

ACCESS AGREEMENT

This Agreement made as of this ____ day of September, 2022, by and between **NORTH SYRACUSE FIRE DEPARTMENT**, a Department governed by the Village of North Syracuse, New York with a mailing address of 109 Chestnut Street, North Syracuse, New York 13212 (the “Fire Department”) and **ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a New York public benefit corporation with an address of 333 West Washington Street, Syracuse, New York 13202 (“OCIDA”).

WHEREAS, the Fire Department desires to access OCIDA property located at 8699 Burnet Road, Clay, NY 13041; 8677 Burnet Road, Clay, NY 13041; and 8688 Burnet Road, Clay, NY 13041 (the “Premises”); and

WHEREAS, the Fire Department seeks from OCIDA access and permission to use the houses located upon these Premises for their training programs and practice drills (the “Training”); and

WHEREAS, OCIDA seeks to cooperate with the Fire Department provided such Training is conducted in a reasonable manner and in accordance with this Agreement.

NOW, THEREFORE, OCIDA and the Fire Department agree as follows:

1. **Recitals**

The recitals set forth above shall be incorporated into this Agreement as if fully set forth herein.

2. **Access**

(a) OCIDA shall grant the Fire Department revocable access upon OCIDA Premises for as long as necessary to conduct the Training but prior to OCIDA demolishing the structures upon the Premises. OCIDA shall provide the Fire Department

reasonable access to the Premises of OCIDA during this period. OCIDA acknowledges and agrees that such Training shall include but not be limited to physical alterations of the structures upon the Premises.

- (b) The Fire Department, its agents, volunteers and/or employees shall be solely responsible for all necessary reconstruction and repairs associated with the Training, in order to reasonably ensure the safety of surrounding community, passersby, and trespassers. The Fire Department acknowledges and agrees that such repairs shall include but not be limited to sealing all holes, cuts, and openings to ensure that trespassers are unable to gain access into the structures upon the Premises and within the Premises.
- (c) The Fire Department agrees to abide by all federal, state and local laws pertaining to security and safety procedures, and otherwise agrees to abide by any reasonable directives and restrictions which are required of its officers, employees, agents, other representatives, contractors or their subcontractors, to abide by such security and safety procedures, directives and restrictions. OCIDA shall be solely responsible for the supervision, conduct and safety of its employees and its contractors/subcontractors and their employees and invitees. The Fire Department shall be responsible for complying with the requirements of all applicable federal and state Occupational Safety and Health Administration (“OSHA”) provisions and the requirements of any and all other laws, rules, regulations and standards pertaining to employee health, safety and accident prevention to the extent that they pertain to the activities and duties of the Fire

Department's employees, contractors/subcontractors, their employees and invitees in connection with the Training.

- (d) The Fire Department shall not allow any refuse, garbage or any loose debris to accumulate in or about the Premises and will at all times keep the Premises in a clean and neat condition.
- (e) In the event of an emergency, the Fire Department agrees that it will immediately notify OCIDA.

3. **Insurance**

Prior to access and use by the Fire Department of the Premises, the Fire Department shall obtain and provide to OCIDA, a valid comprehensive liability policy of insurance with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per event and Three Million and 00/100 Dollars (\$3,000,000.00) in the aggregate, naming OCIDA as an additional insured against any and all liabilities arising out of any occurrence pertaining to the use of the Premises. In addition and if applicable, the Fire Department shall maintain and such insurance shall include Automobile Liability Insurance with limits of Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence for bodily injury and property damage. Coverage shall include all owned, leased, non-owned and hired automobiles; In the event that OCIDA, maintains an insurance policy covering the Premises, and there are additional costs or expenses related to the Training, any reasonable additional cost or expense thereof occasioned by the use of the Premises by the Fire Department shall be reimbursed to OCIDA by the Fire Department upon OCIDA's demand thereof. OCIDA shall not be responsible for any loss or damage to equipment owned or operated by the Fire Department or its authorized agents, servants, employees or invitees placed on OCIDA's Premises.

