

ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

HINSDALE ROAD GROUP LLC

PAYMENT IN LIEU OF TAX AGREEMENT

DATED AS OF JANUARY 29, 2014

**TOWN OF CAMILLUS
TAX MAP PARCEL**

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT dated as of January __, 2014 by and between **ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a New York public benefit corporation, having its office at 333 W. Washington Street, Syracuse, New York 13202 (the "Agency") and **HINSDALE ROAD GROUP LLC**, a New York limited liability company, having an address of 6007 Fair Lakes Road, Suite 100, East Syracuse, New York 13057 (the "Company").

W I T N E S S E T H:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for 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 dispose of land and any buildings or other improvements, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for 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 standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its properties, to mortgage and pledge any or all of its properties, whether then owned or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 435 of the Laws of 1970 of the State of New York (collectively with the Enabling Act, the "Act"), and is empowered under the Act to undertake the Project (as hereinafter defined); and

WHEREAS, by application to the Agency dated _____, the Company requested the Agency's assistance in a project (the "Project") consisting of the following: (A)) (1) the acquisition of an interest in an approximately 67 acre parcel of land located north of NYS Route 5, between Hinsdale and Bennett Roads in the Town of Camillus, Onondaga County, New York (the "Land"); (2) the construction of a mixed-use lifestyle center project with approximately 500,000 square feet of space (the "Improvements") on the Land; and (3) the acquisition and installation in the Improvements of certain machinery and equipment (the "Equipment") (the Land, Improvements and the Equipment are collectively referred to as the "Project Facility"); (B)) the financing of a portion of the costs of the foregoing specifically

relating to the construction of various infrastructure improvements on site and in the imminent vicinity of the Project Facility (the "Infrastructure Costs") which will be financed through the use of a portion of the PILOT Payment as hereinafter defined, which financing may include the issuance of federally taxable PILOT revenue bonds of the Agency in one or more issues or series in an aggregate principal amount not to exceed \$6,000,000 (the "Bonds"); (C); the establishment of a Payment In Lieu of Tax Agreement (the "PILOT Agreement"); and (D) the lease (with an obligation to purchase) or sale of the Project Facility to the Company; and

WHEREAS, on April 22, 2013 the members of the Agency adopted a resolution (the "Inducement Resolution") whereby the Agency agreed, subject to numerous conditions, to undertake the Project; and

WHEREAS, prior to the adoption of the Inducement Resolution, in compliance with the provisions of Section 859-a of the Act, the Assistant Secretary to the Agency (A) caused notice of a public hearing (the "Public Hearing") of the Agency to hear all persons interested in the Project and the PILOT Agreement being contemplated by the Agency with respect to the Project to be mailed on March 28, 2013 to the chief executive officer of the county and of each city, town, village and school district in which the Project is to be located, (B) caused notice of the Public Hearing to be published on March 28, 2013 in *The Post-Standard*, a newspaper of general circulation available to the residents of the Town of Camillus, (C) conducted the Public Hearing on April 9, 2013 at the Town of Camillus Town Hall located at 4600 West Genesee Street, Syracuse, Onondaga County, New York and (D) prepared a report of the Public Hearing which fairly summarized the views presented at the Public Hearing and distributed same to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively, "SEQRA"), the Agency adopted a resolution (the "Environmental Resolution") on April 22, 2013 by which the Agency determined that the Project will not have a significant impact on the environment, and therefore that an environmental impact statement is not required to be prepared with respect to the Project; and

WHEREAS, by resolution adopted by the members of the Agency on May 21, 2013 (the "Closing Resolution"), the Agency determined to grant the PILOT Agreement and to enter into a lease and leaseback agreement (the "Lease Agreement") and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"); and

