



**Thomas E. Dolan**  
**Chief Executive Officer**

**FORM APPLICATION FOR FINANCIAL ASSISTANCE**

**DATE:** March 4, 2024

**APPLICATION OF:** D'Addario & Company, Inc.  
Company Name of Beneficial User of Proposed Project  
(Not Realty or Special Purpose Entity (SPE) created for liability)

**CURRENT ADDRESS:** 595 Smith Street  
Farmingdale, New York 11735

**ADDRESS OF PROPERTY TO RECEIVE BENEFITS:** 595 Smith Street, 540 Smith Street, 590 Smith Street, 535 Smith Street, 525 Smith Street and 160 Finn Court.  
See Attachment 1, Section A, for additional responses sheet for Tax Map information for each property.  
Farmingdale, New York 11735

**Tax Map # District** 0100 **Section** 006.00 **Block** 01.00 **Lot (s)** 012.000

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**Part I: User (Applicant) & Owner Data (if different)****1. User Data (Applicant):****A. User:** D'Addario & Company, Inc.**Address:** 595 Smith StreetFarmingdale, New York 11735**Federal Employer ID #:** [REDACTED] **Website:** www.daddario.com**NAICS Code:** [REDACTED]

(The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. [www.census.gov/eos/www/naics/](http://www.census.gov/eos/www/naics/) )

**Name of User Officer Certifying Application:** [REDACTED]**Title of Officer:** Chief Executive Officer**Phone Number:** [REDACTED] **E-mail:** [REDACTED]**B. Business Type:****Sole Proprietorship** ☐ **Partnership** ☐ **Privately Held** ☒**Public Corporation** ☐ **Listed on** **State of Incorporation/Formation:** New York**C. Nature of Business:**

(e.g., "manufacturer of \_\_\_\_\_ for \_\_\_\_\_ industry"; "distributor of \_\_\_\_\_")

Manufacturer of musical instrument accessories; strings for musical instruments, drumheads, drumsticks, reedsand mouthpieces for clarinets and saxophones as well as other accessory products.**D. User Counsel:****Firm Name:** Forchelli Deegan Terrana**Address:** 333 Earle Covington Blvd, Suite 1010Uniondale, New York 11553**Individual Attorney:** Brian R. Sahn, Esq.**Phone Number:** 516-248-1700**E-mail:** bsahn@forchellilaw.com

**E. Principal Stockholders, Members or Partners, if any, of the User (5% or more equity):**

<b>Name</b>	<b>Percent Owned</b>
<u>James D'Addario &amp; John D'Addario, Jr.</u>	<u>25.5% each</u>
<u>Robert D'Addario, Amy D'Addario and Julie Zerbo</u>	<u>8.16% each</u>
<u>John D'Addario, III, Michael D'Addario, Suzanne D'Addario Brouder and Laura D'Addario</u>	<u>6.125% each</u>

**F. Has the User, or any subsidiary or affiliate of the User, or any stockholder, partner, member, officer, director or other entity with which any of these individuals is or has been associated with:**

- i. ever filed for bankruptcy, been adjudicated bankrupt or placed in receivership or otherwise been or presently is the subject of any bankruptcy or similar proceeding? (if yes, please explain)

No

- ii. been convicted of a felony, or misdemeanor, or criminal offense (other than a motor vehicle violation)? (if yes, please explain)

No

**G. If any of the above persons (see "E", above) or a group of them, owns more than 50% interest in the User, list all other organizations which are related to the User by virtue of such persons having more than a 50% interest in such organizations.**

Not applicable.

**H. Is the User related to any other organization by reason of more than a 50% ownership? If so, indicate name of related organization and relationship:**

D'Addario is the owner of NYXL Realty, Inc. and XPND Realty Company, LLC. NYXL owns 525 and 535 Smith

Street, while XPND Realty owns 160 Finn Court.

**I. List parent corporation, sister corporations and subsidiaries:**

See Response 1(H). D'Addario does not own, in whole or part, any of the other companies.



- J. Has the User (or any related corporation or person) been involved in or benefited by any prior industrial development financing in the municipality in which this project is located, whether by this agency or another issuer? (Municipality herein means city, town or village, or if the project is not in an incorporated city, town or village, the unincorporated areas of the county in which it is located.) If so, explain in full:

Yes, the User and its affiliate companies have been awarded real estate tax abatements and sales tax exemptions on the following properties: 595 Smith Street, 590 Smith Street, 540 Smith Street, 535 Smith Street, 525 Smith Street and 160 Finn Court from the Town of Babylon IDA.

- K. List major bank references of the User:

J.P. Morgan Chase, 395 North Service Road, Suite 302, Melville, NY 11747 Attn: Jason Hand

## 2. Owner Data

**\*\* (for co-applicants for assistance or where a landlord/tenant relationship will exist between the owner and the user) \*\***

- A. Owner (together with the User, the "Applicant"): D'Addario & Company, Inc.

Address: 595 Smith Street

Farmingdale, New York 11735

Federal Employer ID #: [REDACTED] Website: Not applicable

NAICS Code: [REDACTED]

Name of Owner Officer Certifying Application: [REDACTED]

Title of Officer: Chief Executive Officer

Phone Number: [REDACTED] E-mail: [REDACTED]

- B. Business Type:

Sole Proprietorship ☐ Partnership ☐ Privately Held ☒

Public Corporation ☐ Listed on

State of Incorporation/Formation: New York

- C. Nature of Business:

(e.g., "manufacturer of  for  industry"; "distributor of "; or "real estate holding company")

Musical accessories manufacturer.

D. Are the User and the Owner Related Entities? Yes ☒ No ☐

i. If yes, the remainder of the questions in this Part I, Section 2 (with the exception of "F" below) need not be answered if answered for the Owner.

ii. If no, please complete all questions below.

E. Owner's Counsel:

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

Individual Attorney: \_\_\_\_\_

Phone Number: \_\_\_\_\_ E-mail: \_\_\_\_\_

F. Principal Stockholders or Partners, if any (5% or more equity):

Name	Percent Owned
See Response in Part I, Question 1(E)	_____
_____	_____
_____	_____

G. Has the Owner, or any subsidiary or affiliate of the Owner, or any stockholder, partner, officer, director or other entity with which any of these individuals is or has been associated with:

i. ever filed for bankruptcy, been adjudicated bankrupt or placed in receivership or otherwise been or presently is the subject of any bankruptcy or similar proceeding? (if yes, please explain)

\_\_\_\_\_  
\_\_\_\_\_

ii. been convicted of a felony or criminal offense (other than a motor vehicle violation)? (if yes, please explain)

\_\_\_\_\_  
\_\_\_\_\_

- H. If any of the above persons (see "F", above) or a group of them, owns more than 50% interest in the Owner, list all other organizations which are related to the Owner by virtue of such persons having more than a 50% interest in such organizations.

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- I. Is the Owner related to any other organization by reason of more than a 50% ownership? If so, indicate name of related organization and relationship:

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- J. List parent corporation, sister corporations and subsidiaries:

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- K. Has the Owner (or any related corporation or person) been involved in or benefited by any prior industrial development financing in the municipality in which this project is located, whether by this agency or another issuer? (Municipality herein means city, town or village, or if the project is not in an incorporated city, town or village, the unincorporated areas of the county in which it is located.) If so, explain in full:

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- L. List major bank references of the Owner:

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## **Part II – Operation at Current Location**

1. **Current Location Address:** 595 Smith Street, 590 Smith Street, 540 Smith Street, 535 Smith Street, 525 Smith Street and 160 Finn Court, Farmingdale, New York 11735.
2. **Owned or Leased:** With the exception of 540 Smith Street, all of the above buildings are owned by D'Addario or one of its affiliate companies. 540 Smith Street is currently leased but D'Addario will be acquiring it in connection with this application for benefits.
3. **Describe your present location (acreage, square footage, number of buildings, number of floors, etc.):**  
595 Smith Street is a two-story building. The other buildings are one-story structures. Please see Attachment 1, Section A, for additional details.

**4. Type of operation (manufacturing, wholesale, distribution, retail, etc.) and products and/or services:**

595 Smith Street primarily houses our string manufacturing operation as well as a majority of our office personnel. 535 Smith Street is occupied by our Engineering Department, machine shop and mechanics, who help build and repair our manufacturing equipment. Our wire mill is located in 525 Smith Street. Drumheads and a few other accessories are manufactured in 540 Smith Street. Various products (guitar picks and cables to name two) are made in 590 Smith Street. We plan to expand the 590 Smith Street building to allow for additional manufacturing and warehouse space. 160 Finn Court will house a majority of the reed and mouthpiece manufacturing. we will be relocating from California. A portion of our synthetic reed manufacturing will occur in 595 Smith Street.

5. **Are other facilities or related companies of the Applicant located within the State?**  
 Yes ☒ No ☐

A. **If yes, list the Address:** 99 Marcus Drive, Melville, NY 11747, which is D'Addario's distribution facility.

6. **If yes to above ("5"), will the completion of the project result in the removal of such facility or facilities from one area of the state to another OR in the abandonment of such facility or facilities located within the State?** Yes ☐ No ☒

All of the above facilities will continue to be utilized as manufacturing, distribution and

A. **If no, explain how current facilities will be utilized:** warehouse facilities as stated in the IDA Leases connected with such facilities.

As noted in to response 4 within this Section, D'Addario intends to relocate its California based Woodwinds business to 595 Smith Street and 160 Finn Court, which will bring over 60 new jobs on our campus. D'Addario will also be purchasing 540 Smith Street, which it currently leases, from its current owner for \$7,250,000 dollars. Finally, D'Addario will invest over \$4,000,000 dollars in the expansion of our 590 Smith Street facility, which will enable us to increase our manufacturing and warehousing capabilities at that location. Please see Attachment 2, Part III - Project Costs, for an itemized listing of investment amounts.

- B. **If yes, please indicate whether the project is reasonably necessary for the Applicant to maintain its competitive position in its industry or remain in the State and explain in full:**

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7. Has the Applicant actively considered sites in another state? Yes ☒ No ☐

A. If yes, please list states considered and explain:

D'Addario manufactures its ProMark branded drumsticks at its Houston, Texas, facility. D'Addario was approached, and met with, representatives from the State of Texas earlier this year. During that meeting, they broadly outlined benefits available to our company were we to relocate all or a portion of our Long Island based operation to their State. Officials from the State of Tennessee, as well as North Carolina, have also approached our company concerning the relocation of all, or a portion of, our string manufacturing operation to their respective states.

8. Is the requested financial assistance reasonably necessary to prevent the Applicant from moving out of New York State? Yes ☒ No ☐

A. Please explain:

Since 1994, D'Addario has expanded its campus from our initial 595 Smith Street string manufacturing facility and headquarters to include five additional buildings in the Town of Babylon. We are grateful for the IDA's previous support for, amongst other things, the relocation of our then Connecticut and Massachusetts based wire mills, and expansion of our manufacturing capabilities at 590 Smith Street, as the benefits realized from those transactions allowed us to not only increase our revenue but create additional jobs on our campus, as well as expend millions of dollars each year in support of Long Island based businesses from whom we purchase goods and services. However, if we are to remain in the Town of Babylon, and maintain our position as a leader in our industry, we need a new financial incentive package in the form of real estate tax abatements and sales tax exemptions for all of our properties so that we can continue competing with our domestic and international competitors. If D'Addario is not able to obtain the requested financial assistance from the IDA, we will need to consider relocating some or all of our operations to other states when our current IDA deals expire.

9. Number of full-time employees at current location and average salary: Approximately 745 on the

D'Addario campus. Average salary is approximately \$60,221.

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**Part III – Project Data****1. Project Type:****A. What type of transaction are you seeking?: (Check one)**

Straight Lease ☒    Taxable Bonds ☐    Tax-Exempt Bonds ☐  
 Equipment Only Straight Lease ☐

**B. Type of benefit(s) the Applicant is seeking: (Check all that apply)**

Sales Tax Exemption ☒    Mortgage Recording Tax Exemption ☐  
 Real Property Tax Abatement: ☒

**2. Location of project:**

A. Street Address: 595 Smith St., 540 Smith St., 590 Smith St., 535 Smith St., 525 Smith St. and 160 Finn Court, Farmingdale, New York 11735.

See Attachment 1, Section A, for additional information.

B. Tax Map: District \_\_\_\_\_ Section \_\_\_\_\_ Block \_\_\_\_\_ Lot(s) \_\_\_\_\_

See Attachment 1, Section A. See Attachment 1, Section A. See Attachment 1, Section A. See Attachment 1, Section A.

**C. Municipal Jurisdiction:**

- i. Village: N/A
- ii. School District: Half Hollow Hills for all of the above properties
- iii. Library: Half Hollow Hills for all of the above properties

D. Acreage: 9.07 for all properties

**3. Project Components (check all appropriate categories):**

- A. Construction of a new building ☐ Yes    ☒ No
  - i. Square footage: \_\_\_\_\_
- B. Renovations of an existing building ☒ Yes    ☐ No
  - i. Square footage: See Attachment 2, 590 Smith Street
- C. Demolition of an existing building ☐ Yes    ☒ No
  - i. Square footage: \_\_\_\_\_
- D. Land to be cleared or disturbed ☐ Yes    ☒ No
  - i. Square footage/acreage: \_\_\_\_\_
- E. Construction of addition to an existing building ☒ Yes    ☐ No
  - i. Square footage of addition: 590 Smith Street - 14,700 addition to currently existing 27,778 square foot footprint
  - ii. Total square footage upon completion: 42,778
- F. Acquisition of an existing building ☒ Yes    ☐ No
  - i. Square footage of existing building: 46,025

**G. Installation of machinery and/or Equipment**☒ Yes☐ No**i. List principal items or categories of equipment to be acquired:**

As mentioned in prior responses, we intend to acquire 540 Smith Street for \$7.25 million dollars. Currently, we manufacture our Evans branded drumheads in that facility. With respect to 590 Smith Street, we have received approval from the Town of Babylon to construct a 14,000 square foot addition to that building, which is being expanded to increase storage space for raw materials and expand our manufacturing capacity at that site. Finally, we are committing approximately \$2,668,430 dollars to make 160 Finn Court, 595 Smith Street and 590 Smith Street suitable for our reed and mouthpiece manufacturing operation.

**4. Current Use at Proposed Location:****A. Does the Applicant currently hold fee title to the proposed location?**

Minmilt Realty holds title at 540 Smith Street. D'Addario or one of it's affiliate

**i. If no, please list the present owner of the site:** companies owns the other buildings.**B. Present use of the proposed location:** Drumhead and percussion accessory manufacturing occurs at540 Smith Street. Please see prior answers for a description of our operations at our other sites.**C. Is the proposed location currently subject to an IDA transaction (whether through this Agency or another?)** ☒ Yes ☐ No**i. If yes, explain:** Minmilt Realty participated in the December 19, 2013 Straight Lease Transaction for 540 Smith Street. All of the remaining properties are also subject to IDA transactions.**D. Is there a purchase contract for the site? (if yes, attach):** ☒ Yes ☐ No**E. Is there an existing or proposed lease for the site? (if yes, attach):** ☒ Yes ☐ No**5. Proposed Use:****A. Describe the specific operations of the Applicant or other users to be conducted at the project site:** Please see prior response on Page 8, Part II, Question 4 as well as Attachment 2, Project Costs.**B. Proposed product lines and market demands:** Please see prior response on Page 8, Part II, Question 4.**C. If any space is to be leased to third parties, indicate the tenant(s), total square footage of the project to be leased to each tenant, and the proposed use by each tenant:**Currently, Creative Rock Melodies, Inc., which operates a School of Rock franchise, subleases approximately 3500 square feet in 540 Smith Street from D'Addario.The company provides musical instrument lessons to students.



**D. Need/purpose for project (e.g., why is it necessary, effect on Applicant's business):**

As we discovered when we moved our wire drawing businesses from Massachusetts and Connecticut to Long Island, and later moved (and expanded) the operation into 535 Smith Street, the investment and expansion of our Fretted (guitar string) division enabled us to focus research, and ultimately develop, our premium electric guitar string, NYXL, and, subsequently create a new dispersion coated string, XT, and a new covered string, XS. These relocations also allowed us to reduce costs by utilizing more efficient wire drawing machines. By relocating our Woodwinds business to the Town of Babylon, we will not only increase our employee base by over 60 people, but we will also be able to utilize our talented Engineering and Research and Development personnel to not only focus on improving our current Woodwinds product offerings but to also develop new products that will enhance our current product line. Purchasing 540 Smith Street is a key part of relocating our Woodwinds facility to New York. Given Minmilt's desire to sell the building, if we were forced to move our drumhead manufacturing to one of our current buildings, or purchase a different building, it would certainly delay and likely foreclose the relocation of the Woodwinds operation to Long Island. Finally, by adding over 4,000 square feet to 590 Smith Street, we will be able to expand our warehouse and manufacturing capabilities.

**E. Will any portion of the project be used for the making of retail sales to customers who personally visit the project location? Yes ☐ No ☒**

- i. If yes, what percentage of the project location will be utilized in connection with the sale of retail goods and/or services to customers who personally visit the project location? N/A

**6. Project Work:****A. Has construction work on this project begun? If yes, complete the following:**

i.	Site Clearance:	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	% Complete	<u>                    </u>
ii.	Foundation:	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	% Complete	<u>                    </u>
iii.	Footings:	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	% Complete	<u>                    </u>
iv.	Steel:	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	% Complete	<u>                    </u>
v.	Masonry:	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	% Complete	<u>                    </u>
vi.	Other:	<u>N/A</u>			

**B. What is the current zoning? GA - Light, GA - Industrial for all six locations.****C. Will the project meet zoning requirements at the proposed location?**

Yes ☐ No ☒

**D. If a variance or change of zoning is required, please provide the details/status of the variance or change of zone request:**

We are submitting documentation in connection with our application for a parking variance to the Town of Babylon

ZBA. On February 15, 2024, the ZBA granted /approved our request for a parking variance.

