

CLOSING ITEM NO.: A-9

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ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

122 2ND STREET ASSOCIATION, LLC

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PAYMENT IN LIEU OF TAX AGREEMENT

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DATED AS OF JUNE 1, 2015

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RELATING TO THE PREMISES LOCATED AT 122 2ND STREET IN  
THE CITY OF WATERVLIET, ALBANY COUNTY, NEW YORK.

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## PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT dated as of June 1, 2015 (the "Payment in Lieu of Tax Agreement") by and between ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 112 State Street, Albany, New York (the "Agency"), and 122 2ND STREET ASSOCIATION, LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 172 River Street, Suite D, Troy, New York (the "Company");

### WITNESSETH:

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 (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, 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 and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 178 of the Laws of 1975 of the State (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, 122 2nd Street Association, LLC (the "Company"), a limited liability company duly organized and validly existing under the laws of the State of New York, presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest in a parcel of real estate containing approximately 1.46 acres of land located at 122 2nd Street in the City of Watervliet, Albany County, New York (the "Land"), together with the existing building containing approximately 80,000 square feet of space located thereon (the "Facility"), (2) the reconstruction and renovation of the Facility, and (3) the acquisition and installation thereon and therein of machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment being hereinafter collectively referred to as the "Project Facility"), all of the foregoing to be owned by the Company, to constitute a mixed use retail/residential facility and to be leased by the Company to various commercial and residential tenants and any other directly and indirectly related activities; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real

property transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on November 19, 2014 (the “Public Hearing Resolution”), the Chairman of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on November 26, 2014 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is to be located, (B) caused notice of the Public Hearing to be posted on December 5, 2014 on a public bulletin board located at 112 State Street in the City of Albany, Albany County, New York and the Albany County Courthouse, Eagle Street in the City of Albany, Albany County, New York, (C) caused notice of the Public Hearing to be published on December 1, 2014 in the Albany Times Union, a newspaper of general circulation available to the residents of the City of Watervliet, Albany County, New York, (D) conducted the Public Hearing on December 11, 2014 at 5:30 o’clock p.m., local time in the Watervliet Senior Citizens Center located at the J. Leo O’Brien Building, 1501 Broadway in the City of Watervliet, Albany County, New York, and (E) prepared a report of the Public Hearing (the “Public Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available 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 with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on December 17, 2014 (the “SEQR Resolution”) the Agency determined (A) that the Project constituted an “Unlisted Action” under SEQRA, (B) that the Project would not have a “significant effect on the environment” pursuant to SEQRA and, therefore, that no environmental impact statement need be prepared with respect to the Project, and (C) as a consequence of the foregoing, to prepare a negative declaration with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on December 17, 2014 (the “Commercial/Retail Findings Resolution”), the Agency (A) determined that the Project constituted a “commercial project” within the meaning of the Act, (B) found that although the Project Facility appears to constitute a project where facilities or properties that are primarily used in making the retail sales of goods or services to customers who personally visit such facilities may constitute more than one-third of the costs of the Project, the Agency is authorized to provide financial assistance in respect of the Project pursuant to Section 862(2)(a) of the Act because the Project Facility is located in a “highly distressed area” (as defined in the Act), (C) determined, following a review of the Public Hearing Report, that the Project would serve the public purposes of the Act by preserving permanent private sector jobs in the State of New York, (D) determined that the Agency would proceed with the Project and the granting of the Financial Assistance; provided however, that no financial assistance would be provided to the Project by the Agency unless and until the County Executive of Albany County, as chief executive officer of Albany County, New York, pursuant to Section 862(2)(c) of the Act, confirmed the proposed action of the Agency with respect to the Project; and

WHEREAS, the Agency’s Uniform Tax Exemption Policy (the “Policy”) provides that the Agency will not grant any Financial Assistance relating to an exemption from real property taxes unless the project applicant obtains the approval of the “affected taxing jurisdictions” (as defined in the Act) to the terms of any such abatement. The Company has negotiated a real property tax abatement schedule with the City of Watervliet (the “City”), the City of Watervliet City School District (the “School

District") and Albany County (the "County," and together with the City and the School District, being collectively referred to as the "Affected Tax Jurisdictions"), and such Affected Tax Jurisdictions have adopted resolutions and certificates, as applicable (the "PILOT Approval Documents"), approving the payment terms of a payment in lieu of tax agreement to be entered into by the Agency with respect to the Project Facility; and

WHEREAS, by further resolution adopted by the members of the Agency on December 17, 2014 (the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of June 1, 2015 (the "Lease Agreement") between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"). Pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company for a lease term ending on the earlier to occur of (1) December 31, 2036 or (2) the date on which the Lease Agreement is terminated pursuant to the optional termination provisions thereof. The Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, by certificate dated April 16, 2015 (the "Public Approval"), the County Executive of the County of Albany, New York, approved the proposed action to be taken by the Agency with respect to the Project for purposes of Section 862(2)(c) of the Act; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency dated as of June 1, 2015 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises") for a lease term ending on December 31, 2036; (2) a certain license agreement dated as of June 1, 2015 (the "License to Agency") by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency (a) a license to enter upon the balance of the Land (the "Licensed Premises") for the purpose of undertaking and completing the Project and (b) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement; and (3) a bill of sale dated as of June 1, 2015 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency will execute and deliver (1) a payment in lieu of tax agreement dated as of June 1, 2015 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility, (2) a project benefits agreement dated as of June 1, 2015 (the "Project Benefits Agreement") relating to the granting of the Financial Assistance by the Agency to the Company, and (3) a certain recapture agreement (the "Section 875 GML Recapture Agreement") by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes, (C) the Agency will file with the assessor and mail to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement, (D) the Agency will execute and deliver to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (E) the Agency will file with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report"); and

WHEREAS, in order to finance a portion of the costs of the Project, the Company will obtain a loan in the principal sum of up to \$6,500,000 (the "Loan") from Pioneer Savings Bank (the "Lender"), which Loan will be secured by (1) a mortgage and security agreement dated as of June 1, 2015 (the "Mortgage") from the Agency and the Company to the Lender and (2) an assignment of rents and leases dated as of June 1, 2015 (the "Assignment of Rents") from the Agency and the Company to the Lender; 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 "Real Property Tax Law"), the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or control; and

