the "Premises"). The acquisition of the machinery, equipment and building materials to be incorporated and installed in the Premises and all services and rentals of equipment related to the acquisition, construction and equipping of the Project shall be exempt from all New York State and local sales and use taxes if the acquisition thereof is effected in accordance with the terms and conditions set forth in the attached sales tax exemption information letter of the Agency; and the Agent hereby represents that this contract is in compliance with the terms of the Agent and Financial Assistance Agreement by and between 6150 Donner LLC and the Agency dated as of June 1, 2019. This contract 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, the vendor/contractor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

EXHIBIT A

**FORM OF NYS FORM ST-60 TO BE COMPLETED BY COMPANY AND FILED WITH
THE NYS TAX DEPARTMENT IDA UNIT FOR EACH OF ITS SUBAGENTS WITHIN
THIRTY (30) DAYS OF APPOINTMENT**

[Attached Next Page]



IDA Appointment of Project Operator or Agent For Sales Tax Purposes

ST-60

(1/18)

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

For IDA use only

IDA information

Name of IDA Niagara County Industrial Development Agency		IDA project number (use OSC numbering system for projects after 1998) 2903 19-08	
Street address 6311 Inducon Corporate Drive - Suite One		Telephone number (716) 278-8760	
City Sanborn	State NY	ZIP code 14132-9099	Email address (optional)

Project operator or agent information

Name of IDA project operator or agent		Mark an X in the box if directly appointed by the IDA: <input type="checkbox"/>	Employer identification or Social Security number
Street address		Telephone number ()	Primary operator or agent? Yes <input type="checkbox"/> No <input type="checkbox"/>
City	State	ZIP code	Email address (optional)

Project information

Name of project 6150 Donner LLC Project			
Street address of project site 6150 Donner Road			
City Lockport	State NY	ZIP code 14094	Email address (optional)
Purpose of project The renovation of a 35,000 square foot building, along with the renovation of a 28,000 square foot addition.			

Description of goods and services intended to be exempted from New York State and local sales and use taxes

Goods and services used to construct a 36-unit residential apartment building.

Date project operator or agent appointed (mmddyy) 041019	Date project operator or agent status ends (mmddyy) 123120	Mark an X in the box if this is an extension to an original project: <input type="checkbox"/>
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: 100,000.00	Estimated value of New York State and local sales and use tax exemption provided: 8,000.00	

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer or employee signing on behalf of the IDA	Print title
Signature	Date
	Telephone number ()

Instructions

When to file

An IDA must file this form within 30 days of the date they appoint any project operator or other person as agent of the IDA, for purposes of extending any sales and use tax exemptions.

Requirements to file

The IDA must file a separate form for each person it appoints as agent, whether directly or indirectly, and regardless of whether the person is the primary project operator or agent. If the IDA authorizes a project operator or agent to appoint other persons as agent of the IDA, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the date of the new agent's appointment. The IDA should not file this form for a person hired to work on an IDA project if that person is not appointed as agent of the IDA. The IDA should not file this form if they do not extend any sales or use tax exemption benefits for the project.

If an IDA modifies a project, such as by extending it beyond its original completion date, or by increasing or decreasing the amount of sales and use tax exemption benefits authorized for the project, they must, within 30 days of the change, file a new form with the new information.

If the information on this form changes

If an IDA amends, revokes, or cancels the appointment of an agent, or if an agent's appointment becomes invalid for any reason, the IDA, within 30 days, must send a letter to the address below for filing this form, indicating that the appointment has been amended, revoked, or cancelled, or is no longer valid, and the effective date of the change. They must attach to the letter a copy of the form it originally filed. The IDA should not send a letter for a form that is not valid merely because the *Completion date of project* has passed.

Mailing instructions

Mail completed form to:

NYS TAX DEPARTMENT
IDA UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227-0866

Private delivery services – See Publication 55,
Designated Private Delivery Services.

Privacy notification

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

Need help?



Visit our website at www.tax.ny.gov

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

Telephone assistance

Sales Tax Information Center:	518-485-2889
To order forms and publications:	518-457-5431
Text Telephone (TTY) or TDD equipment users	Dial 7-1-1 for the New York Relay Service

EXHIBIT B-1

**NYS FORM ST-123
FOR
COMPANY**

[Attached Next Page]



IDA Agent or Project Operator Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

This certificate is not valid unless all entries have been completed.

Note: To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, IDA Agent or Project Operator Exempt Purchase Certificate for Fuel.

