

AGENT AND FINANCIAL ASSISTANCE AGREEMENT

THIS AGENT AND FINANCIAL ASSISTANCE AGREEMENT (hereinafter, the "Agent Agreement"), made as of March 14, 2016, by and between the **ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, with offices at 95 Perry Street, Suite 403, Buffalo, New York 14203 (the "Agency"), and **GARRETT HOLDING, LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 1360 Niagara Street, Buffalo, New York 14213 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 293 of the Laws of 1970 of the State of New York pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project (the "Project") consisting of: (i) the renovation, upgrading and equipping of an 80,000+/- SF building located at 75 Boxwood Lane, Town of Cheektowaga, Erie County, New York (the "Improvements") to be utilized as the Company's headquarters and (ii) the acquisition and installation by the Company of certain items of machinery, equipment and other tangible personal property (the "Equipment," and collectively with the Improvements, the "Facility"); and

WHEREAS, by Resolution adopted on December 16, 2015 (the "Resolution"), the Agency authorized the Company to act as its agent for the purposes of undertaking the Project subject to the Company entering into this Agent Agreement, and pursuant to the Resolution and this Agent Agreement, the Company has the power to delegate such agency, in whole or in part, to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses including but not limited to the individuals and entities described on Schedule A attached hereto (collectively, the "Subagent"). The Company shall have the right to amend Schedule A from time to time and shall be responsible for maintaining an accurate list of all parties acting as agent for the Agency; and

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

WHEREAS, the Agency requires, as a condition and as an inducement for it to provide said Financial Assistance, that the Company provides assurances with respect to the recapture of said Financial Assistance on the terms herein set forth.

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

1. Scope of Agency. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Resolution to acts reasonably related to the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation thereof in and around the Facility. The right of the Company to act as agent of the Agency shall expire on **October 31, 2016**, unless extended as contemplated by the Resolution. The aggregate amount of work performed as agent for the Agency shall not exceed the amounts identified in the Resolution and Section 2(h) of this Agreement. All contracts entered into as agent for the Agency shall include the following language:

"This contract is being entered into by [NAME OF COMPANY OR NAME OF SUBAGENT] (the "Agent"), as agent for and on behalf of the **ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency"), in connection with a certain project of the Agency for the benefit of **GARRETT HOLDING, LLC**, consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in certain premises located at 75 Boxwood Lane, Cheektowaga, New York 14227 (the "Premises"). The acquisition of the machinery, equipment and building materials to be incorporated and installed in the Premises and all services and rentals of equipment related to the acquisition, construction and equipping of the Project shall be exempt from all New York State and local sales and use taxes if the acquisition thereof is effected in accordance with the terms and conditions set forth in the attached sales tax exemption information letter of the Agency; and the Agent hereby represents that this contract is in compliance with the terms of the Agent and Financial Assistance Agreement by and between **GARRETT HOLDING, LLC** and the Agency dated as of March 14, 2016. This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

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

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

(b) Neither the execution and delivery of this Agent Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agent Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or

by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

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

(d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Agent Agreement.

(e) The Company covenants that the Facility will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) that the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that no underground storage tanks will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company upon receiving any information or notice contrary to the representations contained in this Section shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents (except the Company), representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, the Company agrees to pay the expenses of same to the Agency upon demand.

(f) Any personal property acquired by the Company in the name of the Agency shall be located in the Town of Cheektowaga, except for temporary periods during ordinary use.

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

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

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

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

(4) the Company has made a material false or misleading statement, or omitted any information which, if included, would have rendered any information in the application or supporting documentation false or misleading in any material respect, on its application for Financial Assistance; or

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

(a) Investment Commitment - that the total investment actually made with respect to the Project at the Project's construction completion date equals or exceeds \$3,485,000.00 (which represents the product of 85% multiplied by \$4,100,000.00 being the total project cost as stated in the Company's application for Financial Assistance); and

(b) Employment Commitment - that there are at least 32 existing full time equivalent ("FTE") employees located at, or to be located at, the Facility as stated in the Company's application for Financial Assistance (the "Baseline FTE"); and

- the number of current FTE employees in the then current year at the Facility; and
- that the Company has maintained and created FTE employment at the Facility equal to 40 FTE employees [representing the sum of 32 Baseline FTE plus 8 new FTE employees (the product of 85% multiplied by 10 being the total number of new FTE employee positions as proposed to be created by the Company as stated in the Company's application for Financial Assistance)]; and

(c) Local Labor Commitment - that the Company adheres to and undertakes or has undertaken construction activities in compliance with the Agency's Local Labor Workforce Certification Policy and Local Labor Reporting Requirements on a quarterly reporting basis during the construction period (Exhibit D); and

(d) Equal Pay Commitment - that the Company adheres to and undertakes or has undertaken activities in compliance with the Agency's Pay Equity Policy.