WHEREAS, pursuant to the provisions of Section 6.6 of the Lease Agreement, the Company has agreed to make payments in lieu of taxes with respect to the Project Facility in an amount equivalent to normal taxes, provided that, 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 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 that portion of the Project Facility which is covered by this Payment in Lieu of Tax Agreement; 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, to wit:

ARTICLE I  
REPRESENTATIONS AND WARRANTIES

SECTION 1.01. 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, has been duly established under the provisions of the Act, is 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 to enter into this Payment in Lieu of Tax 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 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) Consent by Affected Tax Jurisdictions. Albany County, the City of Watervliet and the Watervliet City School District (collectively hereinafter referred to as the "Affected Tax Jurisdictions") have each adopted resolutions or certificates approving the terms of this Payment in Lieu of Tax Agreement. Copies of the resolutions and certificates of the Affected Tax Jurisdictions which approve the Payment in Lieu of Tax Agreement are attached as Exhibit B to this Payment in Lieu of Tax Agreement.

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

(A) Power. The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, is duly authorized to do business in the State of New York and has the power under the laws of the State 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 its members has 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 articles of organization, operating agreement and the laws of the State 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 articles of organization or 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 it 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 Consent. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Payment in Lieu of Tax Agreement by the Company or as a condition to the validity of this Payment in Lieu of Tax Agreement.

## ARTICLE II

### COVENANTS AND AGREEMENTS

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

(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 Project Facility.

SECTION 2.02. PAYMENTS IN LIEU OF TAXES. (A) Agreement to Make Payments. The Company agrees that it shall make annual payments in lieu of property taxes in the amounts hereinafter provided to the respective Taxing Entities entitled to receive same pursuant to the provisions hereof. The Company also agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The payments due hereunder shall be paid by the Company to the respective appropriate officer or officers of the respective Taxing Entities charged with receiving payments of taxes for such Taxing Entities (such officers being collectively hereinafter referred to as the “Receivers of Taxes”) for distribution by the Receivers of Taxes to the appropriate Taxing Entities entitled to receive same pursuant to the provisions hereof.

(B) Valuation of the Project Facility. (1) The value of the Project Facility for purposes of determining payments in lieu of taxes due hereunder (hereinafter referred to as the "Assessed Value") shall be determined by the appropriate Assessors. The Company agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The parties hereto agree that the Assessors shall (a) appraise the Land in the same manner as other similar properties in the general area of the Land, (b) place an Assessed Value upon the Land, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes, (c) appraise the Facility and any portion of the Equipment assessable as real property pursuant to the New York Real Property Tax Law (collectively with the Facility, the "Improvements") in the same manner as other similar properties in the general area of the Improvements, and (d) place an Assessed Value upon the Improvements, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial determination of the Assessed Value of the Improvements and of any change in the Assessed Value of the Land or the Improvements.

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

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

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

(2) In each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which the Land shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Land shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to the Land for such tax year.

(3) Next, determine the Normal Tax which would be payable to each Taxing Entity if the Facility and any portion of the Equipment assessable as real property pursuant to the New York Real Property Tax Law (collectively with the Facility, the "Improvements") were owned by the Company and not the Agency by multiplying (a) the Assessed Value of the Improvements determined pursuant to Subsection (B) of this Section 2.02, by (b) the tax rate or rates of such Taxing Entity that would be applicable to the Improvements if the Improvements were owned by the Company and not the Agency.

(4) In the tax years commencing in 2015 through 2036, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax (each such payment, a "PILOT Payment") pursuant to the Payment in Lieu of Tax Agreement with respect to the Improvements shall be an amount equal to the following amount:

<u>Tax Year Commencing in Calendar Year</u>	<u>PILOT Payment</u>
2016	\$15,000.00
2017	\$15,000.00
2018	\$34,100.00
2019	\$34,100.00
2020	\$37,200.00
2021	\$38,750.00
2022	\$40,300.00
2023	\$40,300.00
2024	\$46,500.00
2025	\$49,600.00
2026	\$51,150.00
2027	\$54,250.00
2028	\$55,606.25
2029	\$56,996.41
2030	\$58,421.32
2031	\$59,881.85
2032	\$61,378.90
2033	\$62,913.37
2034	\$64,486.20
2035	\$66,098.36
2036 and thereafter	100% of Normal Taxes

(5) In each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which any portion of the Project Facility shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Project

Facility shall be the sum of (a) the amount due each Taxing Entity with respect to the Land for such tax year, as determined pursuant to Subsection (C)(2) hereof, **plus** (b) the amount due each Taxing Entity with respect to the Improvements for such tax year, as determined pursuant to Subsection (C)(4) hereof.

(D) Additional Amounts in Lieu of Taxes. Commencing on the first tax year following the date on which any structural addition shall be made to the Project Facility or any portion thereof or any additional building or other structure shall be constructed on the Land (such structural additions and additional buildings and other structures being hereinafter referred to as "Additional Facilities") the Company agrees to make additional annual payments in lieu of property taxes with respect to such Additional Facilities (such additional payments being hereinafter collectively referred to as "Additional Payments") to the Receivers of Taxes with respect to such Additional Facilities, such Additional Payments to be computed separately for each Taxing Entity as follows:

(1) Determine the amount of general taxes and general assessments (hereinafter referred to as the "Additional Normal Tax") which would be payable to each Taxing Entity with respect to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency as follows: (a) multiply the Additional Assessed Value (as hereinafter defined) of such Additional Facilities determined pursuant to subsection (E) of this Section 2.02 by (b) the tax rate or rates of such Taxing Entity that would be applicable to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency, and (c) reduce the amount so determined by the amounts of any tax exemptions that would be afforded to the Company by such Taxing Entity if such Additional Facilities were owned by the Company and not the Agency.

