

AGENT, FINANCIAL ASSISTANCE AND PROJECT AGREEMENT

THIS AGENT, FINANCIAL ASSISTANCE AND PROJECT AGREEMENT (hereinafter, the "Agent Agreement"), dated as of the 8th day of June, 2017, is by and between the **CITY OF HORNELL INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, with offices at 40 Main Street, Hornell, New York 14843 (the "Agency"), and **RIEDMAN HORNELL 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 45 East Avenue, Rochester, New York 14604 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 670 of the Laws of 1974 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 (the "State"); and

WHEREAS, the Company has submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project, being undertaken in multiple phases (the "Project"), consisting of: (i) the acquisition by the Company of fee title to, with reservation by the Agency of a leasehold or other interest in, (a) approximately three (3) acres of real property located on Fairlawn Avenue, City of Hornell, Steuben County, New York (being more particularly identified as part of tax map number 166.05-01-002.000) ("Parcel B-1") and (b) approximately six (6) acres of real property located at 87 Hartshorn Street, City of Hornell, Steuben County, New York (being more particularly identified as part of tax map number 166.05-01-006.000) ("Parcel C-1" and "Parcel C-2"; and collectively with Parcel B-1, the "Land", as each is identified on **Schedule B**, attached hereto), (ii) (a) the construction and equipping on the Land of a market-rate apartment community containing ten (10) two-story buildings with six (6) units each, containing in the aggregate approximately sixty (60) residential units of various sizes, plus accessory buildings for garages for each residential unit thereon, (b) buildings for an office and for a maintenance facility and (c) related amenities (collectively, the "Improvements"); and (iii) the acquisition and installation by the Company in and around the Land and the Improvements of certain items of equipment and other tangible personal property (collectively, the "Equipment"; and, together with the Land and the Improvements, the "Facility"); and

WHEREAS, by resolutions adopted on June 8, 2017 (the "Resolution"), the Agency authorized the Company to act as its agent for the purposes of undertaking the Project subject to the Company entering into this Agent Agreement; and

WHEREAS, by the Resolution, the Agency approved certain benefits and financial assistance in connection with the Project consisting of: (a) an exemption from all New York State and local sales and use tax 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, renovation or equipping of the Facility, (b) a partial real property tax abatement structured through a certain tax agreement to be entered into by and between the

Company and the Agency (the "Tax Agreement"), and (c) a mortgage recording tax exemption for financing related to the Project (collectively, the sales and use tax exemption, the partial abatement from real property taxes and the mortgage recording tax exemption are hereinafter referred to as the "Financial Assistance"); and

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

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

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

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

1. Purpose of Project and Scope of Agency. The purpose of the Agency's provision of the Financial Assistance with respect to the Project is to promote, develop, encourage and assist in the undertaking of the Project to advance job opportunities, health, general prosperity and economic welfare of the people of the City of Hornell, New York, and to specifically promote the investment, employment and other commitments of the Company contained herein and in the Application.

Pursuant to the Resolution, the Agency has appointed the Company as agent to undertake the Project, as defined herein and within the Resolution. The Company hereby agrees to limit its activities as agent for the Agency, under the authority of the Resolution, to acts reasonably related to the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation thereof in and around the Facility. Pursuant to this Agent Agreement and the Resolution, 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 "Subagents"). The Company shall have the right to amend Schedule A from time to time and shall be responsible for maintaining an accurate list of all parties acting as agent for the Agency. The Company's right to appoint subagents is expressly conditioned upon updating Schedule A, along with the timely filing of Form ST-60 (non-primary) for each subagent, with such updated Schedule A and a copy of and proof of filing of such ST-60 (non-primary) being immediately filed with the Agency. The right of the Company to act as agent of the Agency shall expire on December 31, 2018, unless extended as contemplated by the Resolution. The aggregate amount

of work performed by the Company as agent for the Agency shall not exceed the amounts identified in the Resolution and in this Agent Agreement.

