

**AMENDMENT TO**

**LEASE AGREEMENT**

Dated as of December 19, 2016

by and between

**TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY**

and

**D'ADDARIO & COMPANY, INC.**

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D'Addario & Company, Inc. Project

Affecting the Land generally known by the street address  
590 Smith Street, located  
in the County of Suffolk,  
Farmingdale, New York 11735  
as more particularly described in  
Exhibit A to the Original Lease Agreement (defined hereinafter)  
and which is also known as  
District 0100, Section 006.00, Block 001.00, Lot 029.000

on the Official Tax Map of Suffolk County

## AMENDMENT TO LEASE AGREEMENT

This **AMENDMENT TO LEASE AGREEMENT**, made and entered into as of December 19, 2016 (this "**Amendment**"), by and between **TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the "**Agency**"), party of the first part, having its principal office at 47 West Main Street, Babylon, New York 11702, and **D'ADDARIO & COMPANY, INC.**, a corporation organized and existing under the laws of the State of New York (the "**Lessee**"), party of the second part, having its principal office at 595 Smith Street, Farmingdale, NY 11735 (all capitalized terms used herein and not otherwise defined shall have the same meaning as set forth in the Original Lease Agreement herein defined):

### WITNESSETH:

**WHEREAS**, the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "**Enabling Act**") authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal property, including but not limited to machinery and equipment, deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

**WHEREAS**, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by Chapter 177 of the 1973 Laws of New York, as amended (together with the Enabling Act, the "**Act**") for the benefit of the Town of Babylon and the inhabitants thereof; and

**WHEREAS**, to accomplish the purposes of the Act, the Agency entered into a Straight Lease (as defined in the Act) dated December 19, 2013 with the Lessee for the acquisition of a "project" within the meaning of the Act within the territorial boundaries of the Town of Babylon, New York (the "**Town**") and located on that certain lot, piece or parcel of land generally known as and located at 590 Smith Street in Farmingdale, New York, which consisted of the acquisition, renovation, reconstruction and equipping of an approximately 28,740 square foot building, all for use by the Lessee as an office, manufacturing, warehouse and distribution facility (the "**Facility**") in its business of manufacturing and distribution of musical instrument accessories (the "**Project**"); and

**WHEREAS**, in connection with the Project, the Agency granted Lessee financial assistance in the form of among others, exemptions from state and local sales and use taxes in

accordance with a Lease Agreement, dated as of December 19, 2013, as amended (the “**Original Lease Agreement**”), between Agency and the Lessee; and

**WHEREAS**, there have been delays with respect to the planned improvements at the Facility and the Lessee requires additional time in order complete such improvements and the Lessee has requested that the term of the sales tax exemption, which expired as of December 19, 2016, be extended to December 19, 2018, with respect to the Project in order to enable the Lessee to complete the planned improvements at the Facility; and

**WHEREAS**, it is desired that the Agency amend the Original Lease Agreement to provide for the foregoing extension of sales tax benefits with respect to the Original Lease Agreement and the Facility;

**NOW, THEREFORE**, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows (provided that in the performance of the agreements of the Agency herein contained, any obligation it may incur for the payment of money shall not create a debt of the State of New York or of the Town of Babylon, and neither the State of New York nor the Town of Babylon shall be liable on any obligation so incurred, but any such obligation shall be payable solely out of the lease rentals, revenues and receipts derived from or in connection with the Facility including moneys received under the Original Lease Agreement):

**Section 1. Amendments Relating to Sales Tax Benefits.**

*(A) Amendment to Section 1.1.* Section 1.1 of the Lease Agreement is hereby amended to add the following Definitions:

“**Agent**” shall have the meaning set forth in Section 2.4(d), as amended by this Amendment.

“**Eligible Items**” shall mean the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Lessee and any Agent shall be entitled to claim a Sales Tax Exemption in connection with the Facility: (i) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Facility; (ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more; (iii) with respect to the eligible items identified in (ii) above; purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs; (iv) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and (v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility.

