

## PROJECT AGREEMENT

THIS PROJECT AGREEMENT, made as of the \_\_\_ day of April, 2017, is by and between the TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its offices at 4287 Main Street, Amherst, New York 14226 (the "Agency") and 2500 KENSINGTON LLC, a limited liability company duly formed and validly existing under the laws of the State of New York, having offices at 2500 Kensington Avenue, Amherst, New York 14226 ("2500 Kensington") and SHATKIN F.I.R.S.T., LLC ("Shatkin"), a limited liability company duly formed and validly existing under the laws of the State of New York, having offices at 2495 Kensington Avenue, Amherst, New York 14226 (with 2500 Kensington and Shatkin being referred to herein as the "Company").

### WITNESSETH:

WHEREAS, the Agency was created by Chapter 579 of the Laws of 1973 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, 2500 Kensington has submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project consisting of construction and equipping of an approximately 15,000 square foot building addition (the "Building Addition") to be used for research and development and back-office purposes, all to be located at 2500 Kensington Avenue, Amherst, New York (the "Premises") and to be conveyed pursuant to an Installment Sale Contract or leased to 2500 Kensington (the "Lessee") for sublease to Shatkin, and the acquisition and installation of machinery and equipment to be used for research and development, manufacturing and distribution purposes, all to be located at 2495 Kensington Avenue, Amherst, New York and to be conveyed pursuant to an Installment Sale Contract or leased for use by the Lessee and/or Shatkin (with all of the foregoing being referred to collectively as the "Project"); and

WHEREAS, after submission of the Application, the Company provided the Agency with supplemental information to confirm that the Company and Lessee were not seeking Financial Assistance (as defined herein) for the portion of the Building Addition that will be utilized as dental suite, comprised of approximately 2,448 square feet of space (the "Dental Suite"), and that the Dental Suite is excluded from the definition of the term "Project", as described herein, and is excluded from any and all Financial Assistance (as defined herein) concerning the Project; and

WHEREAS, by Resolution adopted on April 21, 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 Project Agreement and, pursuant to the Resolution and this Project 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 hereto. The Company shall have the right to

amend Schedule A from time to time and shall be responsible for maintaining an accurate list of all parties acting as agent for the Agency in accordance with this Agreement; and

WHEREAS, pursuant to the Resolution, the Agency has agreed to provide to the Company in connection with the Project certain benefits, exemptions and other financial assistance consisting of: (a) an exemption from all New York State and local sales and use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Project or used in the acquisition, construction or equipping of the Project, (b) an exemption from mortgage recording tax, and (c) a partial abatement of real estate taxes through a payment in lieu of tax arrangement with the Company for the benefit of each municipality and school district having taxing jurisdiction over the Project, (collectively, the sales and use tax exemption, the mortgage recording tax exemption, and the partial abatement of real estate taxes, are hereinafter referred to as the "Financial Assistance"); and

WHEREAS, the Company has estimated in the Application and in the supplemental information provided the value of the Financial Assistance sought by the Company in connection with the Project and the Agency has authorized in the Resolution an exemption from New York State and local sales and use taxes for purchases of sales-taxable tangible personal property and services in connection with the Project which do not exceed a total cost of \$5,000,000.00 and an exemption from mortgage recording tax for mortgages aggregating an amount not to exceed \$5,000,000.00; and

WHEREAS, the Resolution authorizes the Agency to acquire an interest in the Project and to enter into the Project Documents (as defined in the Resolution) which will provide for the completion of the Project by the Company and the provision of the Financial Assistance by the Agency, all in accordance with Act and the Resolution; and

WHEREAS, pursuant to the Act, no Financial Assistance shall be provided to the Company prior to the effective date of this Agreement, which sets forth certain terms and conditions under which the Financial Assistance will be provided to the Company.

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. It is understood and agreed by the parties hereto that the Agency has agreed to provide the Financial Assistance in connection with the Project and to enter into the Project Documents in order to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project to advance the job opportunities, health, general prosperity and economic welfare of the people of the Town of Amherst, New York and to otherwise accomplish the public purpose of the Act.