**E. Have site plans been submitted to the appropriate planning department? Yes ☒ No ☐**

7. Project Completion Schedule:

A. What is the proposed commencement date for the acquisition and the construction/renovation/equipping of the project?

i. Acquisition: Prior to March 31, 2024

ii. Construction/Renovation/Equipping: For 160 Finn Court, by February 16, 2024. For 590 Smith Street, construction will commence at some point in 2025 (we have already received approval from the TOB Planning Board).

B. Provide an accurate estimate of the time schedule to complete the project and when the first use of the project is expected to occur: The commencement of construction is dependent upon approval

of the variance and this application. Given the ZBA approval, we anticipate receiving a building permit in the next

several weeks and construction at 160 Finn Court to take several months to complete. With respect to 590 Smith

Street, we will commence that project in 2025 and anticipate it will take 12 to 16 months to complete.

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## **Part IV – Project Costs and Financing**

### **1. Project Costs:**

- A. Give an accurate estimate of cost necessary for the acquisition, construction, renovation, improvement and/or equipping of the project location:

<u>Description</u>	<u>Amount</u>
Land and/or building acquisition	\$ <u>Please see Attachment 2, Project Costs:</u>
Building(s) demolition/construction	\$ <u>Please see Attachment 2, Project Costs</u>
Building renovation	\$ <u>Please see Attachment 2, Project Costs</u>
Site Work	\$ <u>Please see Attachment 2, Project Costs</u>
Machinery and Equipment	\$ <u>Please see Attachment 2, Project Costs</u>
Legal Fees	\$ <u>150,000</u>
Architectural/Engineering Fees	\$ <u>Please see Attachment 2, Project Costs</u>
Financial Charges	\$ <u>0</u>
Other (Specify)	\$ <u>250,000 - Contingency</u>
Total	\$ <u>15,781,352 (\$15,381,352 (Attachment 2)</u> <u>+ \$400,000 (legal fees and other)</u>

### **2. Method of Financing:**

	<u>Amount</u>	<u>Term</u>
A. Tax-exempt bond financing:	\$ <u>N/A</u>	<u>      </u> years
B. Taxable bond financing:	\$ <u>N/A</u>	<u>      </u> years
C. Conventional Mortgage:	\$ <u>N/A</u>	<u>      </u> years
D. SBA (504) or other governmental financing:	\$ <u>N/A</u>	<u>      </u> years
E. Public Sources (include sum of all State and federal grants and tax credits):	\$ <u>N/A</u>	
F. Other loans:	\$ <u>      </u>	<u>      </u> years
G. Owner/User equity contribution:	\$ <u>15,781,352</u>	<u>      </u> years
Total Project Costs	\$ <u>15,781,352</u>	

- i. What percentage of the project costs will be financed from public sector sources?

None



3. Project Financing: (\*\*Complete only if Bond Financing is being utilized\*\*)

- A. Have any of the above costs been paid or incurred (including contracts of sale or purchase orders) as of the date of this application? Yes ☐ No ☐

i. If yes, provide detail on a separate sheet.

- B. Are costs of working capital, moving expenses, work in progress, or stock in trade included in the proposed uses of bond proceeds? Give details:

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- C. Will any of the funds borrowed through Agency Bonds be used to repay or refinance an existing mortgage or outstanding loan? Give details:

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- D. Has the Applicant made any arrangements for the marketing or the purchase of the bond or bonds? If so, indicate with whom:

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### **Part V – Project Benefits**

**1. Mortgage Recording Tax Benefit:**

- A. Mortgage Amount for exemption (include sum total of construction/permanent/bridge financing):

\$ N/A

- B. Estimated Mortgage Recording Tax Exemption (product of Mortgage Amount and current Mortgage Recording Tax Rate):

\$ N/A

**2. Sales and Use Tax Benefit:**

- A. Gross amount of costs for goods and services that are subject to State and local Sales and Use Tax (such amount to benefit from the Agency's exemption):

\$ 700,000

- B. Estimated State and local Sales and Use Tax exemption (product of current State and Local Sales and Use Tax Rate and figure above):

\$ 60,375

- C. If your project has a landlord/tenant (owner/user) arrangement, please provide a breakdown of the number in "B" above:

i. Owner: \$ N/A

ii. User: \$ N/A

**3. Real Property Tax Benefit:**

- A. Identify and describe if the project will utilize a real property tax exemption benefit other than the Agency's PILOT benefit:

N/A

- B. Agency PILOT Benefit:

i. Term of PILOT requested: 15 years for all properties.

ii. Upon acceptance of this application, the Agency staff will create a PILOT schedule and indicate the estimated amount of PILOT Benefit based on anticipated tax rates and assessed valuation and attached such information to Exhibit A hereto. At such time, the Applicant will certify that it accepts the proposed PILOT schedule and requests such benefit to be granted by the Agency.

***\*\* This application will not be deemed complete and final until Exhibit A hereto has been completed and executed.\*\****

## **Part VI – Employment Data**

1. List the Applicant's and each users present employment, and estimates of (i) employment at the proposed project location at the end of year one and year two following project completion and (ii) the number of residents of the Labor Market Area\* ("LMA") that would fill the full-time and part-time jobs at the end of year second year following completion:

	<u>Present</u>	<u>First Year</u>	<u>Second Year</u>	<u>Residents of LMA</u>
Full-Time	<u>736</u>	<u>60</u>	<u>N/A</u>	<u>Approx. 796</u>
Part-Time**	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

\* The Labor Market Area includes the Town of Babylon, Nassau and Suffolk Counties.

**Full-Time Employee** shall mean, with respect to an Annual Period, an individual on the payroll of, receiving customary benefits from, and directly employed during such Annual Period by, any Company Group Entity (and excluding any individuals employed by temporary employment or similar agencies) and each of whom works within the Town for any Company Group Entity during such Annual Period on a "full-time basis" (*i.e.*, working at least a 35-hour week, subject to customary vacation, holiday and sick leave).

**\*\*Agency converts Part-time staff to Full-Time Equivalent Employee** as follows, with respect to an Annual Period, two (2) individuals on the payroll of, receiving customary benefits from, and directly employed during such Annual Period by, any Company Group Entity (and excluding any individuals employed by temporary employment or similar agencies) and each of whom works within the Town for any Company Group Entity during such Annual Period on a "part-time basis" (*i.e.*, working at least a 20-hour week, subject to customary vacation, holiday and sick leave).

### **2. Salary and Fringe Benefits:**

Category of Jobs to be Retained and Created	Number of Employees	Average Salary or Range of Salary	Average Fringe Benefits or Range of Fringe Benefits
Management	61	206,712	82,685
Professional	75	111,613	44,645
Administrative	35	53,106	21,242
Production	539	39,839	15,936
Supervisor	17	84,033	33,613
Laborer	N/A	N/A	N/A
Other	9	40,328	16,095

Note: The Agency reserves the right to visit the facility to confirm that job creation numbers are being met.

3. Annualized salary range of jobs to be created in the first two years (see question #1).

FROM \$ 32,240 TO \$ 232,634

4. List the number of \*Construction jobs (if applicable) to be created by the Applicants Project.

	<u>First Year</u>	<u>Second Year</u>	<u>Third Year</u>
* Full-Time	<u>N/A</u>	<u></u>	<u></u>
** Part-Time	<u>N/A</u>	<u></u>	<u></u>

\*Construction jobs are defined as full-time equivalents (FTE), or 2,080-hour units of labor (one construction period job equates to one full-time job for 1 year).

\*\*A part-time or temporary job may be considered one job by other models, but would constitute only a fraction of a job. For example, if a laborer or craftsman worked only 3 months on a construction or renovation project (assuming no overtime), that would be considered one-quarter of a job.

*(Remainder of Page Intentionally Left Blank)*



**Part VII – Representations, Certifications and Indemnification**

1. Is the Applicant in any litigation which would have a material adverse effect on the Applicant's financial condition? (if yes, furnish details on a separate sheet)

Yes ☐ No ☒

2. Has the Applicant or any of the management of the Applicant, the anticipated users or any of their affiliates, or any other concern with which such management has been connected, been cited for a violation of federal, state or local laws or regulations with respect to:

- a. Labor practices,

(with respect to workers and/or their working conditions and/or their wages, including but not limited to pending or threatened labor strikes, hand billing, consumer boycotts, mass demonstrations or other similar incidents; unfair labor practices complaints; incurred, or potentially incurred, liability including withdrawal liability with respect to an employee benefit plan, including a pension plan; any complaints, claims, proceedings or litigation arising from alleged discrimination in the hiring, firing, promoting, compensating or general treatment of employees. Please consider "discrimination" to include sexual harassment.)

Yes ☒ No ☐ (If yes, furnish details on a separate sheet)

- b. hazardous wastes, environmental pollution,

Yes ☐ No ☒ (If yes, furnish details on a separate sheet)

- c. other operating practices

Yes ☐ No ☒ (If yes, furnish details on a separate sheet)

3. Is there a likelihood that the Applicant would not proceed with this project without the Agency's assistance? (If yes, please explain why; if no, please explain why the Agency should grant the benefits requested)

Yes ☒ No ☐

As noted in our purchase contract for 540 Smith Street, IDA benefits are essential to this purchase. The benefits previously received from the IDA have enabled D'Addario to not only grow our business but, more importantly, retain our footprint here on Long Island. In order to remain globally competitive, help manage costs and grow our business to meet market demand, these benefits are an essential aspect of our expansion plans. As noted in other responses, D'Addario is routinely contacted by representatives from Tennessee, Texas and other states. If we do not receive benefits under this application, we will be compelled to explore relocating our manufacturing operation and corporate offices elsewhere when our current deals expire several years from now. We do not wish to take such steps but wish to respectfully remind the IDA that we manufacture drumsticks at our Houston, Texas, based facility and that could be a location that we would explore relocating to.

4. If the Applicant is unable to obtain financial assistance from the Agency for the project, what would be the impact on the Applicant and on the municipality?

As discussed throughout the application, awarded benefits will enable D'Addario to further expand its campus and manufacturing capacity to meet market demands. With respect to the sales tax exemption, the savings achieved on construction and equipment can be re-purposed for other legitimate business purposes. Finally, and as most people understand, it is a challenge to run a business here on Long Island. The savings achieved through the real estate tax abatements assist D'Addario by reducing our expenses and, as previously noted, allowing us to take these funds and further invest in, and grow, our business which, of course, keeps us as a viable business and employer here in the Town of Babylon, which takes on added significance due to the fact that a majority of our factory personnel are Town of Babylon residents. Nonetheless, and while our preference is to remain here, we will consider relocating to Texas (where we already have a manufacturing operation) or elsewhere if we do not receive the benefits sought in our application.



5. The Applicant understands and agrees that the provisions of Section 862(1) of the New York General Municipal Law, as provided below, will not be violated if financial assistance is provided for the proposed project:

§ 862. Restrictions on funds of the agency. (1) No funds of the agency shall be used in respect of any project if the completion thereof would result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, provided, however, that neither restriction shall apply if the agency shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.

Initial 

6. The Applicant understands and agrees that in accordance with Section 858-b(2) of the General Municipal Law, except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the project will be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300) in which the project is located (collectively, the "Referral Agencies"). The Applicant also agrees, that it will, except as otherwise provided by collective bargaining contracts or agreements to which they are parties, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies

Initial 

7. The Applicant confirms and acknowledges that the owner, occupant, or operator receiving financial assistance for the proposed project is in substantial compliance with applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

Initial 

8. The Applicant confirms and acknowledges that the submission of any knowingly false or knowingly misleading information may lead to the immediate termination of any financial assistance and the reimbursement of an amount equal to all or part of any tax exemption claimed by reason of the Agency's involvement the Project.

Initial 

9. The Applicant confirms and hereby acknowledges that as of the date of this Application, the Applicant is in substantial compliance with all provisions of Article 18-A of the New York General Municipal Law, including, but not limited to, the provision of Section 859-a and Section 862(1) of the New York General Municipal Law.

Initial 

10. In accordance with Section 862(1) of the New York General Municipal Law the Applicant understands and agrees that projects which result in the removal of an industrial or manufacturing plant of the project occupant from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the project occupant within the State is ineligible for financial assistance from the Agency, unless otherwise approved by the Agency as reasonably necessary to preserve the competitive position of the project in its respective industry or to discourage the project occupant from removing such other plant or facility to a location outside the State.

Initial 

11. The Applicant represents and warrants that to the Applicant's knowledge neither it nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives or agents is, nor will they become a person or entity with who United States persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (OFAC) of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List or under any statute, executive order including the September 24, 2001, Executive Order Block Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, or other governmental action and is not and will not assign or otherwise transfer this Agreement to, contract with or otherwise engage in any dealings or transactions or be otherwise associated with such persons or entities.

Initial 

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Initial after receipt and acceptance of Schedule A and Schedule B

12. The Applicant confirms and hereby acknowledges it has received the Agency's fee schedule attached hereto as Schedule A and agrees to pay such fees, together with any expenses incurred by the Agency, including those of Transaction Counsel, with respect to the Facility. The Applicant agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the project.

Initial 

13. The Applicant hereby agrees to comply with Section 875 of the General Municipal Law. The Company further agrees that the financial assistance granted to the project by the Agency is subject to recapture pursuant to Section 875 of the Act and the Agency's Recapture Policy, attached hereto as Schedule B.

Initial 

**Part VIII – Submission of Materials**

Please send under separate cover all information directly to Agency Counsel:

William F. Dudine, Partner  
Katten Muchin Rosenman LLP  
575 Madison Avenue  
New York, NY 10022-2585

1. Financial statements for the last two fiscal years (unless included in the Applicant's annual report).
2. Applicant's annual reports (or 10-K's if publicly held) for the two most recent fiscal years.
3. Quarterly reports (form 10-Q's) and current reports (form 8-K's) since the most recent annual report, if any.
4. In addition, please attach the financial information described in items A, B, and C of any expected guarantor of the proposed bond issue.
5. Completed Long Environmental Assessment Form.
6. Most recent quarterly filing of NYS Department of Labor Form 45, as well as the most recent fourth quarter filing. Please **remove or redact any employee Social Security numbers** and note the full-time equivalency for part-time employees.

*(Remainder of Page Intentionally Left Blank)*

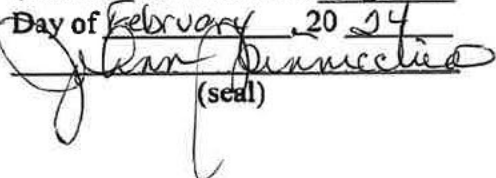
**Part IX – Certification**

John D'Addario, III (name of representative of company submitting application) deposes and says that he or she is the CEO (title) of D'Addario & Co., Inc., the corporation (company name) named in the attached application; that he or she has read the foregoing application and knows the contents thereof; and that the same is true to his or her knowledge.

Deponent further says that s/he is duly authorized to make this certification on behalf of the entity named in the attached Application (the "Applicant") and to bind the Applicant. The grounds of deponent's belief relative to all matters in said Application which are not stated upon his/her personal knowledge are investigations which deponent has caused to be made concerning the subject matter this Application, as well as in formation acquired by deponent in the course of his/her duties in connection with said Applicant and from the books and papers of the Applicant.

As representative of the Applicant, deponent acknowledges and agrees that Applicant shall be and is responsible for all costs incurred by the Town of Babylon Industrial Development Agency (hereinafter referred to as the "Agency") in connection with this Application, the attendant negotiations and all matters relating to the provision of financial assistance to which this Application relates, whether or not ever carried to successful conclusion. If, for any reason whatsoever, the Applicant fails to conclude or consummate necessary negotiations or fails to act within a reasonable or specified period of time to take reasonable, proper, or requested action or withdraws, abandons, cancels or neglects the application or if the Applicant is unable to find buyers willing to purchase the total bond issue required, then upon presentation of invoice, Applicant shall pay to the Agency, its agents or assigns, all actual costs incurred with respect to the application, up to that date and time, including fees to bond or transaction counsel for the Agency and fees of general counsel for the Agency. Upon successful conclusion and sale of the transaction contemplated herein, the Applicant shall pay to the Agency an administrative fee set by the Agency in accordance with its fee schedule in effect on the date of the foregoing application, and all other appropriate fees, which amounts are payable at closing.

  
Representative of Applicant

Sworn to me before this 22nd  
Day of February, 2024  
  
(seal)

JOANN SPINNICCHIA  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 01SP6152748  
QUALIFIED IN SUFFOLK COUNTY  
MY COMMISSION EXPIRES SEPT. 18, 2026



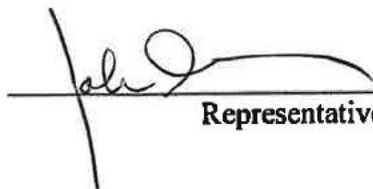
**Part IX – Certification**

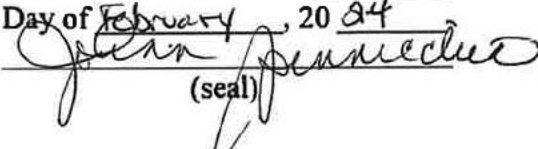
**Property Owner (if different from Applicant)**

John D'Addario, III (name of representative of owner submitting application)  
deposes and says that he or she is the CEO (title) of D'Addario & Co., Inc.,  
the corporation (company name) named in the attached application; that he or she has read the foregoing  
application and knows the contents thereof; and that the same is true to his or her knowledge.

Deponent further says that s/he is duly authorized to make this certification on behalf of the entity  
named in the attached Application (the "Applicant") and to bind the Applicant. The grounds of  
deponent's belief relative to all matters in said Application which are not stated upon his/her personal  
knowledge are investigations which deponent has caused to be made concerning the subject matter this  
Application, as well as in formation acquired by deponent in the course of his/her duties in connection  
with said Applicant and from the books and papers of the Applicant.

