

CLOSING ITEM NO.: A-6

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YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

CASP, LLC

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AMENDED AND RESTATED

PAYMENT IN LIEU OF TAX AGREEMENT

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DATED AS OF FEBRUARY 1, 2008

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RELATING TO PROPERTY LOCATED IN THE HORIZON BUSINESS  
PARK, IN THE VILLAGE OF PENN YAN, YATES COUNTY, NEW  
YORK.

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PAYMENT IN LIEU OF TAX AGREEMENT

THIS AMENDED AND RESTATED PAYMENT IN LIEU OF TAX AGREEMENT dated as of February 1, 2008 (the "PILOT Agreement") is by and between YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at One Keuka Business Park in Penn Yan, New York 14527 (the "Agency") and CASP, LLC, a limited liability company organized and existing under the Limited Liability Company Law of the State of New York having an office for the transaction of business located at 105 Horizon Park Drive, Penn Yan, New York 14527 (the "Company");

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, being Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of the State of New York, as amended (hereinafter referred to as the "Enabling Act") authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish real and personal property, whether or not now in existence or under construction, which shall be suitable for, among others, manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell its projects, to charge and collect rent or the purchase price therefor, to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of, and interest on, any such bonds, to mortgage any or all of its facilities and to pledge the revenues and receipts therefrom to the payment of such bonds; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, Chapter 113 of the 1975 Laws of the State, as amended (said chapter and the Enabling Act being hereinafter collectively referred to as the "Act") created the Agency for the benefit of Yates County, New York and the inhabitants thereof; and

WHEREAS, on July 22, 2003 (the "2003 Closing"), the Agency granted certain financial assistance to CASP, LLC (the "Company") to assist in financing a project (the "2003 Project") consisting of the following: (A) (1) the acquisition of an interest in a parcel of real estate described as Lot #11 and containing approximately 2.5 acres, located in the Horizon Business Park on Route 14A in the Village of Penn Yan, Yates County, New York (the "2003 Land"); (2) the construction on the Land of a building to contain approximately 20,000 square feet of space (the "2003 Facility"); and (3) the acquisition and installation of various machinery and equipment therein and thereon (the "2003 Equipment") (the 2003 Land, the 2003 Facility and the 2003 Equipment hereinafter referred to as the "2003 Project Facility"), all of the foregoing to

constitute a facility to be operated by the Company for the processing of various low acid dairy products and related activities; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales taxes, real estate transfer taxes, mortgage recording taxes and real property taxes (collectively, the "Financial Assistance"); and (C) the lease of the 2003 Project Facility to the Company pursuant to a lease agreement dated as of July 1, 2003, by and between the Company and the Agency (the "2003 Lease Agreement"); and

WHEREAS, on August 4, 2005 (the "2005 Closing"), the Agency granted certain financial assistance to the Company to assist in financing a project (the "2005 Project") consisting of the following: (A) (1) the acquisition of a parcel of real estate (the "New Parcel") containing approximately 0.85 acres and located adjacent to Lot #11 in the Horizon Business Park on Route 14A in the Village of Penn Yan, Yates County, New York (the "Existing Parcel")(the New Parcel and the Existing Parcel hereinafter collectively referred to as the "2005 Land"); (2) the construction on the Land of an addition containing approximately 8,500 square feet of space (the "2005 Addition") to the existing approximately 20,000 square foot facility located on the Land (the "2005 Existing Facility") (the 2005 Addition and the 2005 Existing Facility hereinafter collectively referred to as the "2005 Facility"); and (3) the acquisition and installation of various machinery and equipment therein and thereon (the "2005 Equipment") (the 2005 Land, the 2005 Facility and the 2005 Equipment hereinafter collectively referred to as the "2005 Project Facility"), all of the foregoing to constitute a facility to be operated by the Company for the processing of various low acid dairy products and related activities; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including exemption from certain sales taxes, deed transfer taxes, mortgage recording taxes and real property taxes (the "Financial Assistance"); and (C) the lease of the 2005 Project Facility to the Company pursuant to a lease agreement dated as of July 1, 2005, by and between the Company and the Agency (the "2005 Lease Agreement"); and.