4. **Notice**

All notices under this Agreement shall be sent in writing to:

If to the Fire Department:

North Syracuse Fire Department, Inc.
109 Chestnut Street
North Syracuse, New York 13212

With a copy to:

Att. Mayor Gary Butterfield
Village of North Syracuse
600 South Bay Road
North Syracuse, New York 13212

If to OCIDA:

ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY
Att: Executive Director
333 W. Washington Street – Suite 130
Syracuse, New York 13202

With a copy to:

BARCLAY DAMON LLP
Att: Heather L. Sunser, Esq.
125 E. Jefferson Street
Syracuse, New York 13202.

Any notice or other communication in connection with this Agreement shall be deemed duly served when received (or upon attempted delivery if delivery is not accepted).

5. **Warranty**

It is understood and agreed that OCIDA is not making and has not at any time made, and OCIDA hereby disclaims, any warranties or representations of any kind or character, express or implied, with respect to the Premises (or the condition, safety, title, or fitness thereof), including, but not limited to, any warranties or representations as to habitability, merchantability, fitness or

suitability for a particular purpose, including the Fire Department's intended use, and the Fire Department hereby expressly waives any such representations or warranties.

6. **OCIDA Use**

OCIDA shall have the right to use the Premises, at such times and in a manner not inconsistent with this Agreement.

7. **Indemnification**

To the maximum extent permissible by law, the Fire Department, or any person or entity acting on behalf of the Fire Department, agrees to pay and to release, protect, defend with counsel satisfactory to OCIDA, indemnify and save harmless OCIDA, which term shall include, without limitation, its affiliates, employees, agents, contractors, attorneys and other parties lawfully claiming under OCIDA, or any of them, from and against any and all liabilities, loss, damages, costs, expenses (including any and all attorneys' fees, costs and expenses of OCIDA), causes of action, suits, claims, obligations, demands or judgments of any nature whatsoever caused by, arising from the Fire Department's use of the Premises under this Agreement, including, without limitation: (i) any act or omission to act done in, on or about the Premises, by or on behalf of the Fire Department or any person claiming under the Fire Department, or the employees, agents, servants, contractors and invitees of the Fire Department or any such person; (ii) injury to, or the death of, persons or damage to property (including real property, personal property and environmental or natural resource damages) within the Premises or upon OCIDA's Property or economic damages directly or indirectly caused by or in any way arising out of or in any way connected with the use, nonuse, condition, operation, maintenance, or management of the Premises by the Fire Department or any person claiming under the Fire Department, or the employees, agents, servants, contractors and invitees of the Fire Department or any such person,

or resulting from the condition of the Premises; or (iii) violation of any covenants, agreement, representation, or condition of this Agreement or of any Applicable Laws, or other requirements affecting the Premises or the use thereof by the Fire Department or any person claiming under the Fire Department, or the employees, agents, contractors and invitees of the Fire Department or any such person hereunder, including but not limited to any Hazardous Substances deposited in, upon, under, over or from the Premises. "Hazardous Substance" and "Hazardous Substances" shall mean and refer to (i) asbestos, radon, urea-formaldehyde, polychlorinated biphenyls ("PCBs"), or substances containing PCBs, nuclear fuel or materials, radioactive materials, explosives, known carcinogens, petroleum products and bi-products, and any substance defined as hazardous or toxic or as a contaminant or pollutant in, or the release or disposal of which is regulated by any Environmental Law; and (ii) fungi, bacteria, other microorganisms and microbial substances that are present at levels regulated by Environmental Law or that may be harmful to human health and safety. The term "Environmental Law" shall mean and refer to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9601, et seq.; the Federal Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251, et seq.; the Clean Air Act, 42 U.S.C. §7401, et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; all as the same may be from time to time amended, and any other federal, state, county, municipal, local or other statute, law, ordinance or regulation which relates to or deals with human health or the environment, including, without limitation, all regulations promulgated by a regulatory body pursuant to any such statute, law, ordinance or regulation.