WHEREAS, pursuant to the terms of the Lease Agreement, (A) the Company agreed (1) to cause the Project to be undertaken and completed, (2) as agent of the Agency, to undertake and complete the Project, (3) to lease the Project Facility from the Agency (with an obligation to purchase the Project Facility from the Agency), and (4) to make certain rent payments to the Agency; and (B) the Agency agreed to (1) undertake the Project, (2) appoint the Company as agent of the Agency to undertake and complete the Project, and (3) lease the Facility to the Company (with an obligation to sell the Facility to the Company); and

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

WHEREAS, pursuant to the provisions of Section 6.6 of the Lease Agreement, the Company has agreed to make payments in lieu of taxes with respect to the Facility in the amounts set forth below; provided that, so long as this Payment in Lieu of Tax Agreement shall be in effect, the Company shall during the term of this Payment in Lieu of Tax Agreement make payments in lieu of taxes with respect to the Facility in the amounts and in the manner provided in this Payment in Lieu of Tax Agreement, and during such period the provisions of Section 6.6 of the Lease Agreement shall not control the amounts due as payment in lieu of taxes with respect to the Facility; and

WHEREAS, all things necessary to constitute this Payment in Lieu of Tax Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Payment in Lieu of Tax Agreement have, in all respects, been duly authorized by the Agency and the Company;

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

ARTICLE I REPRESENTATIONS AND WARRANTIES

SECTION 1.1. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant and covenant as follows:

(A) Power. The Company is a corporation duly organized and validly existing under the laws of the State of Delaware, duly authorized to do business in the State of New York, and has the power under the laws of the State of New York to enter into this Payment in Lieu of Tax 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 Payment in Lieu of Tax Agreement, and by proper action of members or managers had been duly authorized to execute, deliver and perform this Payment in Lieu of Tax Agreement.

(B) Authorization. The Company is authorized and has the power under its operating agreement and the laws of the State of New York to enter into this Payment in Lieu of Tax 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 Payment in Lieu of Tax Agreement. By proper action of its members, the Company has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Company is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by (and the execution, delivery and performance of this Payment in Lieu of Tax Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Payment in Lieu of Tax Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its operating agreement, or any other 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 the Company or any of its property is bound, and neither the Company's entering into this Payment in Lieu of Tax Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax 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 Payment in Lieu of Tax Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consents. Except for the consents required by the Agency to enter into this agreement, 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 Payment in Lieu of Tax Agreement by the Company or as a condition to the validity of this Payment in Lieu of Tax Agreement.

SECTION 1.2. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

(A) Power. The Agency is a public benefit corporation of the State of New York, has been duly established under the provisions of the Act, as validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into the transactions contemplated by this Payment in Lieu of Tax Agreement and to carry out 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 Payment in Lieu of Tax Agreement hereunder.

(B) 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 Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all of the covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Agency is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax 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.

(D) Governmental Consents. The Agency has secured the consent and approval of the Affected Taxing Jurisdictions to the terms and conditions of the Payment in Lieu of Tax Agreement.

ARTICLE II COVENANTS AND AGREEMENTS

SECTION 2.1. TAX-EXEMPT STATUS OF THE FACILITY.

(A) Assessment of the 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 a leasehold interest in the Facility by the Agency and the filing by the Agency of a New York State Board of Real Property Services Form RP-412-a (a “Real Property Tax Exemption Form”) with respect to the Facility, and for so long thereafter as the Agency shall own a leasehold interest in the Facility, the Facility shall be assessed by the various taxing entities having jurisdiction over the Facility, including, without limitation, any county, city, school district, town, village or other political unit or units wherein the Facility is located (the aforementioned Affected Taxing Jurisdictions) as exempt upon the assessment rolls of the respective Affected Taxing Jurisdictions prepared subsequent to the acquisition by the Agency of the Facility and the filing of the Real Property Tax Exemption Forms. The Company shall take such action as may be necessary to ensure that the Facility shall be assessed as exempt upon the assessment rolls of the respective Affected Taxing Jurisdictions prepared subsequent to such acquisition by the Agency, including ensuring that a Real Property Tax Exemption Form shall be filed with the appropriate officer or officers of each respective Affected Taxing Jurisdiction responsible for assessing properties on behalf of each such Affected Taxing Jurisdiction (each such officer being hereinafter referred to as an “Assessor”). For so long thereafter as the Agency shall own the Facility, the Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Affected Taxing Jurisdiction. The parties hereto understand that the Facility shall not be entitled to such tax-exempt status on the tax rolls of any Affected Taxing Jurisdiction until the first tax year of such Affected Taxing Jurisdiction following the tax status date of such Affected Taxing Jurisdiction occurring subsequent to the date upon which the Agency becomes the owner of record of the Facility and the Real Property Tax Exemption Forms are filed. Pursuant to the provisions of the Lease Agreement, the Company will be required to pay all taxes and assessments lawfully levied and/or assessed against the Facility, including taxes and assessments levied for the current tax year and all subsequent tax years until the Facility shall be entitled to exempt status on the tax rolls of the