“**Facility Equipment**” shall have the same meaning as set forth in the recitals to the Original Lease Agreement.

“**Facility Realty**” means, collectively, the Land and the Improvements.

“**Form ST-60**” shall mean NYSDTF Form ST-60 “IDA Appointment of Project Operator or Agent” or such additional or substitute form as is adopted by NYSDTF to report the appointment of project operators or agents with respect to industrial development agency transactions.

“**Form ST-123**” shall mean NYSDTF Form ST-123 “IDA Agent or Project Operator Exempt Purchase Certificate” or such additional or substitute form as is adopted by NYSDTF for use in completing purchases that are exempt for Sales and Use Taxes with respect to industrial development agency transactions.

“**Form ST-340**” shall mean NYSDTF Form ST-340 “Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority” or such additional or substitute form as is adopted by NYSDTF to report Lessee Sales Tax Savings with respect to industrial development agency transactions.

“**Ineligible Items**” shall mean the following items of personal property and services with respect to which the Lessee and any Agent shall not be entitled to claim a Sales Tax Exemption in connection with the Facility:

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) ordinary office supplies such as pencils, paper clips and paper;
- (v) any materials or substances that are consumed in the operation of machinery;
- (vi) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and
- (vii) maintenance of the type as shall constitute janitorial services.

“**Lessee Sales Tax Savings**” means all Sales Tax Exemption savings realized by or for the benefit of the Lessee, including any savings realized by any Agent on behalf of the Lessee, pursuant to the Original Lease Agreement, as amended by this Amendment and each Sales Tax Agent Authorization Letter issued in connection with the Facility.

“**Maximum Lessee Sales Tax Savings Amount**” shall mean the aggregate maximum dollar amount of Lessee Sales Tax Savings that the Lessee and all Agents acting on behalf the Lessee are permitted to receive under the Original Lease Agreement, as amended by this Amendment, which shall not exceed \$129,375 or such maximum dollar amount as may be determined by the Agency pursuant to such additional documents as may be required by the Agency for such increase.

“**NYSDTF**” means the New York State Department of Taxation and Finance.

“**Sales Tax Agent Authorization Letter**” shall mean the Sales Tax Agent Authorization Letter, substantially in the form set forth in Schedule I to this Amendment – “Form of Sales Tax Agent Authorization Letter” and to be delivered in accordance with Section 2.4(d) of the Original Lease Agreement, as amended by this Amendment.

“**Sales Tax Exemption**” shall mean an exemption from Sales and Use Taxes resulting from the Agency’s participation in the Facility.

“**Sales Tax Registry**” shall mean the Sales Tax Registry in the form set forth in Schedule II to this Amendment.

“**Sales and Use Taxes**” shall mean local and State sales and compensating use taxes and fees imposed pursuant to Article 28 of the New York State Tax Law, as the same may be amended from time to time.

“**State**” means the State of New York.

“**State Sales and Use Taxes**” shall mean sales and compensating use taxes and fees imposed by Article 28 of the New York State Tax Law but excluding such taxes imposed in a city by Section 1107 or 1108 of such Article 28, as the same may be amended from time to time.

“**State Sales Tax Savings**” shall mean all Sales Tax Exemption savings relating to State Sales and Use Taxes realized by or for the benefit of the Lessee, including any savings realized by any Agent, pursuant to this Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility.

**(B) Sales Tax Letter.** All references to the “Sales Tax letter” shall be amended to read the Section 2.4 of the Original Lease Agreement, as amended by this Amendment, and all sales tax benefits conferred hereunder”.

**(C) Amendment to Section 2.4.** Section 2.4 of the Original Lease Agreement is amended in its entirety to read as follows:

(a) The Agency hereby appoints the Lessee its true and lawful agent, and the Lessee hereby accepts such agency (i) to complete the Project Work in accordance with the Plans and Specifications, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for the Project Work with the same powers and with the same validity as the Agency could do if acting on its own behalf, (iii) to pay all fees, costs and expenses incurred in connection with the Project Work, (iv) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the Project Work, and (v) to enforce the provisions of any contract, agreement, obligation, bond or other performance security. This agency appointment expressly excludes the Lessee from purchasing any motor vehicle, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets.