The foregoing indemnification shall not include injury or damage to the extent directly caused by the gross negligence or willful misconduct of OCIDA as set forth in a final judgment rendered

by a court of competent jurisdiction. In the event any such claim is asserted, the Fire Department shall promptly notify OCIDA in writing of such claim and the amount thereof. The Fire Department shall take prompt action to defend (with counsel satisfactory to OCIDA) and indemnify OCIDA against claims, actual or threatened, but in no event later than notice by OCIDA to the Fire Department of the service of a notice, summons, complaint, petition or other service of a process against OCIDA, alleging damage, injury, liability, or expenses attributed in any way to this Agreement, or the acts, fault, negligence, equipment, materials, properties, facilities, personnel, or property of the Fire Department or any person claiming under the Fire Department, it's the employees, agents, contractors, servants, or invitees. OCIDA shall be entitled to select defense counsel, control the defense of and settle any such claim. The Fire Department shall defend any such claim or threatened claim, including, as applicable, engagement of legal counsel (satisfactory to OCIDA), to respond to, defend, settle, or compromise any claim or threatened claim. Furthermore, the Fire Department understands and agrees it is responsible for any and all costs and expenses incurred by the Fire Department to enforce this indemnification provision and shall make all reasonable efforts to assist OCIDA in the defense of any such claim.

The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement for any and all claims that arise from incidents, accidents, or injuries occurring prior to said termination or expiration.

8. Termination

- (a) This Agreement is terminable by OCIDA *for cause upon three (3) days' notice or*, and may be terminated by either party by giving a thirty (30) day written notice of termination at the address set forth in Section 4 herein. For the purposes of this

Agreement, “cause” may include but is not limited to a default by Fire Department which has not been cured in a reasonable manner and time.

- (b) For the purposes of this Agreement, “cause” also includes a determination by OCIDA, in its sole discretion, that it requires the use of the Premises in connection with the present and/or future activities of OCIDA.
- (c) The Fire Department agrees that, upon the expiration or earlier termination of this Agreement the Fire Department shall, at its sole cost and expense, remove any and all equipment (unless otherwise directed in writing by OCIDA or otherwise provided by this Agreement) and restore the Premises to a condition satisfactory to OCIDA in its sole discretion. If required to do so and the Fire Department fails to restore the Premises within thirty (30) days from the expiration or termination of this Agreement, then OCIDA may restore the Premises at the sole cost and expense of the Fire Department, and any costs so incurred by OCIDA shall be paid to OCIDA by the Fire Department promptly upon demand.

9. **Effective Date**

Notwithstanding any provision in this Agreement to the contrary, this Agreement is expressly conditioned upon, and shall not become effective unless and until, the Fire Department has obtained the insurance required by this Agreement and has delivered to OCIDA satisfactory evidence thereof. If any of the conditions contained in this Paragraph are not completed to OCIDA’s satisfaction, OCIDA may, at its option, cancel or terminate this Agreement by written notice to the Fire Department, in which event this

Agreement shall be null and void and without recourse to the parties hereto, except for any provisions of this Agreement which by their terms shall survive said termination.

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10. **Miscellaneous Provisions.**

(a) Neither party shall assign, transfer, convey, subcontract or otherwise dispose of this Agreement or their right, title or interest in and/or to the same, nor any part thereof, nor the power to execute such Agreement to any other person, company or corporation without first obtaining the written approval of the other party.

(b) The rights, privileges, duties and obligations of the parties hereto under this Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of said parties, respectively, whether such heirs, executors, administrators, successors and assigns of said parties become such due to transfer, reorganization, change in business form or for any other reason.

(c) This Agreement shall be governed by and interpreted pursuant to the laws of the State of New York.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date first above written.

OCIDA

By: _____

Date: _____

FIRE DEPARTMENT

By: _____

Date: _____