Name of seller			Name of agent or project operator		
Street address			Street address		
City, town, or village	State	ZIP code	City, town, or village	State	ZIP code
Agent or project operator sales tax ID number (see instructions)					

Mark an X in one: Single-purchase certificate Blanket-purchase certificate (valid only for the project listed below)

To the seller:

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA Niagara County Industrial Development Agency		
Name of project 6150 Donner LLC	IDA project number (use OSC number) 2903 19-08	
Street address of project site 6150 Donner Road		
City, town, or village Lockport	State NY	ZIP code 14094
Enter the date that you were appointed agent or project operator (mm/dd/yy) 02 / 13 / 19	Enter the date that agent or project operator status ends (mm/dd/yy) 12 / 31 / 20	

Exempt purchases

(Mark an X in boxes that apply)

- A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
- B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
- C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and relationship)	Date
Type or print the name, title, and relationship that appear in the signature box	

Instructions

To the purchaser

You may use Form ST-123 if you:

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

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

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

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

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

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

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

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

Exempt purchases

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

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

Misuse of this certificate

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

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

To the seller

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

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

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

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

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

Privacy notification

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

Need help?



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

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



Sales Tax Information Center:

(518) 485-2889

To order forms and publications:

(518) 457-5431



Text Telephone (TTY) Hotline

(for persons with hearing and

speech disabilities using a TTY):

(518) 485-5082

EXHIBIT B-2

**NYS FORM ST-120.1
FOR
SUBAGENTS OF COMPANY**

[Attached Next Page]



Department of Taxation and Finance

New York State and Local Sales and Use Tax

Contractor Exempt Purchase Certificate

ST-120.1

(5/16)

To be used **only** by contractors who are registered with the Tax Department for sales tax purposes.

To vendors:

You must collect tax on any sale of taxable property or services unless the contractor gives you a properly completed exempt purchase certificate not later than 90 days after the property is sold or service is rendered. In addition, you must keep the certificate for at least three years, as explained in the instructions.

This form cannot be used to purchase motor fuel or diesel motor fuel exempt from tax.

To contractors and vendors: Read the instructions on pages 3 and 4 carefully before completing or accepting this certificate.

Name of seller			Name of purchasing contractor		
Street address			Street address		
City	State	ZIP code	City	State	ZIP code

1. I have been issued a New York State *Certificate of Authority*, _____, to collect New York State and local sales and use tax, and that certificate has not expired or been suspended or revoked.

2. The tangible personal property or service being purchased will be used on the following project:

Construction of buildings

located at 6150 Donner Road, Lockport, New York 14094

for and with 6150 Donner LLC

pursuant to prime contract dated _____.

3. These purchases are exempt from sales and use tax because:
(Mark an X in the appropriate box; for further explanation, see items A through P in the instructions on pages 3 and 4.)

A. The tangible personal property will be used in the above project to create a building or structure or to improve real property or to maintain, service, or repair a building, structure, or real property, owned by an organization exempt under Tax Law section 1116(a). (For example, New York State government entities, United States governmental entities, United Nations and any international organization of which the United States is a member, certain posts or organizations of past or present members of the armed forces, and certain nonprofit organizations and Indian nations or tribes that have received New York State sales tax exempt organization status.) The tangible personal property will become an integral component part of such building, structure, or real property.

B. The tangible personal property is production machinery and equipment, and it will be incorporated into real property.

C. The tangible personal property will be used:

- in an Internet data center when the property is to be incorporated as part of a capital improvement; or
- directly and predominantly in connection with telecommunications services for sale or Internet access services for sale; or
- directly and predominantly by a television or radio broadcaster in connection with producing or transmitting live or recorded programs.

D. The tangible personal property, including production machinery and equipment, is for installation in the above project and will remain tangible personal property after installation.

E. The tangible personal property will become an integral component part of a building, structure, or real property, used predominantly (more than 50%) either in the production phase of farming or in a commercial horse boarding operation, or in both.

Note: This certificate is not valid unless the purchaser completes the certification on page 2.