2. PILOT Agreement. The Payment in Lieu of Tax Agreement ("PILOT Agreement") authorized in the Resolution shall require the Company to make payments in lieu of real estate taxes in accordance with the schedule and formula more particularly set forth on

Schedule B; provided, however, that the square footage of the Dental Suite shall be expressly excluded from the PILOT Agreement and shall be taxed by each taxing jurisdiction as if the Agency did not have an interest in the Project.

3. Limitation on Sales Tax Exemption; Limitation on Mortgage Recording Tax Exemption.

(a) In accordance with the Resolution, the Company 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 \$5,000,000.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$437,500.00; provided, however, that the Company shall be liable for any and all New York State and local sales and use taxes resulting from the purchase of goods and services relating to the construction and equipping of the Dental Suite.

(b) In accordance with the Resolution, the Company covenants that in the event that the Company obtains one or more conventional mortgage loans to finance the cost of the Project or which will otherwise be secured by a lien on the Premises, the aggregate amount of such mortgages shall not exceed \$5,000,000.00, and, therefore, the mortgages shall be eligible for an exemption from mortgage recording tax (in accordance with applicable law); provided, however, that the Company shall be liable for any and all New York State mortgage recording taxes resulting from the mortgage financing of any of the costs to construct or equip the Dental Suite.

4. 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 equipping of the Project as defined above including the construction and equipping of an approximately 15,000 square foot building, excluding the Dental Suite, to be used for research and development and back-office purposes, all to be located at the Premises and the acquisition and installation of machinery and equipment to be used for research and development, manufacturing and distribution purposes, all to be located at 2495 Kensington Avenue, Amherst, New York. The right of the Company to act as agent of the Agency shall expire on April 30, 2018, unless extended as contemplated by the Resolution. The aggregate amount of work performed as agent for the Agency shall not exceed the amounts described in the Application of the Company in this matter. All contracts entered into by the Company as agent for the Agency shall include the following language:

“This contract is being entered into by 2500 Kensington LLC and/or Shatkin F.I.R.S.T., LLC (the “Agent”), as agent for and on behalf of the Town of Amherst Industrial Development Agency (the “Agency”), in connection with a certain project of the Agency for the benefit of the Agent consisting of the construction and equipping of an approximately 15,000 square foot building to be used for research and development and back-office purposes, all to be located at 2500 Kensington Avenue, Amherst, New York, (the “Premises”), but excepting therefrom that 2,448 square foot portion of the Premises being constructed and equipped as a dental suite (the “Dental Suite”), and the acquisition and installation of machinery and equipment to be used for research and development,

manufacturing and distribution purposes, all to be located at 2495 Kensington Avenue, Amherst, New York ("2495 Kensington") (with the foregoing to be referred as the "Project"). The machinery, equipment, furnishings, fixtures and building materials to be incorporated and installed in the Premises, excepting the Dental Suite, and/or 2495 Kensington 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 form of sales tax exemption letter of the Agency attached hereto as Exhibit A; and the Agent hereby represents that it will comply with the terms of the sales tax exemption letter to be issued by the Agency to the Company. 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."

5. 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) 2500 Kensington is a limited liability company duly formed and validly existing under the laws of the State of New York is duly qualified and authorized to conduct business in New York State (the "State"), has the authority to enter into this Agreement and has duly authorized the execution and delivery of this Agreement.

(b) Shatkin is a limited liability company duly formed and validly existing under the laws of New York State and is duly qualified and authorized to conduct business in the State, has the authority to enter into this Agreement and has duly authorized the execution and delivery of this Agreement.

(c) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this 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 either 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 either Company under the terms of any such instrument or agreement.

(d) The Project and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Project, 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 (d).

(e) 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 either Company, threatened against or affecting either Company, to which either Company is a party, and in

which an adverse result would in any way diminish or adversely impact on either Company's ability to fulfill its obligations under this Agreement.

