

**ASSIGNMENT AND ASSUMPTION AGREEMENT
WITH ACKNOWLEDGMENT AND CONSENT**

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT WITH
ACKNOWLEDGMENT AND CONSENT** (herein, this "Agreement") is dated as of August 4, 2016 (the "Effective Date"), and is made by and between **TROY LIVING, LLC**, a New York domestic limited liability company having offices at 340 Broadway, Saratoga Springs, New York 12866 (herein, the "Company" or "Assignor") and **IRVING AVE 158 LLC**, a New York domestic limited liability company having offices at 63-65 Third Avenue, Troy, New York 12180 (herein, the "Assignee"), with acknowledgment and consent of **TROY INDUSTRIAL DEVELOPMENT AUTHORITY**, a public benefit corporation of the State of New York, having its offices at 433 River Street, 5th Floor, Troy, New York 12180 (the "Authority") and **TROY LOCAL DEVELOPMENT CORPORATION**, a not-for-profit local development corporation having its offices at 433 River Street, 5th Floor, Troy, New York 12180 (the "TLDC").

All capitalized terms used but not defined herein shall have the meanings ascribed to them in (a) that certain Lease to Authority, dated as of June 1, 2007 (the "Company Lease Agreement"), by and between the Company and the Authority, a memorandum of such Lease Agreement having been recorded in the office of the Rensselaer County Clerk on July 16, 2007 in Liber 4212 of Deeds, at page 199; and (b) that certain Lease Agreement, dated as of June 1, 2007 (the "Lease Agreement"), by and between the Authority and Company, a memorandum of such Leaseback Agreement having been recorded in the office of the Rensselaer County Clerk on July 16, 2007 in Liber 4212 of Deeds, at page 234. The Authority is executing this document in its capacity as leasehold title holder only for the purpose of consenting to this Agreement and the transactions contemplated herein.

WITNESSETH:

WHEREAS, the Authority previously appointed the Company as agent to undertake a certain project (the "Project") consisting of (A) the acquisition by the Authority of a leasehold or other interest certain real property located at 63-65 Third Street, City Troy, New York more particularly described on Schedule A hereto (the "Land") and the existing improvements located thereon, including the approximately 44,000 square foot building located on the Land (the "Existing Facility"); (B) the renovation of the Existing Facility, (C) the construction of an underground attached parking facility (the "Parking Facility", and together with the Existing Facility, the "Facility"), (D) the acquisition of and installation in the Facility of certain equipment (the "Equipment" and, together with the Land and Facility, the "Project Facility"), and (E) the lease of the Authority's interest in the Project Facility back to the Company; and

WHEREAS, by resolution adopted June 27, 2007, the Authority authorized the undertaking of the Project and pursuant to which the Authority and the Company entered into the Company Lease Agreement, the Lease Agreement, a certain Payment in Lieu of Tax Agreement dated as of June 1, 2007 between the Authority and the Company (the "PILOT Agreement"), and related documents, each dated as of June 1, 2007 (collectively, the "Authority Documents"); and

WHEREAS, pursuant to the Lease Agreement, and in connection with the sale of the Project Facility, the Company has requested the Authority's approval of the proposed assignment of the Authority Documents to the Assignee; and

WHEREAS, Assignor desires to assign to Assignee all of Assignor's rights, title, interest, duties, obligations and liabilities under the Authority Documents, and Assignee desires to accept such assignment and to assume all of such rights, title, interest, duties and obligations and liabilities of Assignor thereunder; and

WHEREAS, Assignor and Assignee hereby acknowledge that Assignor previously accepted certain grant funding from the TLDC, as evidence by that certain New York Main Street Program Property Maintenance Declaration Form, entered into by Assignor and TLDC and dated April 23, 2012 (the "Declaration"), such Declaration having been recorded in the Office of the Rensselaer County Clerk on May 24, 2012 at 6312 of Deeds at Page 319; and

WHEREAS, pursuant to consent resolutions adopted by the Authority and TLDC on May 20, 2016, the Authority and TLDC have authorized their acknowledgment and consent to this Agreement.

NOW THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment by Assignor.

(a) Assignor hereby sells, assigns, transfers, conveys and sets over unto Assignee all of Assignor's rights, title, interest, duties, obligations and liability in, to and under the Authority Documents first arising from and after the Effective Date.

(b) Assignee hereby accepts such assignment, and Assignee hereby covenants to operate and maintain the Project Facility such that it constitutes a "project" under by Title 11 of Article 8 of the Public Authorities Law of the State of New York (the "State"), as amended, and Chapter 759 of the Laws of 1967 of the State of New York, as amended (hereinafter collectively called the "Act") wherein Section 1953(10) of the Act provides the Authority with the power to acquire, construct, reconstruct, lease, improve, maintain, equip or furnish one or more "projects" within the meaning of Section 1951 of the Act.