As representative of the Applicant, deponent acknowledges and agrees that Applicant shall be and is  
responsible for all costs incurred by the Town of Babylon Industrial Development Agency (hereinafter  
referred to as the "Agency") in connection with this Application, the attendant negotiations and all  
matters relating to the provision of financial assistance to which this Application relates, whether or not  
ever carried to successful conclusion. If, for any reason whatsoever, the Applicant fails to conclude or  
consummate necessary negotiations or fails to act within a reasonable or specified period of time to take  
reasonable, proper, or requested action or withdraws, abandons, cancels or neglects the application or if  
the Applicant is unable to find buyers willing to purchase the total bond issue required, then upon  
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with respect to the application, up to that date and time, including fees to bond or transaction counsel for  
the Agency and fees of general counsel for the Agency. Upon successful conclusion and sale of the  
transaction contemplated herein, the Applicant shall pay to the Agency an administrative fee set by the  
Agency in accordance with its fee schedule in effect on the date of the foregoing application, and all  
other appropriate fees, which amounts are payable at closing.

  
\_\_\_\_\_  
Representative of Applicant

Sworn to me before this 22<sup>nd</sup>  
Day of February, 20 24  
  
(seal)

JOANN SPINNICCHIA  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 01SP6152748  
QUALIFIED IN SUFFOLK COUNTY  
MY COMMISSION EXPIRES SEPT. 18, 20 26  
Town of Babylon Industrial Development Agency



## EXHIBIT A

### Proposed PILOT Schedule

Upon acceptance of the Application and completion of the Cost Benefit Analysis, the Agency will attach the proposed PILOT Schedule, together with the estimates of net exemptions based on estimated tax rates and assessment values to this Exhibit.

JB  
3/8/24

## Exhibit A

### Payments in Lieu of Taxes on the Land and the Buildings:

For the period commencing on the Abatement Commencement Date (hereinafter defined) until the earlier of (i) the Abatement Termination Date or (ii) the date on which the Agency no longer owns the Facility Realty, the Lessee shall make payment in lieu of real estate taxes (the "**PILOT Payments**"), as follows:

#### Definitions

X = the then current assessed value of Facility Realty from time to time as determined by the Town Assessor, provided that the assessed value with respect to the first tax year of this PILOT Schedule (December 1, 2024 to November 30, 2025) will be the assessed value of the Facility Realty on December 1, 2024.

Abatement Commencement Date = December 1, 2024.

Normal Tax Due = those payments for taxes and assessments, other than special ad valorem levies, special assessments and service charges against real property located in the Town of Babylon (including any existing incorporated village or any village which may be or may have been incorporated after the date hereof, within which the Project is wholly or partially located) which are or may be imposed for special improvements or special district improvements, which the Lessee would pay without exemption.

Tax Year = the Tax Year of the Town commencing each December 1 and ending the following November 30, commencing December 1, 2024.

#### Tax Year

1	40.0% Normal Tax Due on X
2	44.0% Normal Tax Due on X
3	48.0% Normal Tax Due on X
4	52.0% Normal Tax Due on X
5	56.0% Normal Tax Due on X
6	60.0% Normal Tax Due on X
7	64.0% Normal Tax Due on X
8	68.0% Normal Tax Due on X
9	72.0% Normal Tax Due on X
10	76.0% Normal Tax Due on X
11	80.0% Normal Tax Due on X
12	84.0% Normal Tax Due on X
13	88.0% Normal Tax Due on X
14	92.0% Normal Tax Due on X
15	96.0% Normal Tax Due on X
16 and thereafter	100% Normal Tax Due on X

The tax benefits provided for in this subsection shall be deemed to commence on the Abatement Commencement Date. In no event shall the Lessee be entitled to receive real property tax benefits due to the Project under the Lease and Project Agreement for a period longer than the period set forth in the formula immediately above. Notwithstanding the foregoing schedule, the Lessee further covenants and agrees that for any period that the Agency continues to hold a leasehold interest in the Facility after the Abatement Termination Date, the Lessee shall pay 100% of the Normal Tax Due on X together with any special assessment and services charges relating to the Facility whichever may be imposed for special district improvements in accordance with the provisions of the Lease and Project Agreement.

JB 3/8/24

## Exhibit A

## Tax Savings for properties with physical addresses of:

February 26, 2024

525 Smith St. Farmingdale, NY 11735 0100 006.00 01.00 014.000	23740
535 Smith St. Farmingdale, NY 11735 0100 006.00 01.00 013.000	20740
540 Smith St. Farmingdale, NY 11735 0100 006.00 01.00 025.000	30880
590 Smith St. Farmingdale, NY 11735 0100 006.00 01.00 029.000	28740
595 Smith St. Farmingdale, NY 11735 0100 006.00 01.00 012.000	92510
160 Finn Ct. Farmingdale, NY 11735 0100 006.00 01.00 010.000	33310
Assuming:	
Assessed Value of:	229920
2023 - 2024 Tax without Exemption	725,254
Tax Rate of:	309.3965
Rate Increment of:	2.00%
PILOT number of years	15
Abatements starting at	60%

Number of Years	Abatement %	PILOT %	Estimated Taxes To be Paid	Estimated Savings
1	60.0%	40.0%	\$ 309,824	\$ 443,900
2	56.0%	44.0%	345,905	422,600
3	52.0%	48.0%	383,344	400,250
4	48.0%	52.0%	422,148	376,850
5	44.0%	56.0%	462,357	352,350
6	40.0%	60.0%	503,975	326,750
7	36.0%	64.0%	547,114	299,950
8	32.0%	68.0%	591,784	271,950
9	28.0%	72.0%	637,988	242,700
10	24.0%	76.0%	685,849	212,200
11	20.0%	80.0%	735,374	180,350
12	16.0%	84.0%	786,571	147,200
13	12.0%	88.0%	839,569	112,600
14	8.0%	92.0%	894,377	76,550
15	4.0%	96.0%	951,005	39,050
Estimate Taxes to be paid			\$ 9,097,184	
Estimated Savings				\$ 3,905,250

HB  
3/8/24



**SCHEDULE A**

**Agency's Fee Schedule**

JB  
3/8/24

## Schedule A

**D'Addario & Company, Inc.**  
**525, 535, 540, 590, 595 Smith St.**  
**160 Finn Ct.**  
**Farmingdale, NY 11735**

2/26/2024

<b>Application Fee</b>	\$ 5,000
<b>Estimated Public Hearing Notice</b>	\$ 1,200

**Straight Lease**

1.25% of hard costs + 1% of est. savings

540 Smith St. Acq. & Impr.	\$ 8,475,000	1.25%	\$ 105,938
Woodwinds Building Costs	\$ 1,468,430	1.25%	\$ 18,355
Woodwinds Relocation	\$ 1,200,000	1.25%	\$ 15,000
590 Smith St. Extension	\$ 4,237,922	1.25%	\$ 52,974

(From Attachment 2)

**Total Project Cost:** \$15,381,352

**Estimated Savings** \$ 3,965,625 1% \$ 39,660  
 (See below)

0.75% of FMV of existing buildings (all excl. 540 Smith St.)

AV	Uniform % of Value	Fair Market Value	Rate	
23,740	0.0066	\$ 3,596,970	0.75%	\$ 26,980
20,740	0.0066	\$ 3,142,424	0.75%	\$ 23,570
28,740	0.0066	\$ 4,354,545	0.75%	\$ 32,660
92,510	0.0066	\$ 14,016,667	0.75%	\$ 105,120
33,310	0.0066	\$ 5,046,970	0.75%	\$ 37,850

**Estimated Closing fee** **\$458,107**

**Total Estimated Fees** **\$464,307**

**Estimated Savings**

	Amount	Rate	Savings
(Ex. A) Est PILOT			\$3,905,250
(p. 16) Est Mtg Rec	\$ -	0.75%	\$ -
(p. 16) Est Sales Tax	\$ 700,000	8.625%	\$ 60,375
<b>Total Estimated Savings</b>			<b>\$3,965,625</b>

\* Plus an Annual Reporting / Compliance fee of \$1,000 per year for the duration of the PILOT

Applicant is responsible for all legal fees at closing, which include both local and project counsel. Attorney fees will be based on hourly charges of IDA Project Counsel and IDA Local Counsel.

*JB 3/8/24*

**SCHEDULE B**

**Agency's Recapture Policy**



## SCHEDULE B

**Recapture of Agency Benefits.** It is understood and agreed by the parties hereto that the Agency is entering into this Lease Agreement in order to provide financial assistance to the Company for the Facility and to accomplish the Public Purposes of the Act. In consideration therefor, the Company hereby agrees as follows:

(a) If there shall occur a Recapture Event after the date hereof, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, the following amounts:

(i) one hundred percent (100%) of the Recaptured Benefits (as defined below) if the Recapture Event occurs within the first five (5) years after the date hereof;

(ii) eighty percent (80%) of the Recaptured Benefits (as defined below) if the Recapture Event occurs during the sixth (6th) year through and including the eighth (8th) year after the date hereof;

(iii) sixty percent (60%) of the Recaptured Benefits (as defined below) if the Recapture Event occurs during the ninth (9th) year after the date hereof;

(iv) forty percent (40%) of the Recaptured Benefits (as defined below) if the Recapture Event occurs during the tenth (10th) year after the date hereof; or

(v) twenty percent (20%) of the Recaptured Benefits (as defined below) if the Recapture Event occurs during the eleventh (11th) year after the date hereof.

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

- (i) Mortgage Recording Tax Exemption savings, if any; and
- (ii) Sales Tax Exemption savings realized by or for the benefit of the Company, 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 (the "**Company Sales Tax Savings**"); and
- (iii) real property tax abatements granted pursuant to Section 5.1 hereof (the "**Real Property Tax Abatements**");

which Recaptured Benefits from time to time shall upon the occurrence of a Recapture Event in accordance with the provisions of subsection (c) below and the declaration of a Recapture Event by notice from the Agency to the Company be payable directly to the Agency or the State of New York if so directed by the Agency within ten (10) days after such notice.

JB  
3/8/24

- (a) The term "**Recapture Event**" shall mean any of the following events:
- (1) sale or closure of the Facility;
  - (2) a material violation of the terms and conditions of the Company Documents which remains uncured after any applicable grace periods;
  - (3) a material misrepresentation made by the Company or the Sublessee and contained in the application for Financial Assistance, any Transaction Documents or any other materials delivered pursuant to the Transaction Documents;
  - (4) the Company or Sublessee shall have liquidated its operations and/or assets at the Facility (absent a showing of extreme hardship);
  - (5) the Company or Sublessee shall have ceased all or substantially all of its operations at the Facility (whether by relocation to another facility or otherwise, or whether to another facility either within or outside of the Town) through no force majeure event;
  - (6) the Company or Sublessee shall have transferred all or substantially all of its employees within the Town to a location outside of the Town through no force majeure event;
  - (7) the Company or Sublessee shall have subleased all or any portion of the Facility in violation of the limitations imposed by the Transaction Documents, without the prior written consent of the Agency;
  - (8) the Company, the Sublessee and/or Affiliates of the foregoing shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Facility without the prior written consent of the Agency;
  - (9) the failure by the Company to complete the Project on or before the Completion Date substantially in accordance with the Plans and Specifications and the Project Budget;
  - (10) the Company, the Sublessee and/or any Affiliates of the foregoing shall have failed to maintain the number of FTEs at or above specific thresholds as described herein absent a showing of hardship; and
  - (11) the Company receives Company Sales Tax Savings in connection with the Project Work in excess of the Maximum Company Sales Tax Savings Amount; provided, however, that the foregoing shall constitute a Recapture Event with respect to such excess Company Sales Tax Savings only. It is further provided that failure to repay the Company Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recaptured Benefits.

JB  
3/8/24



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

(c) Furthermore, notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a result of (i) a "force majeure" event (as more particularly defined in Section 10.1(b) hereof), (ii) a taking or condemnation by governmental authority of all or part of the Facility, or (iii) the inability or failure of the Company after the Facility shall have been destroyed or damaged in whole or in part (such occurrence a "Loss Event") to rebuild, repair, restore or replace the Facility to substantially its condition prior to such Loss Event, which inability or failure shall have arisen in good faith on the part of the Company or any of its Affiliates so long as the Company or any of its Affiliates have diligently and in good faith using commercially reasonable efforts pursued the rebuilding, repair, restoration or replacement of the Facility or part thereof.

(d) The Company covenants and agrees to furnish the Agency with written notification within thirty (30) days of actual notice of any facts or circumstances which would likely lead to a Recapture Event or constitute a Recapture Event hereunder. The Agency shall notify the Company of the occurrence of a Recapture Event hereunder, which notification shall set forth the terms of such Recapture Event.

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

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

The obligations of the Company under this Section 5.4 shall survive the termination or expiration of this Lease Agreement for any reason whatsoever. The Agency, in its sole discretion and in furtherance of the purposes of the Act, may waive, the payment of Recaptured Benefits in whole or in part, for good cause shown.

JB  
3/8/24



617.20  
Appendix B  
Short Environmental Assessment Form

**Instructions for Completing**

**Part 1 - Project Information.** The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

<b>Part 1 - Project and Sponsor Information</b>			
Name of Action or Project: D'Addario Campus Project			
Project Location (describe, and attach a location map): 595, 590, 540, 535, 525 Smith Street and 160 Finn Court, Farmingdale, New York 11735			
Brief Description of Proposed Action:  D'Addario is contemplating various uses for these locations. Those uses include, but are not limited to, relocating our Woodwinds business from California to Long Island, expanding our warehouse and manufacturing capabilities at 590 Smith Street and the purchase of 540 Smith Street.			
Name of Applicant or Sponsor: D'Addario & Company, Inc.		Telephone: [REDACTED] E-Mail: [REDACTED]	
Address: 595 Smith Street			
City/PO: Farmingdale		State: NY	Zip Code: 11735
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO  YES ✓
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval: Town of Babylon ZBA - parking variance for 160 Finn Court			NO  YES ✓
3.a. Total acreage of the site of the proposed action?		.94 acres	
b. Total acreage to be physically disturbed?		0 acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		9.07 acres	
4. Check all land uses that occur on, adjoining and near the proposed action. <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input checked="" type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____ <input type="checkbox"/> Parkland			

5. Is the proposed action, a. A permitted use under the zoning regulations?	NO	YES	N/A
		✓	
b. Consistent with the adopted comprehensive plan?			✓
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
			✓
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO	YES	
	✓		
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
	✓		
b. Are public transportation service(s) available at or near the site of the proposed action?			✓
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	✓		
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____	NO	YES	
			✓
10. Will the proposed action connect to an existing public/private water supply? [If Yes, does the existing system have capacity to provide service? <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES] If No, describe method for providing potable water: _____	NO	YES	
			✓
11. Will the proposed action connect to existing wastewater utilities? [If Yes, does the existing system have capacity to provide service? <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES] If No, describe method for providing wastewater treatment: _____	NO	YES	
			✓
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	NO	YES	
	✓		
b. Is the proposed action located in an archeological sensitive area?			✓
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO	YES	
	✓		
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____			✓
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES	
	✓		
16. Is the project site located in the 100 year flood plain?	NO	YES	
	✓		
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES	NO	YES	
			✓
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: _____ Storm water will be discharged into existing storm drains. _____			

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____	NO	YES
	✓	
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____	NO	YES
	✓	
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: <u>540 Smith Street has been subject to remediation and oversight by the NYSDEC since approx</u>	NO	YES
		✓
<b>I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</b>		
Applicant/sponsor name: <u>John D'Addario, III</u>		Date: <u>February 22, 2024</u>
Signature: <u>[Signature]</u>		

**Part 2 - Impact Assessment.** The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?		
2. Will the proposed action result in a change in the use or intensity of use of land?		
3. Will the proposed action impair the character or quality of the existing community?		
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?		
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?		
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?		
7. Will the proposed action impact existing:		
a. public / private water supplies?		
b. public / private wastewater treatment utilities?		
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?		
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?		



	No, or small impact may occur	Moderate to large impact may occur
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?		
11. Will the proposed action create a hazard to environmental resources or human health?		