(b) Agency’s Exempt Status. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, is exempt from the imposition of Sales and Use Taxes. As an exempt governmental entity, no exempt organization identification number has

been issued to the Agency nor is one required. Notwithstanding the foregoing, the Agency makes no representation to the Lessee, any Agent or any third party that any Sales Tax Exemption is available under the Original Lease Agreement, as amended by this Amendment.

(c) Scope of Authorization of Sales Tax Exemption. The Agency hereby authorizes the Lessee, subject to the terms and conditions of the Original Lease Agreement, as amended by the Amendment, to act as its agent in connection with the Facility for the purpose of effecting purchases and leases of Eligible Items so that such purchases and leases are exempt from the imposition of Sales and Use Taxes. The Agency's authorization with respect to such Sales Tax Exemption provided to the Lessee and its Agents pursuant to the Original Lease Agreement, as amended, and any Sales Tax Agent Authorization Letters issued hereunder shall be subject to the following limitations:

(i) The Sales Tax Exemption shall be effective only (1) for the original term which commenced on the Closing Date and expired on December 19, 2016 and (2) for an additional term commencing on the date of this Amendment and expiring upon the earliest of (A) December 19, 2018, (B) the termination of this Lease Agreement, (C) the Completion Date, (D) failure of the Lessee to file Form ST-340, as described in Section 2.4(g) below, (E) the termination of the Sales Tax Exemption authorization pursuant to Section 7.2 or (F) the date upon which the Lessee received the Maximum Lessee Sales Tax Savings Amount.

(ii) The Sales Tax Exemption authorization set forth herein shall automatically be suspended upon written notice to the Lessee that the Lessee is in default, beyond applicable notice and cure periods, if applicable under the Original Lease Agreement or this Amendment, until such default is cured to the satisfaction of the Agency.

(iii) The Sales Tax Exemption authorization shall be subject to all of the terms, conditions and provisions of the Original Lease Agreement, as amended by this Amendment.

(iv) The Sales Tax Exemption shall only be utilized for Eligible Items which shall be purchased, incorporated, completed or installed for use only by the Lessee at the Facility (and not with any intention to sell, transfer or otherwise dispose of any such Eligible Item to a Person as shall not constitute the Lessee), it being the intention of the Agency and the Lessee that the Sales Tax Exemption shall not be made available with respect to any Eligible Item unless such item is used solely by the Lessee at the Facility.

(v) The Sales Tax Exemption shall not be used for any Ineligible Item.

(vi) The Sales Tax Exemption shall not be used to benefit any person or entity, including any tenant or subtenant located at the Facility, other than the Lessee, without the prior written consent of the Agency.

(vii) By execution by the Lessee of this Lease Agreement, the Lessee agrees to accept the terms hereof and represents and warrants to the Agency that the use of the

Sales Tax Exemption by the Lessee or by any Agent is strictly for the purposes stated herein.

(viii) Upon the Termination Date, the Lessee and each Agent shall cease being agents of the Agency, and the Lessee shall immediately notify each Agent in writing of such termination and that the Sales Tax Agent Authorization Letter issued to any such Agent is likewise terminated.

(ix) The Lessee agrees that the aggregate amount of Lessee Sales Tax Savings realized by the Lessee and by all Agents (as hereinafter defined), if any, in connection with the Facility shall not exceed in the aggregate the Maximum Lessee Sales Tax Savings Amount.

