

CITY OF SYRACUSE

and

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT
AGENCY**

and

NORTH CLINTON ST. AND WEST DIVISION ST., LLC

PAYMENT IN LIEU OF TAX AGREEMENT

Dated as of: January 1, 2013

**NORTH CLINTON ST. AND WEST DIVISION ST., LLC
Federal Tax ID #: 26-4087035**

THIS PAYMENT IN LIEU OF TAX AGREEMENT, (this "*Agreement*") dated as of January 1, 2013, by and among the **CITY OF SYRACUSE**, a municipal corporation of the State of New York, having an office at City Hall, Syracuse, New York 13202 (hereinafter referred to as the "*Municipality*"), the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation organized and existing under the laws of the State of New York (hereinafter referred to as the "*Agency*"), having an office at City Hall Commons, 201 East Washington Street, Syracuse, New York 13202, and **NORTH CLINTON ST. AND WEST DIVISION ST., LLC**, a limited liability company organized and existing pursuant to the laws of the State of New York, having a principal place of business at 102 Newbury Hollow Lane, Syracuse, New York 13210 (hereinafter referred to as 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 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 of New York and to improve their recreation opportunities, prosperity and standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease and to sell its projects, to charge and collect rent therefor, to issue its bonds or notes 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 or notes, to mortgage any or all of its facilities and to pledge the revenues and receipts therefrom to the payment of such bonds or notes; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act,

Chapter 641 of the 1979 Laws of the State of New York, as amended (said chapter and the Enabling Act being hereinafter collectively referred to as the "*Act*") created the Agency for the benefit of the Municipality and the inhabitants thereof; and

WHEREAS, the Agency, by Resolution adopted on May 15, 2012, (the "*Resolution*"), resolved to undertake the "*Project*" (as hereinafter defined); and

WHEREAS, the Project will consist of: (A)(i) the Agency's acquisition of a leasehold interest in approximately 83,000 square feet of real property located at 721 North Clinton Street and Spencer Street in the City of Syracuse, New York (the "*Land*"); (ii) the construction of a four story building to house approximately 73 market rate apartment units and approximately 85 associated parking spaces located on the Land (collectively, the "*Facility*"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "*Equipment*", and together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and sales and use taxation (collectively, the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction and equipping of the Project Facility; and (D) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, the Agency will lease the Project Facility from the Company pursuant to that certain Company Lease Agreement dated as of January 1, 2013, (the "*Company Lease Agreement*"), between the Company and the Agency, and sublease the Project Facility back to the Company pursuant to that certain Agency Lease Agreement dated as of January 1, 2013, (the "*Agency Lease Agreement*"), between the Agency and the Company (collectively the Company Lease Agreement and the Agency Lease Agreement are hereinafter referred to as the ("*Lease Agreement*")); and

WHEREAS, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York, 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, the Company, to further induce the Agency to assist with the Project, has agreed with the Municipality and the Agency to enter into this Agreement; the Municipality's participation in this Agreement has been duly authorized by Ordinance No. 514 of 2012, adopted by the Municipality's Common Council on September 10, 2012, and approved by Mayor Stephanie A. Miner on September 11, 2012.

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 and Warranties by Municipality

The Municipality does hereby represent, warrant and covenant as follows:

(a) Authorization. The Municipality has secured all approvals of appropriate officers, boards and bodies of the Municipality necessary to duly authorize the execution, delivery and performance of this Agreement by the Municipality and the performance by the Municipality of its obligations hereunder.

(b) Validity. The Municipality is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by the terms, conditions or provisions of any law, any order of any court or other agency or authority of government, or any agreement or instrument to which the Municipality is a party or by which the Municipality is bound, and this Agreement is a legal, valid and binding obligation of the Municipality enforceable in accordance with its terms.

Section 1.02. Representations and Warranties by Agency

The Agency does hereby represent and warrant as follows:

(a) Existence and Power. The Agency has been duly established under the provisions of the Act and has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

(b) Intentions. The Agency intends to acquire a leasehold interest in the Project Facility

from the Company and to sublease the Project Facility back to the Company, all pursuant to the provisions of the Lease Agreement.