(2) In each fiscal tax year during the term of this Payment in Lieu of Tax Agreement (commencing in the fiscal tax year when such Additional Facilities would first appear on the assessment roll of any Taxing Entity) if such Additional Facilities were owned by the Company and not the Agency, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax with respect to such Additional Facilities pursuant to this Payment in Lieu of Tax Agreement shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to such Additional Facilities for such fiscal tax year (unless the Agency and the Company shall enter into a separate written agreement regarding payments in lieu of property taxes with respect to such Additional Facilities, in which case the provisions of such separate written agreement shall control).

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

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

shall be entitled to protest before, and to be heard by, the appropriate Assessor and the Agency. If the Agency, the Company and any Assessor shall fail to reach agreement as to the proper Additional Assessed Value of the Additional Facilities for purposes of determining payments in lieu of taxes due under this Payment in Lieu of Tax Agreement, then such Assessor, the Company and the Agency shall each select one arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall be a qualified real estate appraiser, experienced in valuation for the purposes of tax assessment in the general area of the Project Facility, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Additional Assessed Value of the Additional Facilities has been properly established by the Assessor. It is understood that the arbitrators are empowered to confirm the Additional Assessed Value or to determine a higher or lower Additional Assessed Value. Any payments in lieu of taxes due upon such Additional Facilities pursuant to Section 2.02(D) hereof may not be withheld by the Company pending determination of the Additional Assessed Value by the arbitrators.

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

(G) Time of Payments. The Company agrees to pay the amounts due hereunder to the Receivers of Taxes for the benefit of each particular Taxing Entity in any fiscal tax year to the appropriate Receiver of Taxes within the period that such Taxing Entity allows payment of taxes levied in such fiscal tax year without penalty. 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 Receivers of Taxes in lawful money of the United States of America. The Receivers of Taxes shall in turn distribute the amounts so paid to the various Taxing Entities entitled to same.

SECTION 2.03. CREDIT FOR TAXES PAID. (A) Amount of Credit. The parties hereto acknowledge and agree that the obligation of the Company to make the payments provided in Section 2.02 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 any Taxing Entity 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 Project Facility or the interest therein of the Company or the occupancy thereof by the Company (but not including, by way of example, (1) sales and use taxes, and (2) special assessments, special ad valorem levies or governmental charges in the nature of utility charges, including but not limited to water, solid waste, sewage treatment or sewer or other rents, rates or charges), then the Company's obligation to make payments in lieu of property taxes attributed to such fiscal tax year to such Taxing Entity hereunder shall be reduced by the amounts which the Company shall have so paid to such Taxing Entity in such fiscal tax year, but there shall be no cumulative or retroactive credit as to any payment in lieu of property taxes due to any other Taxing Entity or as to any payment in lieu of property taxes due to such Taxing Entity in any other 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 Entity and the Agency prior written notice of its intention to claim any credit pursuant to

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

SECTION 2.04. LATE PAYMENTS. (A) First Month. Pursuant to Section 874(5) of the Act, if the Company shall fail to make any payment required by this 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 Entity until such payment in default shall have been made in full, and the Company shall pay the same to the affected Taxing Entity together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

**ARTICLE III**  
**LIMITED OBLIGATION**

**SECTION 3.01. NO REOURSE; 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 the County of Albany, New York, and neither the State of New York nor the County of Albany, New York shall be liable thereon, and further such obligations, covenants and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Lease Agreement).

(C) Further Limitation. Notwithstanding any provision of this 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 4.01. 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 when due 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 incorrectness 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, thereafter, diligently and expeditiously proceeds to cure the same, 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 4.02. 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 Taxing Entity, then with respect to such Event of Default such Taxing Entity) may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this 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 Project Facility to the Company, thus subjecting the Project Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State.

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

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

SECTION 4.04. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or any Taxing Entity is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this 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 Taxing Entity 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 5.01. TERM. (A) General. 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. Unless otherwise provided by amendment hereof, this Payment in Lieu of Tax Agreement shall continue to remain in effect until the earlier to occur of (1) December 31, 2036 or (2) the date on which the Project Facility is reconveyed by the Agency to the Company pursuant to Article X or Article XI of the Lease Agreement.

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

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this 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 5.03. 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 5.04. 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 5.05. 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) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy or (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, property addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted 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 a Taxing Entity under Article II hereof shall be sufficiently given and shall be deemed given when given by the Taxing Entity in the same manner in which similar notices are given to owners of taxable properties by such Taxing Entity.

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

IF TO THE COMPANY:

122 2nd Street Association, LLC  
172 River Street, Suite D  
Troy, New York 12180  
Attention: Thomas Rossi, Manager

WITH A COPY TO:

Scioccetti & Abbott, PLLC  
12 Century Hill Drive  
Latham, New York 12110  
Attention: Paul V. Scioccetti, Esq.

IF TO THE AGENCY:

Albany County Industrial Development Agency  
112 State Street  
Albany, New York 12207  
Attention: Chairman

WITH COPIES TO:

The Forman Law Firm  
68 Simmons Avenue  
Cohoes, New York 12047  
Attention: Walter J. Forman, Esq.

and

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

IF TO THE AFFECTED TAX JURISDICTIONS:

Albany County  
112 State Street  
Albany, New York 12207  
Attention: County Executive

City of Watervliet  
2 Fifteenth Street  
Watervliet, New York 12189  
Attention: Mayor

Superintendent of Schools  
Watervliet City School District  
1245 Hillside Drive  
Watervliet, New York 12189  
Attention: Superintendent of Schools

(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 Taxing Entity.

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

SECTION 5.06. 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 Taxing Entities.

SECTION 5.07. 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 5.08. 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.

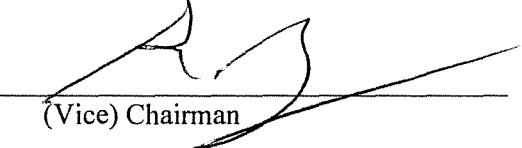
SECTION 5.09. APPLICABLE LAW. This Payment in Lieu of Tax Agreement shall be governed by and construed in accordance with the laws of the State of New York.

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.