All contracts entered into by the Company and all Subagents thereof, as agent for the Agency shall include the following language:

"This contract is being entered into by **RIEDMAN HORNELL LLC (or, subagent name: _____)** (the "Agent"), as agent for and on behalf of the City of Hornell Industrial Development Agency (the "Agency"), in connection with a certain project of the Agency for the benefit of the Agent consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in certain premises located on Fairlawn Avenue and 87 Hartshorn Street, City of Hornell, Steuben County, New York (being more particularly identified as part of tax map numbers 166.05-01-002.000 and 166.05-01-006.000) (the "Premises"). 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 the sales and use taxes levied by the State of New York if the acquisition thereof is effected in accordance with the terms and conditions set forth in the Agent, Financial Assistance and Project Agreement, by and between the Agency and Riedman Hornell LLC, dated as of June 8, 2017 (the "Agent Agreement"); and the Agent hereby represents that this contract is in compliance with the terms of the Agent Agreement. 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."

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

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

(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 City of Hornell, New York, except for temporary periods during ordinary use.

(g) In accordance with Section 875(3) of the Act, 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 subagent receives any Financial Assistance from the Agency, and it is determined by the Agency that (each a "Recapture Event Determination"):

(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; or

(5) the Company fails to meet and maintain the following thresholds and requirements:

(i) The Company recognizes and acknowledges that the Agency is entering into this Agent Agreement based in part on representations made by the Company in its Application to the Agency regarding job creation and retention at the Facility.

(ii) For purposes of this Agent Agreement, "Full-Time Equivalent Employee" shall mean, with respect to any specific date or period, a person or persons directly employed on such date or during such period by the Company (inclusive of its affiliates, tenants and other occupants and users of the Facility), and who shall on such date or for such period have carried out the terms of such employment on a "Full-Time Equivalent Basis" at the Facility. "Full-Time Equivalent Basis" shall mean a person or persons who shall on an aggregate basis work at least thirty-five (35) hours per week, or one hundred forty (140) hours per month which shall be measured on a quarter annual basis.

(iii) The Application represents that, for the purpose of this Agent Agreement, the Company intends to employ and maintain for the term of the Tax Agreement, a workforce of no less than one (1) employee which shall be employed at the Facility on a Full-Time Equivalent Basis, as of the completion of the Facility.

(iv) The Application represents that for the purpose of this Agent Agreement, the Company will invest \$1,750,000.00, which represents 18% of the total Project cost, as stated in the Application.

(v) The Company is required under this Agent Agreement and hereby agrees to submit a copy of quarterly NYS-45 reports, and any other reports required by the Agency to evidence the employment and investment commitment.

(vi) If it is determined upon review of the Annual Report (as hereinafter defined) that the number of Full-Time Employees at the Facility is less than what was represented in the Application, the Agency shall have the right to require the Company to pay to the Agency for the benefit of the Affected Tax Jurisdictions (as defined in the Tax Agreement) an amount equal to the benefits provided hereunder and any real property tax and mortgage tax exemptions, if any, provided by the Agency to the Company in connection with the Project.

(vii) In addition, in the event that (a) the Company closes or sells/transfers the Facility without the consent of the Agency; (b) the use of the Facility or contemplated business activities at the Facility are materially changed or modified; (c) there is a material non-compliance by the Company with the Lease Agreement (as defined herein), the Leaseback Agreement (as defined herein) the Tax Agreement or any other agreement with the Agency or any state or federal law or regulation, the Agency shall have the right to require the Company to pay to the Agency for the benefit of the Affected Tax Jurisdictions an amount equal to the benefits provided hereunder and any real property tax and mortgage tax exemptions, if any, provided by the Agency to the Company in connection with the Project.

In order to certify and verify the foregoing, the Company or the occupant of the Facility shall annually complete and submit to the Agency the Annual Certification Report in the form attached hereto as **Exhibit E** (the "Annual Report"). **Failure by the Company to complete and submit said Annual Report to the Agency by February 15 of each year commencing as of February 15, 2018, shall constitute an Event of Default hereunder, whereby the Agency, in its sole and absolute discretion may terminate this Agent Agreement and/or the Tax Agreement and recapture any or all Financial Assistance.**

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 sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate Affected Tax Jurisdictions. The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner and/or local taxing authorities may assess and determine the Financial Assistance due from the Company, together with any relevant penalties and interest due on such amounts.

(h) 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 **\$3,220,000.00**, 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 **\$257,600.00**.

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

(j) The Company 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 B**) regarding the value of sales and use tax exemptions the Company and its agents, subagents, consultants or subcontractors, 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.