WHEREAS, the Agency proposes to undertake a project (the "2008 Project" and together with the 2003 Project and the 2005 Project being collectively referred to as the "Project") consisting of the following: (A) (1) the acquisition of an interest in a parcel of land located at 105 Horizon Park Drive, in the Village of Penn Yan, Yates County, New York (the "2008 Land"), (2) the renovation of a portion or portions of the existing building located on the 2008 Land containing, in the aggregate, approximately 30,000 square feet of space (the "2008 Existing Facility"), (3) the construction of an addition to the Existing Facility constituting an additional 11,776 square feet of space (the "2008 Addition") (the 2008 Existing Facility and the 2008 Addition hereinafter collectively referred to as the "2008 Facility"), (4) the acquisition and installation thereon and therein of various machinery and equipment (the "2008 Equipment") (the 2008 Land, the 2008 Facility and the 2008 Equipment hereinafter collectively referred to as the "2008 Project Facility" and together with the 2003 Project Facility and the 2005 Project Facility, being collectively referred to as the "Project Facility"), all of the foregoing to constitute an expansion and improvement of the existing dairy food products facility and storage area, such facility to be owned and operated by the Company as facilities for the creation and storage of dairy products and other directly and indirectly related activities; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real estate transfer taxes, mortgage recording taxes and real property taxes (the "Financial Assistance"); and (C) the

lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to the terms and conditions set forth in the Basic Documents as defined in Section 1.1 of a lease agreement by and between the Company and the Agency ( the "2008 Lease Agreement"), the Agency proposes to acquire, reconstruct and install the Project Facility and to lease the Project Facility to the Company, and the Agency has further agreed to hold title to a leasehold interest in the Project Facility during the term of any payment in lieu of tax agreement entered into with respect to the Project Facility; and

WHEREAS, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State (the "Real Property Tax Law"), the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or control; and

WHEREAS, pursuant to the provisions of the Basic Documents, the Company has agreed to make payments in lieu of taxes with respect to the Project Facility in an amount equivalent to normal taxes, provided that, with respect to that portion of the Project Facility which is covered by a payment in lieu of tax agreement, the Company shall during the term of such payment in lieu of tax agreement make payments in lieu of taxes in the amounts and in the manner provided in the payment in lieu of tax agreement;

WHEREAS, the terms of this Amended and Restated PILOT Agreement will amend and restate the terms of the PILOT Agreements entered by and between the Agency and the Company in connection with the 2003 Project and the 2005 Project.

NOW, THEREFORE, in consideration of the matters above recited, the parties hereto formally covenant, agree and bind themselves as follows, to wit:

ARTICLE I  
REPRESENTATIONS AND WARRANTIES

SECTION 1.01. REPRESENTATIONS OF AND WARRANTIES BY AGENCY. The Agency does hereby represent and warrant as follows:

(A) Power: The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act and has the power under the laws of the State to enter into the transactions contemplated by this PILOT Agreement and to carry out its obligations hereunder. The Agency has duly performed all acts necessary under the Act to effectuate this PILOT Agreement including duly adopting a resolution authorizing its Chairman to execute this PILOT Agreement.

(B) Authorization: The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this PILOT Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this PILOT Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this PILOT Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts: The Agency is not prohibited from entering into this PILOT Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this PILOT Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

SECTION 1.02. REPRESENTATIONS OF AND WARRANTIES BY COMPANY. The Company does hereby represent and warrant as follows:

(A) Power: The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, and has the power under the laws of the State to enter into this PILOT Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this PILOT Agreement.

(B) Authorization: The Company is authorized under the laws of the State of New York to enter into this PILOT Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this PILOT Agreement. By proper action of its Members, the Company has duly authorized the execution, delivery and performance of this PILOT Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts: The Company is not prohibited from entering into this PILOT Agreement and discharging and performing all covenants and obligations on its part to be

performed under and pursuant to this PILOT Agreement by (and the execution, delivery and performance of this PILOT Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this PILOT Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its articles of organization, operating agreement or any other company restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this PILOT Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this PILOT Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this PILOT Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms.

(D) Governmental Consent: No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this PILOT Agreement by the Company or as a condition to the validity of this PILOT Agreement.