(c) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State of New York to enter into this 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 Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated.

(d) Validity. The Agency is not prohibited from entering into this Agreement and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by the terms, conditions or provisions of the Act, any other law, any order 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, and this Agreement is a legal, valid and binding obligation of the Agency enforceable in accordance with its terms.

Section 1.03. Representations and Warranties by Company

The Company does hereby represent and warrant as follows:

(a) Existence. The Company is a limited liability company duly organized and validly existing as a limited liability company under the laws of the State of New York.

(b) Authorization. The Company is authorized and has the power under the laws of the State of New York to enter into this 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 Agreement. The Company has duly authorized the execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated. The Company is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by (and the execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this 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 restriction or any 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 the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement will neither 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, nor 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 Agreement is a legal, valid and binding obligation of the Company enforceable in accordance with its terms.

(c) Governmental Consent. No further 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 Agreement by the Company or as a condition to the validity of this Agreement.

ARTICLE II

COVENANTS AND AGREEMENTS

Section 2.01. Tax-Exempt Status of the Project Facility

(a) Assessment of the Project Facility. Pursuant to the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of ownership or control of the Project Facility by the Agency, and for so long thereafter as the Agency shall own or control the Project Facility, the Project Facility shall be entitled to an exemption upon the first available assessment roll of the Municipality prepared subsequent to the acquisition by the Agency of ownership or control of the Project Facility. The time of commencement of the Agency's exemption shall be controlled by the Municipality's taxable status date, in conformity with Section 412-a of the Real Property Tax Law. The Company will be required to pay to the Municipality all taxes and assessments lawfully levied and/or assessed against the Project Facility, in spite of the Agency's actual ownership or control of the Project Facility, until the Project Facility shall be entitled to exempt status on the tax roll of the Municipality.

(b) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by 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. 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 periodic payments in lieu of real property taxes in the amounts hereinafter provided. The said payments due to the Agency hereunder shall be paid by the Company, to the Municipality, by check made payable to "*Commissioner of Finance*". Upon receipt of the Company's payment, it shall be the Municipality's obligation to appropriately disburse any portion of the said payment to the County of Onondaga, or such other taxing jurisdiction, pursuant to the Act. This Company obligation shall exist for so long as the Agency retains an interest in the Project Facility. Notwithstanding the appearance of the Agency's exemption on the Municipality's tax roll for the 2014/2015 City and School portion of the real property tax due on the Land and Facility, the year 1 payment due for the City and School portion of the year 1 payment under Exhibit "A" shall commence on July 1, 2014. The year 1 payment due for the County and Water District portion of the year 1 payment under Exhibit "A" shall commence on January 1, 2015. Without regard to the Agency exemption, the Company shall continue paying real property tax through June 30, 2014 with respect to the City and School portion of the real property tax and through December 31, 2014 with respect to the County and Water District portion of the real property tax, based upon the assessment and the combined real property tax rate in effect for that period as if the Project Facility were privately owned and the Agency had no interest in the same.

(b) Amount of Payments in Lieu of Taxes. Unless otherwise stated, the Company's agreed upon annual payment in lieu of tax hereunder shall be an amount determined by reference to Exhibit "A", attached hereto and made a part hereof. The payments in lieu of tax due, as set forth in Exhibit "A", include any real property tax exemptions that might be afforded to the Company if the Project Facility were owned by the Company and not the Agency. In consideration of this

Agreement, Company waives any right to challenge or contest, by any administrative or applicable judicial means, the assessment placed upon the Project Facility and/or Additional Property by the Municipality. It shall be an event of default under Article IV of this Agreement should the Company bring such a challenge or contest to the assessment on the Project Facility and/or Additional Property.