- F. The machinery or equipment will be used directly and predominantly to control, prevent, or abate pollution or contaminants from manufacturing or industrial facilities.
- G. The tangible personal property is residential or commercial solar energy systems equipment. (Note: Item G purchases are exempt from the 4% New York State tax rate and from the 3/8% MCTD rate. Item G purchases may be exempt from local taxes. See instructions.)
- H. The tangible personal property will be used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Sales and Use Tax Exemptions on Certain Purchases of Tangible Personal Property and Services for Leased Commercial Office Space in Lower Manhattan*, provided that the tangible personal property becomes an integral component part of the building in which the leased premises are located, and where such property is purchased during the first year of the qualifying tenant's lease and delivered to the leased premises no later than 90 days after the end of that first year.
- I. The tangible personal property is machinery or equipment used directly and predominantly in loading, unloading, and handling cargo at a qualified marine terminal facility in New York City. This exemption does **not** apply to the local tax in New York City.
- J. The tangible personal property is commercial fuel cell systems equipment. (Note: Item J purchases are exempt from the 4% New York State tax rate and from the 3/8% MCTD rate. Item J purchases may be exempt from local taxes. See instructions.)

- K. The services are for the project described in line 2 on page 1 and will be resold. (This includes trash removal services in connection with repair services to real property.)
- L. The services are to install, maintain, service, or repair tangible personal property used in an Internet data center, for telecommunication or Internet access services, or for radio or television broadcast production or transmission.
- M. The services are to install, maintain, service, or repair tangible personal property that will be used predominantly either in farm production or in a commercial horse boarding operation, or in both provided such tangible personal property will become an integral component part of such structure, building, or real property.
- N. The services are to install residential or commercial solar energy systems equipment.
- O. The services are to install tangible personal property purchased during the first year of the qualifying tenant's lease and delivered to the leased premises no later than 90 days after the end of that first year, that will be used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S.
- P. The services are to install or maintain commercial fuel cell systems equipment.

Caution: Contractors may **not** use this certificate to purchase services tax exempt unless the services are resold to customers in connection with a project. Construction equipment, tools, and supplies purchased or rented for use in completing a project but that do not become part of the finished project may not be purchased exempt from tax through the use of this certificate.

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Type or print name and title of owner, partner, or authorized person of purchasing contractor

Signature of owner, partner, or authorized person of purchasing contractor

Date prepared

Substantial penalties will result from misuse of this certificate.

Instructions

Only a contractor who has a valid *Certificate of Authority* issued by the Tax Department may use this exempt purchase certificate. The contractor must present a properly completed certificate to the vendor to purchase tangible personal property, or to a subcontractor to purchase services tax exempt. This certificate is not valid unless all entries have been completed.

The contractor may use this certificate to claim an exemption from sales or use tax on tangible personal property or services that will be used in the manner specified in items A through P below. The contractor may not use this certificate to purchase tangible personal property or services tax exempt on the basis that Form ST-124, *Certificate of Capital Improvement*, has been furnished by the project owner to the contractor.

The contractor must use a separate Form ST-120.1, *Contractor Exempt Purchase Certificate*, for each project.

Purchase orders showing an exemption from the sales or use tax based on this certificate must contain the address of the project where the property will be used, as well as the name and address of the project owners (see page 1 of this form). Invoices and sales or delivery slips must also contain this information (name and address of the project for which the exempt purchases will be used or where the exempt services will be rendered, as shown on page 1 of this form).

Use of the certificate

Note: Unless otherwise stated, the customer must furnish the contractor a properly completed Form ST-121, *Exempt Use Certificate*.

This certificate may be used by a contractor to claim exemption from tax only on purchases of **tangible personal property** that is:

- A. Incorporated into real property under the terms of a contract entered into with an exempt organization that has furnished the contractor with a copy of Form ST-119.1, *Exempt Organization Exempt Purchase Certificate*, governmental purchase order, or voucher.
- B. Production machinery or equipment that will be incorporated into real property.
- C. Used in one of the following situations:
 - Machinery, equipment, and other tangible personal property related to providing website services for sale to be installed in an Internet data center when the property is to be incorporated as part of a capital improvement. The customer must furnish the contractor a completed Form ST-121.5, *Exempt Use Certificate for Operators of Internet Data Centers (Web Hosting)*.
 - Used directly and predominantly in the receiving, initiating, amplifying, processing, transmitting, re-transmitting, switching, or monitoring of switching of telecommunications services for sale, or Internet access service for sale.
 - Machinery, equipment, and other tangible personal property (including parts, tools, and supplies) used by a television or radio broadcaster directly and predominantly in the production and post-production of live or recorded programs used by a broadcaster predominantly for broadcasting by the broadcaster either over-the-air or for transmission through a cable television or direct broadcast satellite system. (Examples of exempt machinery and equipment include cameras, lights, sets, costumes, and sound equipment.) This exemption also includes machinery, equipment, and other tangible personal property used by a broadcaster directly and
- D. Installed or placed in the project in such a way that it remains tangible personal property after installation. The contractor must collect tax from its customer when selling such tangible personal property or related services to the customer, unless the customer gives the contractor an appropriate and properly completed exemption certificate.
- E. Going to become an integral component part of a structure, building, or real property used predominantly (more than 50%) either in the production phase of farming or in a commercial horse boarding operation, or in both, for which the customer has provided the contractor a completed Form ST-125, *Farmer's and Commercial Horse Boarding Operator's Exemption Certificate*.
- F. Machinery or equipment used directly and predominantly to control, prevent, or abate pollution or contaminants from manufacturing or industrial facilities.
- G. Residential or commercial solar energy systems equipment. *Residential solar energy systems equipment* means an arrangement or combination of components installed in a residence that utilizes solar radiation to produce energy designed to provide heating, cooling, hot water, and/or electricity. *Commercial solar energy systems equipment* means an arrangement or combination of components installed upon nonresidential premises that utilize solar radiation to produce energy designed to provide heating, cooling, hot water, or electricity. The exemption is allowed on the 4% New York State tax rate and where applicable, the 3% MCTD rate. The exemption does not apply to local taxes unless the locality specifically enacts the exemption. The customer must furnish the contractor a completed Form ST-121 by completing the box marked *Other (U)*. For the definition of *residence* and for an exception relating to recreational equipment used for storage, as well as for other pertinent information, see TSB-M-05(11)S, *Sales and Use Tax Exemption for Residential Solar Energy Systems Equipment*. For the definition of *nonresidential premises*, as well as other pertinent information, see TSB-M-12(14)S, *Sales and Use Tax Exemption for the Sales and Installation of Commercial Solar Energy Systems Equipment*.
- H. Delivered and used directly and exclusively in addition to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Sales and Use Tax Exemptions on Certain Purchases of Tangible Personal Property and Services for Leased Commercial Office Space in Lower Manhattan*, provided that the tangible personal property becomes an integral component part of the building in which the leased premises are located, and where such property is purchased within the first year of the qualifying tenant's lease.
- I. Machinery and equipment used at qualified marine terminal facilities located in New York City. The machinery and equipment must be used directly and predominantly in loading, unloading, and handling cargo at marine terminal facilities located in New York City that handled more than 350,000 twenty foot equivalent units (TEUs) in 2003. For purposes of this exemption, the term *TEU* means a unit of volume equivalent to the volume of a twenty-foot container. This exemption does not apply to the local tax in New York City.

predominantly to transmit live or recorded programs. (Examples of exempt machinery and equipment include amplifiers, transmitters, and antennas.)

J. Beginning June 1, 2016, commercial fuel cell systems equipment. Commercial fuel cell systems equipment means an electric generating arrangement or combination of components that is installed upon nonresidential premises and utilizes solid oxide, molten carbonate, a proton exchange membrane, phosphoric acid, or a linear generator to provide heating, cooling, hot water, or electricity. The exemption is allowed on the 4% New York State tax rate and the 3/8% MCTD rate, if applicable. The exemption does not apply to local taxes unless the locality specifically enacts the exemption. The customer must furnish the contractor a completed Form ST-121 by completing the box marked Other (U.). See TSB-M-16(3)S, Sales and Use Tax Exemptions Related to Commercial Fuel Cell Systems Equipment, for more information.

This certificate may also be used by a contractor to claim exemption from tax on the following services:

K. Installing tangible personal property, including production machinery and equipment, that does not become a part of the real property upon installation.

Repairing real property, when the services are for the project named on page 1 of this form and will be resold.

Trash removal services rendered in connection with repair services to real property, if the trash removal services will be resold.

Note: Purchases of services for resale can occur between prime contractors and subcontractors or between two subcontractors. The retail seller of the services, generally the prime contractor, must charge and collect tax on the contract price, unless the project owner gives the retail seller of the service a properly completed exemption certificate.

L. Installing, maintaining, servicing, or repairing tangible personal property used for Web hosting, telecommunication or Internet access services, or by a broadcaster (described in item C on page 3).

M. Installing, maintaining, servicing, or repairing tangible personal property that will be used predominantly either in farm production or in a commercial horse boarding operation, or in both (described in item E on page 3).

N. Installing qualifying residential or commercial solar energy systems equipment (described in item G on page 3).

O. Installing tangible personal property delivered to and used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, provided that the tangible personal property becomes an integral component part of the building in which the leased premises are located.

