



**Meeting Agenda – Audit and Finance Committee**

Genesee Gateway Local Development Corp

Wednesday, July 6, 2022 – 11:00 a.m.

Location: 99 MedTech Drive, Innovation Zone

Page #	Topic	Discussion Leader	Desired Outcome
	1. Call To Order – Enter Public Session	D. Cunningham	
2-5	<b>2. Chairman’s Report &amp; Activities</b> 2a. Agenda Additions / Other Business 2b. Minutes: May 31, 2022	D. Cunningham	
6-10 11-17 18-59 60-61	<b>3. Discussions / Official Recommendations to the Board:</b> 3a. May 2022 Financial Statements 3b. Assessment of the Effectiveness of Internal Controls 3c. MedTech Centre Lease Agreement – Oakgrove Construction 3d. Genesee CARES Update	L. Farrell L. Farrell M. Masse J. Krencik / M. Zimmerman	Disc / Vote Disc / Vote Disc / Vote Discussion
	<b>4. Adjournment</b>	D. Cunningham	

**GGLDC Audit & Finance Committee Meeting**

**Tuesday, May 31, 2022**

**Location – Electronically**

**8:30 a.m.**

**MINUTES**

**ATTENDANCE**

Committee Members: D. Cunningham, T. Bender, P. Battaglia  
Staff: L. Farrell, M. Masse, L. Casey, J. Krencik, P. Kennett, C. Suozzi, S. Hyde  
Guests: M. Gray  
Absent: T. Felton

**1. CALL TO ORDER / ENTER PUBLIC SESSION**

D. Cunningham called the meeting to order at 9:25 a.m. via conference call / video conference.

Governor Kathy Hochul signed legislation (S.50001 / A.40001) on September 2, 2021 extending virtual access to public meetings under NYS's Open Meetings Law, which allows virtual participation in local government meetings during the COVID-19 pandemic. This meeting is being held electronically via conference call / video conference instead of a public meeting open for the public to attend in person.

**2. CHAIRMAN'S REPORT & ACTIVITIES**

**2a. Agenda Additions / Other Business** – Nothing at this time.

**2b. Minutes: March 29, 2022 & April 5, 2022**

**P. Battaglia made a motion to recommend approval of March 29, 2022 and April 5, 2022 minutes; the motion was seconded by T. Bender. Roll call resulted as follows:**

T. Felton - Absent  
P. Battaglia - Yes  
T. Bender - Yes  
D. Cunningham – Yes

**The item was approved as presented.**

**3. DISCUSSIONS / OFFICIAL RECOMMENDATIONS TO THE BOARD:**

**3a. 1<sup>st</sup> Quarter Financial Statements-** L. Farrell reviewed the 1<sup>st</sup> quarter financial statements with the Committee. The following was noted:

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- On the balance sheet, there were not many significant changes.
- At 12/31/21 there was about \$46,000 in accounts payable. Payments to H. Sicherman for 2021 grant consulting services and Victor Excavating for 2021 expenditures were made in the first quarter, which decreased accounts payable from year end.
- In the Operating Fund, there is \$734,000 in CDBG grant income for the HP Hood project, which was 50% grant and 50% loan to the company. There is grant expense of \$367,000 recorded on the income statement. On the balance sheet there is also \$367,000 in loans receivable.
- Regular monthly activity for MedTech Centre, which is on budget as expected.

**P. Battaglia made a motion to recommend to the full Board the approval of the 1<sup>st</sup> Quarter Financial Statements as presented; the motion was seconded by T. Bender. Roll call resulted as follows:**

- T. Felton - Absent
- P. Battaglia - Yes
- T. Bender - Yes
- D. Cunningham - Yes

**The item was approved as presented.**

**3b. April 2022 Financial Statements-** L. Farrell reviewed with the Committee the significant items of the April 2022 long form financial statements.

- In the Operating Fund, there is \$50,000 of grant income. Two \$25,000 payments from solar projects (Trousdale Solar I & II) were received. The grant payments from these solar projects support workforce development initiatives and the overall economic development program.
- Regular monthly activity for MedTech Centre, which is on budget as expected.

**T. Bender made a motion to recommend to the full Board the approval of the April 2022 Financial Statements as presented; the motion was seconded by P. Battaglia. Roll call resulted as follows:**

- T. Felton - Absent
- P. Battaglia - Yes
- T. Bender - Yes
- D. Cunningham - Yes

**The item was approved as presented.**

**3c. Strategic Investment Funds Analysis** – L. Farrell reviewed the Strategic Investments Analysis with the Committee. It is only an analysis of the cash on hand as well as the cash that is anticipated with certainty within a reasonable period. She noted the following:

- The report has been updated for actual cash activity starting out the year in 2022.
- The second line item, "NYS Homes & Community Loan Repayments" includes repayments from the new HP Hood loan of \$73,400 for the next five years.
- To be conservative, the Genesee County Chamber Loan repayments have been updated for actual cash received only.
- For internal borrowings and repayments, we show \$137,382, which is the net cash available from the Fancher land sale. Years ago, we borrowed from strategic investment funds to pay back a loan

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to the EDC. The Fancher land sale at Buffalo East Tech Park will be used to pay back strategic investments.

- The Batavia Micropolitan Area Community Redevelopment Fund reserved amount of \$134,000 has been included for 2022. This reserved amount is the balance of the original \$500,000 commitment for the Revolving Loan Fund. This amount could be released if needed.
- For Ag Park Improvements, there is about \$23,000 left on the contracts committed for the drainage solution at Ag Park.
- For the Water Works and Sewer Works, \$50,000 per entity has been reserved for start-up costs. These costs have not been approved by the Board yet. This is just a placeholder
- There is the economic development program grant of \$300,000/year from the GGLDC to the GCEDC. This has been approved for 2022; years 2023-2026 are only placeholders and approvals would be required.
- The Workforce Development Reserve and Workforce Development Consultant has not changed.
- Opportunities are listed at the end of the report. La Fermiere has been added and data gathering for the draw request for Upstate Niagara is underway.
- Per the Plug Power Community Investment Agreement, \$900,000 per year for 20 years will be collected. These funds will be tracked in a separate strategic investment funds analysis intended for infrastructure improvements.

**3d. Audit & Finance Committee Charter-** The Committee discussed the Charter in executive session during a Committee self-evaluation discussion. There are no recommended changes at this time.

As there were no changes, a vote of approval was not necessary.

**3e. Committee Self-Evaluation-** A new memo will be drafted for the Governance Committee as the Committee Self-Evaluation comes out of the Committee Charter Review.

**3f. Cyber Insurance-** There was a presentation given by Lawley on Cyber Insurance at the beginning of the meeting. Coverage is through Atbay written with Trisura, Atbay's new supporting writing company. The change to Trisura is a result of the everchanging Cyber market. It's a common practice to use additional writing companies to provide competitive products.

Atbay/Trisura offered a renewal quote of \$10,289.17 for the 22-23 term. Limits and retention are per expiring; however, the carrier did add a Biometric Information Violation Exclusion. This has been a common exclusion that carriers have added to Cyber policies going forward. If you do not collect or house biometric data and that is not part of your services, this should not affect coverage. The agency's information was sent to market, but no additional quote options were received for the renewal.

Terms may change depending on if the STAMP entities are included. The STAMP information has been provided to the carrier. Lawley is waiting to hear as to whether the entities should be included now or when they become active. An update will be provided as soon as one is received from the carrier.

The cost of this policy is \$10,289.17 and will be split evenly between the GCEDC (\$5,144.59) and GGLDC (\$5,144.58). The budget for each entity included \$4,200 for cyber insurance. This is about \$900 over budget for each entity.

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**P. Battaglia made a motion to recommend to the full Board the approval of the Cyber Insurance as presented; the motion was seconded by T. Bender. Roll call resulted as follows:**

- T. Felton - Absent
- P. Battaglia - Yes
- T. Bender - Yes
- D. Cunningham - Yes

**The item was approved as presented.**

**3g. Purchase & Sale Agreement for Ag Park Property** - The GGLDC has received a Purchase and Sale Agreement from a potential project to acquire approximately 20 acres out of tax parcel 13.-1-170.11 for \$1,000,000.

**Fund Commitment:** Legal fees to Harris Beach for the transaction as listed in the resolution.

Resolution No. #06/2022 - 01

RESOLUTION OF THE GENESEE GATEWAY LOCAL DEVELOPMENT CORPORATION, AS THE MANAGING MEMBER OF GENESEE AGRI-BUSINESS LLC AUTHORIZING (I) THE SALE OF CERTAIN LANDS OWNED BY GENESEE AGRI-BUSINESS LLC TO LA FERMIERE INC. (THE "COMPANY") COMPRISING APPROXIMATELY 20 +/- ACRES LOCATED IN THE TOWN OF BATAVIA, GENESEE COUNTY, NEW YORK, AND KNOWN AS TAX PARCEL 13.-1-170.11 (THE "LAND"), (II) THE PROVISION OF CERTAIN FINANCIAL INCENTIVES TO THE COMPANY, (III) THE EXECUTION AND DELIVERY OF A PURCHASE AND SALE AGREEMENT FOR THE CONVEYANCE OF THE LAND AND (IV) THE EXECUTION AND DELIVERY OF DOCUMENTS NECESSARY AND INCIDENTAL TO THE FOREGOING.

**T. Bender made a motion to approve Resolution No. #06/2022-01 and PSA for the Ag Park Property and payment of legal fees not to exceed \$20,000 as presented; the motion was seconded by P. Battaglia. Roll call resulted as follows:**

- T. Felton - Absent
- P. Battaglia - Yes
- T. Bender - Yes
- D. Cunningham - Yes

**The item was approved as presented.**

**3h. Genesee CARES Update** - J. Krencik provided an update on the progress of the projects. Of the 22 projects, 21 have submitted documents per their grant agreements. By the next Genesee CARES update, two projects will be fully reimbursed and potentially 3-4 more that will be partially reimbursed.

M. Masse stated that Oakgrove Construction is now subleasing the Adecco space. At the next meeting, M. Masse will be bringing forward a 6-month extension to the Adecco lease that expires in 2023.

**4. ADJOURNMENT**

T. Bender made a motion to adjourn at 9:40 a.m., seconded by P. Battaglia and passed unanimously.

**Genesee Gateway Local Development Corp.**  
**May 2022 Dashboard**  
**Balance Sheet - Accrual Basis**

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	<u>5/31/22</u>	<u>4/30/22</u>	[Per Audit] <u>12/31/21</u>
<b>ASSETS:</b>			
Cash - Unrestricted	\$ 567,691	\$ 547,950	\$ 503,196
Cash - Restricted (A)	588,449	588,390	588,161
Cash - Reserved (B)	1,467,096	1,451,998	1,447,826
Cash - Subtotal	2,623,236	2,588,338	2,539,183
Grants Receivable (1)	33,643	31,237	34,980
Accounts Receivable	96	3,013	8,059
Loans Receivable - Current Portion	276,649	281,282	281,792
Other Current Assets (2)	18,164	20,826	10,439
<b>Total Current Assets</b>	<b>2,951,788</b>	<b>2,924,696</b>	<b>2,874,453</b>
Land Held for Dev. & Resale	2,556,367	2,556,367	2,556,367
Buildings & Improvements	7,202,120	7,202,120	7,202,120
Furniture, Fixtures & Equipment	46,599	46,599	46,599
Total Property, Plant & Equip.	9,805,086	9,805,086	9,805,086
Less Accumulated Depreciation	(2,235,226)	(2,218,793)	(2,153,059)
<b>Net Property, Plant &amp; Equip.</b>	<b>7,569,860</b>	<b>7,586,293</b>	<b>7,652,027</b>
Loans Receivable - Noncurrent Portion (Net of \$176,545 Allow for Bad Debt at 5/31/22 & 4/30/22 and \$201,229 at 12/31/21)	1,034,142	1,048,671	764,495
Equity Investment in Genesee Agri-Business, LLC (3)	2,562,240	2,562,240	2,562,240
<b>Other Assets</b>	<b>3,596,382</b>	<b>3,610,911</b>	<b>3,326,735</b>
<b>Total Assets</b>	<b>14,118,030</b>	<b>14,121,900</b>	<b>13,853,215</b>
<b>LIABILITIES:</b>			
Accounts Payable (4)	64,954	32,816	46,279
Unearned Revenue (5)	40,728	40,187	56,571
Security Deposits	109,944	109,944	109,944
Loans Payable - Current Portion	84,524	84,244	76,328
Bonds Payable - Current Portion	151,375	150,839	148,743
<b>Total Current Liabilities</b>	<b>451,525</b>	<b>418,030</b>	<b>437,865</b>
Loans Payable - Noncurrent Portion	2,142,826	2,149,999	2,178,456
Bonds Payable - Noncurrent Portion	2,449,279	2,463,464	2,519,445
<b>Total Noncurrent Liabilities</b>	<b>4,592,105</b>	<b>4,613,463</b>	<b>4,697,901</b>
<b>Total Liabilities</b>	<b>5,043,630</b>	<b>5,031,493</b>	<b>5,135,766</b>
<b>EQUITY</b>	<b>\$ 9,074,400</b>	<b>\$ 9,090,407</b>	<b>\$ 8,717,449</b>

**Significant Events:**

1. Grants Receivable - "Cornell in High School" program will be reimbursed by a WDI grant (\$10K) and the balance will be reimbursed for OCR grant services performed by H. Sicherman.
2. Other Current Assets - Prepaid D&O, Cyber, and General Liability insurance.
3. Equity Investment in Genesee Agri-Business, LLC - ties to corresponding GAB, LLC financial statements.
4. Accounts Payable - Grant for continuing Economic Development Program Support and MedTech Centre Property Management.
5. Unearned Revenue - Loan interest, MedTech Centre rent received in advance, etc.

(A) Restricted = Community Benefit Agreement (CBA) Funds, Security Deposits, USDA Debt Sinking Fund.

(B) Reserved = OCR loan repayments, Strategic Investment Funds, Economic Development Loan Funds, Batavia Micropolitan Area Redevelopment Loan Funds, Grant Funds.

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Genesee Gateway Local Development Corp.  
 May 2022 Dashboard  
 Profit & Loss - Accrual Basis

	Month to Date		YTD		2022	2022
	5/31/22	5/31/21	2022	2021	Board Approved Budget	YTD % of Budget
<b>Operating Revenues:</b>						
Grants (1)	\$ 2,406	\$ -	\$ 786,406	\$ 50,000	\$ 932,648	84%
Interest Income on Loans	1,812	1,054	8,766	7,897	19,940	44%
Rent	62,008	66,489	308,885	305,915	738,695	42%
Common Area Fees - Parks	-	-	500	500	500	100%
Fees	-	-	9,980	-	-	N/A
Other Revenue	-	27	1,060	27	-	N/A
Land Sale Proceeds	-	337,500	-	337,500	-	N/A
<b>Total Operating Revenues</b>	<b>66,226</b>	<b>405,070</b>	<b>1,115,597</b>	<b>701,839</b>	<b>1,691,783</b>	
<b>Operating Expenses:</b>						
Operations & Maintenance	12,547	24,392	60,423	60,247	209,801	29%
Professional Services	15,104	10,139	57,371	50,300	162,192	35%
Econ. Dev. Prog. Support Grant	25,000	25,000	125,000	125,000	300,000	42%
Site Development Expense	-	3,175	-	14,625	93,000	0%
Cost of Sales	-	621,489	-	621,489	-	N/A
Grant Expense (2)	-	658,145	367,000	658,145	819,648	45%
Real Estate Dev. (Capitalized)	-	-	-	100	15,000	0%
Buildings/Furniture/Equip. (Capitalized)	-	-	-	-	5,000	0%
Balance Sheet Absorption	-	-	-	(100)	(20,000)	0%
Depreciation	16,433	16,326	82,167	81,634	197,203	42%
<b>Total Operating Expenses</b>	<b>69,084</b>	<b>1,358,666</b>	<b>691,961</b>	<b>1,611,440</b>	<b>1,781,844</b>	
<b>Operating Expense</b>	<b>(2,858)</b>	<b>(953,596)</b>	<b>423,636</b>	<b>(909,601)</b>	<b>(90,061)</b>	
<b>Non-Operating Revenues (Expenses):</b>						
Other Interest Income	194	281	970	1,434	1,600	61%
Interest Expense	(13,343)	(13,975)	(67,655)	(70,178)	(160,518)	42%
<b>Total Non-Operating Exp.</b>	<b>(13,149)</b>	<b>(13,694)</b>	<b>(66,685)</b>	<b>(68,744)</b>	<b>(158,918)</b>	
<b>Change in Net Assets</b>	<b>(16,007)</b>	<b>(967,290)</b>	<b>356,951</b>	<b>(978,345)</b>	<b>\$ (248,979)</b>	
<b>Net Assets - Beginning</b>	<b>9,090,407</b>	<b>9,887,233</b>	<b>8,717,449</b>	<b>9,898,288</b>		
<b>Net Assets - Ending</b>	<b>\$ 9,074,400</b>	<b>\$ 8,919,943</b>	<b>\$ 9,074,400</b>	<b>\$ 8,919,943</b>		

**Significant Events:**

1. Grant Revenue YTD - Two solar projects closed (Trousdale Solar I & II) and OCR grant/loan to HP Hood (\$734K).
2. Grant Expense Ops YTD - 50% of OCR grant funds were disbursed to HP Hood as a grant.