ALBANY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_

(Vice) Chairman

  
122 2ND STREET ASSOCIATION, LLC

BY: \_\_\_\_\_

Authorized Officer

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.

ALBANY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

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

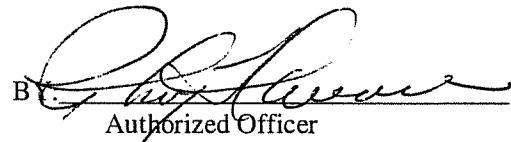
122 2ND STREET ASSOCIATION, LLC

BY: \_\_\_\_\_  
X Authorized Officer

## CONSENT BY AFFECTED TAX JURISDICTIONS

By executing this Payment in Lieu of Tax Agreement, the Affected Tax Jurisdictions: (1) represent that each of the Affected Tax Jurisdictions approved the terms of this Payment in Lieu of Tax Agreement pursuant to the resolutions and certificates attached in Exhibit B of this Payment in Lieu of Tax Agreement (the "Approving Documents"); (2) waive the receipt of any notice from the Agency provided for under the Agency's Uniform Tax Exemption Policy or New York State law with respect to any deviation by the Agency from its Uniform Tax Exemption Policy with respect to this Payment in Lieu of Tax Agreement; (3) consent to the appointment of the City for the purposes collecting and paying-over the payments in lieu of taxes payable by the Company in accordance with this Payment in Lieu of Tax Agreement; and (4) consent to the amounts and specific allocations of the payments in lieu of taxes as provided by the City.

ALBANY COUNTY

BY:   
Authorized Officer

CITY OF WATERVLIET

BY: \_\_\_\_\_  
Authorized Officer

CITY SCHOOL DISTRICT OF  
THE CITY OF WATERVLIET

BY: \_\_\_\_\_  
President of Board of Education

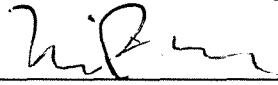
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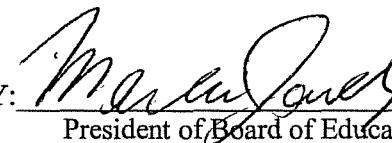
ALBANY COUNTY

BY: \_\_\_\_\_  
Authorized Officer

CITY OF WATERVLIET

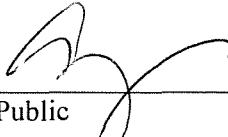
BY:   
Authorized Officer

CITY SCHOOL DISTRICT OF  
THE CITY OF WATERVLIET

BY:   
President of Board of Education

STATE OF NEW YORK        )  
                                  )ss:  
COUNTY OF ALBANY        )

On the 17<sup>th</sup> day of February, in the year 2015, before me, the undersigned, personally appeared GARY DOMALEWICZ, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



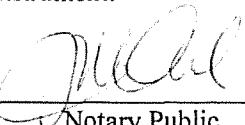
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Notary Public

A. Joseph Scott III  
Notary Public, State of New York  
Qualified in Albany County  
No. 02SC4811591  
Commission Expires December 31, 2018

STATE OF NEW YORK )  
    Penske )ss:  
COUNTY OF ALBANY )

On the 11 day of March, in the year 2015, before me, the undersigned, personally appeared Monica A. Tobe, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

Notary Public  
State of New York  
#0120140157354  
Commissioned in Albany County  
Commission Expires Dec. 4, 2018

EXHIBIT A

DESCRIPTION OF THE LEASED LAND

A leasehold interest created by a certain lease to agency dated as of June 1, 2015 (the "Lease to Agency") between 122 2nd Street Association, LLC (the "Company"), as landlord, and Albany County Industrial Development Agency (the "Agency"), as tenant, in an approximately 1.46 acres parcel of land (the "Leased Land") located at 122 2nd Street in the City of Watervliet, Albany County, New York, said Leased Land being more particularly described below), together with any improvements now or hereafter located on the Leased Land (the Leased Land and all such improvements being sometimes collectively referred to as the "Leased Premises"):

ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND situate, lying and being in City of Watervliet, Albany County, New York, bounded and described as follows:

- SEE ATTACHED -

## SCHEDULE A - LEGAL DESCRIPTION

ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND, situate, lying and being in the City of Watervliet, County of Albany, State of New York being known as Lots 233-237, a portion of Lot 238, and 243-254 as shown on a map entitled "Map of the Village of Port Schuyler" made by John Campbell in 1795, refiled in the Albany County Clerk's Office in Book 23, Dr. 23, Map 396, and lying generally southerly of Second Street, easterly of Second Avenue, westerly of First Avenue and northerly of First Street and being more particularly bounded and described as follows:

BEGINNING AT A POINT, on the southwesterly boundary of Second Street at its intersection with the southeasterly boundary of Second Avenue and runs thence from said point of beginning South 57 deg 32 min 25 sec East, a distance of 360.56 feet to its intersection with the northwesterly boundary of First Avenue; thence, southwesterly along said street boundary South 32 deg 09 min 38 sec West, a distance of 220.00 feet to its intersection with the northeasterly boundary of First Street; thence, North 57 deg 32 min 25 sec West, along said northeasterly boundary of First Street a distance of 220.80 feet to its intersection with the boundary line between lands, now or formerly, of the City of Watervliet as described in Liber 1502 of Deeds at page 475 on the northwest and lands herein described on the southeast; thence North 32 deg 09 min 38 sec East along said boundary line a distance of 120.00 feet to a point; thence along the southwesterly boundary of lots 247, 246, 245 and 243 and long the northerly boundary of the common alley North 57 deg 32 min 25 sec West, a distance of 161.84 feet to its intersection with the above first mentioned southeasterly boundary of Second Avenue; thence North 44 deg 37 min 34 sec East, along said road boundary a distance of 102.30 feet to the point or place of beginning.