ARTICLE II  
COVENANTS AND AGREEMENTS REGARDING  
PAYMENTS IN LIEU OF TAXES

SECTION 2.01. TAX-EXEMPT STATUS OF PROJECT FACILITY. (A) Assessment of Facility: Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of the Project Facility by the Agency and the filing by the Company of an Equalization and Assessment Form RP-412-a (an "Exemption Form") with respect to the Project Facility, and for so long thereafter as the Agency shall own an interest in the Project Facility, the Project Facility shall be assessed by the various taxing entities having jurisdiction over the Project Facility, including, without limitation, any county, city, school district, town, village or other political unit or units wherein the Project Facility is located (such taxing entities being sometimes hereinafter collectively referred to as the "Taxing Entities", and each of such Taxing Entities being sometimes individually hereinafter referred to as a "Taxing Entity") as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the acquisition by the Agency of an interest in the Project Facility and the filing of the Exemption Form. The Agency shall, promptly following acquisition by the Agency of the leasehold interest to the Project Facility, take such action as may be necessary to ensure that the Project Facility shall be assessed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to such acquisition by the Agency, including ensuring that an Exemption Form shall be filed with the appropriate officer or officers of each respective Taxing Entity responsible for assessing properties on behalf of each such Taxing Entity (each such officer being hereinafter referred to as an "Assessor"). For so long thereafter as the Agency shall own an interest in the Project Facility, the Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Taxing Entity. The parties hereto understand that the Project Facility shall not be entitled to such exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the tax status date of such Taxing Entity occurring subsequent to the date upon which the Agency becomes the owner of record of an interest in the Project Facility and the Exemption Forms are filed. Pursuant to the provisions of the Basic Documents, the Company will be required to pay all taxes and assessments lawfully levied and/or assessed against the Project Facility, including taxes and assessments levied for the current tax year and all subsequent tax years until the Project Facility shall be entitled to exempt status on the tax rolls of the respective Taxing Entities. The Agency will cooperate with the Company to obtain and preserve the tax-exempt status of the Project Facility, including the preparation and delivery of the Exemption Form.

(B) Special Assessments: The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Installment Sale Agreement, the Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project Facility.

SECTION 2.02. PAYMENTS IN LIEU OF TAXES. (A) Agreement to Make Payments: The Company agrees that it shall make annual payments in lieu of property taxes in the amounts hereinafter provided to the respective Taxing Entities. The Agency also agrees to give the appropriate Assessors a copy of this PILOT Agreement. The payments due hereunder shall be

paid by the Company to the respective appropriate officer or officers of the respective Taxing Entities charged with receiving payments of taxes for such Taxing Entities each such officer being hereinafter referred to as a "Receiver of Taxes" and all such officers being hereinafter collectively referred to as "Receivers of Taxes") for distribution by the Receivers of Taxes to the appropriate Taxing Entities entitled to same pursuant to the provisions hereof.

(B) Valuation of Project Facility: (1) The value of the Project Facility for purposes of determining payments in lieu of taxes due under Section 2.02(C)(2) hereof shall be determined by the Assessors of each respective Taxing Entity. The parties hereto agree that the Assessors shall (a) appraise the Project Facility in the same manner as other similar properties in the general area of the Project Facility, and (b) place a value for assessment purposes (hereinafter referred to as the "Assessed Value") upon the Project Facility, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial establishment of such Assessed Value and of any change in such Assessed Value.

(2) If the Company is dissatisfied with the amount of the Assessed Value of the Project Facility as initially established or as changed, and if the Company shall have given written notice of such dissatisfaction to the appropriate Assessor and the Agency within thirty (30) days of receipt by the Company of written notice of the initial establishment of such Assessed Value, or of a change in such Assessed Value, then the Company shall be entitled to protest before, and to be heard by, the appropriate Assessor and the Agency. If the Agency, the Company and any Assessor shall fail to reach agreement as to the proper Assessed Value of the Project Facility for purposes of determining payments in lieu of taxes due under this PILOT Agreement, then such Assessor, the Company and the Agency shall each select one arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall be a qualified real estate appraiser, experienced in valuation for the purposes of tax assessment in the general area of the Project Facility, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Assessed Value has been properly established by the Assessor. It is understood that the arbitrators are empowered to confirm the Assessed Value or to determine a higher or a lower Assessed Value. Any payments in lieu of taxes due upon the Project Facility pursuant to Section 2.02(C)(2) hereof may not be withheld by the Company pending determination of the Assessed Value by the arbitrators.

(C) Amount of Payments in Lieu of Taxes: The payments in lieu of taxes to be paid by the Company to the Receivers of Taxes annually on behalf of each Taxing Entity pursuant to the terms of this PILOT Agreement shall be computed separately for each Taxing Entity as follows:

(1) Determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Taxing Entity if the Project Facility were owned by the Company and not the Agency by multiplying (a) the Assessed Value of the Project Facility determined pursuant to Subsection (B) of this Section 2.02, by (b) the tax rate or rates of such Taxing Entity that would be applicable to the Project Facility if the Project Facility was owned by the Company and not the Agency.