(d) Procedures for Appointing Agents. If the Lessee desires to seek the appointment of a sublessee, or a contractor, a subcontractor or other party to act as the Agency's agent (an "**Agent**") for the purpose of effecting purchases which are eligible for the Sales Tax Exemption pursuant to authority of this Lease Agreement, it must complete the following steps:

- (i) For each Agent, the Lessee must complete and submit Form ST-60 to the Agency. The foregoing is required pursuant to the GML Section 874(9) and Form ST-60 and the regulations relating thereto which require that within thirty (30) days of the date that the Agency appoints a project operator or other person or entity to act as agent of the Agency for purposes of extending a sales or use tax exemption to such person or entity, the Agency must file a completed Form ST-60 with respect to such person or entity.
- (ii) Following receipt by the Agency of the completed Form ST-60, such Agent must be appointed as Agent by the Agency, by execution by the Agency and the Agent of a Sales Tax Agent Authorization Letter in the form attached hereto as Schedule I to this Amendment. The determination whether to approve the appointment of an Agent shall be made by the Agency, in its sole discretion. If executed, a completed copy of the Sales Tax Agent Authorization Letter shall be sent to the Lessee. The Lessee must also provide a copy of an executed Sales Tax Agent Authorization Letter together with a copy of this Amendment to the Agent within five (5) Business Days after receipt thereof by the Lessee.
- (iii) The Lessee shall ensure that each Agent shall observe and comply with the terms and conditions of its Sales Tax Agent Authorization Letter and this Amendment.

(e) Form ST-60 Not an Exemption Certificate. The Lessee acknowledges that the executed Form ST-60 designating the Lessee or any Agent as an agent of the Agency shall not serve as a sales or use tax exemption certificate or document. Neither the Lessee nor any other Agent may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or

use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY AN AGENT, THE LESSEE, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY EIGHT AND THIRTY SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

(f) Form ST-123 Requirement. As an agent of the Agency, the Lessee agrees that it will, and will cause each Agent to, present to each seller or vendor a completed and signed Form ST-123 for each contract, agreement, invoice, bill or purchase order entered into by the Lessee or by any Agent, as agent for the Agency, for the Project Work. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Facility on each bill or invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Lessee, as project operator of the Agency, was the purchaser. The Lessee shall retain copies of all such contracts, agreements, invoices, bills and purchase orders for a period of not less than six (6) years from the date thereof. For each Agent the Form ST-123 shall be completed as follows: (i) the "Project information" section of Form ST-123 should be completed using the name and address of the Facility as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent's Sales Tax Agent Authorization Letter; and (iii) the "Exempt purchases" section of Form ST-123 should be completed by marking "X" in box "A" only.

(g) Form ST-340 Filing Requirement. The Lessee shall annually (currently, by each February 28th with respect to the prior calendar year) file a Form ST-340 with NYSDTF, and with a copy to the Agency, in a manner consistent with such regulations as is or may be prescribed by the Commissioner of NYSDTF (the "**Commissioner**"), of the value of all Lessee Sales Tax Savings claimed by the Lessee and each Agent in connection with the Facility. Should the Lessee fail to comply with the foregoing requirement, the Lessee and each Agent shall immediately cease to be agents of the Agency in connection with the Facility without any further action of the Agency and the Lessee shall immediately and without demand notify each Agent appointed by the Agency in connection with the Facility of such termination.

(h) Sales Tax Registry Filing Requirement. No later than August 1st of each year, the Lessee shall file with the Agency a completed Sales Tax Registry, in the form attached hereto as Schedule II to this Amendment, which accounts for all Lessee Sales Tax Savings realized by the Lessee and each Agent during the prior annual period ending on the preceding June 30th (or such shorter period beginning on the Closing Date and ending on the preceding June 30th), unless the Termination Date occurred prior to such June 30th. Within ten (10) days after the Termination Date, the Lessee shall file with the Agency a completed Sales Tax Registry which accounts for all Lessee Sales Tax Savings realized by the Lessee and each Agent during the period from the preceding July 1st to the Termination Date.

(i) Special Provisions Relating to State Sales Tax Savings.

(i) The Lessee covenants and agrees to comply, and to cause each of its contractors, subcontractors, Agents, persons or entities to comply, with the requirements of GML Sections 875(1) and (3) (the “**Special Provisions**”), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Amendment the Special Provisions, the Special Provisions shall control.