(c) 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 Facilities, or any new or additional building shall be constructed on the real property described in Exhibit "B" that is in addition to the Facilities (such structural additions and additional buildings being hereinafter referred to as "**Additional Property**"), the Company agrees to make additional periodic payments in lieu of real property taxes (such additional payments being hereinafter collectively referred to as "**Additional Payments**") to the Municipality with respect to such Additional Property. Such Additional Payments shall be computed as follows:

By multiplying (1) the value placed on such Additional Property, as value is determined by the Municipality's Assessor by (2) the tax rate or rates of the Municipality that would be applicable to such Additional Property if such Additional Property were owned or controlled by the Company and not the Agency, and (3) then reducing the amount so determined by the amounts of any properly acquired tax exemptions that would be afforded to the Company by the Municipality for such Additional Property as if it was owned or controlled by the Company and not the Agency.

(d) Revaluation. In the event of a real property assessment revaluation by the Municipality, the Company shall continue to make its payments in accordance with this Agreement; however, in the event that Exhibit "A" is no longer in effect, but payments are still being made hereunder for any reason, (including, but not limited to, the Agency still having an interest in the Project Facility), and would be effected by revaluation, each year's payments subsequent to such revaluation shall be adjusted to properly reflect the revaluation, it being the intent of the parties that the level of payments following revaluation shall be equal to those payments contemplated by this Agreement.

(e) Damage or Destruction. In the event that all or substantially all of the Project Facility is damaged or destroyed, the Company shall continue to make the payments required by this Agreement for as long as the Agency shall own or control the Project Facility, without regard to such damage or destruction.

(f) Time of Payments. The Company agrees to pay the amounts due the Agency hereunder to the Municipality for each year of this Agreement, within the period that the Municipality allows payment of taxes levied in such calendar year without penalty. The Company shall be entitled to receive receipts from the Municipality for such payments.

(g) Method of Payment. All payments by the Company hereunder shall be paid to the Municipality in lawful money of the United States of America, cash, money order or check.

Section 2.03. Obligation of Municipality

The Municipality shall submit to the Company written semi-annual statements specifying the amount and due date or dates of any payments due to the Agency hereunder. Each said semi-annual statement shall be submitted to the Company at the same time that tax bills are mailed by the Municipality to the owners of privately owned property.

Section 2.04. Obligations of Agency

(a) Requirement that any Project Facility Agreements Require Payments in Lieu of Taxes. So long as the Project Facility shall be entitled to exemption from real property taxes as provided in Section 2.01(a) hereof, the Agency agrees, to the extent permitted by law, that it shall not make any agreement regarding the leasing or sale of the Project Facility which does not require that payments in lieu of taxes shall be paid to the Municipality in at least the amounts set forth in Article II hereof.

(b) Requirement that Mortgagees subordinate to Payments. The Agency and the Company agree that any mortgages on the Project Facility, given by either of them, shall provide that the rights of the mortgagees thereunder shall be subordinate to this Agreement and to the right of the Municipality to receive payments in lieu of taxes pursuant to Article II hereof.

Section 2.05. Company to Furnish Information

The Company agrees to promptly comply with the reporting and information requirements

of the Agency and the Act, and to immediately furnish the applicable information required or requested by the Agency and/or the State of New York. The Company further agrees to assist the Agency with the preparation of any reports, or answer any inquiries, required by the State of New York in connection with the Act or the Agency's participation in the Project.

Section 2.06. Interest

If the Company shall fail to make any payment required by this Agreement when due, its obligation to make the payment so in default shall continue as an obligation of the Company until such payment in default shall have been made in full, and the Company shall pay the same together with interest thereon, to the extent permitted by law, at the greater of **(i) eighteen per cent (18%) per annum, or (ii) the rate per annum which would be payable if such amounts were delinquent taxes, until so paid in full.**

ARTICLE III

LIMITED OBLIGATION OF THE AGENCY

Section 3.01. No Recourse; Limited Obligation of the Agency

(a) No Recourse. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency and not of any member, director, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Agreement, or otherwise based on or in respect of this Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, director, officer, agent, servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this 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 Agreement. It is expressly understood that this 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, director, officer, agent, servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Agreement under or by reason

of the obligations, covenants or agreements contained in this Agreement or implied therefrom. Any and all such personal liability of, and any and all such rights and claims against, every such member, director, officer, agent, servant or employee under or by reason of the obligations, covenants or agreements contained in this 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 Agreement.