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Genesee Gateway Local Development Corp.  
May 2022 Dashboard  
Statement of Cash Flows

	May 2022	YTD
CASH PROVIDED BY OPERATING ACTIVITIES:		
Grant Income	\$ -	\$ 787,743
Interest Income on Loans	2,353	15,111
Rental Income	64,872	294,588
Common Area Fees - Parks	-	500
Fees	-	9,980
Other Revenue	-	1,060
Operations & Maintenance	(9,793)	(79,292)
Professional Services	(8,005)	(66,076)
Economic Development Program Support Grant	-	(75,000)
Site Development Expense	-	(18,943)
Grant Expense	-	(367,000)
Issuance of Loans	-	(367,000)
Repayment of Loans	19,162	102,496
Net Cash Provided By Operating Activities	<u>68,589</u>	<u>238,167</u>
CASH FLOWS USED BY CAPITAL & RELATED FINANCING ACTIVITIES:		
Principal Payments on Bonds & Loans	(20,542)	(94,968)
Interest Paid on Bonds & Loans	(13,343)	(60,116)
Net Cash Used By Capital & Related Financing Activities	<u>(33,885)</u>	<u>(155,084)</u>
CASH FLOWS PROVIDED BY INVESTING ACTIVITIES:		
Interest Income	<u>194</u>	<u>970</u>
Net Cash Provided By Investing Activities	<u>194</u>	<u>970</u>
Net Change in Cash	34,898	84,053
Cash - Beginning of Period	2,588,338	2,539,183
Cash - End of Period	<u>\$ 2,623,236</u>	<u>\$ 2,623,236</u>
RECONCILIATION OF OPERATING REVENUE (EXPENSE) TO NET CASH PROVIDED BY OPERATING ACTIVITIES:		
Operating Revenue (Expense)	\$ (2,858)	\$ 423,636
Adjustments:		
Depreciation Expense	16,433	82,167
Decrease in Grants/Accounts Receivable	511	9,300
Decrease (Increase) in Other Current Assets	2,662	(7,725)
Decrease (Increase) in Loans Receivable	19,162	(264,504)
Increase Operating Accounts Payable	32,138	11,136
Increase (Decrease) in Unearned Revenue	541	(15,843)
Total Adjustments	<u>71,447</u>	<u>(185,469)</u>
Net Cash Provided By Operating Activities	<u>\$ 68,589</u>	<u>\$ 238,167</u>



**Genesee Gateway Local Development Corp.**  
**May 2022 Dashboard**  
**Balance Sheet - Accrual Basis**

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	<b>GGLDC</b>		<b>GABLLC</b>		<b>COMBINED</b>	
	<u>5/31/22</u>	<u>5/31/22</u>	<u>Eliminations</u>	<u>5/31/22</u>	<u>Per Audit</u>	<u>12/31/2021</u>
<b>ASSETS:</b>						
Cash - Unrestricted	\$ 567,691	\$ -	\$ -	\$ 567,691	\$	503,196
Cash - Restricted (A)	588,449	-	-	588,449		588,161
Cash - Reserved (B)	1,467,096	2,549,967	-	4,017,063		3,988,986
Cash - Subtotal	2,623,236	2,549,967	-	5,173,203		5,080,343
Grants Receivable	33,643	-	-	33,643		34,980
Accts Receivable - Current	96	-	-	96		8,059
Loans Receivable - Current	276,649	-	-	276,649		281,792
Other Current Assets	18,164	-	-	18,164		10,439
<b>Total Current Assets</b>	<b>2,951,788</b>	<b>2,549,967</b>	<b>-</b>	<b>5,501,755</b>		<b>5,415,613</b>
Land & Improvements	2,556,367	1,339,729	-	3,896,096		3,896,097
Buildings & Improvements	7,202,120	-	-	7,202,120		7,202,120
Furniture, Fixtures & Equipment	46,599	-	-	46,599		46,599
Total Property, Plant & Equip.	9,805,086	1,339,729	-	11,144,815		11,144,816
Less Accumulated Depreciation	(2,235,226)	-	-	(2,235,226)		(2,153,059)
<b>Net Property, Plant &amp; Equip.</b>	<b>7,569,860</b>	<b>1,339,729</b>	<b>-</b>	<b>8,909,589</b>		<b>8,991,757</b>
Loans Receivable - Noncurrent	1,034,142	-	-	1,034,142		764,495
Equity Investment in GAB, LLC	2,562,240	-	(2,562,240)	-		-
<b>Other Assets</b>	<b>3,596,382</b>	<b>-</b>	<b>(2,562,240)</b>	<b>1,034,142</b>		<b>764,495</b>
<b>TOTAL ASSETS</b>	<b>14,118,030</b>	<b>3,889,696</b>	<b>(2,562,240)</b>	<b>15,445,486</b>		<b>15,171,865</b>
<b>LIABILITIES:</b>						
Accounts Payable	64,954	-	-	64,954		46,279
Unearned Revenue	40,728	-	-	40,728		56,571
Security Deposits	109,944	-	-	109,944		109,944
Loans Payable - Current Portion	84,524	-	-	84,524		76,328
Bonds Payable - Noncurrent Portion	151,375	-	-	151,375		148,743
<b>Total Current Liabilities</b>	<b>451,525</b>	<b>-</b>	<b>-</b>	<b>451,525</b>		<b>437,865</b>
Loans Payable - Noncurrent Portion	2,142,826	-	-	2,142,826		2,178,456
Bonds Payable - Noncurrent Portion	2,449,279	-	-	2,449,279		2,519,445
<b>Total Noncurrent Liabilities</b>	<b>4,592,105</b>	<b>-</b>	<b>-</b>	<b>4,592,105</b>		<b>4,697,901</b>
<b>TOTAL LIABILITIES</b>	<b>5,043,630</b>	<b>-</b>	<b>-</b>	<b>5,043,630</b>		<b>5,135,766</b>
<b>EQUITY</b>	<b>\$ 9,074,400</b>	<b>\$ 3,889,696</b>	<b>\$ (2,562,240)</b>	<b>\$ 10,401,856</b>	<b>\$</b>	<b>10,036,099</b>

(A) Restricted = Community Benefit Agreement (CBA) Funds, Security Deposits, USDA Debt Sinking Fund, Grant Funds.

(B) Reserved = OCR loan repayments, Strategic Investment Funds, Economic Development Loan Funds, Batavia Micropolitan Area Redevelopment Loan Funds, Grant Funds.

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**Genesee Gateway Local Development Corp.**  
**May 2022 Dashboard**  
**Profit & Loss - Accrual Basis**

	GGLDC	GABLLC	Eliminations	COMBINED	
				5/31/22	5/31/22
<u>Operating Revenues:</u>					
Grants	\$ 2,406	\$ -	\$ -	\$ 2,406	\$ 786,406
Interest Income on Loans	1,812	-	-	1,812	8,766
Rent	62,008	2,496	-	64,504	315,102
Common Area Fees - Parks	-	-	-	-	6,794
Fees	-	-	-	-	9,980
Other Revenue	-	-	-	-	1,060
Land Sale Proceeds	-	-	-	-	-
<b>Total Operating Revenues</b>	<b>66,226</b>	<b>2,496</b>	<b>-</b>	<b>68,722</b>	<b>1,128,108</b>
<u>Operating Expenses:</u>					
Operations & Maintenance	12,547	-	-	12,547	64,970
Professional Services	15,104	-	-	15,104	57,371
Econ. Dev. Program Support Grant	25,000	-	-	25,000	125,000
Site Development Expense	-	-	-	-	-
Cost of Sales	-	-	-	-	-
Grant Expense	-	-	-	-	367,000
Real Estate Development (Capitalized)	-	-	-	-	-
Balance Sheet Absorption	-	-	-	-	-
Depreciation	16,433	-	-	16,433	82,167
<b>Total Operating Expenses</b>	<b>69,084</b>	<b>-</b>	<b>-</b>	<b>69,084</b>	<b>696,508</b>
<b>Operating Revenue (Expense)</b>	<b>(2,858)</b>	<b>2,496</b>	<b>-</b>	<b>(362)</b>	<b>431,600</b>
<u>Non-Operating Revenues (Expenses):</u>					
Other Interest Income	194	173	-	367	1,812
Interest Expense	(13,343)	-	-	(13,343)	(67,655)
<b>Total Non-Operating Rev (Exp)</b>	<b>(13,149)</b>	<b>173</b>	<b>-</b>	<b>(12,976)</b>	<b>(65,843)</b>
<b>Change in Net Assets</b>	<b>(16,007)</b>	<b>2,669</b>	<b>-</b>	<b>(13,338)</b>	<b>365,757</b>
<b>Net Assets - Beginning</b>	<b>9,090,407</b>	<b>3,887,027</b>	<b>(2,562,240)</b>	<b>10,415,194</b>	<b>10,036,099</b>
<b>Net Assets - Ending</b>	<b>\$ 9,074,400</b>	<b>\$ 3,889,696</b>	<b>\$ (2,562,240)</b>	<b>\$ 10,401,856</b>	<b>\$ 10,401,856</b>



## 2022 Assessment of the Effectiveness of Internal Controls

### Purpose of the Genesee Gateway Local Development Corporation (GGLDC)

The GGLDC was created in 2004 with a focus on economic development opportunities related to real estate and corporate park development.

### Internal Controls

The accounting, financial reporting, and cash management functions are carried out relying on a multitude of internal controls. A Financial Procedures document details all aspects of the financial controls in place. To be efficient and cost effective and in accordance with the goal of developing shovel-ready sites to assist in the enabling of IDA assisted projects, the staff of the GGLDC's sole owner, the Genesee County Industrial Development Agency d/b/a/ Genesee County Economic Development Center (GCEDC), provides services which enhance the internal controls of the GGLDC. Examples of some of the controls used are listed below:

- All invoices must be reviewed and verified by the Treasurer or GCEDC's CFO, CEO or Sr. VP of Operations. All checks require two Board Member signatures. GCEDC's CFO opens and reviews all bank statements and bank reconciliations. – ***Multiple persons signing off on the process and the GCEDC's CFO opens and reviews bank statements and does not have authorization to sign checks.***
- All checks received by the GGLDC are recorded and stamped "for deposit only" by GCEDC's Operations Assistant or Finance Assistant and given to GCEDC's Operations Manager for review. GCEDC's Operations Manager ensures that all funds are coded, and that each transaction is recorded in the accounting software. The deposit slips are then prepared by GCEDC's Finance Assistant and deposited in the bank. The deposit receipt from the bank is then attached to the appropriate back up for the deposit. – ***Bank verification and receipts make this low risk.***
- Computers are password protected. Accounting software is separately password protected. Access to the accounting software is limited to the Operations Manager, Finance Assistant and CFO. – ***Password protection and limited access to accounting software makes this low risk.***

Note: Internal controls are reviewed continuously and adjustments are made as necessary.

The system of controls applicable to the GGLDC was last reviewed by the GGLDC's Audit & Finance Committee on July 6, 2022. The Audit & Finance Committee's review affirmed that there are no material control weaknesses to be reported. The GGLDC undergoes an annual financial audit by an independent CPA firm. While auditors are not engaged to perform an audit of internal controls, auditors do provide management letter comments when they encounter internal weaknesses. No material weaknesses in internal controls have been identified by the independent auditors.

In summary, the present internal control structure appears to be sufficient to meet internal control objectives that pertain to the prevention and detection of errors and irregularities.

**Client Name: Genesee County Industrial Development Agency  
dba Genesee County Economic Development Center  
Genesee Gateway Local Development Corporation**

**GGLDC administrative tasks are performed by GCEDC employees**

**Audit & Finance Committee Last Reviewed: 7/6/22**

**CASH CONTROL ACTIVITIES**

***Cash Receipts***

The GCEDC/GGLDC does not routinely handle cash. When cash is received, it's generally once a year at the annual meeting location via registration fees paid. Mail is opened by the Operations Assistant. All receipts are immediately marked "for deposit only". The cash receipts are deposited every 3 – 5 days in the appropriate cash account either in Five Star Bank, Key Bank, or The Bank of Castile. Some receipts are received directly into bank accounts via ACH/wire transfer. Posting of cash receipts to accounts receivable is done by the Finance Assistant. The postings are done promptly and accurately recorded as to customer account, amount and period. The Operations Manager reviews deposits and postings to customer accounts and general ledger accounts. Any adjustments to cash accounts are approved by the CFO. Cash held on site is stored in a locked file cabinet and kept independent of mail receipts. A PayPal account is used for annual meeting registration fees paid. Email notifications are received when payments have been made. PayPal deposits are recorded in the general ledger weekly by the Finance Assistant and the Operations Manager reviews the monthly activity.

***Cash Disbursements***

Cash disbursements are made by check, online payments, online bill pay or bank wire, except for small amounts from petty cash. Online payments and online bill pay are only made to ensure that bills are paid on time and to prevent late payment charges.

All checks require two signatures. GCEDC checks must be co-signed by at least one board member. GGLDC checks are signed by two board members. The GCEDC and GGLDC Audit & Finance Committee members are authorized bank signers.

All GCEDC line of credit withdrawals must be co-signed by at least one board member. GGLDC line of credit withdrawals must be signed by two board members.

Checks are pre-numbered and the sequence is accounted for regularly. All blank checks are kept in a secure location. All cash disbursement records are matched against accounts payable/open invoice files by the Operations Manager.

Invoices received are date stamped by the Operations Assistant and given to the Finance Assistant for review, tracking against contracts in place, to make sure supporting documentation is attached, and to ensure that the appropriate person signs off for approval of payment. All invoices are then reviewed by the Operations Manager and the CFO prior to disbursement checks being prepared. Checks are prepared by the Finance Assistant, only after proper matching of supporting documentation. Supporting documentation is marked with the check number when a check is prepared. The check signer reviews all supporting documentation. Purchasing documents are accounted for and controlled by the Operations Manager. Signed disbursement checks are returned to the Finance Assistant / Operations Assistant for mailing. *Mitigating controls: The CFO opens and reviews bank statements and does not have authorization to sign checks.*

All bank and interfund transfers are authorized by the CFO and the Sr. VP of Operations.

***Electronic/Online Payments***

Online bill pay can be used for payments to vendors that are on the Audit & Finance Committee pre-approved list. The same cash disbursement control procedures are followed, except that payments are acknowledged by two authorized bank signers after the online payment is complete.