(2) In each tax year during the term of this PILOT Agreement, commencing on the first tax year following the date on which the Project Facility shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this PILOT Agreement shall be an amount equal to the applicable percentage of the Normal Tax due each Taxing Entity for such calendar year as shown in the following table:

<u>Tax Year Commencing in Calendar Year</u>	<u>Existing Assessment of the Land</u>	<u>County and Town Tax Percentage of Assessed Value of the Project Facility</u>	<u>School Tax Percentage of Assessed Value of the Project Facility</u>
2007	100%	0%	0%
2008	100%	0%	0%
2009	100%	0%	0%
2010	100%	0%	0%
2011	100%	0%	0%
2012	100%	12.5%	12.5%
2013	100%	25%	25%
2014	100%	37%	37%
2015	100%	50%	50%
2016	100%	62.5%	62.5%
2017	100%	75%	75%
2018	100%	87.5%	87.5%
2019	100%	100%	100%
Thereafter	100%	100%	100%

(3) The Agency and the Company agree that the real property tax abatement provided by Section 2.02(C)(2) hereof is expressly limited to increases in the assessed value of the real property and improvements comprising the Project Facility, namely the Land, the Equipment and the Facility.

(D) Additional Amounts in Lieu of Taxes: Commencing on the first tax year following the date on which any structural addition shall be made to the Project Facility or any portion thereof or any additional building or other structure shall be constructed on the Land

(such structural additions and additional buildings and other structures being hereinafter referred to as "Additional Facilities"), the Company agrees to make additional annual payments in lieu of property taxes (such additional payments being hereinafter collectively referred to as "Additional Payments") to the Receivers of Taxes with respect to such Additional Facilities, such Additional Payments to be computed separately for each Taxing Entity as follows:

(1) Determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Taxing Entity if such Additional Facilities were owned by the Company and not the Agency by multiplying (a) the additional Assessed Value of such Additional Facilities determined pursuant to Subsection (E) of this Section 2.02, by (b) the tax rate or rates of such Taxing Entity that would be applicable to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency, and (c) reducing the amount so determined by the amounts of any tax exemptions that would be afforded to the Company by such Taxing Entity if such Additional Facilities were owned by the Company and not the Agency, including, but not limited to, the exemptions provided under Section 485-b of the Real Property Tax Law.

(2) In each calendar year during the term of this PILOT Agreement (commencing in the calendar year when such Additional Facilities first appear on the assessment roll of any Taxing Entity), the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax with respect to such Additional Facilities pursuant to this PILOT Agreement shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to such Additional Facilities for such calendar year (unless the Agency and the Company shall enter into a separate written agreement regarding payments in lieu of property taxes with respect to such Additional Facilities, in which case the provisions of such separate written agreement shall control).

(E) Valuation of Additional Facilities: (1) The value of Additional Facilities for purposes of determining payments in lieu of taxes due hereunder shall be determined by the Assessors of each respective Taxing Entity. The parties hereto agree that the Assessors shall (a) appraise the Additional Facilities in the same manner as other similar properties in the general area of the Project Facility, and (b) place a value for assessment purposes (hereinafter referred to as the "Additional Assessed Value") upon the Additional Facilities, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial establishment of such Additional Assessed Value and of any change in such Additional Assessed Value.

(2) If the Company is dissatisfied with the amount of the Additional Assessed Value of the Additional Facilities as initially established or as changed, and if the Company shall have given written notice of such dissatisfaction to the appropriate Assessor and the Agency within thirty (30) days of receipt by the Company of written notice of the initial establishment of such Additional Assessed Value, or of a change in such Additional Assessed Value, then the Company shall be entitled to protest before, and to be heard by, the appropriate Assessor and the Agency. If the Agency, the Company and any Assessor shall fail to reach agreement as to the proper Additional

Assessed Value of the Additional Facilities for purposes of determining payments in lieu of taxes due under this PILOT Agreement, then such Assessor, the Company and the Agency shall each select one arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall be a qualified real estate appraiser, experienced in valuation for the purposes of tax assessment in the general area of the Project Facility, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Additional Assessed Value of the Additional Facilities has been properly established by the Assessor. It is understood that the arbitrators are empowered to confirm the Additional Assessed Value or to determine a higher or lower Additional Assessed Value. Any payments in lieu of taxes due upon such Additional Facilities may not be withheld by the Company pending determination of the Additional Assessed Value by the Arbitrators.