The findings made by the Agency with respect to Section 2(g)(1), (2), (3) and/or (4) and/or failure to provide the written confirmation as required by Section 2(g)(5) with respect to the thresholds and requirements as identified in Section 2(g)(5), above, and/or failure to meet the thresholds and requirements as identified in Section 2(g)(5) above, may potentially be determined by the Agency, in accordance with the Agency's "Policy for Termination of Agency Benefits and Recapture of Agency Benefits Previously Granted", to constitute a failure to comply with Section 875(3) of the New York General Municipal Law, and/or a failure to comply with a material term or condition to use property or services or Agency Financial Assistance in the manner approved by the Agency in connection with the Project, and/or a failure to comply with the Agency's policies and Resolution (collectively, findings and determinations made as described herein with respect to Section 2(g)(1), (2), (3) and/or (4) and/or the failure under Section 2(g)(5) to submit the required certification and/or the failure to meet the required thresholds and requirements as specified in Section 2(g)(5) are hereby defined as a "Recapture Event Determination"). If the Agency makes a Recapture Event Determination, the Company agrees and covenants that it will (i) cooperate with the Agency in its efforts to recover or recapture any and all Financial Assistance obtained by the Company and (ii) promptly pay over any such amounts to the Agency that the Agency demands in connection therewith. The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner and/or Erie County Comptroller may assess and determine the Financial Assistance due from the Company, together with any relevant penalties and interest due on such amounts.

(h) In accordance with the Resolution the Company further covenants that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$800,000.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 2(g) of this Agent Agreement, cannot exceed \$70,000.00.

(i) The Company acknowledges and understands that a Recapture Event Determination made with respect to Section 2(g)(4) of this Agent Agreement will, in addition, immediately result in the loss and forfeiture of the Company's right and ability to obtain any and all future Financial Assistance with respect to the Project.

(j) The Company further covenants and agrees to complete "IDA Appointment of Project Operator or Agent For Sales Tax Purposes" (NYS Form ST-60), in the form attached hereto as Exhibit A, for each Subagent, if any, and such other parties as the Company chooses

who provide materials, equipment, supplies or services and forward said form to the State Department of Taxation and Finance within thirty (30) days of appointment.

(k) The Company acknowledges and agrees that all purchases made in furtherance of the Project shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (NYS Form ST-123, a copy of which is attached hereto as Exhibits B-1 and B-2), and it shall be the responsibility of the Company (and not the Agency) to complete NYS Form ST-123. The Company acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Company acknowledges and agrees that the bill or invoice should state, "I, [NAME OF COMPANY OR SUBAGENT], certify that I am a duly appointed agent of the ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY and that I am purchasing the tangible personal property or services for use in the GARRETT HOLDING, LLC Project located at 75 Boxwood Lane, Cheektowaga, New York 14227, IDA Project Number "1404-16-02A". For convenience purposes, in the instance where the vendor does not print on each invoice the acknowledgment as described in the prior sentence, an "Invoice Rider" (a copy of which is attached hereto as Exhibit B-3) can be utilized for record keeping purposes.

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

(m) The Company further covenants and agrees to submit to the Agency a Local Labor Utilization Report, which is attached hereto as Exhibit D, on a quarterly basis within ten (10) business days of each quarter end during the construction period. This report represents verification that the Company and its Subagents, if any, adheres to and undertakes or has undertaken construction activities in compliance with the Agency's Local Labor Workforce Certification Policy and Local Labor Reporting Requirements.