***Bank Account Reconciliations***

Bank accounts are reconciled monthly by the Finance Assistant and reconciliations are reviewed by the Operations Manager and the CFO. All reconciling items are appropriate and supported. All bank statements received in the mail are delivered unopened to the CFO who opens, reviews and signs off prior to reconciliations being performed.

***Journal entries***

Non-standard journal entries are recorded in the general ledger by Operations Manager and the Finance Assistant and reviewed by the CFO.

**SUPPORT, PROGRAM SERVICE FEES, REVENUE AND RECEIVABLE CONTROL ACTIVITIES**

***Program Service Receivables***

Invoices are prepared once a month by the Finance Assistant. All invoices are numbered and issued in sequential order. Invoices are posted to the accounting system as payment is received. The individual(s) charged with the billing duties is also responsible for accounts receivable with the Operations Manager monitoring and reviewing the process.

***Pledges Receivable (Not Applicable)***

***Collections***

There are no established credit policies.

When cash payments are received they are posted to customer accounts by the Finance Assistant. The GCEDC/GGLDC does not prepare regular customer statements. Invoices for rent and revolving loan fund payments are mailed once a month and outstanding invoices older than 30 days are followed up via telephone by the **Operations Manager**, Senior VP of Operations, or CFO.

***Trial Balance***

The accounts receivable aging is maintained separately from the general ledger. The aging is reconciled once a month by the Operations Manager. Program revenues recorded are compared with the budget monthly by the Operations Manager and any significant deviations from budget are investigated and explained.

***Allowance for Doubtful Accounts Program Services fee write-offs:***

All write-offs to rent or revolving loan fund accounts are approved by the GCEDC/GGLDC Board of Directors. The accounts receivable aging is reviewed monthly by the Operations Manager. Accounts are deemed possibly uncollectible and written off to the allowance for doubtful accounts when they meet the following criteria: When the board of directors determines that all efforts to collect have been exhausted.

## INVESTMENTS AND DERIVATIVE CONTROL ACTIVITIES

*The GCEDC and GGLDC's Investment Policies are provided separately.*

## EXPENSES FOR PROGRAM AND SUPPORTING SERVICES AND ACCOUNTS PAYABLE AND PURCHASES CONTROL ACTIVITIES

### ***Purchasing (Other than Inventory)***

Purchasing is done by the Operations Assistant. For all purchases (other than items of inventory), the purchases are supported by approvals and authorizations. The GCEDC/GGLDC does not require pre-numbered purchase orders. Individuals with the right to approve and authorize purchases are the President/CEO, CFO, and Senior VP of Operations. The Operations Manager approves purchases of supplies, equipment and postage that are within budget as well as any other purchases that were planned for within the budget.

### ***Receiving, Recording Payable and Expense***

When the ordered items are received they are inspected for condition and counted by the Operations Assistant. Due to the small nature of the organization, full segregation of duties is not possible. The individual responsible for receiving is also responsible for purchasing, with oversight by Operations Manager or Finance Assistant.

The invoices subsequently received from vendors are matched up to the purchase orders and receiving reports and compared for quantities received, product ordered, pricing and clerical accuracy by the Operations Manager. For any goods that are returned, the shipping documents are maintained and reviewed and matched to vendor credit memos.

The payables are paid approximately twice a month by the Finance Assistant. The checks are reviewed and signed by two authorized bank account signers.

### ***Trial Balance***

The accounts payable aging is maintained separately from the general ledger. The aging is reconciled monthly by the Operations Manager. The GCEDC/GGLDC does not prepare monthly vendor statements. The President/CEO, CFO and the Audit & Finance Committee review the detailed monthly financial statements and compare the balances in expense accounts to budgeted amounts and any significant deviations from expectations are investigated and explained.

## GCEDC PAYROLL AND EMPLOYEE BENEFITS CONTROL ACTIVITIES

### ***Payroll***

Employees are paid biweekly out of the Five Star Bank primary checking account. Funds are transferred into the account used for payroll from the Five Star Bank primary savings account by the Operations Manager. The GCEDC transfers funds to cover payroll as needed. All fund transfers are authorized by the CFO and Senior VP of Operations. Employees are never paid in cash.

Salaried employees are not required to submit weekly time records however; a record of absence is to be maintained by each employee, kept current and electronically stored in a common location as directed. Employees must have vacation compensation approved by the President/CEO or CFO. The individuals responsible for approving time are not responsible for processing or recording payroll.

Hourly employees are required to submit bi-weekly time records to their supervisor to report hours worked.

Complete Payroll Processing is the service provider used to process payroll. All the payroll information provided to the service organization such as pay rates and withholdings is authorized by the President/CEO and/or CFO. Bi-weekly payroll information is submitted to Complete Payroll Processing by the Operations Manager after compiling adequate support for the time worked by the employees. The registers produced by the service are reviewed after processing and approved by Operations Manager. The review is done to ensure the payroll transactions are only for authorized employees and that the correct pay rate is used. GCEDC does not pay commission to its employees.

All payroll checks are pre-numbered and used in sequence and any unissued checks are controlled by Complete Payroll Processing.

When new employees are hired they complete the appropriate paperwork including withholding forms and authorizations for payroll deductions that are maintained in personnel files by the Operations Manager and are entered into the payroll system by the Operations Manager. When employees are terminated they are removed from the payroll system by the Operations Manager. When there are raises or changes in pay rates, they are approved by the President/CEO or CFO and entered into the payroll system by the Operations Manager. All changes in personnel data are reported promptly so they can be properly taken care of in the payroll database.

The timely remittance of payroll taxes and of the payroll tax returns is overseen by Complete Payroll Processing.

### ***Employee Benefits***

For all benefits provided to employees such as health insurance, retirement plans, and fringe benefits, support is maintained in the personnel files authorizing deductions by the Operations Manager. Individuals with the appropriate level of knowledge are responsible for monitoring employee benefit matters and for ensuring withholdings such as 403(b) or NYS Deferred Compensation deferrals and cafeteria plan withholdings are remitted timely. These individuals include the CFO and Operations Manager.

### ***Trial Balance***

The Operations Manager reviews the monthly financial statements and compares the balances in the payroll and employee benefit expense accounts to budgeted amounts and any significant deviations from expectations are investigated and explained. The detailed payroll records are also reconciled by the Operations Manager to the payroll tax returns quarterly, and the total W-2s are reconciled to the general ledger at year end by the Operations Manager.

When necessary the appropriate payroll accruals including accruals for compensated absences are made to the general ledger by the Operations Manager.

### **Computers / IT**

All computers are password protected. Peachtree is password protected. Each user has an independent password. Those with access to the Peachtree system are the Operations Manager, Finance Assistant, and CFO. The CFO does not post or change any data in the system; he/she reviews data only.

All employee computer files are backed up to the server and the server is backed up to an off-site location (Erie County IDA) on a nightly basis. The back-up is monitored by the IT Consultant and the Operations Manager.

*GCEDC Employee Reimbursements*

Employee reimbursement requests are submitted to and approved by the Senior VP of Operations and CFO. The President/CEO must sign off on requests submitted by the Senior VP of Operations or CFO. Two Board members must sign off on requests submitted by the President/CEO.

*GCEDC Travel Authorization*

Travel involving overnight accommodation or travel outside of New York State requires prior approval of the President & CEO (or the Chairman or Vice-Chairman of the Board, in the case of the CEO's travel).

Signed travel authorization forms are attached to subsequent reimbursement requests to verify that expenditures are appropriate and in line with the prior approval.



**GCEDC / GGLDC**

**Pre-Approved List of Vendors That Can Be Paid Online:**

- Tompkins Trust Company (Visa)
- Selective Insurance
- Toshiba Financial Services
- National Grid
- National Fuel
- ~~Level 3 Communications (Internet & Phone)~~
- ~~Verizon (Elevator security phone)~~
- Five Star Bank (Loan payments)
- KeyBank (Line of Credit payments)
- Bank of Castile
- Five Star Bank
- Quadient (Postage)
- Traveler's (D&O Insurance)
- ~~Town of Batavia (Water/Sewer)~~

List Last Reviewed & Approved by Audit & Finance Committee:

GCEDC - 7/6/2022

GGLDC - 7/6/2022

### **Proposed Lease Agreement for Upstate Medtech Centre**

**Discussion:** Oakgrove Construction is currently subleasing space in the Medtech Centre from Adecco. That lease expires on March 31, 2023 and Oakgrove Construction would like to lease the space for an additional six months after that date. The GGLDC prepared a lease agreement, as reviewed by Harris Beach, that was signed by Oakgrove and included in this Board packet. Key terms are as follows:

1. Base rent of \$15.50 per square foot plus CAM charges.
2. 6% commission to be paid to Cushman & Wakefield over the term of the six month lease

**Fund Commitment:** Commission to be paid upon collection of rent.

**Committee Action Request:** Recommend approval of Lease Agreement for Upstate Medtech Centre.

GENESEE GATEWAY LOCAL DEVELOPMENT CORPORATION,

As Landlord

and

OAKGROVE CONSTRUCTION

As Tenant

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LEASE AGREEMENT

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Dated: April 1, 2023

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Exhibit A - Site Plan - Property  
Exhibit B - Leased Premises (Drawing)  
Exhibit C - Rules and Regulations

## LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into as of August 1, 2022, by and between GENESEE GATEWAY LOCAL DEVELOPMENT CORPORATION, a New York not-for-profit corporation, having its principal office at 99 MedTech Drive, Batavia, New York 14020 ("Landlord"), and OAKGROVE CONSTRUCTION, a New York State Corporation, organized and existing under and by virtue of the laws of the State of New York, with an address at 99 MedTech Drive, Batavia, New York 14020 ("Tenant").

### RECITALS:

A. Landlord owns and is developing an approximately 34 acre business park currently known as the "Upstate Med & Tech Park" located on MedTech Drive, in the Town of Batavia, New York ("Business Park").

B. Landlord developed an approximately 43,000 square foot building ("Building") located in that portion of the Business Park shown on Exhibit A attached hereto and made a part hereof ("Property").

C. Landlord desires to lease to Tenant and Tenant desires to lease from Landlord the square feet of the Building specified herein on the terms and conditions set forth herein.

D. The Property and/or other portions of the Business Park are or may be, from time to time, subject to one or more mortgages in favor of one or more mortgagees (individually, a "Mortgagee" and collectively, "Mortgagees") to secure payment of certain indebtedness of Landlord.

NOW, THEREFORE, in consideration of the foregoing and of the representations and agreements contained in this Lease Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Leased Premises. (a) Landlord hereby leases to Tenant and Tenant leases from Landlord no less than 820 rentable square feet located in the Building, as shown on Exhibit B attached hereto and made a part hereof upon the terms and conditions set forth in this Lease Agreement (the "Leased Premises").

(b) Subject to the terms of this Lease Agreement, Landlord agrees to allow the Tenant to make some improvements (paint, carpeting) to the Leased Premises in accordance with Exhibit C attached hereto and made a part hereof (the "Tenant Improvements") with approval of all plans by Landlord prior to commencement of work. The cost of the Tenant Improvements is the responsibility of the Tenant.

(c) Upon mutual execution and unconditional delivery of this Lease by each of the parties hereto, Tenant shall be allowed access (or its agents) to construct the Tenant

Improvements. All buildings and improvements erected by Tenant shall be constructed of good materials and erected in a good and workmanlike manner. Landlord agrees to comply with and to require Tenant's contractors to comply with all applicable federal, state and local laws, ordinances, codes, regulations and directions relating to construction of such building and improvements, including without limitation, the employment, conditions of employment and hours of labor in connection with any construction, alteration or repair work done by or for Tenant on or about the Property during the term of the Lease.

2. Term. The term ("Term") of this Lease Agreement shall be for six (6) months with a renewable month to month option, which shall commence on April 1, 2023.

3. Use. Subject to the provisions of Section 40 of this Lease, Tenant shall occupy, use and operate the Leased Premises only for the purpose of commercial office space and for no other purposes.

Tenant shall not use or allow the Leased Premises or any part thereof to be used or occupied for an unlawful purpose or in violation of any certificate of occupancy, temporary or otherwise, restrictions or regulations affecting the Leased Premises or in any manner which may constitute a nuisance, public or private, or make void or voidable any insurance then in force with respect thereto. Tenant shall conduct its operations in compliance with all applicable federal, state and local laws, ordinances, rules, regulations or orders related to Hazardous Substances (as defined in Section 12 hereof) and shall at all times keep the Leased Premises free and clear of any and all unpermitted or unauthorized Hazardous Substances.

Tenant shall at its own cost and expense promptly observe and comply with all laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state, county, municipal or town governments and of all governmental authorities affecting its occupancy of and conduct of its business at the Leased Premises, whether the same are in force at the commencement of the Term of this Lease Agreement or may be in the future passed, enacted or directed.

4. Rent.

(a) As used herein, a Lease Year shall be each twelve month period from January 1 through December 31 during the Term of this Lease Agreement.

(b) Tenant covenants and agrees to pay to Landlord as base rent ("Base Rent"), starting on the Commencement Date, a sum calculated during each Lease Year during the Term on the basis of \$15.50 per square foot of (i) the Leased Premises (820 square feet), plus (ii) subject to adjustment as provided in Subsection 4(c) and Subsection 5(b) below, plus (iii) \$4.20 per square foot of the Leased Premises (820 square feet) as the Operating Expense Portion of Base Rent, is subject to adjustment as provided in Subsection 4(c) and Subsection 5(b). The Base Rent, which includes the Operating Expense Portion of Base Rent, shall be payable in equal monthly installments in advance without notice, demand, offset or deduction on the first day of each month of the Term; provided that the Base Rent for the first two months of the Term shall be payable on the date of execution by Tenant of this Lease Agreement.

(c) No payment by Tenant or receipt by Landlord of a lesser amount than that provided herein shall be deemed to be other than on account of the earliest stipulated rent; nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided herein.

(d) Any installment of the Base Rent or any additional rent or other sum payable under this lease Agreement not received within ten (10) days after it is due shall be subject to a late charge of two percent (2%) of such installment.

(e) In the event that the Term commences after the first day of a month, or expires prior to the last day of a month, the Base Rent for such month shall be prorated.

(f) Except as expressly provided in this Lease Agreement, Tenant shall not make any prepayment of the Base Rent.

(g) Any references in this Lease Agreement to "rent" shall mean Base Rent, any additional rent and any other sums payable by Tenant under the terms of this Lease Agreement.

5. Tenant's Pro Rata Share of Taxes, Insurance, Operating, Maintenance and Other Expenses.

(a) A portion of the Base Rent to be paid by Tenant pursuant to Section 4 will include Tenant's pro rata share of (i) all state and local real estate taxes, special district charges and assessments, and payments in lieu thereof, if any, and all other charges and assessments imposed upon the Property, (ii) premiums for fire, casualty, rent and liability insurance maintained by Landlord pursuant to Section 13(c) hereof, and (iii) for the maintenance services, repairs and replacements provided for in Section 6, the interior cleaning and janitorial services provided for in Section 8 and all other operating, management, maintenance and other expenses incurred by Landlord with respect to the Property and the Business Park including, without limitation, common area utilities and Building security (collectively, the "Enumerated Items").

(b) The Operating Expense Portion of Base Rent may be increased by Landlord for any Lease Year to reflect any increase in the actual costs of the Enumerated Items in the current or any prior Lease Year, and/or any anticipated increases of the Enumerated Items in the current or any future Lease Year. In the event of any such increase, Landlord shall provide Tenant with a written explanation detailing such increase.

(c) Landlord agrees to apply for and diligently pursue all applicable Town, County and State real property tax abatement programs for the Building.