(F) Statements: Pursuant to Section 858(15) of the Act, the Agency agrees to give each Taxing Entity a copy of this PILOT Agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy hereof be given to the appropriate officer or officers of the respective Taxing Entities responsible for preparing the tax rolls for said Tax Entities each, a "Tax Billing Officer") and a request that said Tax Billing Officers submit to the Company and to the appropriate Receiver of Taxes periodic statements specifying the amount and due date or dates of the payments due each Taxing Entity hereunder, such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed by such Taxing Entities.

(G) Time of Payments: The Company agrees to pay the amounts due hereunder to each particular Taxing Entity in any calendar year to the appropriate Receiver of Taxes within the period that such Taxing Entity allows payment of taxes levied in such calendar year without penalty. The Company shall be entitled to receive receipts for such payments.

(H) Method of Payments: All payments by the Company hereunder shall be paid to the Receivers of Taxes in lawful money of the United States of America. The Receivers of Taxes shall in turn distribute the amounts so paid to the various Taxing Entities entitled to same.

SECTION 2.03. CREDIT FOR TAXES PAID. (A) Credits: The parties hereto acknowledge and agree that the obligation of the Company to make the payments provided in Section 2.02 of this PILOT Agreement shall be in addition to any and all other taxes and governmental charges of any kind whatsoever which the Company may be required to pay under the Basic Documents. It is understood and agreed, however, that, should the Company pay in any calendar year to any Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges of other governmental charges of a similar nature levied and/or assessed upon the Project Facility or the interest therein of the Company or the occupancy thereof by the Company (but not including, by way of example, (1) sales and use taxes, and (2) special assessments, special ad valorem levies or governmental charges in the nature of utility charges, including but not limited to water, solid waste, sewage treatment or sewer or other rents, rates and charges), then the Company's obligation to make payments in lieu of property taxes for such calendar year to such Taxing Entity hereunder shall be reduced by the amounts which the Company shall have so paid to such Taxing Entity in such calendar year, but there shall be no cumulative or retroactive credit

as to any payment in lieu of property taxes due to any other Taxing Entity or as to any payment in lieu of property taxes due to such Taxing Entity in any other calendar year.

(B) Method of Claiming Credits: If the Company desires to claim a credit against any particular payment in lieu of tax due hereunder, the Company shall give the governing body of the affected Taxing Entity prior written notice of its intention to claim any credit pursuant to the provision of this Section 2.03, said notice to be given by the Company at least thirty (30) days prior to the date on which such payment in lieu of tax is due pursuant to the provisions of Section 2.02(G) hereof. In the event that the governing body of the appropriate Taxing Entity desires to contest the Company's right to claim such credit, then said governing body, the Agency and the Company shall each select an arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall meet the qualifications set forth in Section 2.02(B) hereof, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Company is entitled to claim any credit pursuant to the provisions of this Section 2.03 and, if so, the amount of the credit to which the Company is entitled. It is understood that the arbitrators are empowered to confirm the amount of the credit claimed by the Company or to determine a lower or higher credit. When the Company shall have given notice, as provided herein, that it claims a credit, the amount of any payment in lieu of property taxes due hereunder against which the credit may be claimed may be withheld (to the extent of the credit claimed by the Company, but only to the extent that such credit may be claimed against said payment in lieu of taxes pursuant to the provisions of this Section 2.03) until the decision of the arbitrators is rendered. After the decision of the arbitrators is rendered, the payment in lieu of taxes due with respect to any reduction or disallowance by the arbitrators in the amount of the credit claimed by the Company shall, to the extent withheld as aforesaid, be immediately due and payable and shall be paid by the Company within thirty (30) days of said decision.

SECTION 2.04. LATE PAYMENTS. (A) First Month: Pursuant to Section 874(5) of the Act, if the Company shall fail to make any payment required by this PILOT Agreement when due, the Company shall pay the same, together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter: If the Company shall fail to make any payment required by this PILOT Agreement when due and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the affected Taxing Entity until such payment in default shall have been made in full, and the Company shall pay the same to the affected Taxing Entity together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per annum, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

ARTICLE III  
LIMITED OBLIGATION

SECTION 3.01. NO RECOURSE; LIMITED OBLIGATION OF AGENCY. (A) No Recourse: All covenants, stipulations, promises, agreements and obligations of the Agency contained in this PILOT Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency and not of any member, officer, director, agent (other than the Company), servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this PILOT Agreement, or otherwise based upon or in respect of this PILOT Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, director, agent (other than the Company), servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this PILOT Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this PILOT Agreement, it being expressly understood that this PILOT Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, director, agent (other than the Company), servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this PILOT Agreement under or by reason of the obligations, covenants or agreements contained in this PILOT Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, director, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this PILOT Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this PILOT Agreement.