(ii) The Lessee acknowledges and agrees that pursuant to GML Section 875(3), the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Lessee, State Sales Tax Savings taken or purported to be taken by the Lessee, any Agent or any other person or entity acting on behalf of the Lessee to which the Lessee is not entitled or which are in excess of the Maximum Lessee Sales Tax Savings Amount or which are for property or services not authorized or taken in cases where the Lessee, any Agent or any other person or entity acting on behalf of the Lessee failed to comply with a material term or condition to use property or services in the manner required by this Lease Agreement. The Lessee shall, and shall require each Agent and any other person or entity acting on behalf of the Lessee, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such State Sales Tax Savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner to assess and determine State Sales and Use Taxes due from the Lessee under Article 28 of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

(j) Subject to the provisions of subsection (i) above, in the event that the Lessee or any Agent shall utilize the Sales Tax Exemption in violation of the provisions of this Lease Agreement or any Sales Tax Agent Authorization Letter, the Lessee shall promptly deliver notice of same to the Agency, and the Lessee shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Lessee or any Agent (as applicable).

(k) Upon request by the Agency with reasonable notice to the Lessee, the Lessee shall make available at reasonable times to the Agency and/or the Independent Accountant all such books, records, contracts, agreements, invoices, bills or purchase orders of the Lessee and any Agent, and require all appropriate officers and employees of the Lessee to respond to reasonable inquiries by the Agency and/or the Independent Accountant, as shall be necessary (y) to indicate in reasonable detail those costs for which the Lessee or any Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Lessee under Section 2.4 of the Original Lease Agreement, as amended by this Amendment.

**Section 2. No Further Amendment.** Except for the forgoing amendments to the Original Lease Agreement, the Original Lease Agreement shall remain in full force and effect.

**Section 3. Severability.** If any clause, provision or section of this Amendment be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

**Section 4. Counterparts.** This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument

**Section 5. Binding Effect.** This Amendment shall inure to the benefit of, and shall be binding upon, the Agency, the Lessee and its respective successors and assigns.

[Remainder of Page Intentionally Left Blank]

**IN WITNESS WHEREOF**, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chief Executive Officer and attested under the seal of the Agency by its Secretary, or an Assistant Secretary and the Lessee duly executed this Amendment all being done as of the year and day first above written.

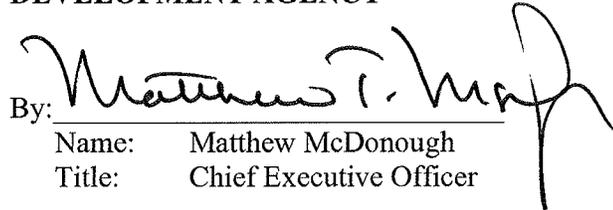
(SEAL)

ATTEST:

  
John E. Batscow  
JEB Counsel

**TOWN OF BABYLON INDUSTRIAL  
DEVELOPMENT AGENCY**

By:

  
Name: Matthew McDonough  
Title: Chief Executive Officer

**D'ADDARIO & COMPANY, INC.**

By:

  
Name: John D'Addario, III  
Title: President

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

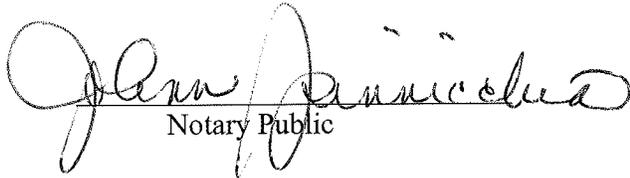
On the 21<sup>st</sup> of ~~February~~ <sup>March</sup>, in the year two thousand and seventeen, the undersigned, personally appeared Matthew McDonough, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

GARY R. BASSO  
Notary Public, State of New York  
No. 4990011  
Qualified in ~~Westchester~~ <sup>Dutchess</sup> County  
Commission Expires Dec. 29, 20 18