SCHEDULE A CONTINUED

THE SAID PREMISES HAS PREVIOUSLY BEEN DESCRIBED AS FOLLOWS:

ALL that piece, parcel or tract of land situate in the City of Watervliet, County of Albany and State of New York, and described as follows: Beginning at a point three feet east of the dividing line between Lot No. 233, now owned by Elizabeth Stewart, party of the first part, and Lot No. 234, now owned by the John S. Tilley Ladders Co., Inc., party of the second part, and running thence north on a line parallel with said dividing line between said Lot Nos. 233 and 234, aforesaid, to a point three feet south of the alley on the north of said lots, thence east on a line parallel with said alley to First Avenue; thence along First Avenue three feet to said alley; thence west along said alley to the dividing line between said lots Nos. 233 and 234 aforesaid; thence south along said dividing line to First Street; thence east along said First Street three feet to the place of beginning. The parcel herein described is intended to be a rectangular strip of land three feet wide out of the north and west sides of said Lot No. 233.

ALL that certain tract or parcel of land situate in the first ward of the City of Watervliet (formerly Village of West Troy), County of Albany and State of New York, known and distinguished as Lot Number Two Hundred Thirty-Three (233) on the north side of First Street (formerly South Street), and bounded as follows; on the north by an alley; on the east by First Avenue (formerly Boston Street) on the south by First Street, and on the west by Lot No. 234, excepting and reserving therefrom a certain portion of said premises heretofore conveyed to The John S. Tilley Ladders Co. by deed of Elizabeth Stewart and George Stewart dated March 22, 1921 and filed in the office of the Clerk of Albany County May 11, 1921 in Book of Deed 697 at page 273.

ALL that certain lot, piece or parcel of land situate, lying and being in the City of Watervliet, County of Albany and State of New York, and designated on a map of the former Village of Fort Schuyler made by Everett Van Allen and filed in the Albany County Clerk's Office, as Lot Number Two Hundred and Thirty-four (234) South Street (now called First Street) and bounded as follows: On the East by Lot Number Two Hundred Thirty-three (233); on the West by Lot Number Two Hundred Thirty-five (235); on the South, by South Street; and on the North by an alley.

ALL that certain lot of land No. (235) Two Hundred Thirty-Five, being in the First Ward of the City of Watervliet (formerly Village of West Troy), and is bounded as follows: To wit, on the south by First Street (formerly South Street); on the west by Lot No. (236) Two Hundred Thirty-Six; on the east by Lot No. (234) Two Hundred Thirty-Four; on the north by an alley, said lot being forty (40) feet wide front and rear One Hundred (100) feet deep more or less.

ALL those certain lots, pieces or parcels of land, situate, lying and being in the Village of West Troy (now City of Watervliet), County of Albany and State of New York, known and designated on the map of said

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Village as lot numbers Two Hundred Two Hundred and Forty-Seven (247), Two Hundred and Forty-Eight (248), and two Hundred and Forty-Nine (249) South Canal Street (now called Second Street) and which said lots are together bounded on the North by South Canal Street (now called Second Street); on the east by lot Number Two Hundred and Fifty (25); on the south by an alley and on the west by lot Number Two Hundred and Forty-Six (246).

Excepting and reserving from the above described parcel or land a certain piece or parcel of land five (5) feet wide on the east side of lot number Two Hundred and Forty-Nine (249), and running the entire length of said lot from Second Street to the alley, which said parcel was heretofore conveyed to the party of the second part by the said party of the first part hereto.

ALSO, all that tract, piece or parcel of land, situate in the City of Watervliet, County of Albany and State of New York, as follows:

BEGINNING at the north-east corner of lot Number Two Hundred and Forty-Six (246) on the south side of Second Street - formerly called Canal Street - running thence Westerly along the line of said Second Street, sixteen (16) feet; thence southerly parallel with the easterly line of said lot number Two Hundred and Forty-Six (246) and sixteen (16) feet distant therefrom to an alley, being the southerly line of said lot, thence easterly along the westerly line of said lot, sixteen (16) feet to the south-east corner of said lot; thence northerly on the line dividing lot Numbers Two Hundred and Forty-Six (246) and Two Hundred Forty-Seven (247) to the point of beginning the premises hereby conveyed being the easterly sixteen (16) feet of said lot number Two Hundred and Forty-Six (246), as laid down on a map made by Elwart Van Allen, of that portion of the said City of Watervliet, which was formerly called Port Schuyler.

ALL that certain piece or parcel of land situate, lying and being in the City of Watervliet, County of Albany and State of New York, known and distinguished upon a map of that part of the said city formerly called Port Schuyler, as the north half of lot Number Two Hundred and Fifty-Three (253) and two Hundred and Fifty-Four (254) South Canal Street (now called Second Street), the said lots being bounded as follows: On the north by said South Canal Street; on the east by Boston Street (now called First Avenue); on the south by an alley; and on the west by lot Number Two Hundred and Fifty-Two (252); the said premises being about sixty (60) feet in width on said Canal Street and extending from the said division line northerly to the present boundary line of said Second Street.

ALL that tract, piece or parcel of land, situate in the City of Watervliet, County of Albany and State of New York, and known upon a map of that part of the said formerly called Port Schuyler, as lot Number Two Hundred Fifty-Two (252) Canal Street (now called Second Street), bounded as follows: On the north by said Canal Street; on the east by lot Number Two Hundred Fifty-Three (253) on the south by an alley; and on the west by lot Number Two Hundred Fifty-One (251).

ALL that certain place or parcel of land situate, lying and being in the City of Watervliet, County of Albany and State of New York, known and distinguished on a map of that part of the City formerly called Fort Schuyler, as the easterly five (5) feet of Lot Number Two Hundred Forty-Nine (249) Canal Street (now called Second Street), bounded and described as follows:

Beginning at the southeasterly corner of said Lot Number Two Hundred Forty-Nine (249), and running thence westerly along the North side of the alley five (5) feet, thence northerly and parallel with the easterly boundary line of said Lot Number Two Hundred Forty-Nine (249) to the southerly boundary line of Second Street as now located; thence easterly along the said boundary line of Second Street (5) feet, thence southerly on a line parallel with the westerly line of the premises hereby conveyed, to the point or place of beginning.