(B) Limited Obligation: The obligations, covenants and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or Yates County, New York, and neither the State of New York nor Yates County, New York shall be liable thereon, and further such obligations, covenants and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Lease Agreement).

(C) Further Limitation: Notwithstanding any provision of this PILOT Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (1) the Agency shall have been requested to do so in writing by the Company, and (2) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity and an agreement from the Company to defend and hold harmless the Agency reasonably satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

ARTICLE IV  
EVENTS OF DEFAULT

SECTION 4.01. EVENTS OF DEFAULT. Any one or more of the following events shall constitute an event of default under this PILOT Agreement, and the terms "Event of Default" or "Default" shall mean, whenever they are used in this PILOT Agreement, any one or more of the following events:

(A) Failure of the Company to pay any amount due and payable by it pursuant to this PILOT Agreement and continuance of said failure for a period of fifteen (15) days after written notice to the Company stating that such payment is due and payable;

(B) Failure of the Company to observe and perform any other material covenant, condition or agreement on its part to be observed and performed hereunder (other than as referred to in paragraph (A) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Company shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days in the aggregate from the date of default; or

(C) Any material warranty, representation or other statement by or on behalf of the Company contained in this PILOT Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this PILOT Agreement.

SECTION 4.02. REMEDIES ON DEFAULT. (A) General: Whenever any Event of Default shall have occurred with respect to this PILOT Agreement, the Agency (or if such Event of Default concerns a payment required to be made hereunder to any Taxing Entity, then with respect to such Event of Default such Taxing Entity) may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this PILOT Agreement.

(B) 2008 Lease Agreement: In addition, an Event of Default hereunder shall constitute an event of default under the 2008 Lease Agreement. Upon the occurrence of an Event of Default hereunder resulting from a failure of the Company to make any payment required hereunder, the Agency shall have, as a remedy therefor under the Lease Agreement, among other remedies, the right to terminate the Lease Agreement and convey the Project Facility to the Company, thus subjecting the Project Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State.

(C) Separate Suits: Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.



(D) Venue: The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this PILOT Agreement may be brought in the courts of record of the State, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

SECTION 4.03. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. Pursuant to Section 874(6) of the Act, if the Company should default in performing any of its obligations, covenants or agreements under this PILOT Agreement and the Agency or any Taxing Entity should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency or such Taxing Entity, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.04. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive: No remedy herein conferred upon or reserved to the Agency or any Taxing Entity is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this PILOT Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay: No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required: In order to entitle the Agency or any Taxing Entity to exercise any remedy reserved to it in this PILOT Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this PILOT Agreement.

(D) No Waiver: In the event any provision contained in this PILOT Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this PILOT Agreement shall be established by conduct, custom or course of dealing.

ARTICLE V  
MISCELLANEOUS

SECTION 5.01. TERM OF PILOT AGREEMENT. (A) General: This PILOT Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the approval of this PILOT Agreement by resolution of the Agency and the execution and delivery of this PILOT Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this PILOT Agreement shall continue to remain in effect until leasehold interest to the Project Facility is conveyed to the Company pursuant to the Lease Agreement.

(B) Extended Term: In the event that (1) the leasehold interest in the Project Facility shall be conveyed to the Company, (2) on the date on which the Company obtains such leasehold interest to the Project Facility, the Project Facility shall be assessed as exempt upon the assessment roll of any one or more of the Taxing Entities, and (3) the fact of obtaining such leasehold interest shall not immediately obligate the Company to make pro-rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of the State (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), this PILOT Agreement shall remain in full force and effect and the Company shall be obligated to make payments to the Receiver of Taxes in amounts equal to those amounts which would be due from the Company if the Project Facility were owned by the Company and not the Agency until the first tax year in which the Company shall appear on the tax rolls of the various Taxing Entities having jurisdiction over the Project Facility as the legal owner of record of the Project Facility.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this PILOT Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Agency is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Agency.

SECTION 5.04. AMENDMENT OF PILOT AGREEMENT. This PILOT Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES. (A) General: All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (1) sent to the applicable address stated below by United States registered or certified mail, postage prepaid, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Addresses: The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE AGENCY:

Yates County Industrial Development Agency  
One Keuka Business Park  
Penn Yan, New York 14527  
Attention: Chairperson

WITH A COPY TO:

Hodgson Russ LLP  
677 Broadway, Suite 301  
Albany, New York 12207  
Attention: A. Joseph Scott, III, Esq.