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

On the ~~13<sup>th</sup>~~ <sup>March</sup> of February, in the year two thousand and seventeen, the undersigned, personally appeared ~~Sam D'Addario~~ <sup>Sam D'Addario</sup>, 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

JOANN SPINNICCHIA  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 01SP6152748  
QUALIFIED IN SUFFOLK COUNTY  
MY COMMISSION EXPIRES SEPT. 18, 20 18

SCHEDULE I

FORM OF SALES TAX AGENT AUTHORIZATION LETTER

**SALES TAX AGENT AUTHORIZATION LETTER**

**EXPIRATION DATE: DECEMBER 19, 2018**

**ELIGIBLE LOCATION:** 590 Smith Street in Farmingdale, New York

\_\_\_\_\_, 201\_

TO WHOM IT MAY CONCERN

Re: Town of Babylon Industrial Development Agency  
(D'Addario & Company, Inc. Project – 590 Smith Street)

Ladies and Gentlemen:

The Town of Babylon Industrial Development Agency (the "Agency"), by this notice, hereby advises you as follows:

1. Pursuant to a certain Amendment to Lease Agreement, dated as of December 19, 2016, amending that certain Lease Agreement, dated as of December 19, 2013 (the "Lease Agreement"), between the Agency and D'Addario & Company, Inc., a corporation duly organized and validly existing under the laws of the State of New York, having its principal office at 595 Smith Street, Farmingdale, New York (the "Lessee"), the Agency has authorized the Lessee to act as its agent in connection with the Facility described therein located at the Eligible Location described above. Certain capitalized terms used herein and not defined shall have the respective meanings given to such terms in the Lease Agreement.

2. Upon the Lessee's request, the Agency has appointed [**insert name of Agent**] (the "Agent"), pursuant to this Sales Tax Agent Authorization Letter (the "Sales Tax Agent Authorization Letter") to act as the Agency's agent for the purpose of effecting purchases exempt from sales or use tax in accordance with the terms, provisions of this Sales Tax Agent Authorization Letter and the Lease Agreement. **The Agent should review the definitions of Eligible Items and Ineligible Items in Exhibit A hereto with respect to the scope of Sales Tax Exemption provided under the Lease Agreement and hereunder.**

3. The effectiveness of the appointment of the Agent as an agent of the Agency is expressly conditioned upon the execution by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project Operator or Agent" ("Form ST-60") to evidence that the Agency has appointed the Agent as its agent (the form of which is to be completed by Agent and the Lessee). Pursuant to the exemptions from sales and use taxes available to the Agent under this Sales Tax Agent Authorization Letter, the Agent shall avail itself of such exemptions when purchasing eligible materials and services in connection with the Facility and shall not include such taxes in its contract price, bid or reimbursable costs, as the case may be.

4. The Agent acknowledges that the executed Form ST-60 shall not serve as a sales or use tax exemption certificate or document. No agent or project operator may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY AN AGENT, THE LESSEE, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY EIGHT AND THIRTY SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

5. As agent for the Agency, the Agent agrees that it will present to each seller or vendor a completed and signed **NYSDTF Form ST-123 “IDA Agent or Project Operator Exempt Purchase Certificate”** or such additional or substitute form as is adopted by NYSDTF for use in completing purchases that are exempt from Sales and Use Taxes (“Form ST-123”) for each contract, agreement, invoice, bill or purchase order entered into by the Agent, as agent for the Agency, for the construction, repair and equipping of the Facility. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Facility on each bill and invoice and invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Lessee, as project operator of the Agency, was the purchaser. The Agent shall complete Form ST-123 as follows: (i) the “Project information” section of Form ST-123 should be completed using the name and address of the Facility as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent’s Sales Tax Agent Authorization Letter; and (iii) the “Exempt purchases” section of Form ST-123 should be completed by marking “X” in box “A” only.