**Part 3 - Determination of significance.** The Lead Agency is responsible for the completion of Part 3. For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

- ☐ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
- ☐ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

\_\_\_\_\_  
Name of Lead Agency

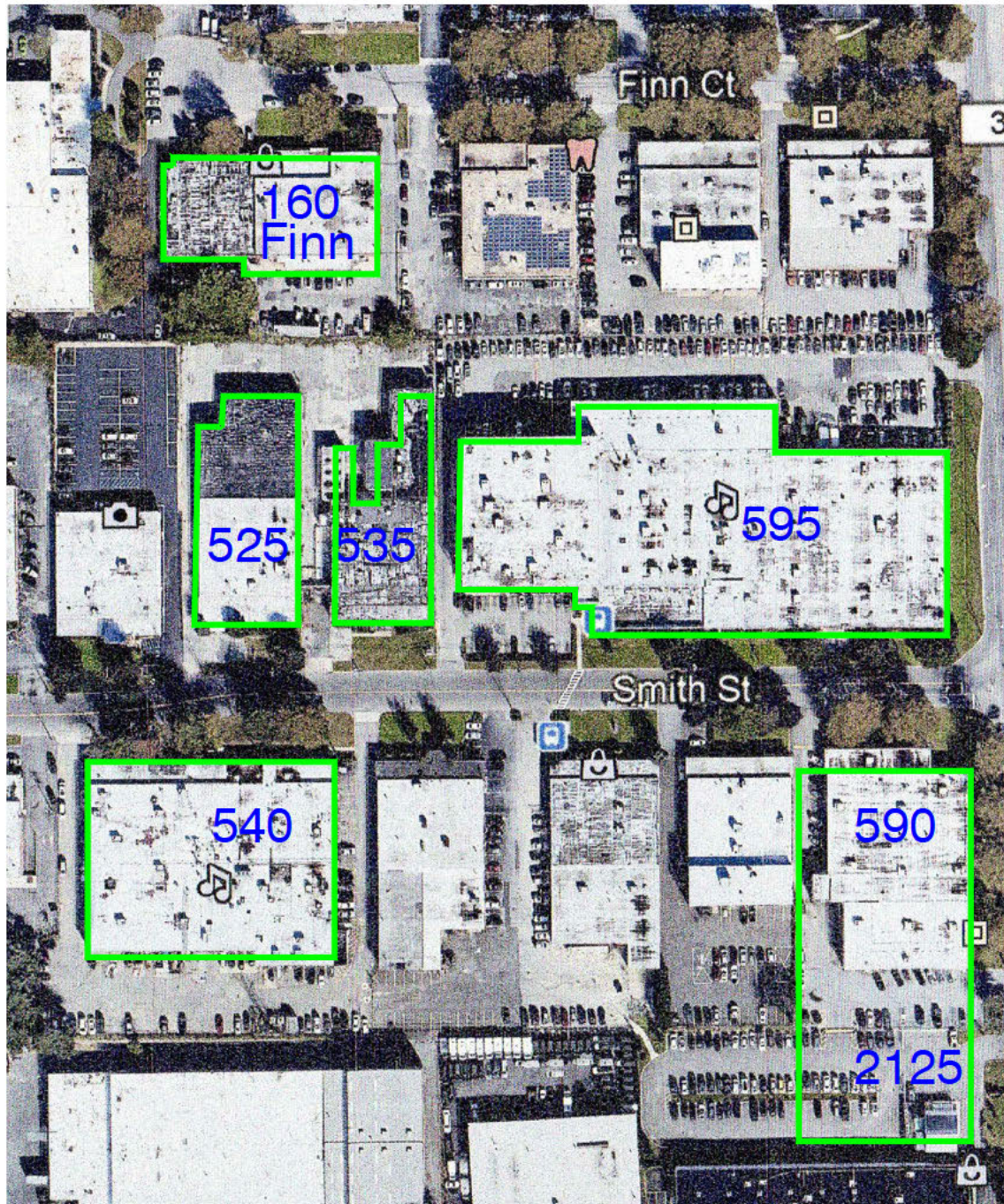
\_\_\_\_\_  
Date

\_\_\_\_\_  
Print or Type Name of Responsible Officer in Lead Agency

\_\_\_\_\_  
Title of Responsible Officer

\_\_\_\_\_  
Signature of Responsible Officer in Lead Agency

\_\_\_\_\_  
Signature of Preparer (if different from Responsible Officer)



## Additional Sheet for D'Addario Application

Attachment 1, Section A

Address of properties to receive benefits:

595 Smith Street – please see application for Tax Map Information, etc.

590 Smith Street

Tax Map District Number: 0100  
Section: 006.00  
Block: 01.00  
Lot: 029.00  
Acreage: 4.0  
Square feet of building: 27,778

540 Smith Street

Tax Map District Number: 0100  
Section: 006.00  
Block: 01.00  
Lot: 025.00  
Acreage: 2.26  
Square feet of building: 46,025

525 and 535 Smith Street

Tax Map District Number: 0100  
Section: 006.00  
Block: 01.00  
Lots: 013.000 and 014.00  
Acreage: 1.87  
Square feet of building: 16,577

160 Finn Court

Tax Map District Number: 0100  
Section: 006.00  
Block: 01.00  
Lot: 010.00  
Acreage: .94  
Square feet of building: 21,907



Attachment 2, Part III – Project Costs:

540 Smith Street

Acquisition	\$7,250,000
Capital Improvements	
Surveillance/NVR Unit upgrade	\$40,000
Install LED Lighting - Evans production area upgrade	\$100,000
Cafeteria upgrade	\$65,000
Electrical upgrade	\$65,000
Parking lot - paving	\$120,000
Windows - exterior window replacements	\$90,000
Roof - new mod/bit roof	\$225,000
Epoxy floor coating - Evans	\$65,000
New roof top HVAC units	\$425,000
Miscellaneous improvements - Unplanned Expenses	\$30,000

**Grand total 540 Smith Street Acquisition & Improvements**

**\$8,475,000**

D'Addario Woodwinds Relocation – Building Costs:

160 Finn Court:

<u>Building Renovation &amp; Site Work</u>	
Automatic overhead doors	\$49,485
Plumbing/air lines	\$55,500
Dust collection	\$265,000
Com-Bell - Cat6 wiring	\$4,500
Electric -Corkrey	\$125,000
Plumbing - HVAC & Dust collection	\$40,000
Surveying	\$17,500
Fogging humidity control system	\$60,000
Compressors	\$75,000
Dock loading bay construction	\$150,000
Electrical purchases	\$12,500
Structural Engineer consulting	\$5,000
Town of Babylon	\$6,445
Dynaire - HVAC, Dust duckwork	\$200,000
Misc. purchases	\$7,500
IT Expenses	\$250,000
<b>160 Finn Court Total</b>	<b>\$1,323,430</b>

#### 590 Smith Street

Fogging Humidity Control System	\$65,000
Warehouse Racking	\$25,000

**Total 590 Smith Street** **\$70,000**

#### 595 Smith Street

Pultrusion (Synthetic Reed)	\$75,000
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**Total 595 Smith Street** **\$75,000**

**Grand Total Woodwinds Building Costs** **\$1,468,430**

#### D'Addario Woodwinds Facility Relocation – Employee and Other Costs:

Airfare	\$74,844
Hotel	\$106,262
Employee Relocation Cost	\$40,133
Employee training	\$116,118
Freight	\$71,350
Project Management Costs	\$242,543
Supplies and Equipment	\$64,301

**Grand Total Woodwinds Relocation** **\$1,200,000**

#### 590 Smith Street Extension – Building Costs (based on 2021 bids/prices)

General Contractor	\$18,000
Excavation	\$40,000
Demolition and Carting	\$22,500
Carpentry	\$265,000
Masonry	\$170,000
Steel	\$680,000
Roofing	\$139,000
Door frames and hardware	\$15,000
Roll up doors	\$12,500
EIFS – Exterior Insulation Facial System	\$86,500
Windows	\$125,000
Canopy	\$7,500
Carpet tile	\$10,000
Paint	\$58,000
Concrete	\$460,000
Toilet partitions	\$7,500
Mechanical	\$240,000
Plumbing	\$250,000
Electrical	\$179,000
Lighting fixtures	\$30,000
Fire sprinklers	\$208,000
Fire alarm	\$50,000

Dock leveler	\$12,000
Dock seal	\$5,000
Exterior Site Work	\$230,000
- Demolition/Carting	
- Excavation	
- Concrete	
- Drainage/Grading	
- Sidewalk/Curbs/Pads	
- Asphalt	
- Site Work DOT	
- Site lighting	
Insurance	\$65,000
Contingency	\$850,000
<b>Grand Total 590 Smith Street Extension</b>	<b>\$4,237,922</b>



### Attachment 3, Part VII

Question 2(a): On or about November 23, 2022, D'Addario notified the Long Island Area Office of the Occupational Safety and Health Administration ("OSHA") that an employee had been injured at our 590 Smith Street location. After responding to various inquiries from OSHA, D'Addario was not cited for any violations and no fine was assessed against our company. Notwithstanding the above result, we are disclosing this incident in light of the interaction between D'Addario and OSHA.

## PURCHASE AND SALE AGREEMENT

**THIS PURCHASE AND SALE AGREEMENT** (the "**Agreement**") is made this 21 day of April, 2023 (the "**Effective Date**") by **MINMILT REALTY CORP**, a New York corporation ("**Seller**"), and Rico Corporation d/b/a D'Addario Woodwinds, a California corporation ("**Buyer**") [**NAME OF BUYER TO FOLLOW**].

### BACKGROUND

**WHEREAS**, Buyer is an affiliate of D'Addario & Co., Inc. f/k/a J. D'Addario, Inc. (the "**Tenant**"), the existing tenant at the Property pursuant to that certain lease dated November 4, 1997 (as amended collectively, the "**Lease**")

**WHEREAS**, The Town of Babylon Industrial Development Agency (the "**Agency**") is the title holder of those certain lots or parcels located at 540 Smith Street, Farmingdale, New York, as more particularly described in **Exhibit "A"** attached hereto and made a part hereof (the "**Land**"), also known as District 100, Section 6, Block 1, Lot 25, as improved with the Existing Improvements (as hereinafter defined) pursuant to that certain Deed dated February 26, 2009, made by Seller in favor of the Agency.

**WHEREAS**, the Property is benefited by the Payment In Lieu of Taxes program ("**PILOT**") through the Agency.

**WHEREAS**, Seller is the beneficial owner of the Property pursuant to the reversionary rights contained in the IDA Deed that certain Overlease Agreement dated February 26, 2009 by and between Agency and Seller, as Sublandlord, as amended by that certain First Amendment to Overlease Agreement dated December 19, 2013 by and between the Agency and Seller (collectively, the "**Overlease Agreement**"), whereby the Agency, pursuant to the provisions of the Overlease Agreement, leased to Seller the Agency's interest in the Property or Premises (as those terms are hereinafter defined). Subject to the terms and conditions of this Agreement, Seller shall convey fee title to the Property to Buyer.

**WHEREAS**, the Agency has expressed its willingness to convey the Property to Seller in conjunction with the conveyance of the Property to Buyer. Notwithstanding the foregoing, as a primary condition precedent to Seller's and Buyer's performance hereunder, fee title to the Property must be conveyed by Agency to Seller via delivery of a deed (the "**IDA Deed Conveyance**").

**WHEREAS**, Buyer and Seller understand and agree that pursuant to the terms of the Overlease and the IDA Deed, as well as IDA regulations and protocols, that the Buyer or its affiliate is required to re-apply to the IDA for a continuation or renewal of IDA benefits, including, without limitation, the PILOT, to become effective upon the occurrence of the IDA Deed Conveyance, and as such, notwithstanding anything to the contrary contained herein, Buyer's performance under this Agreement shall be conditioned and contingent upon the Property and Buyer receiving IDA benefits a more particularly set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. **SALE OF PREMISES.** Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, subject to the terms, covenants and conditions set forth herein, fee title to the Property, including, without limitation, the following (for purposes hereof, the terms "**Property**" and "**Premises**" are interchangeable and mean collectively the Land, the Real Property, the Unpaid Awards, the Lease, the Tangible Personal Property and the Intangible Personal Property as those terms are defined in this Agreement):

A. **Land.** All of Seller's right, title and interests in the Land, including: (1) all buildings and improvements constructed on the Land (the "**Existing Improvements**"), (2) all rights, benefits, privileges, easements, tenements, hereditaments, rights-of-way and other appurtenances thereon or in any way appertaining thereto, including all mineral rights, development rights, air and water rights, (3) all strips and gores and any land lying in the bed of any street, road or alley, open or proposed, adjoining such Land (collectively, the "**Real Property**"); and (4) unpaid awards for any taking by condemnation or any damage to the Real Property by reason of a change of grade of any street or highway ( "**Unpaid Awards**")

B. **Leases.** All of the Seller's leasehold interest in and to the Lease;

C. **Tangible Personal Property.** All of the equipment, machinery, furniture, furnishings, supplies and other tangible personal property, if any, owned by Seller and now or hereafter located on and used exclusively in the operation, ownership or maintenance of the Real Property (collectively, the "**Tangible Personal Property**"), but specifically excluding from the Tangible Personal Property (1) any items of personal property owned by tenants of the Real Property, (2) any items of personal property in Seller's property management office, if any, located on the Real Property, (3) any items of personal property owned by third parties and leased to Seller, and (4) proprietary computer software, systems and equipment and related licenses used in connection with the operation or management of the Premises; and

D. **Intangible Personal Property.** To the extent assignable at no material cost to Seller and to the extent in Seller's possession, all intangible personal property, if any, owned by Seller and related to the Real Property and the Existing Improvements, such as any trade names and trademarks associated with the Real Property and the Existing Improvements; any plans and specifications and other architectural and engineering drawings for the Existing Improvements; any warranties; any service contracts and other contract rights related to the Premises (but only to the extent Seller's obligations thereunder are expressly assumed by Buyer pursuant to the Assignment of Contracts as defined below); and any governmental permits, approvals and licenses (including any pending applications) (collectively, the "**Intangible Personal Property**").

2. **PURCHASE PRICE.** Buyer shall pay in exchange for the fee title interest to the Premises SEVEN MILLION TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$7,250,000.00) (the "**Purchase Price**").

3. **MANNER OF PAYMENT OF PURCHASE PRICE.** The Purchase Price shall be paid



in the following manner:

A. **Deposit.** Within three (3) business days following the Effective Date, Buyer shall deliver to Braunstein Turkish LLP ("**Escrow Agent**") by wire transfer to an IOLA account designated by Escrow Agent SIX HUNDRED TWENTY FIVE THOUSAND AND 00/100 DOLLARS (\$625,000.00) (together with all interest thereon, the "**Deposit**"). The Deposit shall be held by Escrow Agent in accordance with Section 17 until consummation or termination of this Agreement. If the Closing is completed hereunder, on the Closing Date, Escrow Agent shall pay the Deposit to Seller, which sum shall be credited against the Purchase Price at Closing. In the event Buyer fails to tender the Deposit as required pursuant to this Section 3.A, Seller shall deem this Agreement null and void and of no further force and effect.

B. **Payment of Balance of Purchase Price.** At the Closing, Buyer shall pay to Seller the Purchase Price (subject to adjustments and apportionments set forth in this Agreement and less the Deposit) by wire transfer of immediately available federal funds.

C. **Investigation.** Buyer shall have a period commencing on the Effective Date and expiring at 5:00 P.M. Eastern Time on the forty-fifth (45<sup>th</sup>) day following the Effective Date (such period being referred to herein as the "**Investigation Period**") to inspect the Premises at Buyer's sole cost and expense, as more particularly described in this Section 4. During the Investigation Period, Buyer shall have the right to enter upon the Premises to inspect, examine, survey, test and/or cause one or more surveyors, attorneys, engineers, architects, environmental consultants, contractors, inspectors and/or other experts of Buyer's choice to inspect, examine, survey, appraise and otherwise do that which, in Buyer's sole and absolute discretion, is reasonably necessary for Buyer to satisfy itself with regard to the condition of the Premises, including without limitation, review of title, zoning, surveys, and building codes and other governmental requirements; provided, however, in no event shall Buyer conduct any invasive tests or studies, including, without limitation, core drilling, a so-called "Phase II" report or soil or groundwater sampling, without the prior written consent of Seller in each instance (the "**Investigation**"). To facilitate Buyer's Investigation, Seller agrees to make available to Buyer and its agents all of the information and data held or managed by Seller's environmental agent, PW Grosser, and will instruct PW Grosser to cooperate with and respond to any questions or requests posed to them by Buyer's agents. Such right to conduct the Investigation and the exercise of such right shall not constitute a waiver by Buyer of the breach of any representation, warranty, covenant or agreement of Seller which might, or should, have been disclosed by such Investigation. If, at any time prior to the expiration of the Investigation Period, Buyer determines, for any reason or no reason, in its sole, absolute and unreviewable subjective discretion, that it is not satisfied for any reason with the results of the Investigation, and notifies Seller in writing of its election to terminate this Agreement prior the expiration of the Investigation Period, this Agreement shall automatically become null and void, Escrow Agent shall promptly return the Deposit to Buyer, and all of the parties to this Agreement shall be released from any and all further obligation or liability hereunder, except for those obligations that expressly survive the Closing (the "**Surviving Obligations**").

D. **Conditions of Entry.** Prior to any entry upon the Premises by any auditor working for Buyer as permitted by this Section 4, or under another provision of this Agreement, Buyer shall obtain, and shall maintain so long as Buyer intends to enter upon the Premises, and shall cause all

consultants, contractors and other representatives to maintain, commercial general liability insurance coverage, written on an occurrence basis, for damage to property and injury to persons, including death, with minimum limits of \$2,000,000.00 for each type of coverage. The insurance coverages maintained by Buyer's affiliate as Tenant under the Lease shall suffice to meet Buyer's insurance obligations hereunder. Seller, its property manager, and its mortgagee, shall be named additional insureds under such coverage, and Buyer shall furnish Seller with certificates evidencing such coverage upon request. In addition, Buyer agrees to repair any physical damage to the Premises caused by Buyer's or Buyer's agents', representatives' or employees' entry onto the Premises, except that Buyer shall not be responsible for the mere discovery or exacerbation of any existing condition. Buyer shall conduct its Investigation in a manner that does not unreasonably interfere with the operation of any Tenant's business at the Premises. Any liens against the Premises, or any portion thereof, arising from the performance of services by Buyer's Representatives (as hereinafter defined) in connection with Buyer's inspection activities shall be removed by Buyer as promptly as practicable and in any event not later than thirty (30) business days after Buyer shall have been notified of the filing of such liens. The provisions of this Section 4(b) shall survive the Closing or any termination of this Agreement.

E. **Indemnity.** Buyer shall indemnify, defend and hold Seller harmless from and against any and all expenses, claims, losses, costs and liabilities (including reasonable attorneys fees) arising from, caused by or incurred in connection with Buyer's or Buyer's Representatives entry upon the Premises; provided, however, that Buyer shall not be required to indemnify Seller if and to the extent that any such expense, claim, loss, cost or liability was caused by or resulted from (i) the negligence of Seller, its employees or its agents or (ii) any pre-existing conditions, matters or circumstances merely discovered or exacerbated by Buyer in connection with the Investigation (i.e., latent environmental contamination). For the purposes of this Agreement, the term "Buyer's Representatives" shall mean, collectively, Buyer's agents, employees, consultants, inspectors, appraisers, engineers, attorneys, lenders, accountants and contractors. The foregoing indemnity, defense and hold harmless agreement shall survive Closing or the termination of this Agreement.