IF TO THE COMPANY:

CASP, LLC  
105 Horizon Park Drive  
Penn Yan, New York 14527  
Attention: \_\_\_\_\_

WITH A COPY TO:

Harris Beach PLLC  
99 Garnsey Road  
Pittsford, New York 14534  
Attention: Justin S. Miller, Esq.

(C) Change of Address: The Agency, the Company or any Taxing Entity may, by notice given hereunder to each of the others, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

SECTION 5.06. BINDING EFFECT. This PILOT Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns. The provisions of this PILOT Agreement are intended to be for the benefit of the Agency and the respective Taxing Entities.


SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this PILOT Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this PILOT Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

**SECTION 5.08. COUNTERPARTS.** This PILOT 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.

**SECTION 5.09. APPLICABLE LAW.** This PILOT Agreement shall be governed by and construed in accordance with the laws of the State.

IN WITNESS WHEREOF, the Agency and the Company have caused this PILOT Agreement to be executed in their respective names, all being done the date first above written.

YATES COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY:  \_\_\_\_\_  
(Vice) Chairperson

CASP, LLC

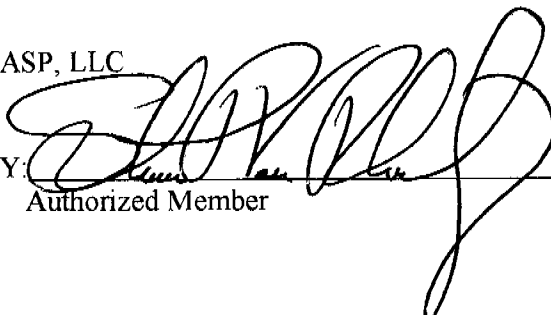
BY: \_\_\_\_\_  
Authorized Member

IN WITNESS WHEREOF, the Agency and the Company have caused this PILOT Agreement to be executed in their respective names, all being done the date first above written.

YATES COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
(Vice) Chairman

CASP, LLC

BY:  \_\_\_\_\_  
Authorized Member

STATE OF NEW YORK            )  
  :SS.  
COUNTY OF YATES            )

On the 25<sup>th</sup> day of February, in the year 2008, before me, the undersigned personally appeared Jeffrey S Gifford, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Susan D McCormick  
Notary Public

Notary Public  
Commission Expires 5/13/2011

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

On the 22<sup>nd</sup> day of February, in the year 2008, before me, the undersigned personally appeared Steven P. VonRheckey 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Barbara S. Powers  
Notary Public

BARBARA S. POWERS  
Notary Public, State of New York  
Ontario County No. 01PO 4893033  
Commission Expires June 15, 20 11



EXHIBIT A  
DESCRIPTION OF THE LAND

- SEE ATTACHED -

**SCHEDULE A**  
**Legal Description of Premises**

Parcel 1

ALL THAT TRACT OR PARCEL OF LAND, situate in the Village of Penn Yan, County of Yates, State of New York, all as shown on map entitled "Casp, LLC Horizon Business Park Minor Subdivision Map", prepared by Costich Engineering, P.C., having drawing number 3283-3, dated 12/23/2002, and being more particularly bounded and described as follows:

Commencing at a point on the east right-of-way line of New York State Route 14A (width varies) with intersection of said north right-of-way of Horizon Drive (80.0' R.O.W.); thence

- A. N. 58° 42' 42" E, along said north right-of-way of Horizon Park Drive a distance of 278.65 feet to a point of curvature; thence
- B. Northerly and along said northwesterly right-of-way line of Horizon Park Drive along a curve to the left having a delta angle of 37° 16' 26", a radius of 310.00 feet, and an arc distance of 201.67 feet, said curve also having a chord of N 40° 04' 29" E, 198.13 feet to a point; thence
- C. N 21° 26' 16" E, and along said west right-of-way line of Horizon Park Drive a distance of 335.97 feet to a point; thence
- D. S 68° 33' 44" E, a distance of 79.93 feet to a point on said east right-of-way line of Horizon Park Drive; said point being the true point and place of beginning; thence
  1. S 68° 33' 44" E, a distance of 368.76 feet to a point; thence
  2. S 19° 09' 37" W, a distance of 309.12 feet to a point on said north right-of-way line of Horizon Park Drive; thence
  3. N 65° 47' 34" W, along said north right-of-way line of Horizon Park Drive a distance of 292.88 feet to a point of curvature; thence

Northwesterly and along said northeasterly right-of-way line of Horizon Park Drive along a curve to the right having a delta angle of 87° 13' 50", a radius of 93.00 feet, and an arc distance of 141.59 feet, N 21° 26' 16" E, along said east right-of-way line of Horizon Park Drive a distance of 201.83 feet to a point and place of beginning.