(b) Limited Obligation. The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or the Municipality, and neither the State of New York nor the Municipality shall be liable thereon. Furthermore, such obligations 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.

(c) Further Limitation. Notwithstanding any provision of this Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (i) the Agency shall have been requested to do so in writing by the Company and (ii) if compliance with such request is expected to result in the incurrence by the Agency (or any of its members, directors, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity 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 Agreement, and the terms "*Event of Default*" or "*Default*" shall mean, whenever they are used in this 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 Agreement or the Lease Agreement.

(b) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed under this Agreement (other than as referred to in paragraph (a) above) or the Lease Agreement, 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.

(c) Any warranty, representation or other statement by or on behalf of the Company contained in this Agreement or the Lease 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 Agreement or the Lease Agreement.

(d) The Company violates any federal, state or local environmental law or allows or causes any Hazardous Materials (as Hazardous Materials is defined and described in any federal, state or local law) to be released at, on, to, into or from the Project Facility, except as permitted by the Lease Agreement or within the terms and conditions of a permit, certificate, license or other written approval of an authorized governmental body, and fails to remedy such violation within thirty (30) days; or if such failure cannot be cured within thirty (30) days, fails to commence a cure within thirty (30) days and thereafter diligently prosecute the cure thereof.

(e) The occurrence of any Event of Default or Default under this Agreement, the Lease Agreement or any other Project documents.

(f) Failure of the Company to commence construction of the Project Facility within six months of the date of this Agreement.

The payment schedule contained in Exhibit "A" is for the benefit of the Company and its Project Facility. In the event that the Company defaults hereunder, and the Lease Agreement cannot be terminated, and/or the Agency's participation in the Project and this Agreement is not or cannot be terminated, the Company, or any assignee, or successor shall no longer be entitled to make payments under this Agreement pursuant to Exhibit "A". In such an event, payments shall be made hereunder, for any remaining term of the Project, as if the Project Facility was privately owned and

assessed and without any further regard to Exhibit “A”.

Section 4.02. Remedies on Company Default

Whenever any Event of Default under Sections 4.01(a), 4.01(b), 4.01(c), 4.01(d), 4.01(e) or 4.01 (f) shall have occurred and be continuing with respect to this Agreement, and/or the Company shall be in default under the Lease Agreement, the Municipality or the Agency may take whatever action at law or in equity, following applicable notice, 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 Agreement and/or the Lease Agreement.

Section 4.03. Recording of Lease Terminations and Other Documents

Whenever any Event of Default under Sections 4.01(a), 4.01(b), 4.01(c), 4.01(d), 4.01(e) or 4.01 (f), shall have occurred and be continuing with respect to this Agreement or the Lease Agreement, the Agency may, upon notice to the Company provided for in this Agreement or the Lease Agreement, terminate the Lease Agreement and record such termination or other necessary documents in the Onondaga County Clerk's Office, terminating the Agency's interest in the Project Facility and terminating this Agreement.

The recording of such a termination and any other documentation shall constitute delivery to, and acceptance of such, by the Company. In order to facilitate such a termination, the Company hereby appoints the Chairman or the Vice Chairman of the Agency as its agent for the purpose of executing and delivering all documents necessary to allow such termination by the Agency.