6. Landlord's Services. Landlord shall, during the Term of this Lease Agreement, provide repairs to and replacements to the foundation, roof and load bearing walls of the Building, of components of the heating, plumbing, water, electrical, sprinkler and air



conditioning systems and any other repairs to the Building, all of which are needed in the reasonable judgment of Landlord unless caused by the misuse or negligence of Tenant, its employees or invitees. In addition, Landlord shall provide snow plowing and sidewalk clearing, parking lot lighting, striping and maintenance, landscaping lawn care, maintenance of Building exterior and signs (other than signs installed by Tenant); and cleaning and maintenance of common hallways, walks, restrooms and other common areas. Landlord shall provide signage on the parking lot directory and the lobby directory as to the location of the Tenant within the facility. Landlord shall not be required to perform any services except as specifically set forth herein.

7. Utilities. Landlord shall provide and connect to the Leased Premises (i) heat and air conditioning and (ii) water and electricity customary for office purposes. Such utilities shall be separately metered and paid for by Tenant. Landlord shall not be liable for any failure of a utility company or governmental authority to supply such service or for any loss, damage or injury caused by or related to such service.

8. Maintenance and Repairs. Tenant shall, at its sole expense, be responsible for maintaining the Leased Premises in a good, orderly and clean condition; provided, however, Landlord shall provide a dumpster for office type uses only by Tenant and other Building tenants and shall arrange and pay for cleaning and janitorial services for the common areas of the Building in accordance with the quality of such services offered in similar buildings in the area. Tenant shall also repair, at its sole expense to the extent not covered by insurance and to the satisfaction of Landlord, any damage to the Business Park, the Property, the Leased Premises, the Building or any appurtenances thereto caused by the misuse or negligence of Tenant, its employees or invitees. Whenever glass is broken due to the misuse or negligence of Tenant, its employees or invitees, Tenant agrees to replace all broken glass with glass of the same size and quality of that broken at its sole expense to the extent not covered by insurance. Landlord shall provide all other repairs and maintenance. If Landlord does not commence to make any necessary repairs for which Landlord is responsible within thirty (30) days after Landlord has knowledge thereof, and if Landlord does not complete such repairs within a reasonable time thereafter, Tenant, upon giving at least thirty (30) days written notice to Landlord, may make such repairs and charge Landlord the cost thereof or, at Tenant's option set off any such obligations of Landlord against the Base Rent or any additional rent due hereunder. Except as permitted by the terms of this Lease, Tenant shall not be entitled to any partial or total abatement of rent for periods during which repairs are required to be made, whether such repairs are the responsibility of Landlord or Tenant.

9. Access to the Leased Premises. Tenant agrees that Landlord shall have such rights to enter upon the Leased Premises (during normal business hours and upon giving Tenant reasonable advance notice), including rights of ingress and egress, as shall be necessary to enable it to exercise its powers, rights, duties and obligations as set forth in this Lease Agreement. Landlord shall further have the right to enter into and grant licensees the right to enter the Leased Premises during Tenant's normal business hours, or in the case of a bona fide emergency at any time, upon reasonable notice to Tenant under the circumstances, for any purpose which Landlord may deem necessary, including, without limitation, for making structural repairs to the Building or the Leased Premises or any other repairs for which Landlord is responsible, or for the last nine (9) months of the term of this Lease only, tenants.

10. Quiet Enjoyment. Landlord covenants that so long as Tenant is not in default hereunder, it shall and may peaceably and quietly have, hold and enjoy the Leased Premises during the term of this Lease Agreement and any renewal or extension hereof.

11. Alterations. Tenant shall make no alterations, additions or improvements in or to the Leased Premises, except as expressly provided for in this section, without Landlord's prior written consent. In the event that Landlord consents to any alterations, additions or improvements, Landlord shall furnish to Tenant at the time of delivering the consent a listing of all of Landlord's requirements with respect to construction. Any such alterations, additions or improvements shall be made at Tenant's sole expense.

Tenant has no authority or power to cause or permit any lien or encumbrance, whether created by act of Tenant, operation of law or otherwise, to be attached to or be placed upon the Leased Premises or the Property, and any and all liens and encumbrances created by Tenant shall be attached only to its interest in the Leased Premises. Any lien or claim of lien filed against the Leased Premises for work claimed to have been done for, or for materials claimed to have been furnished to, Tenant shall, within thirty (30) days thereafter, be discharged by Tenant, or, at the discretion of Tenant, be bonded pursuant to the New York Lien Law, at Tenant's expense (but only if permitted by any mortgages which may encumber the Property). If Tenant fails to discharge (or, if permitted, bond) any such liens, then Landlord may, at its option, bond or discharge such lien, and the costs incurred by it in such discharge or bonding shall be due from Tenant on demand and shall bear interest at the lesser of (a) three percent (3%) in excess of the Prime Rate as published from time to time in The Wall Street Journal or comparable publication or (b) the maximum rate of interest permitted by applicable law (the "Default Rate").

12. Liability. Tenant shall defend, indemnify and hold harmless Landlord and shareholders, members, agents, affiliates, employees and assignees (collectively, "Landlord's Parties") from and against all causes of action, claims, damages, losses and expenses, including reasonable attorneys' fees, resulting from or arising out of bodily injury or death, or damage to or destruction of property, in connection with Tenant's use or occupancy of the Leased Premises, whether the same be asserted by third parties, Tenant or Tenant's agents, contractors, employees, invitees or licensees, except to the extent caused or contributed to by Landlord's or any Landlord's Parties' negligence or willful misconduct.

Landlord shall defend, indemnify and hold harmless Tenant and its shareholders, members, agents, affiliates, employees and assignees (collectively, "Tenant's Parties") from and against all causes of action, claims, damages, losses and expenses, including reasonable attorneys' fees, resulting from or arising out of bodily injury or death, or damage to or destruction of property, in connection with Landlord's activities at the Business Park, Building, and/or Demised Premises, whether the same be asserted by third parties, Landlord or Landlord's agents, contractors, employees, invitees or licensees, except to the extent caused or contributed to by Tenant's or any Tenant's Parties' negligence or willful misconduct.

In addition, except to the extent caused or contributed to by Landlord's or any Landlord's Parties' negligence or willful misconduct, Tenant shall indemnify and hold Landlord harmless against any and all claims, expenses, demands, losses, costs, fines or liabilities of whatever kind

or nature (including, without limitation, arising from personal injury, death or property damage) in any way related to or arising out of:

(a) the Tenant's storage, use, manufacture or presence of any unpermitted Hazardous Substances (as hereinafter defined) on the Leased Premises;

(b) the performance by Tenant of any inspection, investigation, study, sampling, testing, removal, containment or other remedial action or other cleanup related to Hazardous Substances; and

(c) the failure by Tenant to conform with any applicable federal, state or local law, rule, regulation or order related to Hazardous Substances.

"Hazardous Substances" shall mean, without limitation, flammables, explosives, radioactive materials, radon, asbestos, urea formaldehyde foam insulation, lead-based paint, polychlorinated biphenyls, oil, petroleum or petroleum based or related substances, hydrocarbons or like substances and their additives or constituents, methane, solid wastes, refuse, garbage, construction debris, rubble, hazardous materials, hazardous wastes, toxic substances or related materials, and including without limitation, substances now or hereafter defined as "hazardous substances", "hazardous materials", "toxic substances", "hazardous wastes" or "harmful" in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 6901, et seq.), the Hazardous Materials Transportation Act, as amended (40 U.S.C. § 1801, et seq.), the Resource Conservation and Recovery Act, as amended (41 U.S.C. § 6901 et seq.), the Clean Air Act (42 U.S.C. § 7401, et seq.), the Rivers and Harbors Appropriations Act (33 U.S.C. § 401-413), the Clean Water Act (33 U.S.C. § 1251, et seq.), and in the regulations promulgated pursuant thereto, and any other applicable federal, state or local law, common law, code, rule, regulation, order, policy or ordinance, presently in effect or hereafter enacted, promulgated or implemented ("Hazardous Substance Laws").

With respect to both the Property and the Leased Premises, Landlord represents and warrants to Tenant:

(a) To Landlord's actual knowledge, (i) Landlord has no actual knowledge and has received no written notice of any pollution, health, safety, fire, environmental, sewerage or building code violation, asbestos, PCBs, PCB articles, PCB containers, PCB article containers, PCB equipment, PCB transformers or PCB-contaminated electrical equipment, as those terms are defined in any Hazardous Substance Laws (as that term is defined in this Section); (ii) the Project nor the ground under or about the project is contaminated with or contains any hazardous or toxic substance, pollutant, contaminants, or petroleum, including crude oil or any fraction of them, or contains any underground storage tank; (iii) the Project has never been, nor is it currently used, for the generation, transportation, treatment, storage, or disposal of hazardous or toxic substances, pollutants, contaminants, or petroleum, including crude oil or any fraction thereof; (iv) the Project does not contain any conditions that could result in recovery by any governmental or private party of remedial or removal costs, natural resource damages, property damages, damages for personal injuries, or other costs, expenses, or damages or could result in injunctive relief of any kind arising from any alleged injury or threat of injury; and (v) the Project is not subject to investigation, nor is it currently in administrative or judicial litigation

regarding any environmental condition, such as alleged noncompliance or alleged contamination.

(b) To Landlord's actual knowledge, (i) no part of the project has been used in connection with hazardous or toxic substances, pollutants, contaminants, or petroleum, including crude oil or any fraction of them, as defined in any of the hazardous substance laws and (ii) no releases of hazardous or toxic substances, pollutants, contaminants, or petroleum, including crude oil or any fraction of them, as such terms are defined under the hazardous substance laws, has occurred from the project into the environment, and no threat of such release exists.

(c) Landlord will indemnify and hold harmless Tenant, its directors, officers, employees, and agents, and any assignees, subtenants, or successors to Tenant's interest in the Premises, their directors, officers, employees, and agents, from and against any and all losses, claims, damages, penalties, and liability, including all out-of-pocket litigation costs and the reasonable fees and expenses of counsel, including without limitation all consequential damages, directly or indirectly arising out of the use, generation, storage, release, or disposal of hazardous materials by Landlord, its agents, or contractors prior to execution of this Lease or at any time after execution, or by any prior owner or operator of the Leased Premises and/or the Property; and from and against the cost of any required repair, cleanup, or detoxification and any closure or other required plans to the full extent that such action is attributable, directly or indirectly, to the presence or use, generation, storage, release, threatened release, or disposal of hazardous materials by any person (other than Tenant) on, under, or in the project prior to execution of this Lease. The Landlord's indemnification provisions of this Lease relating to hazardous substances will survive the expiration or earlier termination of this Lease.

(d) If any cleanup, repair, detoxification, or other similar action is required by any governmental or quasi-governmental agency as a result of the storage, release, or disposal of hazardous materials by Landlord, its agents, or contractors, at any time, or by any prior owner, possessor, or operator of any part of the Project, and such action requires that Tenant be closed for business or access be denied for greater than a 24-hour period, then all rent and/or additional rent will be abated entirely during the period beyond 24 hours. If the closure or denial of access persists in excess of 30 days then, at Tenant's election by written notice to Landlord, this Lease will end as of the commencement of such closure.

### 13. Insurance.

(a) Tenant shall, at its expense, at all times during the term of this Lease Agreement maintain in force a policy or policies of (i) comprehensive public liability insurance, including liability for both bodily injury and property damage, against claims for loss of life, bodily injury and property damage occurring in, on or about the Leased Premises or with respect to the operations of Tenant in the Leased Premises, in which the limit of public liability coverage shall be not less than One Million Dollars (\$1,000,000) for combined single limit bodily injury, death, and property damage liability and (ii) all risks casualty insurance covering property and inventory used or stored at the Leased Premises. Each such policy of insurance shall be written by one or more insurance companies licensed to do business in the State of New York, shall name Landlord as additional insured and as the certificate holder thereof, with express waivers of subrogation against Landlord, and shall not be cancelable or amendable for any cause without first giving Landlord thirty (30) days' prior written notice. A certificate of

said insurance or, at the request of the Landlord, a duplicate original of the policy, shall be delivered to Landlord on or before the Commencement Date, and certificates or, at the request of the Landlord, duplicate originals of the policy with respect to all renewals, extensions or replacements thereof shall thereafter be furnished to Landlord at least ten (10) days prior to the expiration or cancellation of any policies which they replace.

(b) To effectuate the purposes of Section 12, the Tenant will provide for and insure, in the public liability policies required in Section 13(a) hereof, not only its own liability in respect of the matters therein mentioned but also the liability pursuant to Section 12 other than any liability with respect to Hazardous Substances.

(c) Landlord shall maintain during the Term of this Lease Agreement insurance policies providing coverage for (i) all risks casualty insurance for the Building for the full replacement value thereof, (ii) liability of Landlord for personal injury and property damage caused by occurrences on or connected with the Property with a limit of public liability coverage of not less than One Million Dollars (\$1,000,000) for combined single limit bodily injury, death and property damage liabilities, and (iii) loss of rent by Landlord during periods for which rent is abated hereunder because of fire or casualty damage.

14. Fire or Other Casualty. In the event that the Leased Premises shall be rendered wholly untenantable by fire or other casualty, the Landlord shall be entitled to the proceeds of all applicable insurance maintained by Landlord, and may, at its option, (a) terminate this Lease Agreement by giving Tenant written notice thereof within thirty (30) days from the date of said damage or destruction, or (b) repair or replace the Leased Premises to substantially the same condition as prior to the damage or destruction. If the Landlord fails to commence to repair the damage or destruction within thirty (30) days from the date of such damage or destruction, or if the Leased Premises shall not have been substantially replaced or repaired within two hundred ten (210) days after the date of such damage or destruction, Tenant may at its option, terminate this Lease Agreement by giving written notice to Landlord within fifteen (15) days after Landlord's failure to commence or substantially complete said repairs within the applicable time period. The rent herein required to be paid shall abate during the period of such untenability.

If the Leased Premises shall be damaged in part by fire or other casualty, but still remain partially tenantable, Landlord shall repair the Leased Premises to substantially the same condition as prior to the damage. Landlord shall commence repair of the damage or destruction within sixty (60) days from the date of occurrence. During the period of such repairs and restorations, this Lease Agreement shall continue in full force and effect, and Tenant shall be required to pay the rent herein reserved, abated by the percentage of area of the Leased Premises destroyed as compared to the total area of the Leased Premises.

In the event that any damage or destruction occurs during the last three (3) years of the Term of this Lease to the extent of fifty (50%) percent or more of the insurable value of the Leased Premises, either Landlord or Tenant may elect to terminate this Lease Agreement by giving notice of such election to the other party within thirty (30) days after such damage or destruction. In such event, Landlord shall receive the proceeds of the Landlord's insurance

policies without obligation to rebuild or restore the Leased Premises, and Tenant shall execute any waiver which may be required of it by any insurer or Landlord.

15. Eminent Domain. In the event that all or any portion of the Leased Premises shall be taken by any governmental authority under the exercise of its right of eminent domain or similar right (or by act in lieu thereof), all right, title and interest in and to any award granted (or sums paid in lieu thereof) shall belong entirely to Landlord, and Tenant hereby assigns to Landlord all of its interest, title or claim, if any, in and to such award (or sums paid in lieu thereof), including, but not limited to, any part of such award attributable to Tenant's leasehold interest, if any. In the event of a partial taking, rent shall be reduced as of the date of such taking by an amount which shall equitably reflect the portion of the property taken. If the taking is of such a substantial nature that (a) it includes more than 25% of the square footage of the Leased Premises and (b) Tenant cannot conduct its operations in the Leased Premises, Tenant shall have the option, to be exercised by notice in writing to the Landlord within thirty (30) days after such taking, of terminating this Lease Agreement, or, if such taking be total, this Lease Agreement shall terminate upon the taking. In the event that this Lease Agreement is terminated pursuant to this Section 15, Tenant shall not have any claim against Landlord for the balance of the unexpired term of this Lease Agreement; provided, however, Tenant shall be entitled to make a separate claim directly against the condemning authority for such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of (i) any and all costs or loss (including loss of business) that Tenant incurs in removing Tenant's merchandise, furniture, fixtures, leasehold improvements, and equipment to a new location, (ii) the taking of personal property and fixtures owned by Tenant, (iii) the unamortized portion of any improvements made to the Leased Premises by Tenant at Tenant's sole cost and expense, (iv) any loss of goodwill, and (v) the value of Tenant's leasehold estate.