(c) Assignor hereby agrees and consents that this Assignment shall in no way be construed as a waiver or release of any claims or rights that the Authority may have at any time against the Assignor arising prior to the Effective Date, and the Authority expressly reserves any such claims or rights and the right to pursue the same at law or in equity.

2. Assumption by Assignee. Assignee hereby assumes the performance of all of the obligations, terms, covenants and conditions of the Authority Documents on Assignor's part first to be performed thereunder first arising from and after the Effective Date and will perform all of the obligations, terms, covenants and conditions of the Authority Documents on Assignee's part to be performed from and after the Effective Date, all with the same force and effect as though the Assignee had signed the Authority Documents as a party named therein.

3. Indemnity of Assignee. Assignee does hereby agree, for Assignee and for Assignee's legal representatives, successors and assigns, to indemnify, defend and save Assignor and Assignor's successors and assigns harmless from and against any and all claims, losses, suits and expenses (including, but not limited to, reasonable attorneys' fees and litigation expenses) asserted or first arising in connection with the performance by Assignee under the Authority Documents from and after the Effective Date.

4. Indemnity of Assignor. Assignor does hereby agree, for Assignor and for Assignor's successors and assigns, to indemnify, defend and save Assignee and Assignee's legal representatives, successors and assigns harmless from and against any and all claims, losses, suits and expenses (including, but not limited to, reasonable attorneys' fees and litigation expenses) asserted or first arising in connection with the performance by Assignor under the Authority Documents prior to the Effective Date.

5. Consent of Authority; Indemnity of Assignee and Assignor to Authority. Pursuant to the terms and provisions of the Authority Documents, and in accordance with an authorizing resolution adopted by the Authority on May 20, 2016 (the "Authorizing Resolution"), the Authority hereby consents to this Agreement and acknowledges its consent below by and through its duly authorized officer. It being expressly understood and agreed that each of Assignor and Assignee, jointly and severally, agree and covenant that each of Assignor and Assignee hereby releases the Authority and its members, officers, agents and employees from, agrees that the Authority and its members, officers, agents and employees shall not be liable for, and agrees to indemnify, defend and hold the Authority and its members, officers, agents and employees harmless from and against, any and all costs or liabilities that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to this Agreement, including without limitation, all causes of action and reasonable attorneys' fees and litigation expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing.

6. Representations and Warranties of Assignor. Assignor hereby represents and warrants to Assignee that (a) there have been no prior assignments of the Company Lease Agreement, Lease Agreement or PILOT Agreement made by Assignor to any other party, (b) that the Authority Documents are being assigned to Assignee free and clear of all liens and encumbrances, except as may have been previously authorized by the Authority and Assignee, and (c) Assignor has complied with all provisions of the Company Lease Agreement, the Lease Agreement and PILOT Agreement as of the Effective Date regarding this Agreement, including but not limited to all applicable provisions of the Lease Agreement; and (d) Assignor is not now in breach or default of any Authority

Documents, nor are there any facts that, with the passage of time, may constitute a breach or default under the Authority Documents. The representations and warranties of Assignor set forth herein shall survive the closing of the transactions contemplated by the Company Lease Agreement and the Lease Agreement and the delivery of this Agreement. The Authority hereby acknowledges Assignor's compliance with the provisions of the Company Lease Agreement and the Lease Agreement regarding this Agreement.

7. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which together shall constitute one and the same instrument.

8. Binding Effect. Each reference herein to a party hereto shall be deemed to include its successors and assigns, all of whom shall be bound by this Agreement and in whose favor the provisions of this Agreement shall inure.

9. Entire Agreement. This Agreement represents the entire agreement between the parties hereto with respect to the subject hereof and supersedes all prior negotiations, either written or oral.

10. Further Assurances. Assignor and Assignee agree to deliver to each other such further instruments and/or documents as reasonably requested and for the purpose of carrying out or consummating the transactions contemplated by this Agreement.

11. Assignee Subleases and Annual Reporting to Authority. Other than residential leases entered into in the normal operation of the Project Facility by the Assignee, any and all subleases of one or more portions of the Project Facility by the Assignee, and any amendments thereto, to a non-related person in the normal course of business and operation of the Project Facility shall be delivered to the Authority within 10 days of execution and delivery along with evidence of subtenant insurance naming the Authority as an additional insured. Any such subleases shall also incorporate the provisions set forth in Exhibit A, hereto. Assignee, on behalf of itself and all sublessees of the Project Facility, agrees to timely undertake and provide all annual job reporting as required of and by the Authority utilizing the form attached hereto as Exhibit B, hereto, or such other forms as may be required by the Authority from time to time.