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

(o) The Company covenants and agrees that at all times during the Material Terms and Conditions Monitoring Period, it will (i) maintain its existence and not dissolve, (ii) continue

to be a limited liability company subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business in the State, (iii) not liquidate, wind-up or dissolve or otherwise sell, assign, or dispose of all or substantially all of its property, business or assets except this Agreement may be assigned to a Related Person of the Company (as that term is defined in subparagraph (C) of paragraph three of subsection (b) of section four hundred sixty-five of the Internal Revenue Code of 1986, as amended, hereinafter "Related Person") without the receipt of the Agency's prior written consent and provided such assignee/successor entity shall reaffirm the Company's obligation's hereunder, and (iv) not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it except upon receipt of the Agency's prior written consent and unless such merged or combined entity shall reaffirm the Company's obligation's hereunder. Granting or withholding of the Agency's consent shall be in the sole discretion of the Agency. A transfer in excess of 50% of the equity voting interests of the Company, other than to a Related Person of the Company, shall be deemed an assignment and require the prior written consent of the Agency.

(p) The Company agrees that it will, throughout the term of this Agent Agreement, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof. Notwithstanding the foregoing, the Company may in good faith contest the validity of the applicability of any requirement of the nature referred to this Section 2(p). In such event, the Company, with the prior written consent of the Agency (which shall not be unreasonably conditioned, delayed or withheld) may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom unless the Agency shall notify the Company that it must comply with such requirement or requirements.

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

or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified.

4. **Insurance Required.** During the term of an Agent Agreement and/or a Lease Agreement entered into with the Agency, an **ACORD 25-Certificate of Liability Insurance and ACORD 855 NY-New York Construction Certificate of Liability Addendum** shall be provided evidencing the following insurance is currently maintained and in force with an insurance carrier approved to do business in the State of New York and maintaining an A.M. Best Rating of A- or better showing the Agency as Certificate Holder.

Acceptable Certificates of Insurance shall indicate the following minimal coverage, limits of insurance, policy numbers and policy effective and expiration dates.

(a) **Commercial General Liability:** Agent and subcontractors shall provide such coverage on an occurrence basis for the named insured's premises & operations and products-completed operations. Blanket Contractual Liability provided within the "insured contract" definition may not be excluded or restricted in any way. Property damage to work performed by subcontractors may not be excluded or restricted nor shall the Additional Insured's coverage for claims involving injury to employees of the Named Insured or their subcontractors be excluded or restricted. The "insured contract" exception to the Employers Liability exclusion also may not be removed or restricted in any way.

These coverages are to be properly evidenced by checking the appropriate box(es) on the **ACORD 855-NY Construction Certificate of Liability Addendum's Information Section, Items G, H, I and L.** Policy shall have attached **Designated Location(s) General Aggregate Limit CG 25 04 endorsement.**

Limits expressed shall be no less than:

| | |
|---|-------------|
| General Aggregate | \$2,000,000 |
| Products-Completed Operations Aggregate | \$2,000,000 |
| Per Occurrence | \$1,000,000 |
| Personal & Advertising Injury | \$1,000,000 |
| Fire Damage Liability | \$ 100,000 |
| Medical Payments (per person) | \$ 5,000 |

Agency shall be named as Additional Insured per **ISO Form CG 20 26-Additional Insured Designated Person or Organization** to provide coverage for the Additional Insured. Coverage shall apply on a Primary & Non-Contributory basis. All insurance required of the Company shall waive any right of subrogation of the insurer against any person insured under such policy, and waive any right of the insurer to any off-set or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any person insured under such policy.

(b) **ACORD 855 NY-New York Construction Certificate of Liability Insurance:** It is not uncommon for insurers to modify the standard ISO policy language with endorsements

that result in modifications to language preferred by the insurer. **This addendum is required to supplement the ACORD 25-Certificate of Liability Insurance with additional information that provides a more detailed expression of the types of coverage required.** Specifically required coverages may be excluded or limited by the attachment of exclusionary or limitation endorsements. This addendum provides the insurer the ability to certify coverage provided by the absence of such exclusionary or limiting modifications.

(c) **Umbrella/Excess Liability:** Commercial Umbrella or excess liability for a limit of at least \$5,000,000 per occurrence with a \$5,000,000 Aggregate. Coverage should respond on a follow-form basis and excess over the aforementioned underlying policy limits. Agency shall be named as Additional Insured. Coverage shall apply on a Primary & Non-Contributory basis.