(f) The Company covenants that the Project 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 Premises except in compliance with all material applicable laws, (ii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Premises or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Premises, (iv) that no underground storage tanks will be located on the Premises, 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 Premises, the Company agrees to pay the expenses of same to the Agency upon demand, and agrees that upon failure to do so, its obligation for such expenses shall be deemed to be additional rent.

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

(h) The Agency following the adoption of the Resolution and the execution and delivery of this Agreement will complete and within thirty (30) days of appointment forward to the State Department of Taxation and Finance the "IDA Appointment of Project Operator or Agent For Sales Tax Purposes" (NYS Form ST-60) for the Project. The Company shall immediately notify the Agency of its appointment of any agents or subagents in connection with the Project and shall, on request of the Agency, complete and submit to the Agency a NYS Form ST-60 for each such agent or subagent.

(i) 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) regarding the value of sales and use tax exemptions the Company, its agents, subagents, consultants or subcontractors 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, that such copy shall be provided in no event later than February 15<sup>th</sup> 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.

(j) The Company acknowledges and agrees that all purchases made in furtherance of the Project shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (NYS Form ST-123, a copy of which is attached hereto as Exhibit B.) 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 purchase invoice should state, "I, a duly authorized representative of 2500 Kensington LLC and/or Shatkin F.I.R.S.T., LLC (the "Company"), certify that it is a duly appointed agent of the Town of Amherst Industrial Development Agency and that it is purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my Project Agreement with the Town of Amherst Industrial Development Agency." The Company further acknowledges and agrees that the following information shall be used by the Company to identify the Project on each bill and invoice: "the name of the Project, the street address of the Project site, and IDA project number." Until the Project is completed, the Company will forward to the Agency on an annual basis by February 15 of each year, a listing of all vendors, costs of purchases and estimated sales/use tax for each vendor. The Company will also forward to the Agency all Form ST-123's issued by the Company to sellers to the Agency within 30 days following the issuance of the Form ST-123 by the Company.

(k) 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.

6. Termination, Modification and/or Recapture of Agency Financial Assistance.

(a) In addition to any other covenants, obligations and agreements of the Company contained in this Agreement, the Company agrees to comply throughout the Compliance Period (as defined below) with the following covenants and agreements, each of which shall constitute a "Material Factor":

- i. compliance with the Agency's Local Labor Policy in connection with the construction and equipping of the Project;
- ii. achievement within two (2) years of Project completion of twenty-seven (27) full-time equivalent jobs and retention of such jobs throughout the Compliance Period; and
- iii. investment of not less than 85% of the total Project cost of

\$5,513,000.00 in the renovation and equipping of the Project prior to Project completion.

The "Compliance Period" shall mean the period during which the Company and/or Lessee is receiving Financial Assistance from the Agency, including any assistance under the Payment In Lieu of Taxes Agreement (as defined herein).

(b) In the event the Agency determines that Company and/or Lessee is in violation of a Material Factor, or in the event that the Company closes the Project or relocates its operations to a location outside of the Town of Amherst during the Compliance Period or in the event the Agency determines, in its judgment, that the Company and/or Lessee knowingly and intentionally submitted false or intentionally misleading information in its application to the Agency or in any report or certification submitted to the Agency for the purpose of obtaining or maintaining any Financial Assistance from the Agency (each referred to herein as a "Recapture Event"), the Agency may, in accordance with its policies and procedures then in effect, (i) revoke the designation of the Company and the Lessee and any agents of the Company and the Lessee (including, but not limited to, consultants, sub-contractors or equipment lessors of the Company and the Lessee) as agents for the Agency in connection with the Project and terminate the exemption from New York State and local sales and use taxes conferred with respect to the Project and/or (ii) require that the Company and the Lessee, commencing with the tax fiscal year next following such Recapture Event make payments in lieu of taxes on the Project with respect to all applicable taxing authorities in such amounts as would be payable as real estate taxes levied on the Project if the Agency did not have an interest in the Project or otherwise modify the amount or terms of any Financial Assistance being provided by the Agency in connection with the Project and/or (iii) require that the Company and Lessee pay to the Agency an amount equal to all or a portion (as determined by the Agency in its discretion) of the total value of (x) all sales tax exemptions claimed by the Company and Lessee and any agents of the Company and Lessee, including, but not limited to, consultants, sub-contractors, or any equipment lessors of the Company and the Lessee under the authority granted under the Resolution and this Agreement, (y) any exemption from real estate taxes received by reason of the Agency's leasehold interest in the Project and/or (z) any exemption from mortgage recording tax received by reason of the Agency's involvement with the Project. If the Agency makes any of the foregoing determinations and requires a repayment of all or a portion of the Financial Assistance received by the Company and/or Lessee, the Company and Lessee agrees and covenants that it will (i) cooperate with the Agency in its efforts to recover or recapture any or all financial assistance obtained by the Company and Lessee and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s) unless otherwise agreed to by any affected tax jurisdiction.