12. Assignment and Assumption of TLDC Grant Obligations. Assignor and Assignee hereby acknowledge that Assignor previously accepted certain grant funding from TLDC, as evidenced by the Declaration. Pursuant to a consent resolution adopted by TLDC on May 20, 2016, Assignee does hereby assume all obligations and agreements of the Assignor under the Declaration, which shall continue to run with the land through the Termination Date, as defined therein.

[Remainder of Page Intentionally Left Blank]

**[Signature Page to Assignment and Assumption Agreement
with Acknowledgment and Consent]**

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

TROY LIVING, LLC

By: Deane S. Pfeil
Name: Deane S. Pfeil
Title: Member

IRVING AVE 158 LLC

By: Angelo Grasso
Name: Angelo Grasso, Sr.
Title: Member

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

On the 4th day of August, 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared Deane S. Pfeil, 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.

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

Notary Public JUSTIN S. MILLER
Notary Public, State of New York
No. 02MI6020242
Qualified in Albany County
Commission Expires June 8, 20

On the 4th day of August, 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared Angelo Grasso, Sr., 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.

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ACKNOWLEDGMENT AND CONSENT TO ASSIGNMENT AND ASSUMPTION AGREEMENT

The undersigned, on behalf of the Troy Industrial Development Authority and Troy Local Development Corporation, hereby acknowledges receipt of notice of and consents to the within Assignment and Assumption Agreement with Acknowledgement and Consent (the "Agreement") by and between Troy Living, LLC ("Assignor") and Irving Ave 158 LLC ("Assignee"), pursuant to which Assignor assigns all of Assignor's rights, title, interest, duties, obligations and liabilities under the Authority Documents (as defined in the Agreement) first arising from and after the Effective Date (as defined in the Agreement) and Assignee accepts such assignment and assumes all of Assignor's rights, title, interest, duties, obligations and liability into and under the Authority Documents and Declaration (as defined in the Agreement) first arising from and after the Effective Date. The foregoing shall not be construed, however, as a waiver or release of any claims or rights arising prior to the Effective Date that the undersigned may have at any time against Assignor, and the undersigned expressly reserves any such claims or rights and the right to pursue the same at law or in equity.

IN WITNESS WHEREOF, the undersigned has caused this Acknowledgment and Consent to be duly executed as of this 4th day of August, 2016.

TROY INDUSTRIAL DEVELOPMENT
AUTHORITY

By: 
Monica Kurzejeski, Interim Executive Director

TROY LOCAL DEVELOPMENT
CORPORATION

By: 
Monica Kurzejeski, Interim Executive Director

State of New York)
County of Rensselaer) ss.:

On the 4th day of August in the year 2016, before me, the undersigned, personally appeared MONICA KURZEJESKI, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

JUSTIN S. MILLER
Notary Public, State of New York
No. 02MI6020242
Qualified in Albany County
Commission Expires June 8, 2017

Notary Public

SCHEDULE A

LEGAL DESCRIPTION OF THE LAND

All that tract or parcel of land, situate in the City of Troy, in the County of Rensselaer and State of New York, known on Barton's Map of said City as lot number 190 and the northerly 22 feet of lot number 189, both on the westerly side of Third Street, and together forming one parcel and bounded as follows: On the north by State Street; on the east by Third Street; on the South by a line drawn parallel to the south line of State Street and distant 72 feet southerly therefrom, and on the west by the public alley.

EXHIBIT A

Form of Sublease Rider

IRVING AVE 158 LLC (the "Landlord") and _____ (the "Tenant") hereby acknowledge that the within lease agreement pertains to a certain facility (the "Facility") which is also leased to and from the Troy Industrial Development Authority (the "Authority") pursuant to a certain Company Lease Agreement and Lease Agreement, each dated as of June 1, 2007 (with related documents, including a PILOT Agreement, collectively, the "Authority Documents").

Landlord and Tenant acknowledge and agree that the obligations and agreements of the Authority contained within the Authority Documents and any other instrument or document executed in connection therewith, and any other instrument or document supplemental thereto, are and shall be deemed the obligations and agreements of the Authority, and not of any member, officer, agent (other than the Landlord) or employee of the Authority in his/her individual capacity, and the members, officers, agents (other than the Landlord) and employees of the Authority shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. Landlord and Tenant hereby further acknowledge and agree that the obligations and liabilities of the Authority, if any, with respect to the Facility are specifically limited and controlled by the terms and conditions set forth within the Leaseback Agreement. No recourse may be sought by the Tenant or any permitted guests, agents or invitees from the Authority for any of the operation, condition, or maintenance of the Facility – whether in tort or equity, with any such liability being the express responsibility of Landlord and/or Tenant, as their respective interests shall appear.