P. Installing or maintaining commercial fuel cell systems equipment (described in item J above).

Misuse of this certificate

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

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

and Enhance the Tax Department's Enforcement Ability, for more information.

To the seller

When making purchases that qualify for exemption from sales and use tax, the contractor must provide you with this exemption certificate with all entries completed to establish the right to the exemption.

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

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


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

Failure to collect sales or use tax, as a result of accepting an improperly completed exemption certificate or receiving the certificate more than 90 days after the sale, will make you personally liable for the tax plus any penalty and interest charges due.

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

Caution: You will be subject to additional penalties if you sell tangible personal property or services subject to tax, or purchase or sell tangible personal property for resale, without possessing a valid Certificate of Authority. In addition to the criminal penalties imposed under the New York State Tax Law, you will be subject to a penalty of up to \$500 for the first day on which such a sale or purchase is made; plus up to \$200 for each subsequent day on which such a sale or purchase is made, up to the maximum allowed.

Need help?

 Visit our website at www.tax.ny.gov

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

 Telephone assistance (518) 485-9863

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082


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

EXHIBIT B-3

INVOICE RIDER FORM

I, _____, the
_____ of _____ certify
that I am a duly appointed agent of the Niagara County 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 Agent and Financial Assistance Agreement, dated as of June 1, 2019,
by and between the Agency and 6150 Donner LLC.

Name of the Project: 6150 Donner LLC Project
Street address of the Project Site: 6150 Donner Road, Lockport, New York
IDA OSC project number: 2903-19-08

EXHIBIT C

**NYS FORM ST-340 TO BE COMPLETED BY THE COMPANY AND FILED
ANNUALLY WITH THE NYS TAX DEPARTMENT IDA UNIT NO LATER THAN
FEBRUARY 15TH OF EACH YEAR**

[Attached Next Page]



Department of Taxation and Finance

ST-340
(1/18)

Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA)

For period ending December 31, _____ (enter year)

Project information

Name of IDA agent/project operator		Employer identification number (EIN)	
Street address		Telephone number ()	
City		State	ZIP code
Name of IDA Niagara County Industrial Development Agency	Name of project 6150 Donner LLC	IDA project number 2903-19-08	
Street address of project site 6150 Donner Road		State	ZIP code
City Lockport		NY	14094
Date project began	Completion date of project		Actual <input type="checkbox"/> Expected <input type="checkbox"/>
Total sales and use tax exemptions (actual tax savings; not total purchases)			\$

Representative information (not required)

Authorized representative, if any	Title
Street address	Telephone number ()
City	State ZIP code

Certification

I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer, employee, or authorized representative	Title of person signing	
Signature	Date	

If you do not annually file a complete report, we may remove your authority to act as an IDA agent/project operator.

Mail completed report to:
NYS TAX DEPARTMENT
IDA UNIT
WA HARRIMAN CAMPUS
ALBANY NY 12227-0866

If not using U.S. Mail, see Publication 55, Designated Private Delivery Services.

Instructions

General information

Who must file

The General Municipal Law (GML) and the Public Authorities Law require the agent/project operator (also known as the *project occupant*) of an Industrial Development Agency or Authority (IDA) to file an annual report with the Tax Department. The agent/project operator required to file this report is the person directly appointed by the IDA to act for and to represent the IDA for the project. The agent/project operator is ordinarily the one for whom the IDA project was created.

There is usually only one agent/project operator directly appointed by the IDA for an IDA project. However, if the IDA directly appoints multiple agents/project operators, each agent/project operator must file this form (unless they are related corporations).

Only the agent/project operators directly appointed by the IDA must file Form ST-340. Contractors, subcontractors, consultants, or agents appointed by the agent/project operators should not themselves file Form ST-340. However, the agent/project operators must include on Form ST-340 information obtained from such contractors, subcontractors, consultants, and agents, as described below.

What you must report

The report must show the **total value** of all state and local sales and use taxes exempted during the calendar year, as a result of the project's designation as an IDA project. This includes:

- the value of the exemptions the agent/project operator (you) obtained; and
- the value of the exemptions obtained by your contractors, subcontractors, consultants, and others, whether or not appointed as agents of the IDA.

Include only the **total combined** exemptions obtained by the above people. A breakdown of the total is not required. However, since the report must include the value of the exemptions they obtained, you must keep records of the amounts others report to you.