#### 4. **TITLE.**

A. **Title Report.** Upon execution of this Agreement, Buyer shall promptly order (i) a title report and commitment (the "**Title Report**") to issue an owner's policy of title insurance with respect to the Premises from a reputable title company in New York (the "**Title Company**"). Upon receipt of the Title Report, Buyer shall arrange for the Title Company to furnish to Seller's attorney a copy of the Title Report. Within ten (10) business days of Buyer's receipt of the Title Report, Buyer or its counsel shall notify Seller's attorney in writing (the "**Title Objections Notice**") of any conditions, defects, liens, encumbrances or other items appearing as exceptions in the Title Report or Survey (as hereinafter defined) which are unsatisfactory to Buyer (hereinafter referred to as "**Title Objections**"). Subject to the Mandatory Cure Items, Buyer waives the right to object to any matters not included in the Title Objections Notice and Buyer agrees to close subject thereto. Within five (5) days after receipt of the Title Objections Notice, Seller shall notify Buyer of which Title Objections Seller is unable or unwilling to cure (the "**Response Notice**"); provided, however, Seller's failure to notify shall be deemed Seller's election not to cure any Title Objections (other than **Mandatory Cure Items** (as hereinafter defined)). Within ten (10) days after receipt of the Response Notice or deemed election not to cure, but in no event later than the end of the

Investigation Period (as hereinafter defined), Buyer shall either (1) waive such Title Objections that Seller is unable or unwilling to cure, or (2) terminate this Agreement by giving written notice thereof to Seller, in which event the Escrow Agent shall refund the Deposit to Buyer, this Agreement shall be null and void and neither of the parties shall have any further obligations or liability under this Agreement, except for the Surviving Obligations. Failure to give notice of either election shall constitute Buyer's waiver of the Title Objections. Notwithstanding anything in this Agreement to the contrary, Seller shall be required to remove on or before the Closing Date, by payment, bonding, posting an escrow with Title Company (reasonably satisfactory to Title Company) or otherwise, the following ("**Mandatory Cure Items**"): (i) any mortgages which have been recorded by Seller against the Premises, (ii) any exceptions or encumbrances that can be removed by a payment of a liquidated sum, provided the Seller's cost to remove such exceptions or encumbrances does not exceed the Cap (as hereinafter defined) (iii) except to the extent same are the responsibility of any Tenant under its Lease, any judgment, lien, lis pendens, security interest, tax lien for delinquent taxes or mechanics liens (including should the Title Company take a general exception for mechanics liens) against Seller or the Property that is not otherwise described hereinabove provided the Seller's cost to remove such exceptions or encumbrances does not exceed the Cap.

B. **Status of Title.** Fee title to the Premises are to be conveyed free and clear of any liens, encumbrances, easements, restrictions and agreements, excepting only the Permitted Exceptions (hereinafter defined). "**Permitted Exceptions**" as used herein shall mean (i) all exceptions and other matters set forth on **Exhibit "B"** annexed hereto, (ii) any exceptions originally appearing in the Title Report which are not timely objected to in writing by Buyer to Seller, or which are objected to, but such objection is thereafter waived or deemed waived, (iii) such matters disclosed by a survey of the Premises, (iv) real estate taxes not yet due and payable, (v) the terms of any applicable laws, ordinances or other legal requirements, (vi) the standard pre-printed exceptions in the Title Report, (vii) the Lease and (viii) such other matters as are consented to or created by Buyer. Buyer shall not be entitled to object to, and shall be deemed to have approved, any liens, encumbrances or other title exceptions (and the same shall not constitute Title Objections, but shall instead be deemed to be Permitted Exceptions) (A) over which the Title Company is willing to affirmatively insure over (without additional cost to Buyer or where Seller pays such cost for Buyer), if approved by Buyer, which approval shall not be unreasonably withheld, conditioned or delayed or which will be omitted from Buyer's title insurance policy, or (B) which will be extinguished upon the transfer of the Premises (collectively, the "**Non-Objectable Encumbrances**"). Notwithstanding anything to the contrary contained herein, if Seller is unable to eliminate the Title Objections by the Closing Date, unless the same are waived by Buyer without any abatement in the Purchase Price, Seller may, from time to time, by written notice to Buyer, through and including the Closing Date adjourn the Closing Date (such date to which Seller adjourns the Closing Date is the "Adjourned Closing Date"), for a period not to exceed sixty (60) days in the aggregate (the "**Title Cure Period**"), in which event, Seller shall use good faith efforts to eliminate such Title Objections.

C. **New Title Objections.** If and to the extent any easements, declarations, plats or other instruments affecting the Property, or any other matter affecting title, shall become known to Buyer and which were filed after the issuance of Buyer's title commitment and not included in Buyer's title commitment and are not otherwise a Permitted Exception or Mandatory Cure Items, then



Buyer may notify Seller in writing of any of the foregoing of which Buyer disapproves (the "**New Title Objections**"). Seller shall notify Buyer in writing within ten (10) Business Days after Seller's receipt of Buyer's notice of any New Title Objection (but in any event prior to Closing) as to whether it will take all action necessary to effect a Seller's Cure with respect to any such New Title Objection at or prior to Closing. If Seller fails to so timely notify Buyer that it is willing to effect a Seller's Cure of any such New Title Objection, then Seller shall be deemed to have elected not to take such action, and Buyer shall have the right to terminate this Agreement, and if Buyer does not exercise its rights to terminate this Agreement by the expiration of the later of (a) ten (10) Business Days after the expiration of Seller's period to elect to cure or not to cure such matters and (b) the Closing Date, then any such New Title Objection shall be deemed to be a Permitted Exception. If Buyer elects to terminate this Agreement as a result of Seller's election (or deemed election) not to cure any New Title Objection or inability to cure any New Title Objection, then Escrow Agent shall promptly return the Deposit to Buyer and Seller shall reimburse Buyer for any expenses paid for its title search and survey, and thereupon, the parties will have no further rights or obligations under this Agreement, except for any obligations that expressly survive termination.

D. **Inability to Convey Title.** If Seller is unable to convey title at Closing in accordance with the requirements of this Agreement, Buyer shall have as its exclusive remedy the option:

- (1) Of taking such title to the Premises as Seller is able to convey without abatement of the Purchase Price; or
- (2) Of terminating Buyer's obligations under this Agreement, in which event the Escrow Agent shall refund the Deposit to Buyer and this Agreement shall be null and void and neither party shall have any further obligations hereunder, except for the Surviving Obligations.

E. **Violations.** To the extent it is the responsibility of Tenant under the terms of the Lease, Buyer agrees to purchase the Premises subject to any and all notes or notices of violations of law, or municipal ordinances, orders, designations or requirements whatsoever noted against the Premises or issued by any federal, state, municipal or other governmental department, agency or bureau or any other governmental authority having jurisdiction over the Premises (collectively, "**Buyer Violations**"), or any condition or state of repair or disrepair (including, but not limited to, open permits) or other matter or thing, whether or not noted, which, if noted, would result in a Violation being placed on the Premises. Seller shall have no duty to remove or comply with or repair any condition, matter or thing whether or not noted, which, if noted, would result in a Buyer Violation being placed on the Premises and Seller shall have no duty to remove or comply with or repair any of the aforementioned Buyer Violations, or other conditions, and Buyer shall accept the Premises subject to all such Buyer Violations, the existence of any conditions at the Premises which would give rise to such Buyer Violations, if any, and any governmental claims arising from the existence of such Buyer Violations, in each case without any abatement of or credit against the Purchase Price. Notwithstanding anything to the contrary contained herein, Buyer shall not be responsible for any other violations, which shall solely be the responsibility of Seller pursuant to the terms of the Lease (collectively, "**Seller Violations**"). The existence of Seller Violations shall not permit the Buyer to delay or fail to close provided at Closing Seller deposits with Escrow Agent a sum reasonably sufficient to cause the cure and removal of such Seller Violations within a reasonable time. Seller's obligations with regard to Seller Violations shall survive the Closing

hereunder. Notwithstanding anything to the contrary in the Agreement, Seller Violations shall not include the Consent Order and the SMP or any secondary documents related to the Consent Order or the SMP.

5. **CLOSING.** Closing on the sale of the Premises to Buyer (herein referred to as "**Closing**") shall take place through escrow closing with the Title Company acting as escrow closing agent, on or about December 31, 2023 (the "**Closing Date**"). The Closing shall take place through escrow whereby (i) the Purchase Price to be paid by Buyer shall be deposited with Escrow Agent, (ii) all of the documents required to be delivered by Seller and Buyer at Closing pursuant to this Agreement shall be delivered by the parties hereto in accordance with this Agreement, and (iii) at Closing, the Purchase Price and the Deposit shall be disbursed to Seller and the documents shall be delivered as provided hereunder to Seller and Buyer (as the case may be). Notwithstanding anything to contrary in this Agreement, if (i) the Agency denies or rejects the IDA Resolution or (ii) the Agency fails to issue the IDA Resolution on or before the Closing Date then, provided there is no default, either party may terminate this Agreement upon written notice. Upon such termination, the Deposit shall be returned to Buyer and neither party shall any obligation to the other except for those obligations that expressly survive termination.

6. **POSSESSION.** To the extent not already in Buyer's possession, possession of the Premises shall be given on the Closing Date.

7. **INTENTIONALLY OMITTED.**

8. **APPORTIONMENTS.** At Closing, the following shall be apportioned between Seller and Buyer as of 11:59 p.m. New York City time on the day immediately preceding the Closing Date (the "**Apportionment Date**") on the basis of the actual number of days of the month which shall have elapsed as of the Closing Date and based upon the actual number of days in the month and a 365-day year:

A. **Real Estate Taxes.** Real estate taxes shall not be apportioned as the Tenant is responsible for payment of all real estate taxes under the Lease.

B. **Service Contracts.** Seller has no service contracts that will survive Closing. All service contracts maintained by Tenant shall be deemed assumed by Buyer at Closing.

C. **Security Deposits.** Security deposits, including interest thereon, if any, of the Tenant in Seller's actual possession shall either be credited to Buyer or a segregated account containing such amounts shall be assigned to Buyer at Closing.

D. **Rentals.** All collected rentals and other charges paid by any of the Tenant, and all other income from the Premises, and all collected charges for real estate taxes, insurance, parking charges, operating and maintenance expenses, common area maintenance expenses, electricity charges, percentage rent and other charges of a similar nature (if any) payable by Tenant of the Real Property other than base rent (collectively "**Additional Rent**"), shall be apportioned on a per diem basis as of the Closing Date.

E. **Utilities.** All gas, electricity, steam, water, sewer or other utility charges are the

responsibility of the Tenant and shall not be apportioned with the exception of PSEG electric for account 7142213421, which shall be paid by Seller to the date of Closing or prorated (based on meter readings taken at the time of Closing or if not taken, on prior bills received to be adjusted upon final billing);

F. **Delinquent Rentals.** Delinquent rentals, if any, shall not be pro rated at Closing. Buyer shall use good faith, reasonable efforts to collect rents and other charges not collected as of Closing. In the event that any such delinquent rentals are collected by Buyer after Closing, Buyer shall (upon receipt of such rentals) pay Seller the amount thereof allocable to the period prior to the Closing Date; provided, however, that all rents collected by Buyer on or after the Closing Date shall first be applied to all amounts due under the applicable Lease at the time of collection (*i.e.*, current rents and sums due Buyer as the current owner and landlord) with the balance (if any) payable to Seller, but only to the extent of amounts delinquent and actually due Seller. Buyer shall not have an exclusive right to collect the sums due Seller under the Lease or other revenue due Seller, and Seller hereby retains its rights to pursue claims against any tenant under the Lease or other party for sums due with respect to periods prior to the Closing which rights shall survive the Closing.

G. **Other Customary Apportionments.** Such other items as are customarily apportioned in real estate closings of commercial properties in the County of Suffolk, State of New York.

H. **Closing Costs.**

(a) At the Closing, Seller and Buyer shall execute, acknowledge, deliver and file all such returns as may be necessary to comply with all transfer tax laws of the State of New York (the "**Transfer Tax Laws**"). The transfer taxes payable pursuant to the Transfer Tax Laws shall collectively be referred to as the "**Transfer Taxes**". Seller shall pay (or cause to be paid) to the appropriate governmental authority the Transfer Taxes payable in connection with the transfer of the Premises to Buyer. Seller's obligations hereunder shall survive Closing should the taxing authorities ever raise any concerns about such returns.

(b) Seller shall be responsible for (i) the costs of its legal counsel, advisors and other professionals employed by it in connection with the sale of the Premises; (ii) the cost of preparation and recordation of any satisfactions and termination statements required under the other provisions of this Agreement to clear title to the Premises; and (iii) ½ of the escrow charges of Title Company at Closing.

(c) Buyer shall be responsible for: (i) recording fees for the Deed to convey title to Buyer, (ii) the costs and expenses associated with its inspections and investigations of the Premises; (iii) the costs and expenses of its legal counsel, advisors and other professionals employed by it in connection with the sale of the Premises; (iv) all premiums and fees for title examination and title insurance and endorsements obtained by Buyer and all related charges and survey costs in connection therewith and other costs or fees of the Title Company; (v) ½ of the escrow charges of Title Company at Closing; (vi) the recording and preparation fees for the IDA Deed Conveyance along with Agency's attorneys fees in connection with the IDA Deed Conveyance and (vii) any recording fees for any applicable documents (other than those for which

Seller is responsible) to be recorded in connection with the transactions contemplated by this Agreement.

(d) **Delayed Adjustment; Delivery of Operating and Other Financial Statements.**

If at any time following the Closing Date, the amount of an item listed in any of this Section 9 shall prove to be incorrect (whether as a result of an error in calculation or a lack of complete and accurate information as of the Closing), the party owing money as a result of such error or adjustment shall promptly pay to the other party the sum necessary to correct such error or make such adjustment upon receipt of proof of the same, provided that such proof is received by the party from whom payment is to be made on or before one (1) year after Closing (such period being referred to herein as the "**Post Closing Adjustment Period**").

9. **REPRESENTATIONS AND WARRANTIES.**

A. **Representations and Warranties of Seller.** Seller hereby warrants and represents to Buyer as follows:

(1) **Power to Perform.** Seller has or will have full power and authority to enter into and fulfill its obligations under this Agreement and to consummate the sale of the Premises and the execution, delivery and performance of this Agreement by Seller constitutes a valid and binding obligation of Seller in accordance with its terms.

(2) Seller shall cooperate in good faith to obtain the IDA Deed Conveyance (as hereinafter defined).

(3) Except the requirements of the Lease, no consent, waiver or approval by any other party is required in connection with the execution and delivery by Seller of this Agreement or the performance by Seller of the obligations to be performed by it under this Agreement or any instrument contemplated hereby.

(4) Except for the requirements of the Lease, neither the entering into of this Agreement nor the completion of such sale will constitute a violation or breach by Seller of any contract or other instrument to which Seller is a party or to which Seller is subject or by which any of Seller's assets or properties may be affected, or of any judgment, order, writ, injunction or decree issued against or imposed upon Seller, nor will the said sale result in a violation of any applicable law, order, rule, or regulation of any governmental authority.

(5) The Lease is in full force and effect and Seller has not received written notice that Seller is in default in any material respect under the Lease.

(6) **Leases and Contracts.** To Seller's actual knowledge, the only leases affecting the Premises following the IDA Deed Conveyance is the Lease. Buyer understands the Agency leases and subleases affecting the Premises shall cease and terminate upon the IDA Deed Conveyance. Following the IDA Deed Conveyance, there are no leases, tenancies or other material rights of occupancy with respect to the Property, or any portion thereof, other than pursuant to the Lease. The Lease is in full force and effect. Seller has not received written notice that Seller is in default in any material respect under any Leases. Seller has not delivered written notice to the Tenant that



Tenant is in default in any material respect in the performance of its obligations under its Lease.

(7) **Contracts**. To Seller's knowledge, the only service contracts for the maintenance and operation of the Premises are maintained by the Tenant ("**Contracts**").

(8) **Landmarking**. Seller has not received written notice of and to Seller's knowledge there are not any pending or threatened "landmarking" proceedings affecting the Property, or any part thereof.

(9) **Rights Exclusive**. Other than by reason of this Agreement or the fact that Agency is the existing title holder and except as set forth in the Lease, Seller has not provided any party with a purchase option or rights to acquire the Property, or any portion thereof nor has Seller filed any application or otherwise sought to directly or indirectly effect a rezoning of the Property, and Seller has not and will not transfer all or any portion of the air or other development rights appurtenant to the Property.

(10) **OFAC**. Seller is not acting, directly or indirectly for, or on behalf of, any person, group, entity or nation named by any Executive Order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, or nation pursuant to any Law that is enforced or administered by the Office of Foreign Assets Control, and is not engaging in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of, any such person, group, entity or nation.

(11) **Consent Order and SMP**. To Seller's knowledge, Seller is not in default of the Consent Order (defined below) or the SMP (defined below) and has performed all of its obligations thereunder, and further Seller has fully complied with and as of Closing shall have fully complied with all of its obligations to NYSDEC, including all obligations pursuant to the Consent Order and SMP referenced below in Section 18M.

(12) **No Threatened Release or Claims**. There has been no release or threatened release of Hazardous Materials at, on, under or from the Property, and further, there have been no Claims or threatened Claims arising out of or related to the use, handling, disposal, or presence of Hazardous Materials at, on, under or from the Property, except for the Release described in the Consent Order. (As used herein, "**Hazardous Materials**" means any material, waste, element, compound or chemical that is defined, listed or otherwise classified as a pollutant, toxic pollutant, toxic or hazardous waste, special waste, hazardous substance, or words of similar import under Environmental Laws (as defined herein), including petroleum and petroleum-based products, asbestos and asbestos-containing materials, and per- and polyfluoralkyl substances; and "**Claims**" includes enforcement actions by government or regulatory agencies and any allegations of personal injury, property damage or responsibility for environmental conditions.)