respective Affected Taxing Jurisdictions. The Agency will cooperate with the Company to obtain and preserve the tax-exempt status of the Facility.

(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 Lease Agreement, the Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Facility.

SECTION 2.2. 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 Agency pursuant to the provisions hereof (the "PILOT Payment"). The PILOT Payment due hereunder shall be paid by the Company to the Agency for payment of (1) the Infrastructure Costs and (2) the balance for distribution to the appropriate Affected Taxing Jurisdictions entitled to same pursuant to the provisions hereof (the "ATJ Distribution"). The first year of this Agreement shall relate to the 2014-2015 School tax year and the 2015 Town and County tax years.

(B) Total Amount of Payments in Lieu of Taxes.

(i) October 1, 2014 Payment. On October 1, 2014, the Agency shall bill the Company and the Company shall pay to the Agency a PILOT Payment calculated based upon the number of gross square feet of buildings within the Project placed in service as of September 1, 2014, times Two Dollars and Fifteen Cents (\$2.15). For purposes of this subparagraph a portion of the Project has been "placed in service" if either a temporary or permanent certificate of occupancy has been issued for such portion of the improvements included within the Project.

(ii) For the Period Beginning on October 1, 2015 and for 24 years thereafter. Commencing on October 1, 2015, and on October 1 of each year thereafter for 24 years, including October 1, 2039, the Agency shall bill the Company and the Company shall pay to the Agency a PILOT Payment calculated in accordance with Exhibit A attached hereto.

(iii) Company Report to Agency. In order to provide the Agency the information necessary for the calculation of the PILOT Payment invoice each year, annually during the term of this Agreement, and no later than September 10 each year, the Company shall provide to the Agency by electronic correspondence and by regular mail, a report setting forth the Project Facility Area as that term is defined in Exhibit A attached hereto, as of September 1 each year.

(C) Application of a Portion of the PILOT Payments to Infrastructure Costs.

(i) All of the Affected Taxing Jurisdictions have consented to the allocation, by the Agency, of a portion of their respective shares of the PILOT Payment for the purpose of amortization of the Infrastructure Costs (the "Infrastructure Payment"). Annually, at the direction of the Company, the Agency, following the receipt of the PILOT Payment, shall pay to KeyBank National Association ("KeyBank") or the Infrastructure Lender as hereinafter defined,

the Infrastructure Payment. In any year in which the PILOT Payment is less than One Million Dollars (\$1,000,000.00), the Infrastructure Payment shall be Four Hundred and Seventy Five Thousand Dollars (\$475,000.00). In any year in which the PILOT Payment exceeds One Million Dollars (\$1,000,000.00) the Infrastructure Payment shall be Five Hundred and Twenty Five Thousand Dollars (\$525,000.00). The \$475,000 and \$525,000 payment amounts are collectively hereinafter referred to as the "Infrastructure Payments" and shall continue during the term of this Agreement until such time as the Infrastructure Costs have been completely amortized.