ALL that tract, place or parcel of land, situate in the City of Watervliet, County of Albany and State of New York, known and distinguished on a map of a part of the said City formerly called Fort Schuyler as Lot Numbers Two Hundred Thirty-Eight (238) and Two Hundred Thirty-Nine (239) South Street (now called First Street) and which said lots are together bounded as follows: On the North by an alley; on the east by Lot Number Two Hundred Thirty-Seven (237); on the south by said south Street; and on the west by Lot Number Two Hundred Forty (240).

ALSO, all that certain lot, place or parcel of land situate, lying and being in the City of Watervliet, County of Albany and State of New York (being in that part of said city formerly called Fort Schuyler), known and designated on the map of said City as Lot No. 244 Second Avenue, said lot being forty (40) feet in width, front and rear, and extending from the easterly line of said Second Avenue, as shown on said map, to the westerly line of Lot No. 245. Said lot is bounded as follows: On the north by Second Street, on the east by Lot No. 245, on the south by Lot No. 243 and on the west by Second Avenue.

AND ALSO, all that certain strip, place or parcel of land, lying and being in said City of Watervliet, County of Albany and State of New York (being in that part of said City formerly called Fort Schuyler), and being part of lot known and designated on the map of said city as Lot No. 243 Second Avenue; and strip or parcel being bounded as follows: On the north by Lot No. 244; on the east by Lot No. 245; on the south by a line running parallel to the south line of Lot No. 243 and thirty-five feet distant therefrom; and on the west by Second Avenue; said strip being about five feet wide front and rear and about 80' feet deep, as shown on said map, be the same more less.

Together with all right, title and interest in and to whatever rights have heretofore been granted by the City of Watervliet (formerly Village of West Troy) to William Hayes and Elizabeth J. Hayes, his wife, or their predecessors in interest in and to about twenty-five feet of land, be the

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same more or less, adjoining said above described Lot No. 244, on the north, being a part of the Erie Canal or branch thereof.

ALL those certain pieces or parcels of land situate, lying and being in the First Ward of the City of Watervliet, County of Albany and State of New York, bounded and described as follows:

AND Lots numbers Two Hundred Fifty and Two Hundred Fifty-One, on a Map of the Village of West Troy, made in 1845 by S.A. Beers, Civil Engineer, and filed in the Office of the Clerk of the County of Albany, as the lots now stand on the south side of Second Street since the abandonment of the canal in what was formerly South Canal Street, which said lots constitute a plot of land approximately Sixty feet front and rear and one hundred five feet deep, generally bounded on the north by Second Street, on the east by Lot No. 252, on the south by an alley, and on the west by Lot No. 249, together with all the right, title and interest of John S. Tilley and Rose E. Tilley, in and to said Second Street with all the right, title and interest of John S. Tilley and Rose E. Tilley in and to said Second Street in front of and adjoining said premises on the north to the center line thereof, and in and to that part of said alley in the rear of and adjoining said premises to the center line thereof.

Lots Numbers Two Hundred Thirty-Six and Two Hundred Thirty-Seven on a Map of the Village of West Troy, made in 1845 by S.A. Beers, Civil Engineer, and filed in the Office of the Clerk of the County of Albany, as the lots now stand on the north side of First Street, which said lots constitute a plot of land approximately eighty feet front and rear and one hundred feet deep, generally bounded on the south by First Street, on the west by a strip of land ten feet wide, on the north by an alley, and on the east by Lot No. 235 now or formerly belonging to Bassett, together with all the right, title and interest of John S. Tilley and Rose E. Tilley in and to said First Street in front of and adjoining said premises on the south to the center line thereof, and in and to that part of said alley in the rear of and adjoining said premises to the center line thereof.

A strip of land ten feet wide, Lot No. 237 on a Map of the Village of West Troy made in 1845 by S.A. Beers, Civil Engineer, and filed in the office of the Clerk of the County of Albany, on the west and extending through from First Street to the alley in the rear, one hundred feet in depth, together with all the right, title and interest of said John S. Tilley and Rose E. Tilley in and to said First Street in front of and adjoining said premises on the south to the center line thereof, and in and to that part of said alley in the rear of and adjoining said premises to the center line thereof.

ALL that certain piece, parcel or lot of land situate lying and being in the City of Watervliet (formerly Village of West Troy), County of Albany and State of New York, and known and distinguished on the map of the southern portion of said Village of West Troy, formerly known as Fort Schuyler, as Lot Number Two Hundred Forty-Five (245) (South) Canal Street, now called South Street.

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ALSO All that tract, piece or parcel of land, situate, lying and being in the City of Watervliet aforesaid and known and distinguished as the westerly fourteen (14) feet of Lot Number Two Hundred and Forty-Six (246) (South) Canal Street (now Second Street).

AND ALL that piece or tract of land situate in the City of Watervliet, County of Albany and State of New York, being a part of the lot designated on the map of the Village of Port Schuyler as Lot No. 243, and bounded and described as follows: Beginning at a point at the south-west corner of said lot at the intersection of the east line of Second Avenue and the alley in rear of said lot, and running thence north along Second Avenue thirty-five feet; thence east on a line parallel with said alley to the line dividing Lot Numbers 243 and 245, as shown on said map; thence south along said dividing line thirty-five feet to said alley; thence west along said alley to the place of beginning. The parcel intended to be conveyed herein is a parcel of land thirty-five feet wide and about eighty feet long, be the same more less.

ALL that tract or parcel of land, situate in the City of Watervliet, formerly in the First Ward of the Village of West Troy, County of Albany, and State of New York, being parts of the lots designated on the map of said Village as Lot Numbers Two Hundred Fifty-Three (253) and Two Hundred Fifty-Four (254) on the south said of Second Street, formerly called South Canal Street, the parts of said lots hereby conveyed being bounded and described as follows: Commencing at the southeasterly corner of said lot number Two Hundred Fifty-Four (254) and running thence westerly along the southerly boundary line of said lot Numbers Two Hundred Fifty-Three (253) and Two Hundred Fifty-Four (254), Sixty (60) feet to the westerly boundary line of said Lot Number Two Hundred Fifty-Three (253); thence northerly along said westerly boundary line of said lot number Two Hundred Fifty-Three (253), Forty (40) feet; thence easterly on a line parallel with said southerly boundary line of said Lot Numbers Two Hundred Fifty-Three (253) and Two Hundred Fifty-Four (254) Sixty (60) feet to the First Avenue formerly called Boston Street thence southerly along the said First Avenue, formerly call Boston Street, Forty (40) feet to the place of beginning, said parcel hereby conveyed being bounded as follows, to wit: Northerly by the Northwesterly half of said Lot Numbers Two Hundred Fifty-Three (253) and Two Hundred Fifty-Four (254); Easterly by said First Avenue formerly called Boston Street; Southerly by an alley and westerly by Lot Number Two Hundred Fifty-Two (252).