(13) **No Pending Applications**. Except as may have been submitted by the Tenant (including PILOT), Seller has made no application for any governmental approval related to the Property and nothing is pending.

B. **Limitations.** If after the expiration of the Investigation Period but prior to the Closing, Buyer obtains actual knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Buyer shall give Seller written notice thereof within five (5) business days of obtaining such knowledge (but, in any event, prior to the Closing). If, at or prior to the Closing, Seller obtains actual knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Seller shall give Buyer written notice thereof within five (5) business days of obtaining such knowledge (but, in any event, prior to the Closing). In either such event, Seller shall have the right (but not the obligation) to cure such misrepresentation or breach and shall be entitled to a reasonable adjournment of the Closing (not to exceed thirty (30) days) for the purpose of such cure. If Seller is unable to so cure any misrepresentation or breach of warranty, then Buyer shall have the right to either (a) waive such misrepresentations or breaches of representations and warranties and consummate the purchase of the Premises without any reduction of or credit against the Purchase Price, or (b) terminate this Agreement in its entirety by written notice given to Seller within five (5) business days after the earlier to occur of (i) the expiration of the thirty (30) day cure period (if elected by Seller) and (ii) receipt of notice from Seller that Seller is unable to cure any misrepresentation or breach of warranty, in which event this Agreement shall be terminated, the Deposit shall be returned to Buyer and, thereafter, neither party shall have any further rights or obligations hereunder except for Surviving Obligations. If any such representation or warranty is untrue, inaccurate or incorrect but is not untrue, inaccurate or incorrect in any material respect, Buyer shall be deemed to waive such misrepresentation or breach of warranty, and Buyer shall be required to consummate the purchase of the Premises without any reduction of or credit against the Purchase Price. If Buyer completes Closing notwithstanding Buyer having knowledge that any of Seller's representations or warranties are not correct, Buyer shall be deemed to have waived and released any rights with respect to the inaccuracy of such representation or warranty.

All references in this Agreement to "Seller's knowledge" or words of similar import shall refer only to the conscious actual knowledge of Richard Cole and shall not be construed to refer to the knowledge of any other member, officer, director, shareholder, employee, agent, property manager or representative of Seller, its partners or members (including without limitation Seller's counsel), or any affiliate of any of the foregoing, or to impose or have imposed upon Richard Cole any duty to investigate the matters to which such knowledge, or the absence thereof, pertains, including without limitation the contents of the files, documents and materials made available to or disclosed to Buyer or the contents of files maintained by Richard Cole. Seller further represents and warrants that Richard Cole is the only person on behalf of Seller with such knowledge of the matters set forth herein to make Seller's representations upon which Buyer is relying. There shall be no personal liability on the part of Richard Cole arising out of any representations or warranties made herein.

C. **No Survival.** The representations and warranties made by Seller in Section 9A shall not survive the Closing and shall be merged therein; provided, however, that Seller's representation set forth in Section 9A(11) are material to Buyer and thus shall survive the Closing for a period of three (3) years from the Closing Date. Notwithstanding the foregoing, Seller's liability with respect to any violation or breach of said representation and warranty set forth in Section 4A or 9A(11) shall be limited to the Cap. As used in this Agreement, the term "Cap" shall mean that any costs or liability incurred by Seller on account of any obligations, representations or warranties set

forth in Sections 4.A or 9A(11); provided, however, that the aggregate cost thereof does not exceed any out-of-pocket third-party costs of Seller in the amount of \$100,000.00 in the aggregate (not including, however, any legal or consulting fees that Seller may incur which shall be Seller's costs and not included in or part of the Cap).

D. **Representations and Warranties of Buyer.** Buyer hereby warrants and represents to Seller, none of which shall survive the Closing, that:

(1) **Power to Perform.** Buyer has the full power and authority to enter into and fulfill its obligations under this Agreement. The execution of this Agreement by Buyer constitutes the valid and binding obligation of Buyer in accordance with its terms. The individuals executing this Agreement on behalf of Buyer have been duly and properly authorized to do so. No consent, waiver or approval by any other party is required in connection with the execution and delivery by Buyer of this Agreement or the performance by Buyer of the obligations to be performed by it under this Agreement or any instrument contemplated hereby. Neither the entering into of this Agreement nor the completion of such purchase will constitute a violation or breach by Buyer of any contract or other instrument to which Buyer is a party or to which Buyer is subject or by which any of Buyer's assets or properties may be affected, or of any judgment, order, writ, injunction or decree issued against or imposed upon Buyer, nor will the said purchase result in a violation of any applicable law, order, rule, or regulation of any governmental authority.

(2) Buyer, for itself, shall cause the Tenant to cooperate in good faith to obtain the IDA Deed Conveyance and IDA Resolution.

(3) **ERISA.** Buyer is not a "plan" which is subject to ERISA, nor a "fiduciary" of any such "plan" nor an entity a holding "plan assets" of any such "plan" (as those terms are defined under ERISA) nor an entity whose assets are deemed to be "plan assets" under ERISA. Seller shall not have any obligation to close the transaction contemplated by this Agreement if the transaction for any reason constitutes a prohibited transaction under ERISA or if Buyer's representation is found to be false or misleading in any respect.

(4) **OFAC.** Buyer is not acting, directly or indirectly for, or on behalf of, any person, group, entity or nation named by any Executive Order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, or nation pursuant to any Law that is enforced or administered by the Office of Foreign Assets Control, and is not engaging in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of, any such person, group, entity or nation.

E. **Operations Prior to Closing.**

(1) **Leases.** Following the Effective Date, Seller shall not enter into any new leases or modify the Lease without the Buyer's consent.

(2) **Maintenance of Premises.** Subject to (i) ordinary wear and tear or (ii) damage or

destruction from casualty, Seller shall maintain, repair and operate the Premises in accordance with Seller's customary practices and procedures.

(3) **Contracts.** Prior to the Closing Date, Seller shall not enter into any Contract affecting the Premises which cannot be terminated prior to the Closing Date.

(4) **Insurance.** Seller shall continue to maintain its existing casualty insurance policies with respect to the Premises through Closing.

#### 10. **CONDITIONS PRECEDENT TO CLOSING.**

A. **Buyer's Conditions Precedent.** The obligation of Buyer to complete the purchase of the Premises from Seller in accordance with this Agreement is subject to satisfaction of each of the following conditions, any of which may be waived in whole or in part by Buyer on or prior to the Closing Date (collectively, the "**Closing Conditions**");

(1) **Seller's Representations and Warranties.** Each of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects, subject to Section 9.B but subject to Seller's right to update such representations and warranties as of the Closing Date pursuant thereto **provided, however**, that such update to modify such representations and warranties is due to a factual change occurring on or after the Effective Date and is not otherwise a breach or default by the Seller of this Agreement.

(2) **Compliance with Covenants.** Seller shall have performed and complied with all of the material terms, conditions and covenants required by this Agreement to be performed and complied with prior to or on the Closing Date, including, without limitation, Seller's obligations under the Consent Order and the SMP.

(3) **IDA Resolution.** The issuance of an inducement or other appropriate resolution and approval to be issued by the Agency whereby the Agency agrees, among other things, to (i) the conveyance of fee title to the Property back to Seller (the "**IDA Deed Conveyance**"), (ii) Buyer's continuation of the existing IDA project to which Buyer is a party as same pertains to the Buyer's operations conducted at the Property, (iii) granting to Buyer such other incentives and relief that Buyer has requested of the Agency in connection with Buyer's Town of Babylon Agency projects, and (iv) such other Agency approvals related to the foregoing (collectively, the "**IDA Resolution**"). Buyer will pay all costs and expenses related to the IDA Conveyance and IDA Resolution. Buyer shall, at all times, proceed diligently to obtain the IDA Deed Conveyance and IDA Resolution. Seller shall in good faith cooperate with Buyer's efforts to obtain the IDA Deed Conveyance and IDA Resolution.

If, on the Closing Date, all of the above conditions to Buyer's obligations have not been satisfied, Buyer's sole and exclusive option shall be to elect to either (1) waive such of those conditions as are unsatisfied and complete Closing without any reduction or abatement of the Purchase Price; or (2) terminate this Agreement and receive a refund of the Deposit, whereupon this Agreement shall, without any further action by Seller or Buyer, become null and void, and all



of the parties shall be released from any and all further obligation or liability hereunder, other than the Surviving Obligations.

(4) **Seller's Conditions Precedent.** The obligation of Seller to complete the sale of the Premises to Buyer in accordance with this Agreement is subject to satisfaction of each of the following conditions, any of which may be waived in whole or in part by Seller on or prior to the Closing Date:

**B. Buyer's Representations and Warranties.** Each of the representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects.

(1) **IDA Deed Conveyance and IDA Resolution.** The IDA Deed Conveyance and IDA Resolution have been obtained. (2) **Compliance with Covenants.** Buyer shall have performed and complied with all of the material terms, conditions and covenants required by this Agreement to be performed and complied with prior to or on the Closing Date, including payment of the Purchase Price. If, on the Closing Date, all of the above conditions to Seller obligations have not been satisfied, Seller's sole and exclusive option shall be to elect to either (1) waive such of those conditions as are unsatisfied and complete Closing; or (2) terminate this Agreement and exercise the remedies available to Seller under this Agreement.

#### 11. **CLOSING PROCEDURE.**

A. **Seller's Closing Documents.** At or before the Closing, Seller shall deliver to the Title Company, or cause to be delivered to the Title Company the following:

(1) A duly executed Bargain and Sale Deed With Covenant Against Grantor's Acts containing the statutory lien law provisions with respect to the Property (the "**Deed**") sufficient to convey to Buyer Seller's right, title and interest in and to the Property together with the ancillary recordation documents;

(2) The IDA Deed Conveyance documents sufficient to effectuate conveyance of fee title from the Agency to Seller;

(3) An assignment and assumption agreement for assignment of the Lease to Buyer, in the form attached hereto as **Exhibit "C"**.

(4) A form letter executed by Seller, in the form attached hereto as **Exhibit "D"**, advising the tenants of the Premises that the Premises has been conveyed to Buyer and directing such tenants to pay all rents and other charges to Buyer at an address to be designated by Buyer (a "**Notice to Tenants**");

(5) Documents of authority of Seller authorizing the transactions contemplated by this Agreement;

(6) Any other documents, instruments, records, correspondence or agreements called for hereunder which have not previously been delivered to Buyer;

- (7) A non-foreign status affidavit in the form of **Exhibit "E"** attached hereto and incorporated herein by this reference, as required by Section 1445 of the Internal Revenue Code, executed by Seller.
- (8) At the Closing, Seller shall execute, acknowledge, deliver and file all such returns as may be necessary to comply with all Transfer Tax Laws;
- (9) A closing statement setting forth the Purchase Price and the closing adjustments and prorations;
- (10) Such other documents as may be reasonably required by the Title Company or as may be agreed upon by Seller and Buyer to consummate the sale of the Premises;
- (11) With respect to any security deposits which are letters of credit, Seller shall, if the same may be assigned or quitclaimed by Seller, (i) deliver to Buyer at the Closing such letters of credit, (ii) execute and deliver such other instruments as the issuers of such letters of credit shall reasonably require, and (iii) cooperate with Buyer to change the named beneficiary under such letters of credit to Buyer, so long as Seller does not incur any additional liability or expense in connection therewith;
- (12) Keys to all locks on the Real Property in Seller's or Seller's building manager's possession;
- (13) Original copies of all Leases and Contracts in Seller's possession (and amendments thereto, if any, and all records and correspondence relating thereto) or copies, if originals are not available;
- (14) To the extent in Seller's possession, originals or copies, if originals are not available, of all Intangible Personal Property.

**B. Buyer's Closing Documents and Deliveries.** On the Closing Date, Buyer shall deliver to Seller payment of the balance of the Purchase Price, as adjusted for apportionments pursuant to this Agreement; and at or before the Closing, Buyer shall deliver or cause to be delivered to the Title Company, the following:

- (1) The balance of the Purchase Price remaining due at time of Closing;
- (2) A closing statement setting forth the Purchase Price and the closing adjustments and prorations;
- (3) Documents of authority of Buyer authorizing the transactions contemplated by this Agreement;
- (4) Buyer shall execute, acknowledge, deliver and file all such returns as may be necessary to comply with all Transfer Tax Laws; and
- (5) Such other instruments as may be reasonably required by the Title Company or otherwise reasonably required to consummate the purchase of the Premises in accordance with the terms hereof.

12. **RECORDING.** This Agreement shall not be recorded by either party in any office of public record.

13. **CONDEMNATION.** If, prior to Closing, all or any material part of the Premises is taken by eminent domain proceedings or a notice of any eminent domain proceeding is received by Seller, Seller shall immediately give notice thereof to Buyer and Buyer shall have the right, exercisable in writing within ten (10) days of receipt of such notice to either:

A. Complete the purchase of the entire Premises in accordance with this Agreement; or

B. Terminate this Agreement, in which event the Deposit shall be returned to Buyer and this Agreement shall be null and void, and the parties shall have no further rights or obligations hereunder, except for Surviving Obligations.

Failure to deliver such written notice shall be deemed an election by Buyer to complete the purchase of the Premises. If Buyer elects (or is deemed to have elected) to complete the purchase of the Premises, the purchase shall be completed in accordance with this Agreement under and subject to such taking and all consequences thereof, and without abatement of Purchase Price, except that at Closing, Seller shall assign, transfer, and pay to Buyer all rights that Seller has to any of the proceeds of such eminent domain proceedings and all proceeds from such proceedings theretofore received by Seller, less Seller's reasonable costs and expenses incurred to obtain such award.

14. **FIRE OR CASUALTY.** If, on or prior to the Closing Date, all or any material portion of the Existing Improvements are destroyed or damaged as a result of fire or any other casualty, Seller shall promptly give written notice thereof to Buyer, and Buyer shall have the right, at its sole option, of terminating this Agreement and being released from all liabilities and obligations hereunder, in which event the Deposit shall be refunded to Buyer, whereupon both Seller and Buyer shall be released from any and all further obligation and liability hereunder, other than the Surviving Obligations. Buyer shall deliver written notice of its election to Seller within five (5) calendar days after the date upon which Buyer receives written notice, or otherwise learns, of such damage. If notice of such damage is received by Buyer and it fails to timely deliver written notice to Seller of its election, such failure shall be deemed an election by Buyer to complete the purchase of the Premises under this Agreement. If Buyer does not terminate this Agreement, or if Buyer does not have the right to terminate this Agreement, the proceeds of any insurance paid between the Effective Date and the Closing Date, less the reasonable costs incurred by Seller to obtain such proceeds, shall be paid to Buyer on the Closing Date, and Seller shall assign to Buyer all rights Seller has to any future insurance proceeds arising from such casualty, without in any manner affecting the Purchase Price, and Seller shall credit to Buyer at Closing the deductible under Seller's insurance policy. For the purposes of this paragraph, a material portion of the Existing Improvements shall be destroyed or damaged as a result of fire or any other casualty if the cost to repair or restore such damage exceeds ten percent (10%) of the portion of the Purchase Price. Seller shall have no obligation to repair or restore any damaged portion of the Existing Improvements, and if Buyer elects to complete Closing, Buyer shall accept the Existing Improvements subject to all such damage or destruction.

15. **REAL ESTATE BROKERS.** Seller and Buyer respectively warrant to each other that no finders, real estate brokers or other persons entitled to claim a fee or commission have interested either of them in this transaction, and that they have not had any dealings with any person which may entitle that person to a fee or commission, other than Richard Pisacone and Justin Maiorano of Colliers International LI, Inc., who will be paid by Seller pursuant to terms of a separate agreement. The parties hereby agree to indemnify and hold the other harmless against any losses, costs or expenses (including attorney's fees) arising out of any claim of any broker or finder in conjunction with this transaction, the obligation for which was incurred by the breaching party. The terms of this Section 16 shall survive the Closing Date.

16. **DEFAULT.**

A. **By Buyer or Tenant.** If (i) Buyer defaults in the performance of any of its obligations hereunder and such default shall continue for ten (10) days after notice to Buyer, or (ii) Tenant is in default of its obligations under the Lease and such default shall continue beyond expiration of any applicable notice and/or grace period, then as Seller's sole and exclusive remedy under this Agreement, Seller may terminate this Agreement and the Title Company shall pay the Deposit to Seller. The foregoing amount shall be retained by Seller as liquidated damages and not as a penalty, such amount being agreed between Buyer and Seller to be a necessary condition to this Agreement to compensate Seller for expenses and expenditures incurred and made in connection therewith, the damages sustained as a result of withdrawing the Premises from the market, and otherwise for Buyer's non-compliance with this Agreement. Thereupon, this Agreement shall become null and void and of no further force and both parties shall be released of further liability and obligations hereunder, other than Surviving Obligations, and Seller shall have no further remedy, either at law or in equity. The foregoing shall not apply to, and shall not limit Buyer's obligations or liability under, any indemnities expressly set forth herein given by Buyer to Seller, nor shall it limit Seller's recovery under Section 16.C below.

B. **By Seller.** If Seller defaults in the performance of any of its obligations hereunder and such default shall continue for ten (10) days after notice to Seller, or if any of Seller's representations or warranties are untrue in any material respect (subject to Section 10.B above), Buyer shall be entitled, as its sole remedies, to either (i) seek specific performance of Seller's obligations hereunder, (ii) terminate this Agreement and receive a refund of the Deposit, or (iii) waive such default and proceed to Closing. As a condition precedent to exercise by Buyer of any right Buyer may have to bring an action for specific performance hereunder, Buyer must commence such an action within ninety (90) days after the occurrence of Seller's default. Buyer agrees that its failure timely to commence such an action for specific performance within such ninety (90) day period shall be deemed a waiver by Buyer of its right to commence an action for specific performance as well as a waiver by it of any right it may have to file or record a notice of *lis pendens* or notice of pendency of action or similar notice against any portion of the Premises.