(ii) At the time of the commencement of construction of the Project Facility, the Company has obtained financing for a portion of the Infrastructure Costs through a loan facility from KeyBank from which Four Million Dollars (the "Infrastructure Tranche") shall be allocated toward payment of Infrastructure Costs. The Two Million Six Hundred Thousand Dollars (\$2,600,000.00) balance of the Infrastructure Costs (the "Non-Financed Infrastructure Costs") shall be funded directly by the Company. Upon commencement of PILOT Payments under 2.2(B)(ii) above, the Infrastructure Payments shall be delivered by the Agency to KeyBank or its assignee to be applied against interest and principal of the Infrastructure Tranche as determined by KeyBank or its assignee.

(iii) In the event that the Company is able to obtain replacement or supplemental financing either in the amount of the then principal balance of the Infrastructure Tranche and/or in an amount which includes some or all of the Non-Financed Infrastructure Costs, the Agency shall deliver the Infrastructure Payments to the lender or lenders, as directed by the Company or the Company's assignee; such lender or lenders are hereinafter collectively referred to as an "Infrastructure Lender". It is acknowledged by the parties hereto that at some future point in time after the execution of this Agreement, the Company may request that the Agency issues its bonds to finance the non-amortized portion of the Infrastructure Tranche as well as the Non-Financed Infrastructure Costs in such case the bond trustee shall be deemed to be an Infrastructure Lender.

(iv) In the event that the Company is unable to finance through a lending institution the Non-Financed portion of the Infrastructure Costs, the Agency shall remit to KeyBank, for so long as the loan from KeyBank to the Company for the Project remains outstanding, or thereafter to the Company that portion of the PILOT Payments not then payable to an Infrastructure Lender until such time as the Infrastructure Costs have been completely amortized through the amalgamation of payments on the Infrastructure Tranche, payments to an Infrastructure Lender or to the Company. Any portion of the Infrastructure Costs financed by the Company shall be amortized over the then remaining term of this Agreement at the same interest rate as then paid by the Company under its permanent financing for the Project Facility. In no event shall the total amount of PILOT Payments exceed the amount necessary to amortize the Infrastructure Costs at the applicable interest rates.

(D) ATJ Distribution. The amount to be distributed to the Affected Taxing Jurisdictions pursuant to the terms of this Payment in Lieu of Tax Agreement shall be the balance of the annual PILOT Payments less the amount applied by the Agency to Infrastructure Costs, such balance being distributed proportionately based upon the then current tax rates of each of the Affected Taxing Jurisdictions.

(E) Valuation of Additional Facilities. The value of each Additional Facility, as hereinafter defined, for purposes of determining payments in lieu of taxes due under Section 2.2(G) hereof shall be determined in accordance with the assessment valuation schedule set forth in Exhibit B. The parties hereto agree that the Assessors shall (a) appraise each Additional Facility in the same manner as other similar properties in the general area of the Facility, and (b) place a value for assessment purpose (hereinafter referred to as the “Additional Assessed Value”) upon each Additional Facility, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy for real property taxes. The Company shall be entitled to written notice of the initial establishment of such Additional Assess Value and of any change in such Additional Assessed Value.

(F) Statements. Pursuant to Section 858(15) of the Act, the Agency agrees to give each Affected Taxing Jurisdiction a copy of this Payment in Lieu of Tax 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 Affected Taxing Jurisdiction responsible for preparing the tax rolls for said Tax Entities (each, a “Tax Billing Officer”).

(G) Time of Payments. The Company agrees to pay the amounts due under 2.2(B)(i) to the Agency within the period that each Affected Taxing Jurisdiction allows payment of taxes levied in such fiscal year without penalty. The Company agrees to pay the amounts under 2.2(B)(i) and (ii) and 2.2(E) on October 1 each year starting October 1, 2014. The Company shall be entitled to receive receipts for such payments.

(H) Method of Payment. All payments by the Company hereunder shall be paid to the Agency in lawful money of the United States of America. The Agency shall in turn distribute the amounts so paid pursuant to the provisions of 2.2(c).

(I) Challenge of Assessments.