(c) In addition, in the event, because of the involvement of the Agency, the Company and/or Lessee claims an exemption from the New York State portion of any Sales Taxes in connection with the Project, and such exemption is claimed with respect to property or services not authorized hereunder or under the Resolution, or which exemption is in excess of the amounts authorized hereunder or under the Resolution, or is otherwise not permitted under this Agreement or the Resolution, or if the Company and/or Lessee shall fail to comply with a material term or condition regarding the use of property or services acquired by the Company as agent for the

Agency as set forth in this Agreement, the Resolution, the PILOT or in any other document executed and delivered by the Company and Lessee in connection therewith (collectively, the "Project Documents") then the Company and Lessee shall be required to remit to the Agency an amount equal to the amount of New York State portion of any Sales Taxes for which such exemption was improperly claimed. A failure to remit such amounts may result in an assessment against the Company and Lessee by the Commissioner of the New York State portion of any Sales Taxes, together with any relevant penalties and interest.

(d) The rights of the Agency pursuant to this Section 6 and the obligation of the Company and Lessee to cooperate with the Agency in its exercise of those rights shall survive the termination of this Agreement.

7. Annual Reporting. As a condition to receiving the Financial Assistance, the Company agrees to deliver to the Agency on an annual basis a certified statement enumerating (i) the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the Project location, and (ii) the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. In addition, the Company shall report, on an annual basis, the value of Financial Assistance received and the amount of Project costs incurred and paid by the Company. The form of certification is attached as Schedule B.

8. Compliance with Laws. By entering into this Agreement the Company certifies, under penalty of perjury, that the Company and any other owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

9. 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, officers, members 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 Project or the Premises or arising by reason of or in connection with the occupation, or the use thereof or the presence on, in or about the Project or Premises or breach by the Company of this Agreement or (ii) liability arising from or expense incurred by the Agency's financing, acquiring, rehabilitating, constructing, renovation, equipping, owning and leasing of the Project or the Premises, 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 members, directors, officers, agents (except the Company) 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 any loss, liability or claim arising solely from the willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified.



The provisions of this Section 9 and the obligations of the Company hereunder shall survive a termination of this Agreement.

10. Insurance Required. Effective as of the date hereof and until the expiration or termination of the right of the Company to act as agent of the Agency hereunder, the Company shall maintain, or cause to be maintained by its subagent or subcontractors, certain insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type, and paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) (i) 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 Project, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company or (ii) as an alternative to the above requirements (including the requirement of periodic appraisal), the Company may insure the Project under a blanket insurance policy or policies covering not only the Project but other properties as well. Such insurance shall have a commercially reasonable deductible.

(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 Project.

(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 \$5,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$5,000,000 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.

11. Additional Provisions Respecting Insurance. (a) All insurance required by Section 10 hereof shall name the Agency as an additional insured, as its interest may appear, on a primary and non-contributory basis. 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 commercially reasonably 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, except in the event of non-payment, in which at least ten (10) days prior written notice of the cancellation shall be delivered to the Company and the Agency. All insurance requirements in Section 10 may be satisfied by blanket policies subject to the reasonable approval by the Agency; provided, however, that approval or acceptance by a commercial lender (if any) in connection with the financing of the Project shall not require approval by the Agency. All or some of Section 10 insurance requirements may be satisfied by an Owner Controlled

Insurance Program ("OCIP") subject to approval by the Agency; provided, however, that approval or acceptance by a commercial lender in connection with the financing of the Project shall not require approval by the Agency.