C. **Attorneys' Fees.** In the event any dispute between the parties with respect to this Agreement results in litigation or other proceedings, the prevailing party shall be reimbursed by the party not prevailing in such proceeding for all reasonable costs and expenses, including, without limitation, reasonable attorneys' and experts' fees and costs incurred by the prevailing party in connection with such litigation or other proceeding and any appeal thereof. Such costs,



expenses and fees shall be included in and made a part of the judgment recovered by the prevailing party, if any.

17. **ESCROW.** The Deposit and any other sums which the parties agree shall be held in escrow (herein collectively called the “**Escrow Deposits**”), together with all interest earned thereon, shall be held by the Escrow Agent, in trust, and disposed of only in accordance with the following provisions:

A. Escrow Agent, subject to collection thereof, shall hold the Deposit in a non-interest bearing attorney IOLA/trust account maintained by Escrow Agent at Webster Bank, Escrow Agent shall hold the Deposit until the Closing or sooner termination of this Agreement, and shall pay over or apply the Deposit in accordance with the terms of this Agreement. At the Closing, the Deposit shall be paid by Escrow Agent to Seller, and Seller and Buyer shall execute and deliver to Escrow Agent, an agreement in writing (i) authorizing Escrow Agent to deliver the Deposit to Seller; and (ii) releasing Escrow Agent from any liability in connection with the performance of its obligations hereunder. If for any reason either party makes a written demand upon Escrow Agent for payment of the Deposit, Escrow Agent shall give at least ten (10) business days' prior written notice to the other party hereto of Escrow Agent's intention to pay over the Deposit in accordance with such demand on a stated date. If Escrow Agent does not receive a written objection from the other party to the proposed payment before such stated date, Escrow Agent is hereby authorized and directed to pay the Deposit to the party claiming to be entitled thereto. If Escrow Agent does receive written objection before such payment, or if for any other reason Escrow Agent, in its reasonable discretion, shall elect not to make such payment, Escrow Agent shall continue to hold the Deposit until otherwise directed by written instructions from both Seller and Buyer, or by a final judgment of a court of competent jurisdiction. Notwithstanding the foregoing or anything to the contrary contained herein, Escrow Agent shall have the right, at any time in its sole and absolute discretion, to deposit the Deposit with any court of competent jurisdiction and thereby be relieved and discharged of any further obligation under this Agreement. Escrow Agent shall give written notice of such deposit to Seller and Buyer.

B. Seller and Buyer acknowledge that Escrow Agent is merely a stakeholder, and that Escrow Agent shall not be liable for any act or omission unless taken or suffered in bad faith, in willful disregard of this Agreement or involving gross negligence. Seller and Buyer shall indemnify and hold Escrow Agent harmless from and against any costs and expenses incurred in connection with the performance of the Escrow Agent's duties hereunder. Seller and Buyer shall be jointly and severally liable for, and shall pay Escrow Agent, on demand, any costs and expenses of Escrow Agent incurred in connection with the performance of Escrow Agent's duties hereunder, including attorneys' and accountants' fees, if any, paid or payable in connection with the holding, investment or disposition of the Deposit. If any such cost or expense is not promptly paid to Escrow Agent on demand, Escrow Agent may apply so much of the Deposit as may be required to pay such costs and expenses. Notwithstanding that Escrow Agent is serving as the escrow agent pursuant to this Article 17, Escrow Agent as attorney may represent any party to this Agreement in the event of any dispute hereunder, or in any other matter. For purposes of clarity, nothing contained herein shall prevent or otherwise preclude Escrow Agent from representing Seller in connection with the sale of the Premises or in any other matter.

C. Escrow Agent shall not be bound by any agreement between Seller and Buyer, whether or not Escrow Agent has knowledge thereof, and Escrow Agent's only duties and responsibilities shall be to hold, and to dispose of, the Deposit in accordance with this Article 17. Without limiting the generality of the foregoing, Escrow Agent shall have no responsibility to protect, demand payment of, collect, or enforce any obligation with respect to the Deposit, for any diminution of the value, or the failure to earn income, of the Deposit for any cause. Escrow Agent may consult with counsel, and any opinion of counsel shall be full and complete authorization and protection in respect of any action taken or omitted by Escrow Agent hereunder in good faith and in reliance upon such opinion.

D. All instructions or notices given pursuant to this Article 17 shall be in writing and delivered in accordance with the requirements for notices pursuant to Article 18 of this Agreement. For purposes of this Article 17, such instructions and notices shall be deemed delivered on the date of delivery, if by hand, or on the date of mailing in accordance with Article 18 if mailed, except that no instruction or notice to Escrow Agent shall be deemed effectively delivered to Escrow Agent until actual receipt thereof by Escrow Agent. This Article 17 may not be amended without the prior written consent of Escrow Agent.

E. Intentionally Omitted.

F. Escrow Agent has executed this Agreement in the place indicated on the signature page hereof in order to confirm that Escrow Agent shall hold the Deposit and the interest earned thereon, in escrow, and shall disburse the Escrow Deposit, and the interest earned thereon, pursuant to the provisions of this Section 17.

#### 18. ADDITIONAL PROVISIONS.

A. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns. Buyer shall have no right to assign this Agreement without the prior written consent of Seller; provided that Buyer may, by written notice to Seller not less than five (5) business days prior to Closing, assign this Agreement to a wholly-owned affiliate of Buyer or to an entity under common control with Buyer, but in no event shall Buyer be released from any of its obligations hereunder.

B. **Entire Agreement.** This Agreement constitutes the entire agreement among the parties hereto and supersedes all prior negotiations, understandings and agreements of any nature whatsoever with respect to the subject matter hereof. No amendment, waiver or discharge of any provision of this Agreement shall be effective against either party unless that party shall have consented thereto in writing.

C. **Governing Law.** This Agreement shall be governed, interpreted, and construed in accordance with the laws of the State in which the Premises is located.

D. **Notices.** All notices, demands, requests or other communications (collectively, "Notices") required to be given, or which may be given, hereunder shall be in writing and shall be sent by (a) certified or registered mail, return receipt requested, postage prepaid, or (b) national overnight

delivery service, or (c) email (provided that the original shall be sent on the same business day by national overnight delivery service or personal delivery), or (d) personal delivery, addressed as follows:

If to Buyer, addressed as follows:

D'Addario & Company, Inc.  
595 Smith Street  
Farmingdale, New York 11735  
Attn: [REDACTED]  
Tel. No. [REDACTED]  
E-Mail: [REDACTED]

And a copy by like manner to:

Forchelli Deegan Terrana LLP  
333 Earle Ovington Blvd., Suite 1010  
Uniondale, New York 11553  
Attn: [REDACTED]  
Tel. No. [REDACTED]  
E-Mail: [REDACTED]

If to Seller, addressed as follows:

Minmilt Realty Corp.  
352 Carnation Drive  
Farmingdale, New York 11735  
Attention: [REDACTED]  
E-mail: [REDACTED]

With a copy to:

Yuri Burshteyn, Esq.  
Braunstein Turkish LLP  
7600 Jericho Turnpike, Suite 402  
Woodbury, New York 11797  
Tel: [REDACTED]  
E-mail: [REDACTED]

Any Notice so sent by certified or registered mail, national overnight delivery service or personal delivery shall be deemed given on the date of receipt or refusal as indicated on the return receipt, or the receipt of the national overnight delivery service or personal delivery service. Any Notice sent by email shall be deemed given when sent provided that the original shall be sent on the same business day by national overnight delivery service or personal delivery as set forth above). A Notice may be given either by a party or by such party's attorney. Seller or Buyer may designate, by not less than five (5) business days' notice given to the others in accordance with the

terms of this Section 18D, additional or substituted parties to whom Notices should be sent hereunder. The respective attorneys for the parties may give notices on behalf of their clients.

E. **Captions.** Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of this Agreement or any provision hereof.

F. **Reliance.** Subject to Buyer's rights to perform its investigation during the Investigation Period and Buyer's opportunity to review and approve the state and condition of title pursuant to this Agreement, Buyer acknowledges that Buyer is purchasing the Premises and will purchase the Premises based upon Buyer's Investigation and not based upon or in reliance on any representation, warranty, statement or assurance of any kind made by Seller, any real estate agent or anyone acting or purporting to act on Seller's behalf, except those expressly set forth in writing in this Agreement. Buyer shall have no right to rely on any representation or warranty set forth in this Agreement to the extent that Buyer has actual or constructive knowledge that any such representation or warranty may be false or incorrect, or to the extent that the results of Buyer's Investigation, or any other facts or circumstances come to the attention of Buyer prior to the Closing, give Buyer actual or constructive knowledge that any such representation or warranty may be untrue or incorrect. Any reports, repairs or work required by Buyer are the sole responsibility of Buyer, and Buyer agrees that there is no obligation on the part of Seller to make any changes, alterations or repairs to the Premises or to cure any violations of law or to comply with the requirements of any insurer.

**EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, BUYER HEREBY ACKNOWLEDGES AND AGREES, WHICH AGREEMENT SHALL SURVIVE THE CLOSING HEREUNDER, THAT SELLER HAS AFFORDED BUYER FULL AND COMPLETE OPPORTUNITY TO MAKE ITS OWN INVESTIGATION OF THE PREMISES AND OF ALL FINANCIAL AND OTHER MATTERS PERTAINING THERETO, AND THAT BUYER IS ACQUIRING THE PREMISES IN "AS IS" "WHERE IS" AND "WITH ALL FAULTS" CONDITION AND WITHOUT ANY REPRESENTATIONS AND WARRANTIES EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. IN AMPLIFICATION OF THE FOREGOING, BUYER ACKNOWLEDGES THAT SELLER HAS NOT MADE, NOR IS BUYER RELYING ON, ANY WARRANTIES OTHER THAN THOSE WHICH ARE SET FORTH HEREIN, INCLUDING ANY IMPLIED WARRANTY OF HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR OF THE EXISTENCE OR NON-EXISTENCE OF PATENT OR LATENT DEFECTS. EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, BUYER FURTHER ACKNOWLEDGES AND AGREES THAT SELLER IS UNDER NO DUTY TO MAKE ANY AFFIRMATIVE DISCLOSURES OR INQUIRY REGARDING ANY MATTER WHICH MAY OR MAY NOT BE KNOWN TO SELLER OR ANY OF THE OTHER SELLER PARTIES, AND BUYER, FOR ITSELF AND FOR ITS SUCCESSORS AND ASSIGNS, HEREBY EXPRESSLY WAIVES AND RELEASES SELLER FROM ANY SUCH DUTY THAT OTHERWISE MIGHT EXIST.**



G. **Tax-Free Exchange.** Buyer or Seller may elect to effect the transfer and conveyance of the Premises as part of an exchange under Section 1031 of the Internal Revenue Code of 1986, as amended (the "**Code**"). If Buyer or Seller so elects, it shall provide notice to the other of such election, and thereafter may at any time at or prior to the Closing assign its rights (but such assignment shall not relieve the either of its obligations) under this Agreement with respect to the Premises to a "qualified intermediary" as defined in Treas. Reg. 1.1031(k)-1(g)(4), subject to all rights and obligations hereunder and such electing party shall promptly provide written notice of such assignment to the other. Each party shall cooperate with all reasonable requests of the other and the "qualified intermediary" in arranging and effecting the transfer of the Premises to the "qualified intermediary".

H. **Confidentiality.** Buyer shall not disclose any "confidential information" (as hereinafter defined) without Seller's prior written consent, other than disclosure to Buyer's consultants, attorneys, engineers, contractors, lenders and other similar parties having a need to know, provided that Buyer shall advise such parties of the confidentiality requirement set forth herein. Buyer may also disclose confidential information to the Agency and its counsel and consultants, NYSDEC, and otherwise to the extent required by law, so long as Buyer notifies Seller of its need to make such disclosure and cooperates with Seller in an effort to narrow or avoid such disclosure or to obtain an adequate confidentiality agreement or protective order to protect the confidentiality of such information. If this Agreement is terminated, Buyer shall return all confidential information provided by Seller. "Confidential information" shall mean any all financial, technical, and any and all other information concerning the Premises, including engineering, geotechnical and environmental reports and plans, all analyses, inventories, correspondence, market studies or other material prepared by Buyer or Seller or their representatives, advisors or otherwise, including any of the same that may have been provided to the such party by any third party source. The provisions of this section shall survive Closing or any earlier termination of this Agreement.

I. **Business Day.** As used herein, the term "business day" shall mean any day other than a Saturday, Sunday, or any Federal or State of New York holiday. If any period expires on a day which is not a business day or any event or condition is required by the terms of this Agreement to occur or be fulfilled on a day which is not a business day, such period shall expire or such event or condition shall occur or be fulfilled, as the case may be, on the next succeeding business day.

J. **Jurisdiction.** WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THE TRANSACTION, THIS AGREEMENT, THE PREMISES OR THE RELATIONSHIP OF BUYER AND SELLER HEREUNDER ("**PROCEEDINGS**") EACH PARTY IRREVOCABLY (A) SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE COUNTY OF SUFFOLK, STATE OF NEW YORK AND THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK, AND (B) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDINGS BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT SUCH PROCEEDINGS HAVE BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDINGS, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY.

K. **Waiver Of Jury Trial.** EACH PARTY HEREBY WAIVES TRIAL BY JURY IN ANY PROCEEDINGS BROUGHT BY THE OTHER PARTY IN CONNECTION WITH ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE PREMISES OR THE RELATIONSHIP OF BUYER AND SELLER HEREUNDER.

L. **Third Party Beneficiary.** This Agreement is an agreement solely for the benefit of Seller and Buyer (and their permitted successors and/or assigns and the parties expressly indemnified under this Agreement) and, as expressly set forth herein, Escrow Agent. No other person, party or entity shall have any rights hereunder nor shall any other person, party or entity be entitled to rely upon the terms, covenants and provisions contained herein. The provisions of this Section shall survive the Closing or the termination hereof.

M. **Environmental Matters; Condition Of The Property; Representations.**

Buyer acknowledges that the Property is currently in the New York State Inactive Hazardous Waste Disposal, Site Remedial Program, Site No. 152147 and is subject to New York State Department of Environmental Conservation ("NYSDEC") rules, regulations and restrictions, including but not limited to, the following:

- (i) An Order on Consent (Index Number W1-0669--02-08) dated December 4, 2003 (the "**Consent Order**") entered into between NYSDEC, a true correct copy of the Consent Order is attached hereto as **Exhibit "F;"** and
- (ii) A Site Management Plan ("**SMP**") dated February 2022 (incorporating the previous Operation, Maintenance and Monitoring Plan) for the remaining contamination at the Property and to ensure protection of public health, a true and correct copy of the SMP is attached hereto as **Exhibit "G."**

**BY ITS EXECUTION OF THIS AGREEMENT, BUYER ACKNOWLEDGES THAT IT HAS READ THE CONSENT ORDER AND THE SMP AND UNDERSTANDS AND ACCEPTS THE TERMS AND CONDITIONS OF EACH, AND THAT UPON CLOSING AND CONVEYANCE OF THE PROPERTY BY SELLER TO BUYER, BUYER SHALL ASSUME THE POST-CLOSING OBLIGATIONS OF SELLER UNDER THE CONSENT ORDER AND SMP. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, AND WITHOUT LIMITATION ON THE TERMS AND CONDITIONS OF THIS SECTION, IT IS EXPRESSLY ACKNOWLEDGED AND AGREED BETWEEN THE PARTIES THAT SELLER SHALL HAVE NO LIABILITY TO BUYER, AND BUYER HEREBY WAIVES AND RELEASES ANY CLAIM AGAINST SELLER, WITH RESPECT TO SELLER'S POST-CLOSING PERFORMANCE (OR LACK OF PERFORMANCE) OF ITS OBLIGATIONS UNDER THE CONSENT ORDER AND THE SMP AS APPROVED BY NYSDEC.**

N. **Disclaimers.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, IT IS UNDERSTOOD AND AGREED THAT SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY,

INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ZONING, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION, UTILITIES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE PROPERTY WITH GOVERNMENTAL LAWS (INCLUDING, WITHOUT LIMITATION, ACCESSIBILITY FOR HANDICAPPED PERSONS), THE TRUTH, ACCURACY OR COMPLETENESS OF THE PROPERTY DOCUMENTS OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF SELLER TO BUYER, OR ANY OTHER MATTER OR THING REGARDING THE PROPERTY. BUYER ACKNOWLEDGES AND AGREES THAT UPON CLOSING SELLER SHALL SELL AND CONVEY TO BUYER AND BUYER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS", EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT. BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO (INCLUDING SPECIFICALLY, WITHOUT LIMITATION, PROPERTY INFORMATION PACKAGES DISTRIBUTED WITH RESPECT TO THE PROPERTY) MADE OR FURNISHED BY SELLER, THE MANAGER OF THE PROPERTY, OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR PURPORTING TO REPRESENT SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT. BUYER REPRESENTS TO SELLER THAT BUYER HAS CONDUCTED, OR WILL CONDUCT PRIOR TO CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS BUYER DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO, OTHER THAN SUCH REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT. UPON CLOSING, BUYER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY BUYER'S INVESTIGATIONS, AND BUYER, UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER (AND SELLER'S OFFICERS, DIRECTORS, PARTNERS, MEMBERS, MANAGERS, SHAREHOLDERS, EMPLOYEES AND AGENTS) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH BUYER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER (AND SELLER'S OFFICERS, DIRECTORS, PARTNERS, MEMBERS, MANAGERS, SHAREHOLDERS, EMPLOYEES AND AGENTS)

AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAWS) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY. BUYER AGREES THAT, SHOULD ANY CLEANUP, REMEDIATION OR REMOVAL OF HAZARDOUS SUBSTANCES OR OTHER ENVIRONMENTAL CONDITIONS ON THE PROPERTY BE REQUIRED AFTER THE DATE OF CLOSING, SUCH CLEAN-UP, REMOVAL OR REMEDIATION SHALL NOT BE THE RESPONSIBILITY OF SELLER. UPON CLOSING, EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, BUYER ASSUMES THE RISK OF ADVERSE MATTERS, INCLUDING ADVERSE PHYSICAL CONDITIONS, DEFECTS, CONSTRUCTION DEFECTS, ENVIRONMENTAL, HEALTH, SAFETY AND WELFARE MATTERS WHICH MAY NOT HAVE BEEN REVEALED BY BUYER'S INSPECTIONS. AS OF THE CLOSING DATE, BUYER, FOR ITSELF AND ITS AGENTS, AFFILIATES, SUCCESSORS AND ASSIGNS, HEREBY WAIVES,, RELEASES AND FOREVER DISCHARGES SELLER AND THE OTHER SELLER PARTIES FROM ANY AND ALL RIGHTS, CLAIMS AND DEMANDS AT LAW OR IN EQUITY, WHETHER KNOWN OR UNKNOWN AT THE TIME OF THIS AGREEMENT, WHICH BUYER HAS OR MAY HAVE IN THE FUTURE, ARISING OUT OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC OR LEGAL CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ALL CLAIMS IN TORT OR CONTRACT AND ANY CLAIM FOR INDEMNIFICATION OR CONTRIBUTION ARISING UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED (42 U.S.C. §§ 9601 ET SEQ.), THE RESOURCE CONSERVATION AND RECOVERY ACT, AS AMENDED (42 U.S. §§ 6901 ET SEQ.) OR ANY ENVIRONMENTAL OR OTHER SIMILAR FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND ALL OTHER TITLE OR INSPECTION MATTERS DESCRIBED ABOVE OR ANY OTHER PROVISIONS OF THIS AGREEMENT. BUYER HEREBY ASSUMES THE RISK OF CHANGES IN APPLICABLE LAWS AND REGULATIONS RELATING TO PAST, PRESENT AND FUTURE ENVIRONMENTAL CONDITIONS AND THE RISK THAT ADVERSE PHYSICAL CHARACTERISTICS AND CONDITIONS, INCLUDING WITHOUT LIMITATION, THE PRESENCE OF HAZARDOUS MATERIALS OR OTHER CONTAMINANTS, MAY NOT HAVE BEEN REVEALED BY ITS INVESTIGATION. BUYER HEREBY WAIVES ANY AND ALL OBJECTIONS AND COMPLAINTS, WHETHER KNOWN OR UNKNOWN, CONCERNING THE PHYSICAL CHARACTERISTICS AND ANY EXISTING CONDITIONS OF THE PROPERTY, INCLUDING PHYSICAL, ENVIRONMENTAL OR LEGAL COMPLIANCE STATUS OF THE PROPERTY, WHETHER ARISING BEFORE OR AFTER THE EFFECTIVE DATE AND/OR THE CLOSING DATE. BUYER, UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER AND ALL OTHER SELLER PARTIES FROM AND AGAINST ANY AND ALL MATTERS AFFECTING THE PROPERTY, INCLUDING, ANY AND ALL COMPLAINTS OR OBJECTIONS CONCERNING THE PHYSICAL CHARACTERISTICS OF THE PROPERTY OR EXISTING PROPERTY CONDITIONS. BUYER WAIVES THE BENEFITS OF ANY LAW WHICH GENERALLY PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH A CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST



IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH, IF KNOWN BY HIM, MAY HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR. BUYER AGREES THAT IT DOES NOT HAVE AND WILL NOT HAVE ANY CLAIMS OR CAUSES OF ACTION AGAINST ANY SELLER PARTY (OTHER THAN SELLER), ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**THE PROVISIONS OF THIS SECTION 18M AND 18N SHALL SURVIVE THE CLOSING.**

O. **Miscellaneous.**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument. To facilitate execution of this Agreement, the parties may execute and exchange counterparts of the signature pages by e-mail attachments in PDF format.

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law. The provisions of this Section 18.O shall survive the Closing or the termination hereof.


P. **Buyer's Right to Assign.** Buyer shall have the right in its sole discretion to assign this Agreement to any entity under the ownership and decision-making control of the principals of the entity named in the preamble Buyer named herein.

**SIGNATURE PAGE TO FOLLOW**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

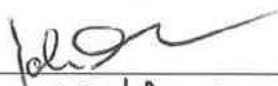
**SELLER:**

**MINMILT REALTY CORP**

By:   
Name: Richard Cole  
Title: President

**BUYER:**

**RICO CORPORATION**

By:   
Name/Title: CEO / President

**AGREEMENT OF ESCROW AGENT**

The undersigned has executed this Agreement solely to confirm its agreement to (a) hold the Escrow Deposits in escrow in accordance with the provisions hereof and (b) comply with the provisions of Section 17.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

### **List of Exhibits**

Exhibit "A"	Land
Exhibit "B"	Permitted Exceptions
Exhibit "C"	Assignment
Exhibit "D"	Notice to Tenants
Exhibit "E"	FIRPTA
Exhibit "F"	Consent Order
Exhibit "G"	Site Management Plan



**Exhibit "A"**

**Description of Land**

## **Exhibit "B"**

### **PERMITTED EXCEPTIONS**

#### **MATTERS TO WHICH THE SALE IS SUBJECT**

The sale of the leasehold interest in the Property shall be subject to each and all of the following (collectively, the "Permitted Encumbrances");

(a) All real estate taxes, general and special assessments, water and sewer rents or charges and/or vault charges, subject to adjustment as more particularly set forth in this Agreement;

(b) Building, building line, use or occupancy restrictions and zoning, building and/or environmental laws and ordinances of the Federal, State, municipal, city, town, county, village, and other governmental authorities having jurisdiction over the Property provided same are not violated by the existing uses on or operating at the Property, including, without limitation, the environmental remediation equipment and facilities.

(c) Any and all rights of Buyer's affiliate, as Tenant of the Property and any occupants permitted by Tenant, except nothing herein shall excuse Seller from providing a standard Title Affidavit at Closing on the Title Company's form which attests to, among other things, the existence of tenants and occupants at the Property;

(d) intentionally omitted;

(e) Possible minor projections and/or encroachments of retaining walls, stoops, areas, steps, sills, trim, cornices, standpipes, fire escapes, coal chutes, casings, ledges, water tables, lintels, porticos, keystones, bay windows, hedges, copings, cellar doors, sidewalk elevator, fences, and the like, or similar projections or objects on, under or above any adjoining streets or the Property, or within any set-back areas, and variations between the lines of record title and fences, retaining walls, hedges and the like and provided that the title company insures that the Building can remain as is; provided, however, that notwithstanding the foregoing, any such encroachment does not exceed 12 inches and does not raise an out of possession exception raised by the Title Company;

(f) State of facts which an accurate and current survey and/or a personal inspection of the Property might disclose, provided the same do not render title unmarketable;

(g) Rights, if any, by any utility company or other service supplier to maintain and operate lines, cables, poles, distribution boxes and the like, in, under, over and upon the Property as may be documented in any easement previously recorded against the Property;

(h) intentionally omitted;

(i) intentionally omitted;

(j) Any and all Local Laws, or any amendments, replacements or successor laws

thereto (or to any similar statute, ordinance, rule or regulation of the municipality or any governmental authority having jurisdiction of the Property);

(k) Any and all covenants, restrictions, easements, agreements, dedications, rights of way and reservations, of record, in effect on the date hereof, if any, in addition to those specifically set forth elsewhere in this Agreement, provided the same does not prevent current use or render title unmarketable;

(l) Consents, if any, by Seller or any former owner of the Property, for the erection and maintenance of any structure or structures on, under or above any street or streets on which the Property may abut;

(m) intentionally omitted [violations are specifically addressed in the test of the PSA];

(n) Covenants and Restrictions in Deed at Liber 5754 Page 132 (subject to Buyer's review during the Investigation Period);

(o) Declaration of Covenants and Restrictions in Liber 10130 Page 108 (subject to Buyer's review during the Investigation Period);

(p) Declaration of Easement in Liber 8796 Page 43 (subject to Buyer's review during the Investigation Period);

(q) Consent Order (subject to Buyer's review during the Investigation Period); and

(r) SMP (subject to Buyer's review during the Investigation Period).

**Exhibit "C"**

**ASSIGNMENT AND ASSUMPTION OF LEASES**

This Assignment and Assumption of Leases (this "Assignment") dated as of \_\_\_\_\_, \_\_\_\_\_ is entered into by and between \_\_\_\_\_, a \_\_\_\_\_ ("Assignor"), and \_\_\_\_\_ ("Assignee").

**W I T N E S S E T H**

WHEREAS, Assignor is the lessor under those certain lease agreements identified on Exhibit B attached hereto (the "Leases") executed with respect to that certain real property commonly known as \_\_\_\_\_, \_\_\_\_\_ (the "Property") as more fully described in Exhibit A attached hereto;

WHEREAS, Assignor, as Seller, and \_\_\_\_\_, as Buyer, have entered into that certain Purchase and Sale Agreement Effective Dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Purchase Agreement") conveying leasehold interest in the Property (as defined in the Purchase Agreement); and

WHEREAS, Assignor desires to assign its interest as lessor in the Leases to Assignee, and Assignee desires to accept the assignment thereof.

NOW, THEREFORE, in consideration of the promises and conditions contained herein, the parties hereby agree as follows:

1. Effective as of the Effective Date (as defined below), Assignor hereby assigns to Assignee all of its right, title and interest in and to the Leases.

2. Effective as of the Effective Date, Assignee hereby assumes all of the Assignor's obligations under the Leases.

3. Any rental and other payments under the Leases shall be prorated between the parties as provided in the Purchase Agreement.

4. In the event of any litigation arising out of this Assignment, the losing party shall pay the prevailing party's costs and expenses of such litigation, including, without limitation, attorneys' fees.

5. This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.

6. This Assignment shall be governed by and construed in accordance with the laws of the State of New York.

7. This Assignment is delivered pursuant to the Purchase Agreement.

8. For purposes of this Assignment, the "Effective Date" shall be the date of the Closing (as defined in the Purchase Agreement).

9. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment the day and year first above written.

ASSIGNOR:

\_\_\_\_\_

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

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

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

ASSIGNEE:

\_\_\_\_\_

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

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

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



**Exhibit "D"**

**NOTICE TO TENANTS**

\_\_\_\_\_, \_\_\_\_

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Notice of Lease Assignment

Premises: \_\_\_\_\_  
\_\_\_\_\_

Ladies and Gentlemen:

Please be advised that the Premises have been acquired by, and the Lessor's interest in your lease and your security deposit (if any) have been assigned, to \_\_\_\_\_ ("New Owner").

All future rental and other payments under your lease shall be paid to New Owner, in accordance with the terms of your lease, to the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Very truly yours,

**Exhibit "E"**

**CERTIFICATE OF NON-FOREIGN STATUS**

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform transferee, [ ] ("Transferee"), that withholding of tax is not required upon the disposition of a United States real property interest by transferor, **MINMILT REALTY CORP** ("Transferor"), the undersigned hereby certifies the following on behalf of the Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations).

2. Transferor has the following employer identification number:  
[ ].

3. Transferor has an address as follows: [ ].

4. Transferor is not a disregarded entity as defined in §1.1445-2(b)(2)(iii);

Transferor understands that this certification may be disclosed to the Internal Revenue Service by Transferee and any false statement contained herein may be punishable by fine, imprisonment or both.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE EXAMINED THIS CERTIFICATION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IT IS TRUE, CORRECT AND COMPLETE. I FURTHER DECLARE THAT I HAVE AUTHORITY TO EXECUTE THIS DOCUMENT ON BEHALF OF TRANSFEROR.

TRANSFEROR:

**MINMILT REALTY CORP**

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

Dated: \_\_\_\_\_

**Exhibit "F"**

**Consent Order**

**Exhibit "G"**

**Site Management Plan**

#### FOURTH AMENDMENT OF LEASE

THIS FOURTH AMENDMENT OF LEASE (this "Amendment") is made as of the 19 day of April, 2022, by and between Minmilt Realty Corp., a New York corporation, having an office at 352 Carnation Drive, Farmingdale, New York 11735 ("Landlord") and D'Addario & Co., Inc. f/k/a J. D'Addario, Inc., a New York corporation, having an office at 595 Smith Street, Farmingdale, New York 11735 ("Tenant").

#### W I T N E S S E T H:

WHEREAS, by Agreement of Lease dated November 4, 1997 (the "Original Lease"), Landlord did demise and let unto Tenant and Tenant did hire and take from Landlord the premises known as 540 Smith Street, Farmingdale, New York 11735 (the "Premises"); and

WHEREAS, by First Amendment of Lease dated February 1, 2003 (the "First Amendment") the Landlord and Tenant amended the Original Lease, to modify, among other things, the term and the Annual Base Rental and Monthly Base Rental (as such terms are defined in the Original Lease), and by Second Amendment of Lease dated February 26, 2009 (the "Second Amendment") the Landlord and Tenant further amended the Original Lease, to modify, among other things, the term and the Annual Base Rental and Monthly Base Rental and by Third Amendment of Lease dated January 1, 2013 (the "Third Amendment") the Landlord and Tenant amended the Original Lease, to modify, among other things, the term and the Annual Base Rental and Monthly Base Rental (the Original Lease, as amended by the First Amendment, the Second Amendment, and the Third Amendment is hereinafter referred to as the "Lease"); and

NOW, THEREFORE, in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS paid by Tenant to Landlord and for other good and valuable consideration, the mutual receipt and legal sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions. All capitalized terms used herein shall have the meanings ascribed to them in the Lease unless specifically set forth herein to the contrary.
2. Amendments.
  - a. Expiration Date. Notwithstanding anything to the contrary contained in the Lease, effective as of the date hereof, the term "Expiration Date" shall mean December 31, 2027.
  - b. Rent. Commencing on January 1, 2023 the Annual Base Rental and Monthly Base Rental amounts for the Term of the Lease are hereby set forth and shall be as follows:



<u>Period</u>	<u>Monthly Base Rental</u>	<u>Annual Base Rental</u>
January 1, 2023 to December 31, 2023	\$51,028.90	\$612,346.80
January 1, 2024 to December 31, 2024	\$53,580.35	\$642,964.14
January 1, 2025 to December 31, 2025	\$56,249.55	\$674,994.59
January 1, 2026 to December 31, 2026	\$59,075.77	\$708,909.18
January 1, 2027 to December 31, 2027	\$62,019.74	\$744,236.88

3. Miscellaneous.

- a. Ratification and Confirmation of the Lease. Except as specifically modified and amended by this Amendment, all of the terms, covenants and conditions of the Lease are hereby ratified and confirmed and shall continue to be and remain in full force and effect throughout the remainder of the term thereof, and the Lease as amended hereby shall, from and after the Effective Date, be read as a single, integrated document incorporating the changes effected by this Amendment. Should any conflicts, ambiguities or inconsistencies arise between the Lease and this Amendment, the terms of this Amendment shall prevail.
- b. Not a Binding Offer. This Amendment shall not be binding upon or enforceable against Landlord or Tenant unless and until both parties shall have executed and unconditionally delivered a fully executed copy of this Amendment to the other party.
- c. Modifications Must Be in Writing. This Amendment may not be modified, amended or terminated nor may any of its provisions be waived except by an agreement in writing signed by the parties hereto.
- d. Successors and Assigns. The covenants, agreements, terms, provisions and conditions contained in this Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- e. No Prior Agreements. This Amendment constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter of this Amendment.
- f. Each of Tenant and Landlord represents to the other that it has dealt with no broker in connection with this Amendment. Each of Landlord and Tenant agrees to indemnify, defend and hold harmless the other from and against any claims based or alleged to be based upon the acts or omissions of the indemnifying party, for any brokerage commission or finder's fee with respect to this Amendment by any persons, and for all costs, expenses and liabilities incurred in connection with such claims, including reasonable attorney's fees and disbursements arising out of a breach of the foregoing representation.

- g. Due Authorization. (a) Tenant represents and warrants that (i) the execution and delivery by Tenant of this Agreement, and Tenant's performance of its obligations hereunder, have been duly authorized by Tenant, (ii) the person(s) executing this Amendment on behalf of Tenant have full authority to enter into this Amendment, and (iii) no further action is necessary for Tenant to be obligated to fulfill Tenant's obligations under the Lease, as amended hereby.

(b) Landlord represents and warrants that (i) the execution and delivery by Landlord of this Amendment, and Landlord's performance of its obligations hereunder, have been duly authorized by Landlord, (ii) the person(s) executing this Amendment on behalf of Landlord have full authority to enter into this Amendment, and (iii) no further action is necessary for Landlord to be obligated to fulfill Landlord's obligations under the Lease, as amended hereby.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the day and year first above written.

LANDLORD:

MINMILT REALTY CORP.

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



Name: Richard Cole

Title: President

TENANT:

D'ADDARIO & CO., INC.

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



Name: John D'Addario III

Title: CEO & President

[Acknowledgement(s) to Follow]

ACKNOWLEDGEMENT(S)

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

On the 19<sup>th</sup> day of April, in the year 2022, before me, the undersigned, a notary public in and for said state, personally appeared RICHARD COLE, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Diane M. Collins  
Notary Public

**DIANE M. COLLINS**  
Notary Public, State of New York  
Registration No. 4942714  
Qualified in Nassau County  
Commission Expires Oct. 3, 2022

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

On the 13<sup>th</sup> day of April, in the year 2022, before me, the undersigned, a notary public in and for said state, personally appeared John D'Addario III, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Joann Spinnicchia  
Notary Public

**JOANN SPINNICCHIA**  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 01SP6152748  
QUALIFIED IN SUFFOLK COUNTY  
MY COMMISSION EXPIRES SEPT. 18, 2022