16. Subordination. As a condition to the effectiveness of the subordination and attornment in this Section 16, Landlord will obtain and deliver to Tenant a reasonably acceptable non-disturbance agreement from the holder of any prior mortgage, lien or other encumbrance on the Property and/or the Building (a "Superior Lien"). The non-disturbance agreement will provide that Tenant will not be disturbed by the holder of the Superior Lien so long as Tenant is in compliance with the terms of this Lease. Upon delivery of the required non-disturbance agreement by the holder of a Superior Lien, this Lease Agreement shall automatically be and be deemed to be subject and subordinate to such Superior Lien.

17. Estoppel Certificate.

(a) Tenant shall, from time to time, upon not less than ten (10) days' prior written request by Landlord, execute, acknowledge and deliver to Landlord a written estoppel certificate in such form as Landlord may reasonably require, certifying that this Lease Agreement is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified and stating the modifications), the dates to which the rent and other charges have been paid, whether or not to the best of Tenant's knowledge Landlord is in default hereunder (and if so, specifying the nature of the default), and such other matters as may be required by Landlord or the holder of any mortgage to which the Leased Premises are subject, it being intended that any such statement delivered pursuant to this Section 17(a) may be relied upon by a prospective purchaser of Landlord's interest or mortgagee of

Landlord's interest or assignee of any mortgage or deed of trust upon Landlord's interest in the Leased Premises.

(b) Landlord shall, from time to time, upon not less than ten (10) days' prior written request by Tenant, execute, acknowledge and deliver to Tenant a written estoppel certificate in such form as Tenant may reasonably require, certifying that this Lease Agreement is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified and stating the modifications), the dates to which the rent and other charges have been paid, whether or not to the best of Landlord's knowledge Tenant is in default hereunder (and if so, specifying the nature of the default), and such other matters as may be required by Tenant, it being intended that any such statement delivered pursuant to this Section 17(b) may be relied upon by a prospective subtenant or assignee of Tenant's interest in the Leased Premises.

18. Default.

(a) Any one or more of the following events shall constitute an "Event of Default" hereunder:

(i) If any representation or warranty made by Tenant herein shall prove to be false, misleading or incorrect in any material respect as of the date made; or

(ii) If Tenant fails to pay any installment of Base Rent, additional rent, or any other sum due under this Lease Agreement within ten (10) days after written demand by Landlord to Tenant; or

(iii) If Tenant fails to remedy a default by it with respect to any of the other covenants, conditions and agreements contained herein or in any rider, exhibit or other addendum hereto, within thirty (30) days after notice thereof (provided, however, if such default is not capable of being remedied within thirty (30) days, there shall be no Event of Default where Tenant has commenced to remedy such default within thirty (30) days and diligently proceeds to remedy such default); or

(iv) If Tenant abandons the Leased Premises without securing the Leased Premises in a customary manner; or

(v) If a petition in bankruptcy is filed by Tenant or if proceedings under any bankruptcy or debtor's relief law is filed against Tenant, or if Tenant becomes insolvent or admits in writing its inability to pay its debts as they become due, or if proceedings are taken by or against Tenant seeking the appointment of a receiver or similar relief.

(b) If an Event of Default shall occur, Landlord may, in addition to any other right or rights which Landlord may have, serve a written three (3) days' notice of cancellation of this Lease Agreement upon Tenant, and upon the expiration of said three (3) days, this Lease Agreement and the Term hereunder shall end and expire as fully and completely as if the date of expiration of such three (3) day period were the day herein definitely fixed for the end and expiration of this Lease Agreement and the Term hereof, and Tenant shall then quit

and surrender the Leased Premises to Landlord, but Tenant shall remain liable as hereinafter provided. If the three (3) day notice of cancellation shall have been given, and the term shall expire as aforesaid, or if any execution or attachment shall be issued against Tenant or any of Tenant's property whereupon the Leased Premises shall be taken or occupied by someone other than Tenant, then and in either of such events Landlord may, without notice, re-enter the Leased Premises and dispossess Tenant and the legal representative of Tenant or other occupant of the Leased Premises by summary proceedings or otherwise, and remove their effects and hold the Leased Premises as if this Lease Agreement had not been made, but Tenant shall remain liable hereunder as hereinafter provided.

(c) In case of any such default, re-entry, expiration and/or dispossession by summary proceedings or otherwise, (i) all Base Rent, additional rent and other sums then to be paid by Tenant pursuant to this Lease Agreement shall be paid up to the time of such re-entry, dispossession and/or expiration, together with such reasonable expenses as Landlord may incur for legal expenses, attorneys' fees, brokerage, and/or putting the Leased Premises in good order, (ii) Landlord may re-let the Leased Premises or any part or parts thereof, either in the name of Landlord or otherwise, for a term or terms, which may at Landlord's option be less than or exceed the period which would otherwise have constituted the balance of the term of this Lease Agreement and may grant concessions or free rent, and/or (iii) Tenant or the legal representatives of Tenant shall also pay Landlord as liquidated damages for the failure of Tenant to observe and perform Tenant's covenants herein contained, any deficiency between the rents and other sums hereby reserved and/or covenanted to be paid and the net amount, if any, of the rents collected on account of the lease or leases of the Leased Premises for each month of the period which would otherwise have constituted the balance of the term of this Lease Agreement. In computing such damages there shall be added to the said deficiency such reasonable expenses as Landlord may incur in connection with re-letting, such as legal expenses, attorneys' fees, brokerage and for keeping the Leased Premises in good order. Landlord, at Landlord's option, may make such alterations, repairs, decorations and replacements as are reasonably necessary or desirable for the purpose of re-letting the Leased Premises; and the making of such alterations and/or decorations shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Neither the failure or refusal of Landlord to re-let the Leased Premises or any part or parts thereof nor, in the event that the Leased Premises are re-let, the failure of Landlord to collect the rent under such re-letting shall release or affect Tenant's liability for damages, and Landlord shall not in any way be liable for same, but, if Landlord fails to collect such rent, Tenant is hereby authorized to collect the same and apply the same to any indebtedness owing to Landlord. Any such damages shall be paid in monthly installments by Tenant on the rent days specified in this Lease Agreement and any suit brought to collect the amount of the deficiency for any month or months shall not prejudice in any way the rights of Landlord to collect the deficiency for any subsequent month or months by a similar proceeding. Any such action may be an action for the full amounts of all rents then due or to be due to, and all damages then suffered or to be suffered by, Landlord. Mention in this Lease Agreement of any particular remedy shall not preclude Landlord from resorting to any other remedy, in law or in equity. The foregoing remedies and rights of Landlord are cumulative. Tenant expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant's eviction or dispossession for any cause. Notwithstanding the foregoing, Landlord hereby covenants and agrees with Tenant to make commercially reasonable efforts to mitigate Landlord's damages in connection with any Event of Default under this Lease.



19. Failure to Insist on Strict Performance. The failure of Landlord to insist, in any one or more instances, upon a strict performance of any covenant, term, provision or agreement of this Lease Agreement shall not be construed as a waiver or relinquishment thereof, but the same shall continue and remain in full force and effect, notwithstanding any law, usage or custom to the contrary. The receipt by Landlord of rent with knowledge of the breach of any covenant or agreement hereunder shall not be deemed a waiver of the rights of Landlord with respect to such breach, and no waiver by Landlord of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Landlord.

20. Surrender of Leased Premises.

(a) Tenant shall, upon the termination of this Lease Agreement, by lapse of time or otherwise, return the Leased Premises to Landlord in as good condition as when received, loss by fire or other unavoidable casualty and reasonable wear and tear excepted. It is understood and agreed that the exception made as to "loss by fire or other unavoidable casualty" does not include damages, fires or casualties caused or contributed to by the act or neglect of Tenant, its servants, agents, employees, invitees or licensees, and not compensated for by insurance. Tenant shall surrender all keys to the Leased Premises and inform Landlord of all combinations on locks, safes and vaults therein.

(b) All installations, additions, fixtures, and improvements in or upon the Leased Premises, whether placed there by Landlord or Tenant, including, without limitation, paneling, decoration, partitions, railings, carpeting and flooring, shall, at Landlord's option, become the property of Landlord and shall remain upon the Leased Premises at the termination of this Lease Agreement without compensation, allowance or credit to the Tenant; provided, however, Tenant shall have the option of removing any trade fixtures which it installed in or upon the Leased Premises prior to the expiration of, or within thirty (30) days after the termination of, this Lease Agreement, but Tenant shall remain responsible for repairing any damage caused to the Leased Premises by such removal.

(c) Any furniture, equipment, machinery or movable property owned by Tenant and brought onto the Leased Premises during Tenant's occupancy thereof and not removed prior to the expiration of, or within thirty (30) days after the termination of, this Lease Agreement shall be deemed to have been abandoned by Tenant and shall, without any further act by Tenant, be conclusively deemed to have been conveyed by Tenant to Landlord as by bill of sale without further payment or credit by Landlord to Tenant and may be sold by Landlord or disposed of by Landlord as it sees fit. Any amount realized upon any such a sale shall be the property of Landlord. If Landlord has directed Tenant to remove any or all of such property, Tenant shall remain liable for the cost of its removal and for the cost of restoring the Leased Premises after such removal.

21. Holding Over. Should Tenant fail to vacate the Leased Premises at the termination hereof, such holding over shall operate and be construed to be a tenancy from month to month only, at a base monthly rental equal to the base monthly rental paid for the last month of the term of this Lease Agreement plus fifty percent (50%) of such amount, plus additional rent as provided herein and subject to the conditions, obligations and provisions of this Lease Agreement. No such holding over or payment or acceptance of rent resulting therefrom shall constitute or be deemed reconfirmation or renewal of this Lease Agreement. Nothing in this Section 21 shall be construed as a consent by Landlord to the possession of the Leased Premises after the expiration or termination of this Lease Agreement.

22. Expenses and Attorneys' Fees. In any litigation arising from the default in the performance of any of the provisions of this Lease Agreement by either Tenant or Landlord, each party shall bear the cost and expense of its own legal fees, disbursements and payment of expert witnesses incurred in connection with such litigation. In the event that either Landlord or Tenant shall be made a party to such litigation commenced by a person other than the parties hereto, then such party performing the act or suffering the omission which is alleged to be the subject of the litigation shall pay all costs, expenses and reasonable attorneys' fees incurred by the other party which arise from or in connection with such litigation. Notwithstanding the foregoing, this Lease is intended for the exclusive benefit of the parties hereto and shall not be for the benefit of, and shall not create any rights in, or be enforceable by, any other person or entity.

23. Self-Help. If Tenant fails to perform any of its obligations hereunder beyond all applicable notice, grace and/or cure periods provided for in this Lease Agreement, Landlord may (but shall not be obligated to) perform same, and in such event, Tenant shall reimburse Landlord for the cost thereof, and said reimbursement shall be due and payable upon demand by Landlord and shall bear interest at the Default Rate.

(a) If Landlord fails to perform any of its obligations hereunder beyond all applicable notice, grace and/or cure periods provided for in this Lease Agreement, Tenant may (but shall not be obligated to) perform same, and in such event, Landlord shall reimburse Tenant for the costs thereof and said reimbursement shall be due and payable upon demand by Tenant and shall bear interest at the Default Rate. If not paid upon demand, Tenant shall be permitted to offset any sums due and owing under this Section 23(b) against Base Rent, additional rent or any other sums due and owing by Tenant in favor of Landlord.

24. Assignment or Subletting. Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably conditioned, delayed or withheld (it being deemed to be reasonable for Landlord to withhold its consent in the event that its mortgagee declines to consent), assign this Lease Agreement, or sublet, or encumber the Leased Premises in whole or in part, or permit any other person or entity to occupy or use same. No attempted subletting, whether with the appropriate consent(s) (and the consent of any Mortgagee, if required) or in violation of this Section 24, shall relieve Tenant from liability for payment of rent or other sums due hereunder, or from being bound by any of the terms, conditions, covenants and agreements of this Lease Agreement. Tenant shall be immediately relieved of any and all of its obligations under this Lease Agreement in the event that Landlord (and any applicable Mortgagee) consents to an assignment of this Lease Agreement to a new tenant. Any

subletting or assignment by Tenant permitted by Landlord (and Mortgagee, if any) shall be subject to and conditioned upon the following: (i) Tenant shall not be in default under any of the terms of this Lease Agreement, and (ii) Tenant shall deliver to Landlord a fully executed counterpart of the written assignment or sublease. Acceptance of rent from any other person or entity shall not be deemed a waiver of any of the provisions of this Lease Agreement or a consent to the assignment of this Lease Agreement or to the subletting, encumbrance or use or occupancy by another of the Leased Premises.

In the event that Landlord and/or any Mortgagee consent(s) to any proposed assignment, subletting, encumbrance, or granting of a right of use or occupancy, such consent shall not be deemed to be a consent to any other or further assignment, sub-letting, encumbrance or granting of a right of use or occupancy.

25. Broker. The parties agree that Cushman & Wakefield brought about this Lease Agreement. Each party shall indemnify the other with respect to the claim of any other broker, agent or finder alleging to have acted on behalf of the indemnifying party. The indemnity obligations of Landlord and Tenant under this Section 25 shall survive the expiration and/or earlier termination of this Lease Agreement.

26. Rules and Regulations. Tenant agrees to follow the rules and regulations set forth in Exhibit E attached hereto and made a part hereof and all other rules and regulations from time to time promulgated by Landlord to promote the safe and efficient administration of the Business Park, the Building and the Property. Notwithstanding the foregoing, Tenant will not be required to expend money or take action to make any alterations, additions, improvements, or replacements on or to the Leased Premises on account of any rules or regulations established by Landlord pursuant to this Lease. Furthermore, Landlord will not establish rules or regulations that interfere unreasonably with Tenant's use and enjoyment of the Leased Premises. Landlord will use its best efforts to encourage compliance with the rules and regulations by other Tenants and occupants of the building and will enforce the rules and regulations in a fair and non-discriminatory manner. In the case of any conflict between any rules and regulations established by Landlord and the Lease, the Lease will control.

27. Use of Parking Lot and Other Common Areas. Tenant shall have the right to use, in common with others, any parking areas in front of the Building, as they may exist from time to time, any hallways providing access to the Leased Premises and rest rooms, if any, in the Building not located within any portion of the Building leased to another tenant. Unless otherwise designated by Landlord, employees, licensees and invitees of Tenant shall use only the parking area designated for the Leased Premises. The location, number and size of parking spaces in the parking lot are to be in full compliance with any and all applicable laws, rules, regulations or ordinances which govern parking at the Business Park, the Building and/or the Property. Landlord may, at its reasonable discretion, restripe and/or relocate any parking areas for Building safety or efficiency.

28. Miscellaneous.

(a) This Lease Agreement shall inure to the benefit of, and shall be binding upon, the Landlord and the Tenant, and their respective successors and assigns.

(b) This Lease Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

(c) Tenant hereby waives the provisions of Section 227 of the New York Real Property Law or any law of like import now or hereafter in effect.

(d) All notices, certificates or other communications hereunder shall be sufficient if personally delivered or sent by registered or certified United States mail, postage prepaid, addressed, if to Landlord, to Genesee Gateway Local Development Corporation, 99 MedTech Drive, Batavia, New York 14020, Attention: President, with a copy sent to Harris Beach PLLC, 99 Garnsey Road, Pittsford, New York 14534, Attention: Russell Gaenzle, Esq., or to such other person or address as Landlord may hereafter direct by giving notice as provided herein, and if to Tenant, to OAKGROVE CONSTRUCTION, 6900 Seneca Street, Elma, New York 14059, Attention: Doug May, with a copy to sent to Cushman & Wakefield US Inc., 575 Maryville Center Drive, Suite 500, St. Louis, Missouri 63141, or to such other person or persons or address or addresses as Tenant may hereafter direct by giving notice as provided herein. All notices, certificates or other communications hereunder shall be deemed given under this Lease upon personal delivery or, if by registered or certified mail, upon the third day after mailing.