You must make it clear to the contractors, subcontractors, consultants, and others that they must keep accurate tax information and have it available, so that you can comply with the annual reporting requirements.

Do not include on this report the amount of any sales and use tax exemptions from other provisions of the Tax Law (for example, manufacturer's production equipment exemption, research and development exemption, or contractor's exemption for tangible personal property incorporated into a project of an exempt organization).

When the report is due

You must file Form ST-340 on a calendar-year basis. It is due by the last day of February of the following year. The reporting requirement applies to IDA projects started on or after July 21, 1993.

Project information

At the top of the form, identify the reporting period by entering the year in the space provided. If an address is required, always include the ZIP code.

Name of IDA agent/project operator: Enter your name, address, employer identification number (EIN), and telephone number.

Name of IDA and IDA project number: Enter the name and address of the IDA. If more than one IDA is involved in a particular project, you must file a separate report for the tax exemptions attributable to each IDA. Also enter the ID project number.

Name of project: Enter the name of the project and the address of the project site. If you are involved in more than one project, you

must file a separate report for each project, even if authorized by the same IDA.

Date project began: Enter the date the project started (this means the earliest of the date of any bond or inducement resolution, the execution of any lease, or any bond issuance). Include month, day, and year.

Completion date of project: Enter the date installation, lease, or rental of property (for example, machinery or computers) on the project ended, or the date the project is expected to be completed. Mark an **X** in the appropriate box to indicate if the date entered is actual or expected.

Total sales and use tax exemptions: Enter the total amount of New York State and local sales and use taxes exempted during the reporting period as a result of the project's receipt of IDA financial assistance (*if none, enter 0*). This includes exemptions obtained at the time of purchase, as well as through a refund or credit of tax paid. Include the sales and use taxes exempted on purchases of property or services incorporated into or used on the exempt project. This includes the taxes exempted on purchases made by or on behalf of the agent/project operator, the general contractor for the project, and any subcontractors, consultants, or others. Do not enter total purchases.

Representative information

If applicable, enter the name, address, title (for example, attorney or accountant), and telephone number of the individual you authorize to submit this report. This section is not required.

Certification

Enter the name and title of the person signing on your behalf (for example, the IDA agent/project operator's officer, employee, or other authorized representative). Your officer, employee, or authorized representative must sign and date the report.

Mail completed report to:

NYS TAX DEPARTMENT
IDA UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227-0866

If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

Need help?



Visit our website at www.tax.ny.gov

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

Telephone assistance

Sales Tax Information Center:	518-485-2889
To order forms and publications:	518-457-5431
Text Telephone (TTY) or TDD equipment users	Dial 7-1-1 for the New York Relay Service

Privacy notification

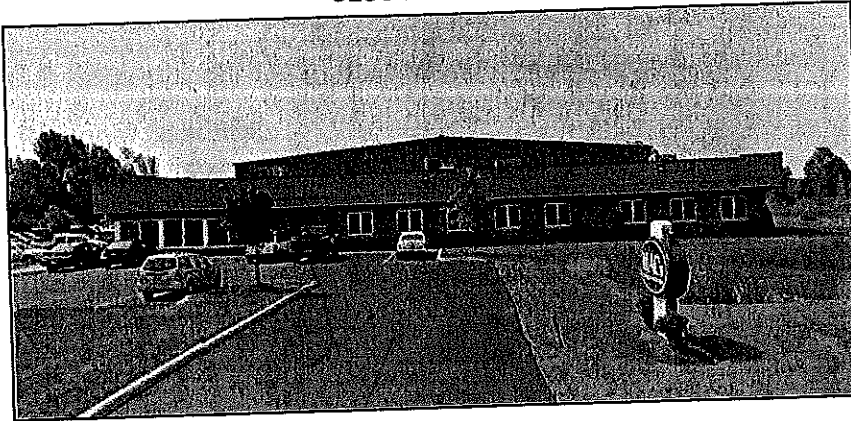
New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request for personal information, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information,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

EXHIBIT D

COST BENEFIT ANALYSIS

[attached]