In the event that the Lease Agreement, for any reason, is extended by its terms, or for any reason this Agreement expires or terminates, but the Agency retains an interest or remains in title to the Project Facility, the Company shall continue to make payments in lieu of taxes to the Municipality for as long as the Agency retains an interest in, or remains in title to, the Project Facility. Those payments shall be the equivalent of the real property taxes that would be due on the Project Facility if it were owned by the Company and not the Agency. It is the intention of the parties hereto, that for so long as the Agency shall possess title to, or an interest in, the Property, the Company, or any permitted successors or assigns, shall make payments in lieu of taxes to the Municipality that are either based upon Exhibit “A”, or if Exhibit “A” is no longer applicable for

any reason, are the equivalent of the real property taxes that would be due and owing if the Project Facility were privately owned.

Section 4.04. Payment of Attorney's Fees and Expenses

If the Company should default in performing any of its obligations, covenants and agreements under this Agreement and the Agency or the Municipality should employ attorneys (whether in-house or outside counsel) or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency and/or the Municipality the reasonable fees and disbursements of such attorneys and such other reasonable expenses so incurred.

Furthermore, should the Company bring a challenge or contest to the assessment on the Project Facility and/or Additional Property during the term of this Agreement, and the Agency and/or the Municipality waives its right to declare a default under this Agreement in regards to such challenge or contest, or such challenge or contest is determined not to be a default of this Agreement by any Court of competent jurisdiction, the Company agrees that in the event that the Company is unsuccessful in its challenge or contest to the assessment, it will, on demand, pay to the Agency and/or the Municipality the reasonable fees and disbursements of any attorneys employed (whether in-house or outside counsel) for the defense of such action as well as such other reasonable expenses so incurred.

Section 4.05. Remedies; Waiver and Notice

(a) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency 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 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 the Municipality to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Agreement.

(d) No Waiver. In the event any provision contained in this 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 Agreement shall be established by conduct, custom or course of dealing.

ARTICLE V

MISCELLANEOUS

Section 5.01. Term of Agreement

(a) General. This Agreement shall become effective and the obligations of the Municipality, the Agency and the Company shall arise absolutely and unconditionally upon the execution and delivery of this Agreement. This Agreement shall terminate on the earliest to occur of (i) the same date that the Lease Agreement terminates; (ii) on any earlier date permitted under the Lease Agreement; or (iii) upon the expiration on June 30, 2024, of the PILOT Schedule set forth in Exhibit "A" hereto. In the event of a termination of the Agency's interest in the Project Facility, the Company's payments due hereunder shall be pro-rated to the extent necessary to allow the Municipality to issue a supplemental tax bill based upon the Agency's transfer of ownership or control of the Project Facility to the Company, and the loss of the Agency's tax exemption on the said Project Facility.

(b) Conflict. In the event of a conflict between this Agreement or any of its terms on the one hand, and the Lease Agreement or any other Project documents on the other hand, the provisions most favorable to the Agency shall govern. The Agency and the Company agree that the Agency's participation in the Project is for the benefit of the Company and that the Municipality must receive payments from the Company hereunder, during the entire term of this Agreement and/or the Agency's ownership or control of the Project Facility.

Section 5.02. Company Acts

Where the Company 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 Company.

Section 5.03. Amendment of Agreement

This Agreement may not be amended, changed, modified or altered unless such amendment, change, modification or alteration is in writing and signed by the Municipality, the Agency, and the Company.

Section 5.04. Notices

All notices, certificates or other communications hereunder shall be in writing, shall be sufficiently given, and shall be deemed given when (a) sent to the applicable address stated below by registered or certified mail, return receipt requested, and actually received by the intended recipient or by overnight courier or such other means as shall provide the sender with documentary evidence of such delivery, or (b) delivery is refused by the addressee as evidenced by the affidavit of the person who attempted to effect such delivery. The addresses to which notices, certificates, and other communications hereunder shall be delivered are as follows:

- (a) To the Municipality:
City of Syracuse
City Hall, Room 300
233 East Washington Street
Syracuse, New York 13202
Attention: Mayor
Attention: Corporation Counsel

- (b) To the Agency:
City of Syracuse Industrial Development Agency
City Hall, Room 300
233 East Washington Street
Syracuse, New York 13202
Attention: Chairman
Attention: Corporation Counsel

- (c) To the Company:

North Clinton St. And West Division St., LLC
102 Newbury Hollow Lane
Syracuse, NY 13210
Attention: Cosimo Zavaglia

The Municipality, Agency, and Company may, by notice given hereunder to each of the others, designate any further or different addresses to which the subsequent notices, certificates or other communications to them shall be sent.