(e) This Lease Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between Landlord and Tenant relating to the rental of the Leased Premises.

(f) If any clause, provision or section of this Lease Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions thereof.

(g) This Lease Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(h) **TENANT DOES HEREBY EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY ON ANY CAUSE OF ACTION DIRECTLY OR INDIRECTLY INVOLVING THE TERMS, COVENANTS OR CONDITIONS OF THIS LEASE AGREEMENT OR THE LEASED PREMISES OR ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE AGREEMENT.**

(i) The provision of this Lease Agreement relating to waiver of a jury trial and the right of redemption shall survive the termination or expiration of this Lease Agreement.

29. Construction. In this Lease Agreement, unless the context otherwise requires:

(a) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms shall refer to this Lease Agreement, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of the execution and delivery of this Lease Agreement.

(b) Any headings preceding the texts of the several Sections of this Lease Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Lease Agreement, nor shall they affect its meaning, construction or effect.

30. Force Majeure. This Lease Agreement and the obligation of Tenant to pay Base Rent and additional rent hereunder and to perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall not be affected, impaired or excused because Landlord is unable to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make or is delayed in construction, making any repairs, additions, alterations or decorations or is unable to supply, or is delayed in supplying any equipment or fixtures if Landlord is prevented or delayed from so doing by reason of a strike or labor trouble, or governmental preemption in connection with a National Emergency or in connection with any rule, order or regulation of any department or subdivision thereof or of any governmental agency, or by reason of the condition of supply and demand which have been or are affected by war, terrorism, or other emergency, or by any other condition beyond the control of Landlord.

31. Financial Information and Security Deposit.

(a) The condition precedent to the effectiveness of this Lease Agreement shall be the receipt and approval by Landlord of financial statements of, or other financial information regarding, Tenant.

(b) Upon the date of the execution of this Lease Agreement by Tenant, Tenant shall deposit with Landlord two full month's Base Rent as a security deposit for the full and faithful performance by Tenant of each and every covenant, term and condition of this Lease Agreement.

32. Memorandum of Lease. This Lease Agreement shall not be recorded but, at the request of either party, Landlord and Tenant shall execute a Memorandum of Lease which may be recorded in the Genesee County Clerk's Office.

33. Representations and Warranties.

(a) Tenant represents and warrants to Landlord that the execution, delivery and performance of this Lease Agreement and the consummation of the transactions herein contemplated have been duly authorized by all requisite corporate action on the part of the Tenant and will not violate any provision of law, any order of any court or agency of government, or the certificate of incorporation or by-laws of the Tenant, or any indenture, agreement or other instrument to which the Tenant is a party or by which it or any of its property

is bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or result in the imposition of any lien, charge or encumbrance of any nature whatsoever.

(b) Landlord represents and warrants to Tenant as follows:

1. Landlord owns the fee interest in and to the Property;
2. the execution, delivery and performance of this Lease Agreement and the consummation of the transactions herein contemplated have been duly authorized by all requisite corporate action on the part of the Landlord and will not violate any provision of law, any order of any court or agency of government, or the certificate of incorporation or by laws of the Landlord, or any indenture, agreement or other instrument to which the Landlord is a party or by which it or any of its property is bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or result in the imposition of any lien, charge or encumbrance of any nature whatsoever;
3. there is no pending or threatened condemnation action relative to the Property and/or the Business Park;
4. the Property is (or will be upon the Lease Commencement Date) currently served by all necessary utilities required for Tenant's permitted use under this Lease (including, but not limited to, water, gas, electric, cable, telephone and sewer (storm and sanitary)); and
5. Tenant will not be prevented from or restricted in conducting any part of its primary business in or from the Leased Premises or in exercising any of the rights granted with respect to the common areas of the Building because of any zoning ordinance, private restriction, covenant, lease, encumbrance, or agreement entered into by any person having or having had an interest in the Property, the Building or any portion of the Business Park.

The foregoing representations and warranties are a material inducement to Tenant to enter into this Lease and shall survive the expiration and/or earlier termination of the Lease.

34. Consent of Mortgagee. In the event that the Property is or becomes encumbered by a mortgage and such mortgage requires the consent of the Mortgagee to leases of the Property, this Lease Agreement shall not become effective unless and until the Mortgagee has consented to it. Landlord will use its best efforts to obtain the Mortgagee's consent but shall not be liable in the event that the Mortgagee does not consent. The parties agree that they will modify or amend this Lease Agreement if required by the Mortgagee as a condition to its consent, provided that such modification does not substantially alter the financial terms hereof or the rights or obligations of the parties hereunder. Tenant agrees to cooperate with Landlord in obtaining such consent.

Whenever the consent of Landlord is required hereunder, the consent of the Mortgagee shall also be required if the mortgage so requires. The Mortgagee shall also have such rights of the Landlord (e.g., to access) as may be provided in the mortgage.

35. Termination, Modifications and Amendments. Landlord and Tenant agree not to terminate, materially modify or materially amend this Lease Agreement or any of the term thereof, or to grant any concessions in connection therewith, either orally or in writing, or to accept a surrender thereof, without the prior written consent of the Landlord and Tenant. Any attempted termination, modification or amendment of this Lease Agreement without such written consent shall be null and void.

36. Non-recourse to Landlord. This Lease Agreement shall be non-recourse to Landlord, and Tenant shall look only to Landlord's equity in the Leased Premises in the event of any damages or claims which Tenant may assert against Landlord arising out of or in connection with this Lease Agreement.

37. Tenant's Personal Property; No Lien. Landlord waives any statutory liens, and any rights of distraint, with respect to Tenant's personal property and trade fixtures ("Personal Property"). This Lease does not grant a contractual lien or any other express or implied security interest to Landlord with respect to Tenant's Personal Property.

IN WITNESS WHEREOF, this Lease Agreement is executed as of the day and year first above written.

GENESEE GATEWAY LOCAL DEVELOPMENT CORPORATION

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

OAKGROVE CONSTRUCTION

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



STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF                )

On the \_\_\_ day of \_\_\_\_\_ in the year 200\_, before me, the undersigned, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

---

Notary Public

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF                )

On the \_\_\_ day of \_\_\_\_\_ in the year 200\_, before me, the undersigned, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

---

Notary Public

EXHIBIT A – PROPERTY: Site = Upstate MedTech Park, Batavia NY  
Building = Upstate MedTech Centre

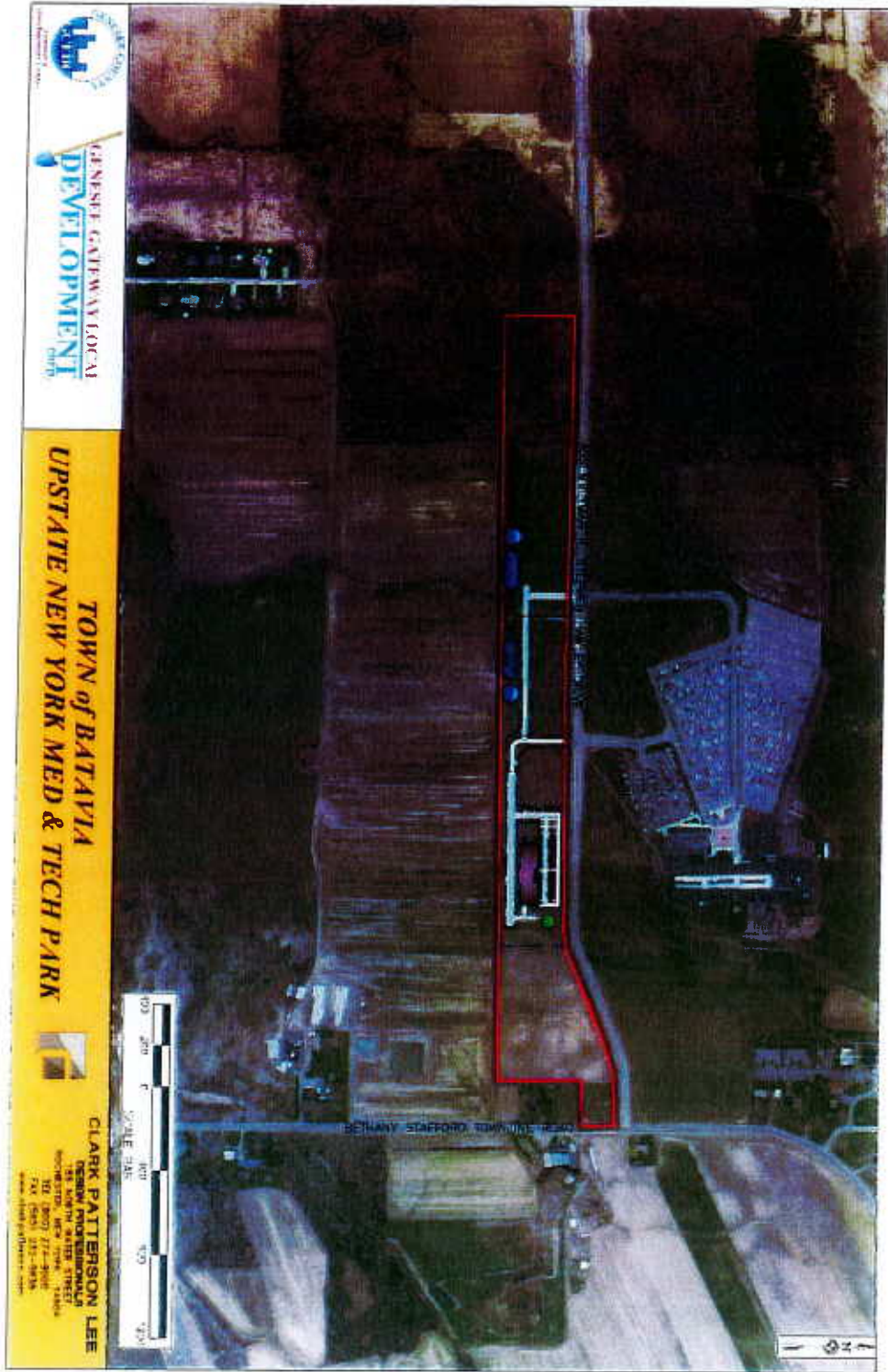
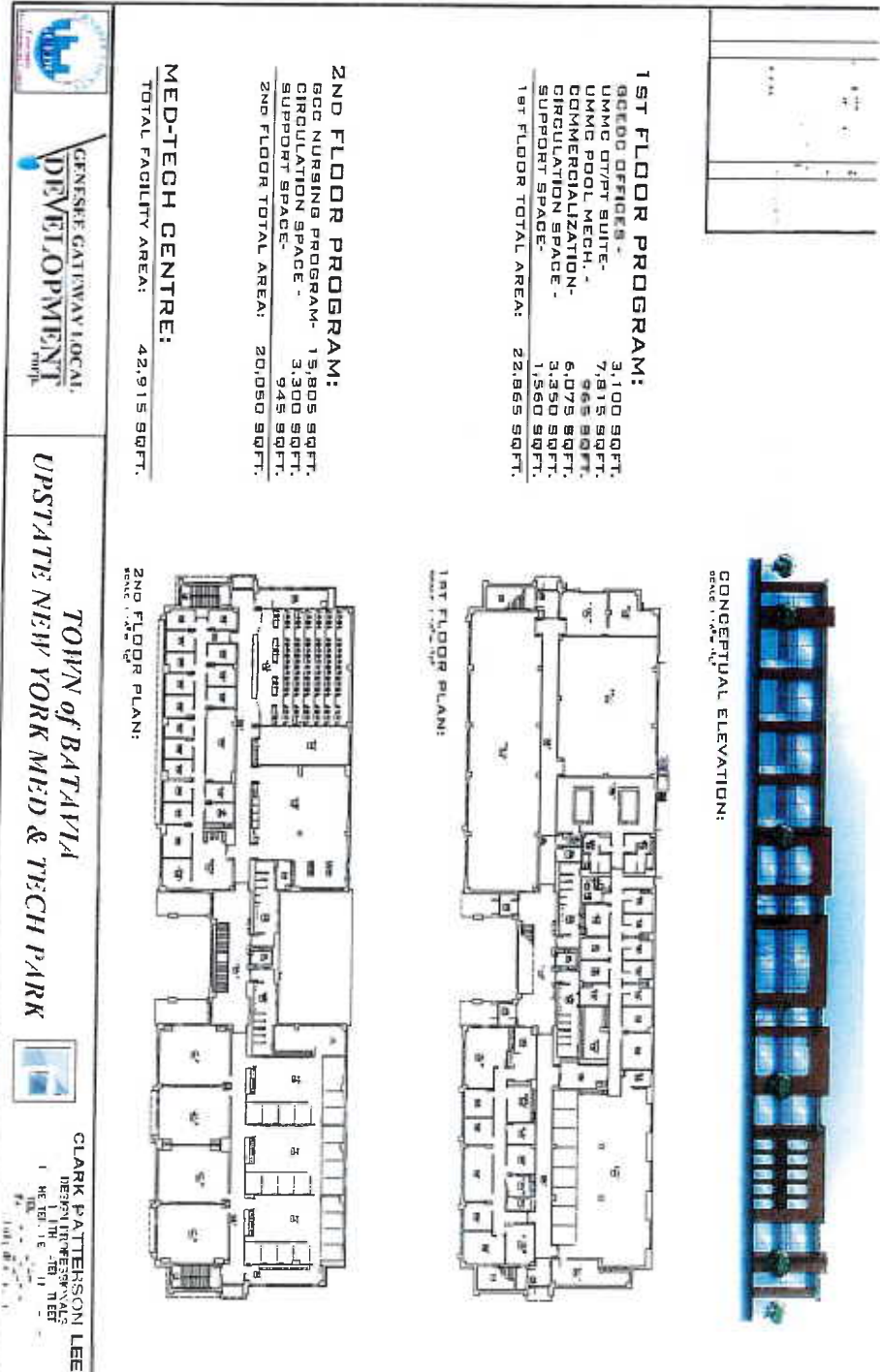


EXHIBIT B

LEASED PREMISES  
(Drawing)



## EXHIBIT C

### RULES AND REGULATIONS

1. Tenant shall not discharge, or permit the discharge, of any industrial waste, hazardous waste, or any other matter, except for normal sanitary sewerage, into the sewer facilities which serve or are used in connection with the Leased Premises.

2. Tenant shall not, without the prior written consent of Landlord (which consent shall not be unreasonably conditioned, delayed or withheld), install, or permit the installation of, any object, including, without limitation, any antenna, dish, sign, or transmission device, on the roof or exterior walls of the Leased Premises or Building or in the yards or parking areas related thereto.

3. Tenant shall not use, or permit the use of, the water, water closets, and plumbing fixtures for any purposes other than those for which they were designed and constructed.

4. Tenant shall not use, keep, or permit to be used or kept, any foul or noxious gas or other substance in or about the Leased Premises, or permit or suffer the Leased Premises to be occupied or used in a manner offensive or objectionable to Landlord-by reason of noise, odors, and/or vibrations or by reason of interference in any way with other tenants of the Building or those having business therein.

5. Tenant shall not exhibit, inscribe, paint, or affix any sign, advertisement, notice or other document in or about the Leased Premises or the Building, or the surrounding areas, yards or parking lots or allow any such sign, advertisement, notice, or other document to be so exhibited, inscribed, painted, or affixed without first obtaining prior written consent of Landlord (which consent shall not be unreasonably conditioned, delayed or withheld). In the event of any violation of the foregoing, Landlord may remove same without any liability, and may charge the expense incurred by such removal to Tenant.

6. Tenant shall not mark, paint, drill into, or in any way deface any part of the Leased Premises or the Building. Tenant shall not bore, cut or string wires on or about the Leased Premises, Building, or the surrounding areas, yards or parking lots, or permit same to be done, without the prior written consent of the Landlord.