ALSO including all right, title and interest of the grantor in and to that portion of the alley lying between First Street and Second Street and extending westerly from the westerly side of First Avenue a distance of approximately two hundred feet, as the same was discontinued as a public highway as set forth in a Ordinance No. 580 of the City of Watervliet.

Said premises are also described as follows:

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ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND, situate, lying and being in the City of Watervliet, County of Albany, State of New York being known as Lots 233-237, a portion of Lot 238, and 243-254 as shown on a map entitled "Map of the Village of Port Schuyler" made by John Campbell in 1795, refiled in the Albany County Clerk's Office in Book 23, Dr. 23, Map 396, and lying generally southerly of Second Street, easterly of Second Avenue, westerly of First Avenue and northerly of First Street and being more particularly bounded and described as follows:

BEGINNING AT A POINT, on the southwesterly boundary of Second Street at its intersection with the southeasterly boundary of Second Avenue and runs thence from said point of beginning South 57 deg 32 min 25 sec East, a distance of 350.56 feet to its intersection with the northwesterly boundary of First Avenue; Thence, southwesterly along said street boundary South 32 deg 09 min 38 sec West, a distance of 220.00 feet to its intersection with the northeasterly boundary of First Street; Thence, North 57 deg 32 min 25 sec West, along said northeasterly boundary of First Street a distance of 220.80 feet to its intersection with the boundary line between lands, now or formerly, of the City of Watervliet as described in Liber 1502 of Deeds at Page 475 on the northwest and lands herein described on the southeast; Thence, North 32 deg 09 min 38 sec West along said boundary line a distance of 120.00 feet to a point; Thence, along the southwesterly boundary of Lots 247, 246, 245 and 243 and along the northerly boundary of the common alley North 57 deg 32 min 25 sec West, a distance of 161.84 feet to its intersection with the above First mentioned southeasterly boundary of Second Avenue; Thence North 44 deg 37 min 34. sec East, along said road boundary a distance of 102.80 feet to the point or place of beginning and containing 63,655+ square feet of land.

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EXHIBIT B

**AUTHORIZING RESOLUTIONS AND CERTIFICATES OF  
AFFECTED TAX JURISDICTIONS**

**ALBANY COUNTY  
PILOT APPROVAL/PUBLIC APPROVAL CERTIFICATE  
122 2<sup>ND</sup> STREET ASSOCIATION, LLC PROJECT**

**CERTIFICATE OF THE COUNTY EXECUTIVE**

APPROVING (A) THE PROPOSED ACTION BY THE ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY WITH RESPECT TO THE 122 2ND STREET ASSOCIATION, LLC PROJECT AND (B) THE TERMS AND CONDITIONS OF A CERTAIN PILOT AGREEMENT TO BE ENTERED INTO BETWEEN THE AGENCY AND 122 2ND STREET ASSOCIATION, LLC IN CONNECTION WITH THE 122 2<sup>ND</sup> STREET ASSOCIATION, LLC PROJECT.

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 (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, 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 and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Albany County Industrial Development Agency (the "Agency") was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 178 of the Laws of 1975 of the State (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, 122 2<sup>nd</sup> Street Association, LLC, a New York limited liability company (the "Company"), has presented an application (the "Application") to the Agency requesting that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project consisting of the following: (A) (1) the acquisition of an interest in a parcel of real estate containing approximately 1.46 acres of land located at 122 2nd Street in the City of Watervliet, Albany County, New York (the "Land"), together with the existing building containing approximately 80,000 square feet of space located thereon (the "Facility"), (2) the reconstruction and renovation of the Facility, and (3) the acquisition and installation thereon and therein of machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment being hereinafter collectively referred to as the "Project Facility"), all of the foregoing to be owned by the Company, to constitute a mixed use retail/residential facility and to be leased by the Company to various commercial and residential tenants and any other directly and indirectly related

activities; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on November 19, 2014 (the “Public Hearing Resolution”), the Chairman of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on November 26, 2014 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is to be located, (B) caused notice of the Public Hearing to be posted on December 5, 2014 on a public bulletin board located at 112 State Street in the City of Albany, Albany County, New York and the Albany County Courthouse, Eagle Street in the City of Albany, Albany County, New York, (C) caused notice of the Public Hearing to be published on December 1, 2014 in the Albany Times Union, a newspaper of general circulation available to the residents of the City of Watervliet, Albany County, New York, (D) conducted the Public Hearing on December 11, 2014 at 5:30 o’clock p.m., local time in the Watervliet Senior Citizens Center located at the J. Leo O’Brien Building, 1501 Broadway in the City of Watervliet, Albany County, New York, and (E) prepared a report of the Public Hearing (the “Public Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available 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 with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on December 17, 2014 (the “SEQR Resolution”) the Agency determined (A) that the Project constituted an “Unlisted Action” under SEQRA, (B) that the Project would not have a “significant effect on the environment” pursuant to SEQRA and, therefore, that no environmental impact statement need be prepared with respect to the Project, and (C) as a consequence of the foregoing, to prepare a negative declaration with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on December 17, 2014 (the “Commercial/Retail Findings Resolution”), the Agency (A) determined that the Project constituted a “commercial project” within the meaning of the Act, (B) found that although the Project Facility appears to constitute a project where facilities or properties that are primarily used in making the retail sales of goods or services to customers who personally visit such facilities may constitute more than one-third of the costs of the Project, the Agency is authorized to provide financial assistance in respect of the Project pursuant to Section 862(2)(a) of the Act because the Project Facility is located in a “highly distressed area” (as defined in the Act), (C) determined, following a review of the Public Hearing Report, that the Project would serve the public purposes of the Act by preserving permanent private sector jobs in the State of New York, (D) determined that the Agency would proceed with the Project and the granting of the Financial Assistance; provided however, that no financial assistance would be provided to the Project by the Agency unless and until the County Executive of Albany County, as chief executive officer of Albany County, New York, pursuant to Section 862(2)(c) of the Act, confirmed the proposed action of the Agency with respect to the Project; and