Section 5.05. Binding Effect

This Agreement shall inure to the benefit of, and shall be binding upon the Municipality, Agency, and Company, and their respective successors and assigns.

Section 5.06. Severability

If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this 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 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 5.07. Counterparts

This 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 5.08. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Venue of any action or proceeding brought hereunder shall be in the State or Federal Courts located in Onondaga County, New York.

Section 5.09. Assignment

This Agreement may not be assigned by the Company without the prior written consent of the Municipality and Agency.

[No Further Text – Signature Pages Follows]

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

Attest

By: John P. Copanas
John P. Copanas, City Clerk

CITY OF SYRACUSE

By: Stephanie A. Miner
Stephanie A. Miner, Mayor

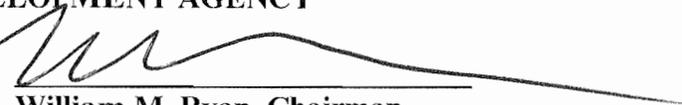
STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

On this 25th day of January, 2013, before me the undersigned, a Notary Public in and for said state, personally appeared Stephanie A. Miner, Mayor of the City of Syracuse, 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 she signed said instrument as Mayor of said City of Syracuse by like authority.

CHRISTINE E. KLEBERG
Notary Public in the State of New York
Qualified in Onondaga County
No. 01KL6107874
My Commission Expires April 12, 2014

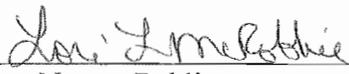
Christine E. Kleberg
Notary Public

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
William M. Ryan, Chairman

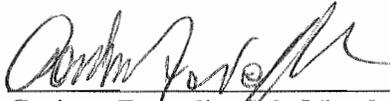
STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss:

On the 16th day of January, 2013, before me the undersigned, a Notary Public in and for said state, personally appeared William M. Ryan, 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 he person upon behalf of which the individual acted, executed the instrument.


Notary Public

LORI L. McROBBIE
Notary Public, State of New York
Qualified in Onondaga Co. No. 01MC5055591
Commission Expires on Feb. 12, 20 14

NORTH CLINTON ST. AND WEST DIVISION ST., LLC

By: 
Cosimo Zavaglia, Sole Member

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss:

On the 25th day of January, in the year 2013, before me the undersigned, a notary public in and for said state, personally appeared Cosimo Zavaglia, 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 he person upon behalf of which the individual acted, executed the instrument.


Notary Public

LORI L. McROBBIE
Notary Public, State of New York
Qualified in Onondaga Co. No. 01MC505591
Commission Expires on Feb. 12, 20 14

ACKNOWLEDGEMENT BY

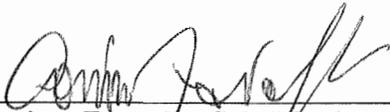
NORTH CLINTON ST. AND WEST DIVISION ST., LLC

North Clinton St. And West Division St., LLC, (the “*Company*”) hereby acknowledges receipt and review of this Agreement, and consents to, and approves of, the terms and provisions contained herein.

IN WITNESS WHEREOF, the Company has caused this Acknowledgment to be executed in its name by its duly authorized representative, dated as of January 1, 2013.

NORTH CLINTON ST. AND WEST DIVISION ST., LLC

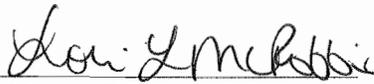
By:



Cosimo Zavaglia, Sole Member

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss:

On the 01 day of January, in the year 2013, before me the undersigned, a notary public in and for said state, personally appeared Cosimo Zavaglia, 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 he person upon behalf of which the individual acted, executed the instrument.