(b) All such policies of insurance, or a certificate or certificates of insurance that such insurance is in force and effect, shall be deposited with the Agency on the date hereof. Prior to expiration of any such policy, the Company shall furnish evidence to the Agency that the policy has been renewed or replaced or is no longer required by this Agreement.

12. Default/Termination of Agreement. Should the Company fail to comply with any of its obligations under this Agreement and such failure shall continue for a period of thirty (30) days after notice of such default is sent by the Agency to the Company, the Agency shall have the right to revoke the designation of the Company as an agent for the Agency and may elect to terminate its involvement with the Project, in which event the Company shall be required to pay all sales taxes which would have been levied in connection with acquisition, construction and installation of all improvements of the real property and machinery and equipment which constitute the Project. In addition, as set forth in the Resolution, in the event the Project Documents have not been executed by Company by the expiration date (as such date may be extended) or termination of the Resolution, the Company shall be required to pay all sales taxes which would have been levied in connection with the acquisition, construction and installation of all improvements of the real property and machinery and equipment which constitute the Project. The designation of the Company as agent for the Agency shall terminate as set forth in Section 4 of this Agreement, provided, however, that the obligation of the Company to (a) provide reports for the time period for which any Financial Assistance was received in accordance with the Resolution and (b) cooperate in the exercise by the Agency of its rights and remedies under this Agreement shall survive any termination of this Agreement.

13. Survival. All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Agreement to the Agency regardless of any investigation made by the Agency.

14. Counterparts. This 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.

15. Notices. 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, certified mail, return receipt requested as follows:

To the Agency: TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY  
4287 Main Street  
Amherst, New York 14226  
Attention: Executive Director

With Copy To: Hurwitz & Fine, P.C.  
1300 Liberty Building  
Buffalo, New York 14202

Attention: Joseph M. Reynolds, Esq.

To the Company: 2500 Kensington LLC and  
SHATKIN F.I.R.S.T., LLC  
2500 Kensington Avenue  
Amherst, New York 14226  
Attention: Kim Wiesmore

With Copy To: ~~Kavinoky Cook LLP  
726 Exchange Street, Suite 800  
Buffalo, New York 14210  
Attention: Laurence K. Rubin, Esq.~~

(KW)  
DUKE HOLZMAN PHOTADIS & GREENS  
701 SENECA STREET SUITE 700  
BUFFALO, NY 14210  
ATTN: MICHAEL LOMBARDI

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 received or when delivery of same is refused by the recipient or when personally delivered in the manner provided in this Section.

16. Governing Law/Consent to Jurisdiction. This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State 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.

17. Payment of Fees and Expenses. By executing this Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Agency for (i) legal services in connection with the Project, including but not limited to those provided by the Agency's Counsel, and (ii) other consultants retained by the Agency 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 is entitled to receive a written estimate of fees and costs of the Agency's Counsel in accordance with the fee schedule of the Agency.

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.

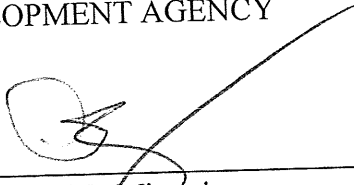
18. **WAIVER OF TRIAL BY JURY.** THE COMPANY AND THE AGENCY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY DISPUTE ARISING UNDER THIS AGREEMENT, AND THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

*[Signature Page to Project Agreement]*

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

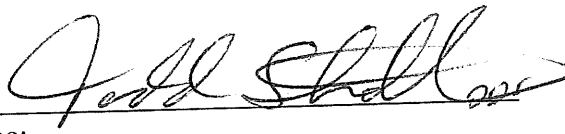
Dated: April 24, 2017

TOWN OF AMHERST INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Name: David S. Mingoia  
Title: Executive Director