Parcel 2

ALL THAT TRACT OR PARCEL OF LAND, situate in the Village of Penn Yan, County of Yates, and State of New York, all as shown on a map entitled "JD Financial Investments Horizon Business Park Minor Subdivision Map", prepared by Costich Engineering, P.C., having drawing number 3562-3, dated 9/21/2004, and filed in the Yates County Clerk's Office as Map Nos. 04-243 and 04-244 and being more particularly bounded and described as follows:

Commencing at the point of intersection of the east right of way line of New York State Route 14A (width varies) and the north right of way line of Horizon Park Drive (80.0' R.O.W.); thence

- A. N 58° 42' 42" E, along said north right of way line of Horizon Park Drive a distance of 278.65 feet to a point of curvature; thence
- B. Northerly and along said northwesterly right of way line of Horizon Park Drive along a curve to the left having a delta angle of 37° 16' 26", a radius of 310.00 feet, and an arc distance

Mortgage

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of 201.67 feet, said curve also having a chord of N 40° 04' 29" E, 198.13 feet to a point; thence

- C. N 21° 26' 16" E, and along the west right of way line of Horizon Park Drive a distance of 435.97 feet to point; thence
- D. S 68° 33' 44" E, a distance of 80.00 feet to a point on the east right of way line of Horizon Park Drive, said point being the true point and place of beginning; thence
  - 1. S 68° 33' 44" E, a distance of 364.78 feet to a point; thence
  - 2. S 19° 09' 37" W, a distance of 100.08 feet to a point; thence
  - 3. N 68° 33' 44" W, a distance of 368.76 feet to a point;
  - 4. N 21° 26' 16" E, a distance of 100.00 feet to the point and place of beginning.

Said Premises are alternatively described as follows:

**ALL THAT TRACT OR PARCEL OF LAND** being part of former Tax Parcel # 61.36-01-1.1 Village of Penn Yan, County of Yates, State of New York, all as shown on a map entitled "CASP, LLC Horizon Business Park - Instrument Location Map", prepared by Costich Engineering, P.C., having Drawing No. 3283-INST, dated 7/18/2005, last revised 7/28/2005 and being more particularly bounded and described as follows:

Commencing at the intersection of the easterly right-of-way line of New York State Route 14A (R.O.W. width varies) with the northwesterly right-of-way line of Horizon Park Drive (R.O.W. width varies); thence

- A. N 58° 42' 42" E, along said right-of-way of Horizon Park Drive, a distance of 278.65 feet to a point of curvature; thence
- B. Northeasterly, along said right-of-way line of Horizon Park Drive and along a curve to the left having a delta angle of 37° 16' 26", a radius of 310.00 feet, and an arc distance of 201.67 feet, said curve also having a chord of N 40° 04' 29" E, 198.13 feet, to a point; thence
- C. N 21° 26' 16" E, and along said right-of-way line of Horizon Park Drive, a distance of 435.97 feet to point; thence
- D. S 68° 33' 44" E, a distance of 80.00 feet to a point on the easterly right-of-way line of said Horizon Park Drive, said point being the true point and place of beginning; thence
  - 1. S 68° 33' 44" E, a distance of 364.78 feet to a point; thence
  - 2. S 19° 09' 37" W, a distance of 409.20 feet to a point on the northerly right-of-way line of said Horizon Park Drive; thence
  - 3. N 65° 47' 34" W, along said northerly right-of-way line of Horizon Park Drive, a distance of 292.88 feet to a point of curvature; thence
  - 4. Northwesterly, along said right-of-way line of Horizon Park Drive and along a curve to the right having a delta angle of 87° 13' 50", a radius of 93.00 feet, and an arc distance of 141.59 feet, said curve also having a chord of N° 22 10' 39" W, 128.31 feet, to a point; thence
  - 5. N° 21 26' 16" E, along said easterly right-of-way line of said Horizon Park Drive, a distance of 301.83 feet to the point and place of beginning. Containing 3.382 acres, more or less.

Being Tax Map No. 61.36-1-2.2 & No. 61.44-1-2

Mortgage

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