7. Landlord shall have the right to prohibit any advertising by Tenant which, in Landlord's reasonable opinion, tends to impair the reputation of the Landlord or the desirability of the building, or the project of which it is a part, and upon written notice from Landlord, Tenant shall refrain from or discontinue such advertising.

8. Tenant shall not bring or permit to be brought or kept in or on the Leased Premises, Building, or surrounding yards, areas, or parking lots any inflammable, combustible, or explosive or otherwise hazardous fluid, material, chemical or substance or cause or permit any odors to permeate in or emanate therefrom.



5/13/2022

99 Medtech Dr. Batavia  
Genesee Gateway Local Development

**Re: 99 Medtech Drive Batavia, NY**

Dear Chris:

Please review the following Letter of Intent for the 820 SF Office space at 99 Medtech Dr. Batavia.

**Landlord:** Genesee Gateway Local Development Corp (hereinafter "Landlord")  
**Tenant:** Oak Grove Construction ("Tenant")  
**Guarantee:** Corporate  
**Use:** Field Office for Construction Project  
**Property:** 820 SF

**Rent Commencement Date: April 1 – Sept 30, 2023**

**Lease Term:** 6 months lease with option to extend month to month beginning on October 1, 2023  
**Gross Monthly Rental:** \$15.50 PSF + \$4.20 CAM  
\$1,346.16 Gross Per Month. Rent includes insurance and CAMs.  
**Security Deposit:** One Month Rent  
**Premise Utilities:** Tenant shall be responsible for premise gas, electric and water within the space.  
**Tenant Improvements:** NA



This Proposal shall not be binding upon the parties, and is being offered for consideration for ten (10) business days from the date of this letter. A binding agreement shall not exist until a lease has been executed and delivered by both parties. Neither party may claim any legal rights against the other by reason of activities taken in reliance upon this non-binding Proposal, including, without limitation, any partial performance of the transactions contemplated herein. Neither party owes the other party any duty to negotiate a formal agreement, and either party may cease discussion at any time.

Sincerely,

Jonathan Maurer  
Real Estate Salesperson

**AGREED AND ACCEPTED:**

LANDLORD

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

DATE: \_\_\_\_\_

TENANT

BY: 

NAME: Douglas E May

DATE: May 25, 2022

# LOI 99 Medtech Dr Batavia 2023

Final Audit Report

2022-05-25

Created:	2022-05-25
By:	Jon Maurer (jmaurer@pyramidbrokerage.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAjmBasoO_GitRI7KMoccmfztkGEJBZZlw

## "LOI 99 Medtech Dr Batavia 2023" History

-  Document created by Jon Maurer (jmaurer@pyramidbrokerage.com)  
2022-05-25 - 5:30:33 PM GMT- IP address: 24.97.234.210
-  Document emailed to Douglas May (dougm@oakgroveconst.com) for signature  
2022-05-25 - 5:31:02 PM GMT
-  Email viewed by Douglas May (dougm@oakgroveconst.com)  
2022-05-25 - 6:02:23 PM GMT- IP address: 104.28.111.207
-  Document e-signed by Douglas May (dougm@oakgroveconst.com)  
Signature Date: 2022-05-25 - 6:04:48 PM GMT - Time Source: server- IP address: 174.208.32.26
-  Agreement completed.  
2022-05-25 - 6:04:48 PM GMT

3c



Adobe Acrobat Sign

47

## SUBLEASE AGREEMENT

### 1. PARTIES

This Sublease Agreement ("Sublease") dated 5/20, 2022, is made between Adecco USA, Inc., a Delaware Corporation ("Sublandlord"), and Oakgrove Construction, a SUB S corporation ("Subtenant").

### 2. MASTER LEASE

Sublandlord is the tenant under a written lease dated April 1, 2020 (the "Master Lease") wherein Genesee Gateway Local Development Corporation ("Landlord") leased to Sublandlord the real property located in the City of Batavia, State of New York, described as 99 MedTech Drive, Suite 111, New York 14020, consisting of 820 square feet of rentable area (the "Premises"). The Master Lease is attached to this Sublease as Exhibit "A" and incorporated herein by this reference. Capitalized terms that are not otherwise defined in this Sublease shall have the respective meanings ascribed to them in the Master Lease.

### 3. PREMISES

Sublandlord hereby subleases the Premises to Subtenant, and Subtenant hereby takes and accepts the Premises, on and subject to the terms and conditions set forth in this Sublease.

### 4. WARRANTY BY SUBLANDLORD

4.1 Sublandlord warrants and represents to Subtenant that the Master Lease has not been amended or modified and that Sublandlord is not now and as of the commencement of the Sublease Term (as defined below) will not be, in default or breach of any of the provisions of the Master Lease, and that Sublandlord has no knowledge of any claim by Landlord that Sublandlord is in default or breach of any of the provisions of the Master Lease.

4.2 Sublandlord further warrants and represents that: (i) Exhibit "A" to this Sublease is a true, correct and complete copy of the Master Lease; (ii) there are no other or additional documents forming a part of the Master Lease or constituting an amendment thereto; and (iii) the Master Lease is in full force and effect.

### 5. TERM

5.1 The term of this Sublease ("Sublease Term") shall commence on the latest to occur of (a) the receipt of master landlord consent, (b) removal of Sublandlord's IT equipment, furniture & artwork by Sublandlord, and (c) the delivery of the Premises to Subtenant (the "Commencement Date") and, unless sooner terminated as provided herein, shall end on March 30, 2023 (the "Termination Date"). In no event shall Sublandlord delay the Commencement Date beyond June 1, 2022, unless such delay is due to Master Landlord's Consent to Sublease. Sublandlord shall promptly submit this Sublease to Master Landlord for consent. If the Commencement Date shall not occur on or before June 1, 2022 (including due to the failure to obtain Master Landlord's consent by June 1, 2022), then Subtenant may terminate this Sublease by giving Sublandlord notice thereof at any time thereafter prior to the occurrence of the Commencement Date. The Sublease Term shall be deemed to commence as of the Commencement Date irrespective of the



date Subtenant takes actual possession of the Premises. Within seven (7) days after the Commencement Date, Sublandlord and Subtenant shall execute an agreement in the form attached hereto as Exhibit C ("Commencement Date Memorandum") setting forth the Commencement Date and Expiration Date of this Lease.

5.2 Subtenant agrees to accept the Premises in their existing "AS IS" condition. Sublandlord shall have no obligation to alter, improve or otherwise modify the Premises before the Possession Date.

5.3 Upon the expiration or termination of the Sublease Term, Subtenant shall immediately surrender the Premises together with all leasehold improvements thereon, to Sublandlord in good order, repair and condition, reasonable wear and tear expected. ("Reasonable wear and tear" and "Improvement" shall have the meanings provided in the Master Lease). Subtenant shall also comply with the terms of Section 20 of the Master Lease with respect to surrender of possession. Subtenant shall pay Sublandlord on demand the cost of repairing any damage to the Premises or removing any improvements made by Subtenant that are required to be removed pursuant to the terms of the Master Lease.

## 6. RENT

6.1 Subtenant shall pay to Sublandlord without deduction, setoff, notice or demand at the address for Payment to Sublandlord specified in Section 14 of this Sublease or at such other place as Sublandlord shall designate from time to time by notice to Subtenant, the Monthly Rent, in advance on the first day of each month of the Term. If the Sublease Term begins or ends on day other than the first or last day of a month, the Base Rent for such partial month shall be prorated on a per diem basis. Subtenant's Monthly Gross Rent shall be as follows: \$850.00. Notwithstanding the foregoing, Subtenant shall pay Sublandlord the Monthly Rent for the full first, second and third month of the Sublease Term, in the amount of \$2,550.00, upon full execution of all sublease documents.

6.2 Subtenant's covenant to pay Rent shall be independent of every other covenant in this Lease. All payments required of Subtenant hereunder which remain unpaid for thirty (30) days after the due date thereof shall bear interest from the date due until paid at the lesser of eighteen percent per annum or the maximum lawful rate of interest (such lesser amount is referred to herein as the "Default Rate"); additionally, with respect to any payments that remain unpaid for five (5) days after the due date thereof, Sublandlord, in addition to all other rights and remedies available to it, may charge Subtenant a fee equal to five percent (5%) of the delinquent payment to reimburse Sublandlord for its cost and inconvenience incurred as a consequence of Subtenant's delinquency.

6.3 The Master Lease requires Sublandlord to pay to Landlord amounts representing Tenant's Pro Rata share of Taxes and Operating Expenses. Subtenant shall not be responsible for paying any Operating Expense pass throughs throughout the Sublease Term.

6.4 Subtenant shall not pay any electric charges for lighting and outlets for the Premises during the Sublease Term.

6.5 If Subtenant, without the consent of Sublandlord (and the consent of Landlord, where required by the Master Lease), retains possession of the Premises, or any part thereof, after the expiration or termination of the Sublease Term, Subtenant shall pay

to Sublandlord all rent payable by Sublandlord to Landlord under Section 21 of the Master Lease for each month or partial month (without proration for any partial month) that Subtenant remains in possession. In addition, Subtenant shall protect, defend, indemnify and hold Sublandlord harmless from and against all damages, loss, cost, liability or expense threatened or sustained by Sublandlord by reason of Subtenant's continuance in possession.

7. SECURITY DEPOSIT

Subtenant shall deposit with Sublandlord upon execution of this Subtenant the sum of \$850.00 (the "Security Deposit") as security for Subtenant's faithful performance of Subtenant's obligations hereunder. As Monthly Base Rent increases, Subtenant shall deposit such additional sums so that the Security Deposit shall equal one month's Base Rent. If Subtenant fails to pay Rent when due under this Sublease, or fails to perform any of its other obligations hereunder, Sublandlord may use or apply all or any portion of the Security Deposit for the payment of any Rent then due hereunder and unpaid, for the payment of any other same for which Sublandlord may become obligated by reason of Subtenant's default or breach. If Sublandlord so uses any portion of the Security Deposit, Subtenant shall, within ten (10) days after written demand by Sublandlord, restore the Security Deposit to the full amount deposited, and Subtenant's failure to do so shall constitute a default under this Sublease. Sublandlord shall not be required to keep the Security Deposit separate from the general accounts and shall have no obligation or liability for payment of interest on the Security Deposit. In the event Sublandlord assigns its interest in the Sublease, Sublandlord shall deliver to its assignee so much of the Security Deposit as is then held by Sublandlord. Within thirty (30) days after the Sublease Term has expired, or Subtenant has vacated the Premises, whichever shall last occur, and provided Subtenant is not then in default of any of its obligations hereunder, the Security Deposit, or so much thereof as had not theretofore been applied by Sublandlord, or is to be applied to restore or repair any damage to the Premises, shall be returned to Subtenant or to the last assignee, if any, of Subtenant's interest hereunder.

8. USE OF PREMISES

The Premises shall be used and occupied only for general offices and related office uses, and for no other use or purpose.

9. ASSIGNMENT AND SUBLETTING

Subtenant shall not assign this Sublease or further sublet all or any part of the Premises without the prior written consent of Sublandlord which consent shall not be unreasonably withheld, and the consent of Landlord, if such is required under the terms of the Master Lease. A reasonable basis for withholding consent shall include, but not be limited to, the creditworthiness of the proposed assignee and ability of the assignee to perform the obligations hereunder of Subtenant and the other bases specified in Section 24 of the Master Lease. Any such assignment of subleasing shall be subject to compliance with the terms and conditions of the Master Lease, including, without limitation, exercise of Landlord's right to consent to such assignment or subleasing and/or terminate the Master Lease and recapture all or a portion of the Premises.

10. APPLICABLE PROVISIONS OF MASTER LEASE

10.1 Subject to this Section 10.1 and Sections 10.2 and 10.3 below, all terms and conditions of the Master Lease. Subtenant were the tenant thereunder, except that any references to the "Premises" in the Master Lease shall be references to the "Premises" as

defined above. In case of conflict between the incorporated provisions of the Master Lease and the remaining provisions of this Sublease, the latter shall control. Subtenant assumes and agrees to perform the tenant's obligations under the Master Lease during the Sublease Term, except that the obligation to pay rent or other amounts to Landlord under the Master Lease shall not be an obligation of Subtenant, and Subtenant shall instead pay the Rent under this Sublease.

Subtenant shall not commit or suffer any act or omission that will violate any of the provisions of the Master Lease. Landlord has covenanted under the Master Lease to perform repairs and maintenance and provide services pursuant to Sections 10 of the Master Lease. Sublandlord shall exercise due diligence in attempting to cause Landlord to perform its obligations under the Master Lease for the benefit of Subtenant, including, but not limited to, the Landlord's obligations to make repairs and provide services under Section 6 of the Master Lease. In addition, if Landlord defaults in its obligations under the Master Lease to maintain the Premises and Building or to furnish services to the Premises and such default materially interferes with Subtenant's use and enjoyment of the Premises, Sublandlord authorizes Subtenant to deal directly with Landlord regarding such default. If the Master Lease terminates as a result of a default or breach of Sublandlord or Subtenant under this Sublease and/or the Master Lease, then the defaulting party shall be liable to the nondefaulting party for the direct damage suffered as a result of such termination. Notwithstanding the foregoing, if the Master Lease gives Sublandlord any right to terminate the Master Lease, whether in the event of the partial or total damage destruction or condemnation of the Premises or the Property or Project or the Premises or otherwise, the exercise of such right by Sublandlord shall not constitute a default or breach hereunder. Sublandlord covenants not to commit or suffer any act or omission that will violate the Master Lease. In the event that Sublandlord at any time becomes in default under the Master Lease, Subtenant has the right to cure said default on behalf of Sublandlord in accordance with the applicable provisions of the Master Lease. Any direct costs incurred by Subtenant in curing Sublandlord's default under the Master Lease over and above Subtenant's Rent under this Sublease shall be recoverable by Subtenant from Sublandlord as an item of damages. Neither Sublandlord nor Subtenant shall be liable to the other under this Section 10.1 for any indirect, incidental, special or consequential damages, including business interruption or lost profits.

10.2 Notwithstanding anything to the contrary herein, the incorporated provisions of the Master Lease are amended or qualified as follows:

a. Sublandlord shall not be liable under any circumstances for a loss of or injury to property, or interference with Subtenant's business, however occurring, incidental to any failure to furnish any utilities or services.

b. Sublandlord shall have no responsibility to perform or construct (or to pay the cost of performing or constructing) any repair, maintenance or improvement in or to the Property, Building, the Project or the Premises.

c. Rent shall be abated under this Sublease only to the extent that Sublandlord receives a corresponding rent abatement under the Master Lease.

d. Wherever the Master Lease grants to Sublandlord a grace or cure period, the corresponding grace or cure period under this Sublease shall be two (2) business days shorter in duration.

10.3 The parties acknowledge that Sublandlord's ability to satisfy certain of its obligations to Subtenant under this Sublease is contingent upon the full and timely performance of Landlord's obligations under the Master Lease. The parties further

acknowledge that, while Sublandlord will use reasonable efforts to cause Landlord to perform its obligations under the Master Lease, Sublandlord will not be liable to Subtenant for any breach of Sublandlord's obligations under this Sublease, nor shall such breach diminish Sublandlord's rights hereunder, where the same is caused by or attributable to the failure of Landlord to perform its obligations under the Master Lease.

10.4 Subtenant shall procure and maintain policies of insurance covering liability, casualty and covering all contents, Subtenant's trade fixtures, machinery, equipment, furniture and furnishing in the Premises, such as required of Tenant under Section 13 of the Master Lease. Subtenant shall provide Sublandlord with evidence of such insurance upon request.

10.5 Landlord under the Master Lease shall be served any and all notices of default by Sublandlord against Subtenant or by Subtenant against Sublandlord in the manner provided for service of such notice under the Master Lease.