Notary Public

LORI L. McROBBIE
Notary Public, State of New York
Qualified in Onondaga Co. No. 01MC5055591
Commission Expires on Feb. 12, 20 14

EXHIBIT "A"

PILOT SCHEDULE

North Clinton St. And West Division St., LLC PILOT Schedule		
Year	Assessment	Payment
1	$\$385,000 \times \text{tax rate}^*$	-
2	$\$385,000 \times \text{tax rate}$	-
3	$\$385,000 \times \text{tax rate}$	-
4	$\$385,000 \times \text{tax rate}$	-
5	$\$385,000 \times \text{tax rate}$	-
6	$\$385,000 \times \text{tax rate}$	-
7	$\$385,000 \times \text{tax rate}$	-
8	$[(\text{full assessment} - \$385,000) \times .25] + (\$385,000 \times \text{tax rate})$	-
9	$[(\text{full assessment} - \$385,000) \times .50] + (\$385,000 \times \text{tax rate})$	-
10	$[(\text{full assessment} - \$385,000) \times .75] + (\$385,000 \times \text{tax rate})$	-

*tax rate = Combined Syracuse City, County, School District and Water District Real Property Tax Rate in effect for each year, or portion thereof, covered by the Agreement

EXHIBIT "B"

DESCRIPTION OF LAND

ALL THAT TRACT OR PARCEL OF LAND, located in the City of Syracuse, County of Onondaga and State of New York, and being further described as Lot P, Blk. B1 460 Fl Sml 37, Bk. 15, Pl. 612; Pcl. 101, Property #0217003001, 132 x 600.02 x 131.97 Brick Concrete Building.

The above-described premises are more particularly described as follows:

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Marsh Lot No. 37 in said City, bounded and described as follows: Beginning at the intersection of the westerly line of North Clinton Street and the southerly line of Spencer Street; thence S. 28 04' 40" E. along the westerly line of North Clinton Street, 132 feet; thence S. 54 35' 00" W. 599.97 feet to a point in the easterly line of Solar Street; thence N. 28 09' 10" W. along the easterly line of Solar Street 131.97 feet to the intersection of the easterly line of Solar Street with the southerly line of Spencer Street; thence N. 54 35' 00" E. along the southerly line of Spencer Street 600.20 feet to the place of beginning.

EXCEPTING AND RESERVING THEREFROM, a parcel of land conveyed to the City of Syracuse by deed dated September 8, 2003 and recorded in the Onondaga County Clerk's Office September 9, 2003 in Book of Deeds 4796 at page 561, more particularly described as follows:

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga, State of New York, being part of Salt Marsh Lot No. 37, and being more particularly described as follows:

Beginning at the intersection of the southerly street boundary of Spencer Street and the easterly street boundary of Solar Street; thence N. 54 35' 00" E. 17.539± meters (57.54± feet) along said southerly street boundary of Spencer Street to a point; thence through the lands of Sunhill Supply Co., Inc., reputed owner, as recorded in the Onondaga County Clerk's Office in Liber 3460 at page 220, the following two courses and distances:

1. S. 34 25' 12 W. 17.286± meters (56.71± feet) to a point; thence
2. S. 28 18' 40" E. 34.230± meters (112.30± feet) to a point in the division line between the lands of John A. Rotondo and Samuel A. Rotondo, reputed owners, as recorded in the Onondaga County Clerk's Office in Liber 3566 at page 60, on the south and said lands of Sunhill Supply Co., Inc., reputed owner, on the north; thence S. 54 35' 00" W. 2.167± meters (7.11± feet) along the last mentioned division line to a point in the easterly street boundary of Solar Street;

Thence along said easterly street boundary of Solar Street N. 28° 09' 10" W. 40.249± meters (132.05± feet) to the point of beginning, containing 130.426± square meters (1404± square feet) or 0.013± hectares (0.032± acres) of land, more or less.

Subject to easements, covenants and restrictions of record.