The obligations and agreements of the Authority contained within the Authority Documents do and shall not constitute or give rise to an obligation of the State of New York or the City of Troy, New York and neither the State of New York nor the City of Troy, New York shall be liable hereon or thereon and, further, such obligations and agreements are and shall not constitute or give rise to a general obligation of the Authority, but rather shall constitute limited obligations of the Authority, payable solely from the revenues of the Authority derived and to be derived from the sale or other disposition of the Facility (except for revenues derived by the Authority with respect to the Unassigned Rights, as defined within the Lease Agreement).

No order or decree of specific performance with respect to any of the obligations of the Authority under the Authority Documents shall be sought or enforced against the Authority unless (i) the party seeking such order or decree shall first have requested the Authority in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Authority shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (ii) if the Authority refuses to comply with such request

and the Authority's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall place, in an account with the Authority, an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) if the Authority refuses to comply with such request and the Authority's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Landlord) or employees shall be subject to potential liability, the party seeking such order or decree shall agree to indemnify and hold harmless the Authority and its members, officers, agents (other than the Landlord) and employees against all liability expected to be incurred as a result of compliance with such request.

Tenant further represents and acknowledges that by entering into the within Sublease Agreement will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Facility from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Tenant located within the State. To the extent that Tenant are relocating from one plant or facility to another, Tenant's shift of operations to the Facility is and was necessary to discourage the Tenant from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Tenant in its respective industry. Tenant shall further provide evidence of insurance with limits as required within the Lease Agreement naming the Authority as an additional insured and the Tenant shall further provide all job reporting information to the Authority as required within the Lease Agreement.

The within acknowledgments and representations are made for the benefit of the Authority and the Landlord and may be relied upon by same.

**IRVING AVE 158 LLC,
AS LANDLORD**

By: _____
Name: _____
Title: _____

_____,
AS TENANT

By: _____

EXHIBIT B

AUTHORITY JOB REPORTING FORM

FORM OF ANNUAL EMPLOYMENT AND FINANCIAL ASSISTANCE CERTIFICATION LETTER

Company name and address:

Project Name:

Job Information

Current number of full time equivalent employees ("FTE") retained at the project location, including FTE contractors or employees of independent contractors that work at the project location, by job category:

Category	FTE	Average Salary and Fringe Benefits or Ranges
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____
Other	_____	_____

Current number of full time equivalent employees ("FTE") created at the project location, including FTE contractors or employees of independent contractors that work at the project location, by job category:

Category	FTE	Average Salary and Fringe Benefits or Ranges
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____
Other	_____	_____

A copy of the NYS 45 form for the project location is required to be submitted with this report. If the NYS 45 form is not available for the specific project location or the form does not accurately reflect the full time jobs created, an internal payroll report verifying the

total jobs by employment category as outlined above at the location is required with this submission.

Financing Information

Has the Authority provided project financing assistance (generally through issuance of a bond or note)

Yes No

If financing assistance was provided, please provide:

- Original principal balance of bond or note issued _____
- Outstanding principal balance of such bond or note as of December 31 _____
- Outstanding principal balance of such bond or note as of December 31 _____

Final maturity date of the bond or note _____

Sales Tax Abatement Information

Did your Company or any appointed subagents receive Sales Tax Abatement for your Project During the prior year?

Yes No

If so, please provide the amount of sales tax savings received by the Company and all appointed subagents

(Attach copies of all ST-340 sales tax reports that were submitted to New York State by the Company and all subagents for the reporting period. Please also attach all ST-60's filed for subagents for the reporting period)

Mortgage Recording Tax Information

Did your company receive Mortgage Tax Abatement on your Project During the prior year?

Yes No

(note this would only be applicable to the year that a mortgage was placed upon the Project, so if the Authority did not close a mortgage with you during the reporting period, the answer should be no)

The amount of the mortgage recording tax that was exempted during the reporting period:

PILOT INFORMATION:

County Real Property Tax without PILOT	\$ _____
City/Town Property Tax without PILOT	\$ _____
School Property Tax without PILOT	\$ _____
TOTAL PROPERTY TAXES WITHOUT PILOT	\$ _____
Total PILOT Payments made for reporting period:	\$ _____

Whether paid separately or lump sum to Authority for distribution, please provide break down of allocation of PILOT Payment to individual taxing jurisdictions:

County PILOT	\$ _____
City/Town PILOT	\$ _____
Village PILOT	\$ _____
School PILOT	\$ _____
TOTAL PILOTS	\$ _____
Net Exemptions (subtract Total PILOTS from TOTAL property taxes without PILOT)	\$ _____

I certify that to the best of my knowledge and belief all of the information on this form is correct. I further certify that the salary and fringe benefit averages or ranges for the categories of jobs retained and the jobs created that was provided in the Application for Financial Assistance is still accurate and if not, I hereby attach a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. I also understand that failure to report completely and accurately may result in enforcement of provisions of my agreement, including but not limited to voidance of the agreement and potential claw back of benefits.

Signed: _____
Name: _____
Title: _____
(authorized company representative)

Date: _____