PROJECT SUMMARY
6150 Donner LLC



Applicant:	6150 Donner LLC (Scott Cassety and Alanja Properties, LLC - Mark Barberio, Principal)	
Project Location:	6150 Donner Road Town of Pendleton	
Assistance:	Assignment and Assumption of PILOTS and revised Employment Plan Sales Tax Abatement Mortgage Recording Tax Abatement	
Description:	<p>The applicants wish to acquire the property located at 6150 Donner Road in the Town of Pendleton. The property is owned by Dimax, LLC and is currently occupied by Mac's Antique Auto parts (a division of Eckler Industries). Dimax received a PILOT in 2006 for construction of the initial 30,000 square feet. In 2010, a second PILOT was approved by the NCIDA for the construction of a 30,000 square foot addition. Four and seven years, respectively, remain on those PILOTS. The applicants are requesting assignment and assumption of the existing PILOTS, mortgage recording tax abatement and sales tax abatement for limited improvements.</p> <p>In addition, the original PILOTS were granted with the understanding that Mac's Antique Auto parts would be the occupant of the original structure and the addition and that significant growth of the company was expected. Sale of Mac's to Eckler Industries in 2017 resulted in the warehousing operations being moved out of state, resulting in a significant loss of jobs at the site. Approximately 30 Ecklers employees remain in the building under a sublease with a duration of 4 years.</p> <p>Upon acquisition, the applicants will aggressively market the building for a new tenant to occupy the unused warehouse space. Since the original employment plan is no longer realistic for the situation, the applicants are requesting that the employment requirements in the building be lowered to a total of 45.</p>	
Project Costs:	Real Estate	\$ 2,260,000
	Improvements	\$ 100,000
	Soft costs & other	\$ 5,000
	TOTAL	\$ 2,365,000
Employment:	Current jobs in Niagara County	30
	New Jobs in Niagara County within 3 years:	15
	Total Annual Payroll End Year 3:	\$1,350,000
	Skills: Warehouse, Production, Administrative, Management	

REGIONAL ECONOMIC IMPACT ANALYSIS
6150 Donner Road

Estimated State & Regional Benefits / Estimated Project Incentives Analysis

Total State and Regional Benefits	\$ 1,062,640
Total Project Incentives	\$ 289,835
Benefit to Cost Ratio	3.7:1

Projected Employment	State	Region
Total Employment	67	67
Direct**	45	45
Indirect***	6	6
Induced****	16	16
Temporary Construction (Direct and Indirect)	1	1

Estimated State & Regional Benefits (Discounted Present Value*)

Total State and Regional Benefits	\$1,062,640
Income Tax Revenue	\$ 426,853
Property Tax/PILOT Revenue	\$ 298,460
Sales Tax Revenue	\$ 337,327

Estimated Project Incentives (Discounted Present Value*)

Total Project Incentives	\$ 289,835
Mortgage Tax	\$ 13,560
Property Tax	\$ 268,275
Sales Tax	\$ 8,000

* Figures over 15 years and discounted by 3.49%

** Direct - The recipient of IDA assistance adds new jobs to the regional economy and/or retains jobs at risk of being lost to another region.

Investments that result in displacing existing jobs (e.g., most retail and many service sector industries) do not fall under this definition.

*** Indirect - The recipient of IDA assistance makes purchases from regional firms, which stimulates suppliers to add jobs and payroll that are new to the regional economy or are saved from being lost to competitors outside the region.

**** Induced - The recipient of IDA assistance by adding to and/or retaining payroll stimulates household spending that is new to the regional economy and/or saved from being lost to competitors outside the region.

Utilizing informANALYTICS modeling software, an economic impact analysis was conducted to measure new investment and employment for the project. This software is a widely accepted and an industry standard for economic impact modeling measuring employment and salary impacts and facility output on the community for a given project.

EXHIBIT E

BILL OF SALE

NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York with offices at 6311 Inducon Corporate Drive, Suite One, Sanborn, New York 14132 (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 **6150 Donner LLC.**, a New York corporation duly organized, validly existing and in good standing under the laws of the State of New York with offices at 56 Fairlawn Drive, Amherst, New York 14226 (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, the Equipment as defined in the Agent and Financial Assistance Agreement dated June 1, 2019 (the "Agent Agreement"), as may be amended from time to time, which were acquired and installed and/or are to be acquired and installed by the Grantee as agent for the Grantor pursuant to the Agent Agreement, which Equipment is located or intended to be located at the Grantee's Facility located at 6150 Donner Road, Lockport, New York.

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____.