(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 C-1 and C-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, RIEDMAN HORNELL LLC (or, name of subagent: _____), certify that I am a duly appointed agent of the City of Hornell Industrial Development Agency (the "Agency") and that I am purchasing the tangible personal property or services for use in the City of Hornell Industrial Development Agency Project located on Fairlawn Avenue and 87 Hartshorn Street, in the City of Hornell, County of Steuben, New York (being more particularly identified as part of tax map numbers 166.05-01-002.000 and 165.05-01-006.000), IDA Project Number 4602-17-02A; such purchases qualify as exempt from sales and use taxes under my agent agreement with the Agency."

For convenience purposes, in the instance where the vendor does not print on each invoice the acknowledgement as described in the prior sentence, an "Invoice Rider" (a copy of which is attached hereto as **Exhibit C-3**) can be utilized for record keeping purposes.

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

(m) The Company covenants and agrees that 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 and duly qualified to do business in the State, (iii) not liquidate, wind-up or dissolve or otherwise sell, assign, or dispose of all or substantially all of its property, business or assets. This Agent Agreement may not be assigned in whole or part without the prior written consent of the Agency.

(n) The Company confirms and acknowledges under penalty of perjury that as of the date hereof, the Company, as owner, occupant, or operator of the Project receiving the Financial Assistance from the Agency in connection with the Project, is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations. The Company agrees that it will, throughout the term of this Agent Agreement, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen and unforeseen, ordinary and 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 in this Section 2(n). In such event, the Company, with the prior written consent of the Agency (which shall not be unreasonably conditioned, delayed or withheld) may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom unless the Agency shall notify the Company that it must comply with such requirement or requirements.

3. Hold Harmless Provision. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, directors, members, officers, employees, agents (except the Company), representatives, successors and assigns harmless from and against, any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or breach by the Company of this Agent Agreement or (ii) liability arising from or 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. Effective as of the date hereof and until the Agency consents in writing to a termination, the Company shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

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

(b) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Facility.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$1,000,000.00 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000.00 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workers' compensation law and a blanket excess liability policy in the amount not less than \$3,000,000.00, protecting the Company against any loss or liability or damage for personal injury or property damage.

5. Additional Provisions Respecting Insurance.

(a) All insurance required by Section 4(a) of this Agent Agreement shall name the Agency as a named insured and all other insurance required by Section 4 hereof shall name the Agency as an additional insured. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Company and the Agency as their respective interest may appear, and (ii) at least thirty (30) days' prior written notice of the cancellation thereof to the Company and the Agency.

(b) All such policies of insurance, or a certificate or 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: City of Hornell Industrial Development Agency
40 Main Street
Hornell, New York 14843
Attn.: James W. Griffin, Executive Director

With a copy to: Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attn.: Shawn M. Griffin, Esq.

To the Company: Riedman Hornell LLC
45 East Avenue
Rochester, New York 14604
Attn.: David J. Riedman

With a copy to: Woods Oviatt Gilman LLP
700 Crossroads Building
2 State Street
Rochester, New York 14614
Attn.: W. Stephen Tierney, 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 Steuben County, New York.

9. The warranties, representations, obligations and covenants of the Company under this Agent Agreement shall be absolute and unconditional and shall remain in full force and

effect during the term of this Agent Agreement, shall be deemed to have been relied upon by the Agency, and shall survive the delivery and termination of this Agent Agreement to the Agency, regardless of any investigation made by the Agency. This Agent Agreement shall survive any termination or expiration of the Leaseback Agreement or the Tax Agreement, as described below.

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

11. By executing this Agreement, the Company covenants and agrees to pay the Agency's administrative fee (as specified in the Application) and 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 transaction counsel and (b) other consultants retained by the Agency, if any, in connection with the Project; with all such charges to be paid by the Company at the closing or, if the closing does not occur, within ten (10) business days of receipt of the Agency's invoices therefore. The Company further covenants and agrees that the Company is liable for payment to the Agency of all charges referred to above and with respect to the Agency's enforcement of any event of default or failure to comply with the terms of this Agent Agreement (including reasonable attorneys' fees), 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)

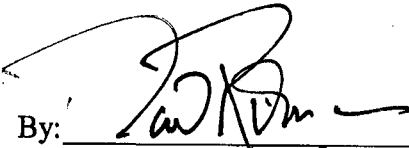
[Signature Page to Agent, Financial Assistance and Project Agreement]

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

**CITY OF HORNELL INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
James W. Griffin, Executive Director

RIEDMAN HORNELL LLC

By: 
Name: David J. Riedman
Title: Managing Member