6. The Agent agrees to comply with the terms and conditions of the Lease Agreement. The Agent must retain for at least six (6) years from the date of expiration of its contract copies of (a) its contract with the Lessee to provide services in connection with the Facility, (b) all contracts, agreements, invoices, bills or purchases entered into or made by such Agent using the Letter of Authorization for Sales Tax Exemption, and (c) the executed Form ST-60 appointing the Agent as an agent of the Agency, and shall make such records available to the Agency upon reasonable notice. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

7. In order to assist the Lessee in complying with its obligation to file New York State Department of Taxation and Finance Form ST-340 “Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority” (“Form ST-340”), the Agent covenants and agrees that it shall file semi-annually with the Lessee and the Agency (no later than January 15th and July 15th of each calendar year in which it has claimed sales and use tax exemptions in connection with the Facility) a written statement of all sales and use tax exemptions claimed by such Agent for the preceding six-month period (ending on June 30th or December 31st, as applicable) in connection with the Facility by completing and submitting to the Lessee and the Agency the **Sales Tax Registry** attached hereto as **Exhibit B**.

If the Agent fails to comply with the foregoing requirement, the Agent shall immediately cease to be the agent for the Agency in connection with the Facility (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Agent shall be deemed to have automatically lost its authority to make purchases as agent for the Agency, and shall desist immediately from all such activity.

8. The Agent agrees that if it fails to comply with the requirements for sales and use tax exemptions, as described in this Sales Tax Agent Authorization Letter, it shall pay any and all applicable Lessee Sales Tax Savings and any interest and penalties thereon. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

**9. Special Provisions Relating to State Sales Tax Savings.**

(a) The Agent covenants and agrees to comply, and to cause each of its contractors, subcontractors, persons or entities to comply, with the requirements of General Municipal Law Sections 875(1) and (3) (the “Special Provisions”), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Sales Tax Agent Authorization Letter or the Original Lease Agreement, as amended and the Special Provisions, the Special Provisions shall control.

(b) The Agent acknowledges and agrees that pursuant to General Municipal Law Section 875(3) the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Agent State Sales Tax Savings taken or purported to be taken by the Agent or any other person or entity acting on behalf of the Agent to which Agent or the Lessee is not entitled or which are in excess of the Maximum Lessee Sales Tax Savings Amount or which are for property or services not authorized or taken in cases where the Lessee, any Agent or any other person or entity acting on behalf of the Lessee or the Agent failed to comply with a material term or condition to use property or services in the manner required by this Sales Tax Agent Authorization Letter or the Original Lease Agreement, as amended. The Lessee shall, and shall require each Agent and any other person or entity acting on behalf of the Lessee, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such State Sales Tax Savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of the New York State Department of Taxation and Finance (the “Commissioner”) to assess and determine State Sales and Use Taxes due from the Lessee under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

10. Subject to the provisions of Section 9 hereof, in the event that the Agent shall utilize the Sales Tax Exemption in violation of the provisions of the Original Lease Agreement, as amended, or this Sales Tax Agent Authorization Letter, the Agent shall promptly deliver notice of same to the Lessee and the Agency, and the Agent shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Agent.

11. Upon request by the Agency with reasonable notice to the Agent, the Agent shall make available at reasonable times to the Agency all such books, records, contracts, agreements, invoices, bills or purchase orders of the Agent, and require all appropriate officers and employees of the Agent to respond to reasonable inquiries by the Agency as shall be necessary (y) to indicate in reasonable detail those costs for which the Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Agent under Section 10.

12. By execution of this Sales Tax Agent Authorization Letter, the Agent agrees to accept the terms hereof and represent and warrant to the Agency that the use of this Sales Tax Agent Authorization Letter by the Agent is strictly for the purposes stated herein.

13. The Agent acknowledges that this Sales Tax Agent Authorization Letter will terminate on the date (the "Termination Date") that is the earlier of (i) December 19, 2018 (the "Expiration Date"), and (ii) the expiration or termination of the Original Lease Agreement, as amended. Upon the Termination Date, the agency relationship between the Agency and the Agent shall terminate.