**NIAGARA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

Form Only - Do Not Sign

By: _____

Name:

Title:

EXHIBIT F

**FORM OF ANNUAL EMPLOYMENT AND
FINANCIAL ASSISTANCE CERTIFICATION REPORT**

Company name and address: 6150 Donner Road LLC

56 Fairlawn Drive, Amherst, NY 14226

Project Name: 6150 Donner LLC Project

Job Information

Current number of full time equivalent employees ("FTE") retained at the project location, including FTE contractors or employees of independent contractors that work at the project location, by job category:

Category	FTE	Average Salary and Fringe Benefits or Ranges
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____

Current number of full time equivalent employees ("FTE") created at the project location, including FTE contractors or employees of independent contractors that work at the project location, by job category:

Category	FTE	Average Salary and Fringe Benefits or Ranges
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____

A copy of the NYS 45 form for the project location is required to be submitted with this report. If the NYS 45 form is not available for the specific project location or the form does not accurately reflect the full time jobs created, an internal payroll report verifying

the total jobs by employment category as outlined above at the location is required with this submission.

Financing Information

Has the Agency provided project financing assistance (generally through issuance of a bond or note)

Yes No

If financing assistance was provided, please provide:

- Original principal balance of bond or note issued _____
- Outstanding principal balance of such bond or note as of December 31 _____
- Outstanding principal balance of such bond or note as of December 31 _____

Final maturity date of the bond or note _____

Sales Tax Abatement Information

Did your Company or any appointed subagents receive Sales Tax Abatement for your Project during the prior year?

Yes No

If so, please provide the amount of sales tax savings received by the Company and all appointed subagents _____

(Attach copies of all ST-340 sales tax reports that were submitted to New York State by the Company and all subagents for the reporting period. Please also attached all ST-60's filed for subagents for the reporting period)

Mortgage Recording Tax Information

Did your company receive Mortgage Tax Abatement on your Project during the prior year?

Yes No

(note this would only be applicable to the year that a mortgage was placed upon the Project, so if the Agency did not close a mortgage with you during the reporting period, the answer should be no)

The amount of the mortgage recording tax that was exempted during the reporting period:

PILOT INFORMATION:

County Real Property Tax without PILOT \$ _____

City/Town Property Tax without PILOT \$ _____

School Property Tax without PILOT \$ _____

TOTAL PROPERTY TAXES WITHOUT PILOT \$ _____

Total PILOT Payments made for reporting period: \$ _____

Whether paid separately or lump sum to Agency for distribution, please provide break down of allocation of PILOT Payment to individual taxing jurisdictions:

County PILOT	\$ _____
City/Town PILOT	\$ _____
Village PILOT	\$ _____
School PILOT	\$ _____
TOTAL PILOTS	\$ _____

Net Exemptions \$ _____
(subtract Total PILOTS from TOTAL property taxes without PILOT)

I certify that to the best of my knowledge and belief all of the information on this form is correct. I further certify that the salary and fringe benefit averages or ranges for the categories of jobs retained and the jobs created that was provided in the Application for Financial Assistance is still accurate and if not, I hereby attach a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. I also understand that failure to report completely and accurately may result in enforcement of provisions of my agreement, including but not limited to voidance of the agreement and potential claw back of benefits.

Signed: _____

Name: _____

Title: _____

(authorized company representative)

Date: _____

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EXHIBIT G

FINAL PROJECT COST AND FINANCING REPORT

A. **Actual costs for the construction, acquisition, rehabilitation, improvement and/or equipping of the project by the applicant.**

Actual Costs Eligible for Sales Tax Exemption Benefit

a. Building Construction or Renovation Costs	a.	\$	
b. Sitework	b.	\$	
c. Non-manufacturing Equipment	c.	\$	
d. Furniture, Fixtures	d.	\$	
e. Other (specify)	e.	\$	
f. Subtotal	f.	\$	12

Actual Costs Not Subject to Sales Tax

g. Land and/or building purchase	g.	\$	13
h. Manufacturing Equipment	h.	\$	
i. Soft Costs (Legal, Architect, Engineering)	i.	\$	
j. Other (specify)	j.	\$	
k. Subtotal	k.	\$	14

Total Project Costs

f & k \$

B. Indicate how the project was financed

a. Tax-Exempt IRB	a.	\$
b. Tax-Exempt Bond	b.	\$
c. Taxable IRB	c.	\$
d. Bank Financing	d.	\$
e. Public Financing	e.	\$
f. Equity	f.	\$
TOTAL SOURCES		\$
Estimated Amount of Mortgage		\$

I certify that to the best of my knowledge and belief all the information on this form is correct. I also understand that failure to report completely and accurately may be subject to penalty of perjury and result in enforcement of provisions of my agreement, including but not limited to voidance of the agreement and potential claw back of benefits.

Signed: _____

(authorized company representative)

Date: _____