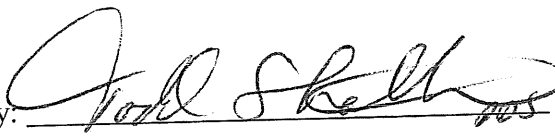
Dated: April 26 2017

SHATKIN F.I.R.S.T., LLC

By:   
Name:  
Title:

Dated: April 26 2017

2500 KENSINGTON LLC

By:   
Name:  
Title:

**SCHEDULE A**

List of Appointed Agents

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
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10. \_\_\_\_\_

## SCHEDULE B

### Payment in Lieu of Tax Schedule

Payments in lieu of general levy real estate taxes ("PILOT Payments") will be due and payable as follows: (a) with respect to the Town and County by February 15; and (b) with respect to the School District by October 15. PILOT Payments shall be calculated as follows: with respect to the assessed value of the land and any pre-project improvements, payments shall be in an amount equal to the amount of taxes that would have been paid were there no exemption based on the Agency's leasehold interest in the Project. With respect to any assessed value added by the Project, payments shall be based on percentages of the increased assessment in accordance with the following schedule (which reflect the percentage of increased value to be abated in calculating the payment):

#### Seven Year PILOT Schedule

Year	1	2	3	4	5	6	7
% Abatement	90%	90%	80%	80%	70%	70%	70%

**SCHEDULE C**

Reporting Form

**FOR IMMEDIATE ATTENTION**

\_\_\_\_\_, 20\_\_

Project Address:

Project ID:

Dear Sir or Madam:

Please confirm the following information. We must receive this information no later than **JANUARY 15, 20\_\_** so our office can meet the New York State Public Authorities Office compliance requirements. Please mail, email or fax your completed form directly to my attention at: laure@amherstida.com or fax - 716-688-0205.

Should you have any questions regarding this letter please contact me, Laure Manuszewski at the Amherst IDA at 716-688-9000.

**Employment**

Please list total number of full time equivalent (FTE) employees for calendar year 20\_\_ at the project location listed above, including full time equivalent independent contractors or employees of independent contractors that work at the project location, and specify full time equivalent jobs created during calendar year 20\_\_. **For multi-tenant facilities, please provide a rent roll listing the name of each tenant and the number of employees - FULL TIME AND PART TIME.**

Number of FTE (full time equivalent) jobs at 12/31/20\_\_ \_\_\_\_\_  
Number of FTE (full time equivalent) jobs created during calendar year 20\_\_ \_\_\_\_\_

Please provide a copy of your Form NYS-45 Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance return for the fourth quarter of 20\_\_.

Please provide the salary and fringe benefits averages or ranges for jobs created and retained, by category.

Category of Jobs Retained and Created	Average Salary or Range of Salary	Average Fringe Benefits or Range of Fringe Benefits
Management		
Professional		

Administrative		
Production		
Independent Contractor		
Other		

**Tax Exemptions**

Did you purchase any goods or services using a sales tax exemption in 20\_\_? Yes\_\_ No\_\_

Value of sales tax exemption taken in 20\_\_: (applies only to exemptions taken using the AIDA's sales tax exemption letter)

State (4%)\_\_ Local (4.75%)\_\_

Value of Mortgage Recording Tax exemption taken in 20\_\_.  
(1% of mortgage issued in 20\_\_)

**Project Costs**

Please confirm the amount of costs incurred and paid in connection with the project.

Total to date \$ \_\_\_\_\_  
In calendar year 20\_\_ \$ \_\_\_\_\_

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**Certification**

The information furnished on the report is complete and correct to the best of my knowledge and belief according to our records as of December 31, 20\_\_.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-Mail: \_\_\_\_\_



**EXHIBIT A**

FORM OF SALES TAX LETTER

**SALES TAX LETTER**

[ON OR AFTER APRIL \_\_\_, 2017]

[NAME OF COMPANY]  
[ADDRESS OF COMPANY]

**Re: *Town of Amherst Industrial Development Agency and [COMPANY]***

Ladies and Gentlemen:

Pursuant to a resolution duly adopted on April 21, 2017 (the "Resolution"), the Town of Amherst Industrial Development Agency (the "Agency") appointed 2500 KENSINGTON LLC and/or SHATKIN F.I.R.S.T, LLC (the "Company") the true and lawful agent of the Agency to undertake a certain project (the "Project") consisting of: [PROJECT DESCRIPTION].