(1) The Company shall not challenge the annual rates set forth in Exhibit C attached hereto but retains the right to challenge the assessment of the Project Facility as the assessment controls a portion of the special assessments payable outside of this PILOT Agreement. The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this Agreement.

(2) With regards to any Additional Facility, the Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Additional Facility, with respect to any proposed Additional Assessed Value and likewise shall be entitled to protest before and be heard by the appropriate Assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any Additional Assessed Value or the validity or amount of any tax equivalent provided for in this Agreement.

SECTION 2.3. CREDIT FOR TAXES PAID.

(A) Amount of Credit. The parties hereto acknowledge and agree that the obligation of the Company to make the payments provided in Section 2.2 of this Payment in Lieu of Tax 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 Lease Agreement. It is understood and agreed, however, that, should the Company pay in any fiscal tax year to the Agency any amounts in the nature of general property taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the 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 or charges), then the Company's obligation to make payments in lieu of property taxes attributed to such fiscal tax year to the Agency hereunder shall be reduced by the amounts which the Company shall have so paid to the Agency in such fiscal tax year, but there shall be no cumulative or retroactive credit as to any payment in lieu of property taxes due to the Agency in any other fiscal tax 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 Jurisdiction and the Agency prior written notice of its intention to claim any credit pursuant to the provision of this Section 2.3, 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 2.2(I) hereof. In the event that the governing body of the appropriate Affected Taxing Jurisdiction 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 2.2(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 2.3 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 2.3) 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 2.4. 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 Payment in Lieu of Tax 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 Payment in Lieu of Tax 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 Jurisdiction until such payment in default shall have been made in full, and the Company shall pay the same to the Affected Taxing Jurisdiction 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 month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

SECTION 2.5 RECAPTURE. There is no Recapture Penalty under this PILOT as the PILOT Payment has been calculated to approximate the amount of taxes that the Company would have paid in real property taxes in the absence of the Section 412-a exemption.

ARTICLE III LIMITED OBLIGATION

SECTION 3.1. NO RECOURSE; LIMITED OBLIGATION OF THE AGENCY.

(A) No Recourse. All obligations, covenants, and agreements of the Agency contained in this Payment in Lieu of Tax Agreement shall be deemed to be the obligations, covenants and agreements of the Agency and not of any member, 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 Payment in Lieu of Tax Agreement, or otherwise based upon or in respect of this Payment in Lieu of Tax Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, 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 Payment in Lieu of Tax 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 Payment in Lieu of Tax Agreement, it being expressly understood that this Payment in Lieu of Tax 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, 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 Payment in Lieu of Tax Agreement under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax 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, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax 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 Payment in Lieu of Tax Agreement by the Agency.

(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 Onondaga County, New York, and neither the State of New York nor Onondaga 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 Premises (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 Payment in Lieu of Tax 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 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 4.1. EVENTS OF DEFAULT. Any one or more of the following events shall constitute an event of default under this Payment in Lieu of Tax Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Payment in Lieu of Tax Agreement, any one or more of the following events:

(A) Failure of the Company to pay any amount due and payable by the Company pursuant to this Payment in Lieu of Tax 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 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 warranty, representation or other statement by or on behalf of the Company contained in this Payment in Lieu of Tax 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 Payment in Lieu of Tax Agreement and (1) shall be materially adverse to the Agency at the time when the notice referred to below shall have been given to the Company and (2) if curable, shall not have been cured within thirty (30) days after written notice of such incorrectness shall have been given to a responsible officer of the Company, provided that if such correctness cannot reasonably be cured within said thirty-day period and the Company shall have commenced action to cure the incorrectness within said thirty-day period and the Company shall have commenced action to cure the incorrectness within said thirty-day period, such thirty-day period shall be extended for so long as the Company shall require, in the exercise of due diligence, to cure such default.

SECTION 4.2. REMEDIES ON DEFAULT.