(d) **Workers Compensation/Disability Insurance:** The Company and/or Project Owner shall provide evidence of insurance and maintain Workers Compensation/Disability insurance as required by statute.

i) **Accepted Forms:**

| Workers Compensation Forms | | DBL (Disability Benefits Law) Forms | |
|----------------------------|-------------------------------|-------------------------------------|--------------|
| CE-200 | Exemption | CE-200 | Exemption |
| C-105.2 | Commercial Insurer | DB-120.1 | Insurers |
| SI-12 | Self-Insurer | DB-155 | Self-Insured |
| GSI-105.2 | Group Self-Insured | | |
| U-26.3 | New York State Insurance Fund | | |

If the Company and/or Project owner have no employees, the Company and/or Project owner shall provide a completed and signed Form CE-200 or later revision, which is found on the New York State Workers Compensation Board website: www.wcb.ny.gov/ This form is to be completed on-line, printed, and signed.

ECIDA Address: All evidence of insurance shall be sent to:
 Erie County Industrial Development Agency
 95 Perry Street, Suite 403
 Buffalo, NY 14203

5. **Additional Provisions Respecting Insurance.** (a) Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide for payment of the losses of the Company and the Agency as their respective interests may appear. The Company shall cause all contractors and agents of the Company undertaking the Project to carry and provide evidence of insurance as required within Section 4(a) and 4(b) of this Agreement, with the Agency named as an additional insured.

(b) All such certificates of insurance of the insurers indicating that such insurance is in force and effect, and all policies (if applicable), shall be deposited with the Agency on the date hereof. At least thirty (30) days prior to expiration of the policy evidenced by said certificates, the Company shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agent Agreement.

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

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

To the Agency: Erie County Industrial Development Agency
95 Perry Street, Suite 403
Buffalo, NY 14203
Attn: Chief Executive Officer

With a copy to: Harris Beach PLLC
726 Exchange Street, Suite 1000
Buffalo, NY 14210
Attn: Robert G. Murray, Esq.

To the Company: Garrett Holding, LLC
1360 Niagara Street
Buffalo, NY 14213
Attn: Gary Williams, President

With a copy to: Barclay Damon
200 Delaware Avenue, Suite 1200
Buffalo, NY 142
Attn: Richard Krieger, Esq.

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

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

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

Agency, and shall survive the delivery and termination of this Agent Agreement to the Agency, regardless of any investigation made by the Agency.

10. The Company agrees not to take title to any real property as agent for the Agency. The Agency will provide the Company with a bill of sale (a form of which is attached hereto as Exhibit E) which sells, transfers and delivers unto the Company and its successors and assigns, all Equipment which were acquired and installed and/or are to be acquired and installed by the Company as agent for the Agency pursuant to this Agent Agreement which Equipment is located or intended to be located at 75 Boxwood Lane, Cheektowaga, New York 14227.

11. By executing this Agent Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Agency for (a) legal services, including but not limited to those provided by the Agency's general counsel or bond/transaction counsel, (b) other consultants retained by the Agency, if any, in connection with the Project; in accordance with the terms of the Administrative Fee Agreement between the Company and the Agency, and (c) with respect to enforcing this Agent Agreement (including reasonable attorney fees). The Agency counsel fees are based upon the Company's representations made in its application for Agency assistance and as established in accordance with the Agency counsel fee schedule. The Company further covenants and agrees to make a non-refundable payment upon execution of this Agent Agreement in accordance with the terms of the Agency Counsel Fee Agreement. The Company further covenants and agrees that the Company is liable for payment to the Agency of all charges referred to above, as well as all other actual costs and expenses incurred by the Agency in undertaking the Project notwithstanding the occurrence of any of (i) the Company's withdrawal, abandonment, cancellation or failure to pursue the Project; (ii) the inability of the Agency or the Company to procure the services of one or more financial institutions to provide financing for the Project; or (iii) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.

(Remainder of page intentionally left blank)

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

**ERIE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: Karen M. Fiala
Name: Karen M. Fiala
Its: Assistant Treasurer

GARRETT HOLDING, LLC

By: Cameron Brown
Name: ~~Gary Williams~~ CAMERON BROWN
Title: President