#### 11. MUTUAL WAIVER OF SUBROGATION RIGHTS

Whenever (i) any loss, cost, damage or expense resulting from fire, explosion or any other casualty or occurrence is incurred by either of the parties to this Sublease, or anyone claiming by, through, or under it in connection with the Premises, and (ii) such party is then covered in whole or in part by insurance with respect to such loss, cost, damage or expense or is required under this Sublease to be so insured, then the party so insured (or so required) hereby releases the other party and the Landlord under the Master Lease from any liability said other party and the Landlord under the Master Lease may have on account of such loss, cost damage or expense to the extent of any amount recovered by reason of such insurance (or which could have been recovered had such insurance been carried as so required) and waives any right of subrogation which might otherwise exist in or occur to any person on account thereof, provided that such release of liability and waiver of the right of subrogation shall not be operative in any case where the effect thereof is to invalidate or adversely affect such insurance coverage or increase the cost thereof (except that in the case of the increased cost, the other party and the Landlord under the Master Lease shall have the right, within thirty (30) days following written notice, to pay such increased cost, thereby keeping such release and waiver in full force and effect). If the party released from liability hereunder is the Landlord under the Master Lease, the term "Landlord", for the purpose of this section shall include the Trustee, its beneficiary or beneficiaries and their agents, and Agent.

#### 12. BROKER PARTICIPATION

Sublandlord warrants and represents that it has dealt with no real estate broker in conjunction with this Sublease other than *Pyramid Brokerage Company*. Subtenant warrants and represents that it has dealt with no real estate broker in conjunction with this Sublease other than *Pyramid Brokerage Company*. Sublandlord shall pay and be responsible for the commissions due *Pyramid Brokerage Company* on this Sublease. Sublandlord and Subtenant each warrant and represents to the other that no other brokers are entitled to any commission on account of this Sublease, and each agrees to hold the other harmless from and against any and all costs (including reasonable attorneys' fees), expenses or liability for any compensation, commission and charges claimed by any broker other than those identified in this Section 12, through such party with respect to this Sublease.

#### 13. ATTORNEYS' FEES

If Sublandlord or Subtenant shall commence an action against the other arising out of or in connection with this Sublease, the prevailing party shall be entitled to recover its costs of suit and reasonable attorneys' fees.

14. NOTICES

All notices and demands which may or are to be required or permitted to be given by either party on the other hereunder shall be in writing. All notices and demands by Sublandlord to Subtenant shall be sent by (i) United States Mail, certified or registered, postage prepaid with return receipt requested, or (ii) by nationally recognized overnight courier service providing receipted delivery, addressed in either case to Subtenant at the Premises, or to such other place as Subtenant may from time to time designate by notice to Sublandlord. All notices and demands by Subtenant to Sublandlord shall be sent by (i) United States Mail, certified or registered, postage prepaid with return receipt requested, or (ii) by nationally recognized overnight courier service providing receipted delivery, addressed to Sublandlord at the address set forth herein, and to such other person or place as Sublandlord may from time to time designate by notice to Subtenant. Any notice sent by United States Mail shall be deemed delivered on the date of delivery or rejection as shown on the return receipt or, in the absence of such date, on the third day following the deposit thereof with the United States Postage Service. Any notice sent by overnight courier service shall be deemed delivered on the delivery date as shown in the regularly maintained business records of such courier service.

To Sublandlord: 10151 Deerwood Park Blvd  
Building 200, Suite 400  
Jacksonville, FL 32256  
Attention: Real Estate Department

Copy to: Cushman and Wakefield  
Attn: Adecco Lease Admin  
575 Maryville Centre Drive, Suite 600  
St. Louis, MO 63141

Payment to Sublandlord: Cushman and Wakefield  
Attn: Adecco Lease Admin  
575 Maryville Centre Drive, Suite 600  
St. Louis, MO 63141

To Subtenant: 6900 Seneca Street  
Elma, NY 14059  
Attention: Doug May

15. QUIET ENJOYMENT

Subject to the provisions of this Sublease, Sublandlord covenants that Subtenant, upon performing its obligations under this Sublease, shall and may peaceably and quietly have, hold and enjoy the Premises for the Sublease Term.

16. CONSENT BY LANDLORD

16.1 This Sublease is conditioned upon procuring the consent of Landlord to this Sublease in accordance with the Master Lease (the "Consent"), which Consent shall be in the form attached as Exhibit "B" to this Sublease. Sublandlord and Subtenant shall cooperate with each other in seeking Landlord's Consent.

16.2 Sublandlord shall allow Subtenant access to the Premises, and the Possession Date shall occur, when Landlord provides Sublandlord and Subtenant with the executed Consent. Subtenant shall be entitled to exercise the option to extend the term of the Master Lease specified in Section 2 of the Master Lease only if Landlord shall have agreed in writing with Subtenant and Sublandlord that Sublandlord shall have no liability or obligations under the Master Lease or Sublease whatsoever with respect to the extension period and that subtenant shall become the "Tenant" under the Master Lease effective upon the commencement of the extension term.

16.3 If (i) Landlord's Consent is withheld or (ii) Landlord exercises its recapture rights under the Master Lease and terminates the Master Lease as to the Premises, this Sublease shall terminate upon the delivery of written notice to Sublandlord and Subtenant that Landlord's Consent will not be given or that Landlord is terminating the Master Lease. If this Sublease is so terminated: (i) all consideration previously paid by Subtenant to Sublandlord on account of this Sublease shall be returned to Subtenant; and (ii) the parties thereupon shall be relieved of any further liability or obligation under this Sublease, except for those liabilities or obligations which have accrued and remain unperformed as of the date this Sublease is so terminated.

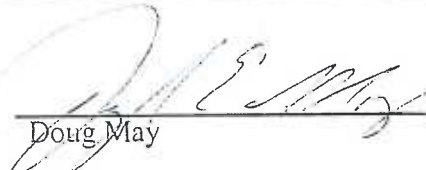
**17. ENTIRE AGREEMENT**

This Sublease (including Exhibits "A" and "B" hereto which are incorporated and made a part hereof by this reference) represents the entire agreement of the parties with respect to the subject matter hereof, supersedes all prior communications concerning the subject matter and may not be amended except in writing signed by both parties' authorized officers.

Intending to be bound hereby the parties have, by their duly authorized corporate officers, executed this Sublease on the dates set forth below.

Oakgrove Construction

Adecco USA, Inc

By:   
Title: Doug May  
Date: 5/20/2022

E-SIGNED by Mindy Holden  
on 2022-05-20 01:13:58 GMT  
By: \_\_\_\_\_  
Title: Mindy Holden  
SVP of Procurement and Real Estate  
Date: \_\_\_\_\_

May 20, 2022

Exhibit A

Master Lease

Exhibit B

Consent to Sublease



EXHIBIT C

COMMENCEMENT DATE MEMORANDUM

Adecco, Inc., as Sublandlord, and Oakgrove Construction, as Subtenant, executed that Sublease dated as of 5/20, 2022 (the "Sublease").

This Commencement Date Memorandum shall become part of the Sublease.

Sublandlord and Subtenant agree as follows:

1. The Commencement Date of the Sublease is 5/20, 2022;
2. The date on which this Sublease will expire is March 30, 2023;
3. The Lease is in full force and effect as of the date of this Commencement Date Memorandum. By execution of this Commencement Date Memorandum, Subtenant confirms that as of the date of the Commencement Date Memorandum (a) Subtenant has no claims against Sublandlord and (b) Sublandlord has fulfilled all of its obligations under the Lease required to be fulfilled by Sublandlord.

This Memorandum is not in effect until duly signed by Sublandlord and Subtenant.

Sublandlord:  
Adecco, Inc.

Subtenant:  
Oakgrove Construction

By:

By:

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Authorized Signature)

Printed Name:

Printed Name:

\_\_\_\_\_

DOUGLAS MAW

Its:

Its:

\_\_\_\_\_

PRESIDENT

Date:

Date:

\_\_\_\_\_

5/20/2022



373 Woodbury Drive  
 Rochester, NY 14450  
 Tel: +1 585 248 3434  
 Fax: +1 585 248 3661  
 pyramidbrokerage.com

**COMMISSION AGREEMENT**  
**(LEASE)**

The undersigned owner (the "Owner") of property or premises comprised of 820 ± SF also known as a portion of 99 MedTech Drive, situate in the Town of Batavia, County of Genesee, State of New York, Tax ID# 9.-1-216.12 (the "Property") agrees that if **Pyramid Brokerage Company of Rochester, Inc.** ("Pyramid Brokerage Company") procures a tenant ready, willing and able to enter into a lease with respect to some or all of such Property under terms acceptable to the Owner, the Owner shall pay to Pyramid Brokerage Company a commission (the "Commission") equal to (a) six percent (6%) of the gross rent payable over the term of the lease, plus (b) six percent (6%) of the gross rent payable with respect to any renewal or extension of the lease term, and (c) six percent (6%) of the gross rent payable with respect to any expansion of the leased premises or lease of additional space in the Property. The Commission provided for in (a) above shall be paid by the Owner to Pyramid Brokerage Company in full upon the earlier of the execution of the lease by the Owner and the tenant or the occupancy of the premises by the tenant. The Commission referred to in (b) and (c) shall be paid by the Owner to Pyramid Brokerage Company upon the earlier of the effective date of any renewal or extension of the lease term or of any expansion of the leased premises or leasing of such additional space or the entering into of an agreement between Owner and tenant with respect to any of the foregoing. The

Owner agrees to include in each lease or rental agreement under which space in the Property is leased or rented, the following provisions:

"The Landlord or Lessor is obligated to pay Pyramid Brokerage Company a Commission with respect to this lease or rental agreement and with respect to any renewal whether by exercise of an option, renegotiation or otherwise and is also obligated to pay a Commission upon any expansion of the leased or rented space or any extension of the lease term. Without any further agreement between the parties or their successors in interest or assigns, any purchaser of the Property shall by purchasing the Property be deemed to have assumed all covenants and obligations of the Landlord or Lessor under this lease or rental agreement arising after the date of the closing of the purchase, including any obligation to pay commissions to Pyramid Brokerage Company."

The Owner assigns to Pyramid Brokerage Company so much of the rents payable under any lease as to which a Commission is due hereunder as security for the payment of such Commission and agrees that the tenant under any such lease may at the request of Pyramid Brokerage Company pay to Pyramid Brokerage Company such rents to the extent of the Commission due hereunder.

In the event (i) tenant makes a deposit, earnest money deposit, good faith payment, down payment, option payment or such similar payment (hereinafter referred to as the "Deposit"), (ii) the lease is not finalized for any reason, and (iii) Owner becomes entitled to the Deposit or any portion thereof (the "Retained Deposit"), then Owner shall pay to Pyramid Brokerage Company an amount equal to the Retained Deposit multiplied by the commission percentage rate to be paid to Pyramid Brokerage Company for the term of the lease as set forth above.

If payment of all or any part of the Commission is not received by Pyramid Brokerage Company within ten (10) days after the date when due, then in addition to the amount remaining unpaid, the Owner shall pay as liquidated damages and not as a penalty, ten percent (10%) of the amount due and unpaid.

If Pyramid Brokerage Company commences an action to collect amounts due to it under this Agreement, the Owner shall pay the reasonable attorneys' fees and other expenses incurred by Pyramid Brokerage Company. Any action relating

to this Agreement including an action to collect amounts due hereunder shall be commenced in the Supreme Court for the County of Monroe, New York and the Owner and Pyramid Brokerage Company consent to the jurisdiction and venue of such court. Pyramid Brokerage Company and the Owner waive any right to a trial by jury in any action relating to this Agreement or the collection of amounts due hereunder.

The Owner warrants and represents that (a) there are no exclusive agreements or arrangements with any other real estate broker relating to the lease or sale of the Property and (b) this Agreement is not inconsistent with or in violation of any other agreement signed by Owner. The Owner agrees to defend, indemnify and hold Pyramid Brokerage Company harmless from and against any and all claims, losses, damages or expenses (including reasonable attorneys' fees) which may be asserted by any other real estate broker in connection with the lease or sale of all or any portion of the Property.

The Owner warrants to Pyramid Brokerage Company that to the best of the Owner's knowledge there are no hazardous substances, hazardous waste or other contaminate or pollutants at or under the Property.

The Owner warrants that he is the owner of the Property and has the full right and authority to execute, deliver and perform this Agreement and to retain Pyramid Brokerage Company hereunder.

This Agreement may be executable in counterpart, each of which shall be an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Commission Agreement has been executed and delivered this \_\_\_\_\_ day of May, 2022.

**GENESEE GATEWAY LOCAL DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Name)  
(Title)

PH: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

**PYRAMID BROKERAGE COMPANY OF ROCHESTER, INC.**

By: \_\_\_\_\_  
John J. Manilla  
President

PH: (585) 248-9426

GGLDC

Jim Krencik, Director of Marketing & Communications

Audit & Finance Meeting Report

July 6, 2022

**Genesee CARES Update**

With the support of the New York State Office of Community Renewal and Genesee County, the Genesee CARES Business Recovery Fund has completed a first round of grant disbursements to eligible businesses and has a second round of grant disbursements submitted as of June 30, 2022.

Grant Disbursement #1: \$43,400 to 3 awarded projects

Grant Disbursement #2: \$194,482 to 7 awarded projects

Remaining for Grant Disbursement Requests: \$637,117

Mike Zimmerman and the Harrison Studio continue to assist businesses with grant disbursement requests, with a third round of requests anticipated in early July and subsequent rounds to disburse the entirety of remaining funds.

Genesee CARES - Status of Grant Disbursements & Eligible Reimbursements as of June 30, 2022

Applicant	ID	Location	Awarded Funding Level	Grant Disbursement Request #1	Grant Disbursement Request #2	Remaining Available Award to Reimburse
First Wave Technology	1	Batavia - Town	\$25,000			\$25,000
Sweet Betty's	2	LeRoy	\$20,000	\$13,179	\$6,821	\$0
Pro Construction	3	Bergen	\$25,000	\$25,000		\$0
Red Roof Inn	4	Batavia - Town	\$25,000		\$25,000	\$0
Terry Hills	5	Batavia - Town	\$75,000			\$75,000
La Quinta	6	Batavia - Town	\$25,000		\$25,000	\$0
Hodgins Engraving	7	Batavia - Town	\$60,000			\$60,000
Rivers Performance	8	Batavia - Town	\$10,000	\$5,221		\$4,779
Chaps Elba Diner	9	Elba	\$50,000			\$50,000
Craft Cannery	10	Bergen	\$60,000			\$60,000
Sikes Enterprises	11	Batavia - City	\$25,000		\$25,000	\$0
New Caryville Inn	12	Oakfield	\$25,000			\$25,000
Center Street Smokehouse	13	Batavia - City	\$25,000			\$25,000
Smokin Eagle BBQ	14	LeRoy	\$50,000		\$50,000	\$0
John's Service	15	Batavia - City	\$25,000			\$25,000
Alleghany Services	16	Basom	\$60,000			\$60,000
Eden Café	17	Batavia - City	\$25,000		\$18,901	\$6,099
Copperhead Creek Bar	18	Batavia - City	\$75,000		\$43,761	\$31,239
Byron Hotel & Trailhouse	19	Byron	\$50,000			\$50,000
Empire Hemp	20	Batavia - City	\$15,000			\$15,000
Fava Brothers Lawn Care	21	Byron	\$60,000			\$60,000
The Spa at Artemis	22	Batavia - City	\$65,000			\$65,000
<b>Totals</b>			<b>\$875,000</b>	<b>\$43,400</b>	<b>\$194,482</b>	<b>\$637,117</b>
				<b>5%</b>	<b>22%</b>	<b>73%</b>

- 6 Project submitted for disbursement of 100% of eligible Genesee CARES grant as of 6-30-22
- 3 Project submitted for disbursement of a portion of eligible Genesee CARES grant as of 6-30-22
- 13 Project not submitted for disbursement of eligible Genesee CARES grant as of 6-30-22

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