(A) General. Whenever any Event of Default shall have occurred with respect to this Payment in Lieu of Tax Agreement, the Agency (or if such Event of Default concerns a payment required to be made hereunder to any Affected Taxing Jurisdiction, then with respect to such Event of Default such Affected Taxing Jurisdiction) 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 Payment in Lieu of Tax Agreement.

(B) Cross-Default. In addition, an Event of Default hereunder shall constitute an event of default under Article X of the 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 Facility to the Company, thus subjecting the 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 Payment in Lieu of Tax 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 4.3. PAYMENT OF ATTORNEYS' 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 Payment in Lieu of Tax Agreement and the Agency or any Affected Taxing Jurisdiction 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 Affected Taxing Jurisdiction, 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 reasonable expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.4. REMEDIES; WAIVER AND NOTICE.

(A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or any Affected Taxing Jurisdiction 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 Payment in Lieu of Tax 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 Affected Taxing Jurisdiction to exercise any remedy reserved to it in this Payment in Lieu of Tax Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Payment in Lieu of Tax Agreement.

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

ARTICLE V MISCELLANEOUS

SECTION 5.1. TERM. This Payment in Lieu of Tax Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the approval of this Payment in Lieu of Tax Agreement by resolution of the Agency and the execution and delivery of this Payment in Lieu of Tax Agreement by the Company and the Agency (the "Effective Date"). Unless otherwise provided by amendment hereof and subject to the provisions of Section 5.1(B) below, this Payment in Lieu of Tax Agreement shall continue to remain in effect as to any particular tax parcel incorporated in the Facility until the earlier to occur of (1) December 31, 2040, or (2) the date on which the tax parcel is reconveyed by the Agency to the Company pursuant to the Lease Agreement.

SECTION 5.2. FORM OF PAYMENTS. The amounts payable under this Payment in Lieu of Tax 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 5.3. 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 5.4. AMENDMENTS. This Payment in Lieu of Tax Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.5. RELEASE. The parties to this Payment in Lieu of Tax Agreement acknowledge and agree that portions of the Premises may be released from the terms and conditions of this Payment in Lieu of Tax Agreement including the Mortgage PILOT upon the request of the Company. Additionally, at the request of the Company, the Agency and the Company shall enter into a separate payment in lieu of tax agreement for a tax parcel and thereupon such tax parcel shall be released from the terms and conditions of this Payment in Lieu of Tax Agreement.

SECTION 5.6. NOTICES.

(A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail 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 attempt to effect such delivery.

(B) Notices Given by Taxing Entities. Notwithstanding the foregoing, notices of assessment or reassessment of the Project Facility and other notices given by an Affected Taxing Jurisdiction under Article II hereof shall be sufficiently given and shall be deemed given when by the Affected Taxing Jurisdiction in the same manner in which similar notices are given to owners of taxable properties by such Affected Taxing Jurisdiction.

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

IF TO THE AGENCY:

Onondaga County Industrial Development Agency
333 West Washington Street, Room 130
Syracuse, New York 13202
Attention: Mary Beth Primo, Executive Director

WITH A COPY TO:

Gilberti Stinziano Heintz & Smith, P.C.
555 East Genesee Street
Syracuse, New York 13202
Attention: Anthony P. Rivizzigno, Esq.

IF TO THE COMPANY:

Hinsdale Road Group LLC
6007 Fair Lakes Road, Suite 100
East Syracuse, New York 13057

WITH A COPY TO:

Hiscock & Barclay, LLP
One Park Place
300 South State Street
Syracuse, New York 13202
Attention: Kevin R. McAuliffe, Esq.

(D) Copies. A copy of any notice given hereunder by the Company which affects in any way a Taxing Entity shall also be given to the chief executive officer of such Affected Taxing Jurisdiction.

(E) Change of Address. The Agency, the Company or any Affected Taxing Jurisdiction may, by notice given hereunder, designate any further or different address to which subsequent notices, certificates or other communications to them shall be sent.

SECTION 5.7. BINDING EFFECT. This Payment in Lieu of Tax 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 Payment in Lieu of Tax Agreement are intended to be for the benefit of the Agency and the respective Affected Taxing Jurisdictions.