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

This appointment further stipulates that the purchase of goods and services relating to the Project which are subject to New York State and local sales and use taxes, as authorized by the Resolution, may not exceed an aggregate amount of \$5,000,000.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency for the Project pursuant to the Resolution, cannot exceed an aggregate amount of \$437,500.00.

This agency appointment includes the power to delegate such agency, in whole or in part to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses, as is set forth in the Project Agreement, dated as of \_\_\_\_\_, 2017, by and between the Agency and the Company (referred to herein as the "Project Agreement"). As further set forth in the Project Agreement, the Agency will complete "IDA Appointment of Project Operator or Agent For Sales Tax Purposes" (NYS Form ST-60) for the Company and the Agency will execute said form forward said form to the New York State ("State") Department of Taxation and Finance within thirty (30) days of appointment.

As further set forth in the Project Agreement, in order to be entitled to use the exemption from New York State Sales and Use Taxes ("Sales Tax"), the Company, its agents, subagents, contractors and subcontractors should present to the supplier or vendor of materials for the Project, a completed "IDA Agent or Project Operator Exempt Purchase Certificate" (NYS Form ST-123), to show that the Company, its agents, subagents, contractors and subcontractors are each acting as agent for the Agency in making

the purchases of tangible personal property or services for use in the Project, thereby relieving such vendor or seller from the obligation to collect Sales Tax with respect to the construction and installation and equipping of the Facility. In connection therewith, it is necessary for the Company to identify the Project on each bill or invoice and indicate thereon which of the Company, its agents, subagents, contractors and subcontractors acted as agent for the Agency in making the purchases. Copies of each NYS Form ST-123 issued by the Company to a seller shall be forwarded to the Agency within thirty (30) days following the issuance by the Company.

As further set forth in the Project Agreement, the Company is required 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) regarding the value of sales and use tax exemptions the Company, its agents, consultants or subcontractors have claimed pursuant to the agency conferred on the Company by the Agency with respect to this Project, and the Company is required to provide a copy of same to the Agency within thirty (30) days of each filing; provided, however, in no event later than February 15<sup>th</sup> of each year.

The agency conferred on the Company by the Agency is limited to the Project, and will expire on **[DATE OF EXPIRATION OF AGENT STATUS]**. The Company may apply to extend this agency authority by showing good cause; *provided, however, the exemption for leases executed prior to said date shall continue through the term or extended term of said lease and any acquisition of said leased property.* Should the agency authority be extended beyond such date, the agency created will continue for as long as the period approved by the Agency for such extension.

This letter is provided for the sole purpose of describing the exemption from Sales Tax for this Project only. No other principal/agent relationship is intended or may be implied or inferred by this letter.

This letter is being issued pursuant to the Project Agreement and is subject to any further terms and conditions contained therein; without limiting the generality of the foregoing, it is expressly agreed and understood that the Company shall be liable for any and all New York State sales and use taxes resulting from the purchase of goods and services relating to the constructing and equipping of the the Dental Suite (as the term is defined in the Project Agreement). All agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project should be aware of the Project Agreement and obtain a copy thereof.

As further set forth in the Project Agreement, except to the extent of bond proceeds (to the extent bonds are issued by the Agency with respect to the Project), the Agency is not 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 is the sole party liable thereunder.

Very truly yours,

TOWN OF AMHERST INDUSTRIAL  
DEVELOPMENT AGENCY

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



# IDA Agent or Project Operator

## Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

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

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

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

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

### To the seller:

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

### Project information

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

Name of IDA					
Name of project				IDA project number (use OSC number)	
Street address of project site					
City, town, or village				State	ZIP code
Enter the date that you were appointed agent or project operator (mm/dd/yy) .....			/	/	Enter the date that agent or project operator status ends (mm/dd/yy) .....

### Exempt purchases

(Mark an **X** in boxes that apply)

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

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

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