(Remainder of Page Intentionally Left Blank -Signature Page Follows)

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

**TOWN OF BABYLON INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_

Name:

Title:

ACCEPTED AND AGREED TO BY:

\_\_\_\_\_ **[AGENT]** \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

## Exhibit A

### To SALES TAX AGENT AUTHORIZATION LETTER

Set forth below is a description of items that are eligible for the Sales Tax Exemption

**Eligible Items** shall mean the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Agent shall be entitled to claim a Sales Tax Exemption in connection with the Facility:

(i) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Facility;

(ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more;

(iii) with respect to the eligible items identified in (ii) above: purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs;

(iv) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and

(v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility.

**Ineligible Items** shall mean the following items of personal property and services with respect to which the Agent shall not be entitled to claim a Sales Tax Exemption in connection with the Facility:

(i) vehicles of any sort, including watercraft and rolling stock;

(ii) personalty having a useful life of one year or less;

(iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;

(iv) ordinary office supplies such as pencils, paper clips and paper;

(v) any materials or substances that are consumed in the operation of machinery;

(vi) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and

(vii) maintenance of the type as shall constitute janitorial services.



**Name of Agent:** \_\_\_\_\_

**Signature By:** \_\_\_\_\_

**Name (print):** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**SCHEDULE II**

**Sales Tax Registry**

Please Complete: **REPORTED PERIOD:** ANNUAL PERIOD FROM JULY 1, 201\_\_ to JUNE 30, 201\_\_

Description of Item (incl. Serial #, if applicable)	Location of Item	Dollar Amount	Vendor Description	Date of Payment	Purchase order or invoice number	Sales Tax Savings
SEMI-ANNUAL PERIOD FROM JULY 1, [ ] to DECEMBER 31, [ ]						
<b>TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL PERIOD</b>						
FROM JULY 1, [ ] to DECEMBER 31, [ ]:						
SEMI-ANNUAL PERIOD FROM JANUARY 1, [ ] to JUNE 30, [ ]						
<b>TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL PERIOD</b>						
FROM JANUARY 1, [ ] to JUNE 30, [ ]:						
<b>TOTAL SALES TAX SAVINGS REALIZED DURING THE ANNUAL REPORTED PERIOD:</b>						

Certification: I, the undersigned, an authorized officer or principal owner of the Lessee, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Lessee Sales Tax Savings realized by the Lessee below and its principals, affiliates, tenants, subtenants, contractors, subcontractors and any other person or entity pursuant to the LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION issued to the Lessee, and any SALES TAX AGENT AUTHORIZATION LETTER issued to any other person or entity at the direction of the Lessee, by the Town of Babylon Industrial Development Agency ("BIDA"). This form and information provided pursuant hereto may be disclosed by BIDA in connection with the administration of the programs by BIDA; and, without limiting the foregoing, such information may be included in reports or disclosure required by law.

Lessee Name: \_\_\_\_\_

Signature By: \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE C**

**Sales Tax Registry**

Please Complete: **REPORTED PERIOD:** ANNUAL PERIOD FROM JANUARY 1, 201\_\_ to  
DECEMBER 31, 201\_\_

Description of Item (incl. Serial #,if applicable)	Location of Item	Dollar Amount	Vendor Description	Date of Payment	Purchase order or invoice number	Sales Tax Savings
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ANNUAL PERIOD FROM JANUARY 1, [ ] to DECEMBER 31, [ ]

**TOTAL SALES TAX SAVINGS REALIZED DURING THE ANNUAL REPORTED PERIOD:**

Certification: I, the undersigned, an authorized officer or principal owner of the Lessee, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Sales Tax Savings realized by the Lessee below and its principals, affiliates, tenants, subtenants, contractors, subcontractors and any other person or entity pursuant to the LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION issued to the Lessee, and any SALES TAX AGENT AUTHORIZATION LETTER issued to any other person or entity at the direction of the Lessee, by Town of Babylon Industrial Development Agency. This form and information provided pursuant hereto may be disclosed or may be included in reports or disclosure required by law.

Lessee Name: \_\_\_\_\_

Signature By: \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