SECTION 5.8. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Payment in Lieu of Tax 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 Payment in Lieu of Tax 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 5.9. COUNTERPARTS. This Payment in Lieu of Tax 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 5.10. APPLICABLE LAW. This Payment in Lieu of Tax Agreement shall be governed by and construed in accordance with the laws of the State of New York.

NOTHING FURTHER ON THIS PAGE.

IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

**ONONDAGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: Mary Beth Primo

Name: Mary Beth Primo

Title: Executive Director

HINSDALE ROAD GROUP LLC

By: _____

Name:

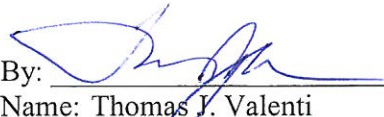
Title:

IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

**ONONDAGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: Mary Beth Primo
Title: Executive Director

HINSDALE ROAD GROUP LLC

By:  _____
Name: Thomas J. Valenti
Title: Manager

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

On the 28th day of January in the year 2014, before me, the undersigned, personally appeared MARY BETH PRIMO, 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 acknowledges to be that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

KEVIN R. McAULIFFE
Notary Public State of New York
No. 01MC4602421
Qualified in Onondaga County
Commission Expires May 31, 2015

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

On the _____ day of _____ in the year 2014, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledges to be 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.

Notary Public

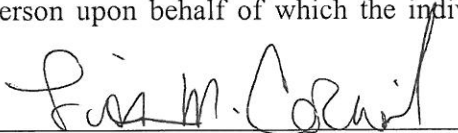
STATE OF NEW YORK)
) ss.:
COUNTY OF ONONDAGA)

On the _____ day of _____ in the year 2014, before me, the undersigned, personally appeared MARY BETH PRIMO, 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 acknowledges to be that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

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

On the 30 day of January in the year 2014, before me, the undersigned, personally appeared THOMAS J. VALENTI, 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 acknowledges to be 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.



Notary Public

LISA M. CORNISH
No. 01CO6001274
Notary Public, State of New York
Qualified in Onondaga County
Commission Expires January 5, 2018

Exhibit A

To The

Hinsdale Road Group LLC Payment in Lieu of Tax Agreement

1. Definitions:

- a. **“Initial Rate”** means: Two Dollars and Fifteen Cents (\$2.15)
- b. **“Rate Increase Factor”** means three percent (3%).
- c. **“Annual Rate”** means: the Initial Rate increased annually by the Rate Increase Factor
- d. **“Project Facility Area”** means: the number of gross square feet of building Placed In Service as of September 1, of each year during the term of this Agreement.
- e. **“Placed In Service”** means: at a minimum, a temporary or permanent certificate of occupancy has been issued by the Town of Camillus.

2. Calculation of Payment Amount.

- a. The initial annual PILOT payment required to be paid under Paragraph 2.2(B)(ii) shall be the product of the **Initial Rate** and the **Project Facility Area** as of September 1, 2015.
- b. Commencing on October 1, 2016 and for twenty-three (23) years thereafter the PILOT payment required to be paid under Paragraph 2.2(B)(ii) shall be the product of the **Annual Rate** and the **Project Facility Area** as of September 1 of that year. For clarity, set forth below is a table setting forth the payment year, the calendar year and the Annual Rate:

Payment Year	Calendar Year	Annual Rate
1	2015	2.15
2	2016	2.21
3	2017	2.28
4	2018	2.35
5	2019	2.42
6	2020	2.49
7	2021	2.57
8	2022	2.64
9	2023	2.72
10	2024	2.81
11	2025	2.89
12	2026	2.98
13	2027	3.07
14	2028	3.16
15	2029	3.25
16	2030	3.35
17	2031	3.45
18	2032	3.55
19	2033	3.66
20	2034	3.77

21	2035	3.88
22	2036	4.00
23	2037	4.12
24	2038	4.24
25	2039	4.37