WHEREAS, in connection with the undertaking of the Project, the Company will execute and deliver a certain payment in lieu of tax agreement (the “PILOT Agreement”) by and between the Agency

and the Company pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility; and

WHEREAS, the Agency's Uniform Tax Exemption Policy (the "Policy") provides that the Agency will not grant any Financial Assistance relating to an exemption from real property taxes unless the project applicant obtains the approval of the "affected taxing jurisdictions" (as defined in the Act) to the terms of any such abatement; and

WHEREAS, the Agency desires that Albany County (the "County"), the City of Watervliet and the Watervliet City School District, as the affected tax jurisdictions with respect to the Project Facility, approve the terms of the PILOT Agreement;

NOW, THEREFORE, the undersigned County Executive of Albany County hereby determines and approves as follows:

Section 1. The County Executive (A) has reviewed the Public Hearing Report and (B) approves and confirms the proposed action by the Agency in connection with the Project.

Section 2. The County Executive of Albany County hereby (A) approves the terms and conditions of the PILOT Agreement, including but not limited, to the payment terms, and (B) waives the receipt of any notice from the Agency provided for under the Agency's Uniform Tax Exemption Policy with respect to any deviation by the Agency from its Uniform Tax Exemption Policy with respect to the PILOT Agreement. The payment terms to be contained in the PILOT Agreement are substantially described in Schedule A attached hereto.

Section 3. The County Executive hereby agrees, on behalf of the County, to execute and deliver the PILOT Agreement, said PILOT Agreement to contain the payment terms substantially in the form described in Schedule A attached hereto with such changes, variations, omissions and insertions as the County Executive shall approve, the execution thereof by the County Executive to constitute conclusive evidence of such approval.

Section 4. This Certificate shall take effect immediately.

IN WITNESS WHEREOF, I have set my hand unto these presents this 16<sup>th</sup> day of April, 2015.



Daniel P. McCoy, County Executive  
Albany County, New York

**SCHEDULE A**  
**PILOT PAYMENT TERMS**

<u>Tax Year Commencing in Calendar Year</u>	<u>PILOT Payment</u>
1	\$15,000.00
2	\$15,000.00
3	\$34,100.00
4	\$34,100.00
5	\$37,200.00
6	\$38,750.00
7	\$40,300.00
8	\$40,300.00
9	\$46,500.00
10	\$49,600.00
11	\$51,150.00
12	\$54,250.00
13	\$55,606.25
14	\$56,996.41
15	\$58,421.32
16	\$59,881.85
17	\$61,378.90
18	\$62,913.37
19	\$64,486.20
20	\$66,098.36
Thereafter	100% of Normal Taxes

JEREMY A. SMITH  
City Clerk/Clerk to the Council  
(518) 270 3810



WATERVLIET CITY HALL  
2 Fifteenth Street  
Watervliet, NY 12189

**CERTIFICATION OF RECORD**

I, Jeremy A. Smith, City Clerk and Clerk to the Council in and for the City of Watervliet, N.Y., due hereby certify and attest that the attached document is a true and exact duplication of Resolution No. 9106 adopted by the Council of the City of Watervliet, N.Y., November 20, 2014. The original Resolution No. 9106 is on file and available at the Office of the Watervliet City Clerk, City Hall, 2-15<sup>th</sup> Street, Watervliet, NY 12189.

Jeremy A. Smith  
City Clerk and  
Clerk to the Council

November 21, 2014

Date

THE COUNCIL OF THE CITY OF WATERVLIET

RESOLUTION NO. 9106

\*\*\*\*\*

**WHEREAS**, Redburn Development Companies, LLC has received certain approvals from the City of Watervliet Planning Board and Zoning Board of Appeals to renovate the former Tilley Ladder industrial building located at 122 Second Street Watervliet, New York 12189; and

**WHEREAS**, 122 2<sup>nd</sup> Street, LLC has presented an application to the Albany County Industrial Development Agency requesting the execution and delivery of a payment in lieu of tax agreement (the "PILOT Agreement") between 122 2<sup>nd</sup> Street, LLC and the Albany County Industrial Development Agency; and

**WHEREAS**, the Albany County Industrial Development Agency has required 122 2<sup>nd</sup> Street, LLC to obtain the consent of the County of Albany, City of Watervliet, and the Watervliet City School District approving the terms of the PILOT Agreement; and

**WHEREAS**, the amounts of the payments in lieu of taxes in said PILOT Agreement will be as shown on the attached Schedule A, attached hereto and made a part hereof.

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. The Council of the City of Watervliet hereby supports 122 2<sup>nd</sup> Street, LLC in their efforts to obtain a PILOT Agreement with the Albany County Industrial Development Agency including supporting the proposed amounts of the payments in lieu of taxes as shown on the attached Schedule A; and
2. This Resolution shall take effect immediately.

Introduced by: **COUNCILWOMAN FOGARTY**  
Moved by: **COUNCILWOMAN FOGARTY**  
Seconded by: **COUNCILMAN FOGLIA**

Adopted by the following vote:

Ayes - - - 3  
Nays - - - 0

November 20, 2014

RESOLUTION APPROVING PROPOSED PILOT PAYMENT SCHEDULE FOR A CERTAIN PILOT AGREEMENT TO BE ENTERED INTO BETWEEN ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY AND 122 2<sup>ND</sup> STREET ASSOC, LLC IN CONNECTION WITH THE 122 2<sup>ND</sup> STREET ASSOC., LLC PROJECT

WHEREAS, 122 2<sup>nd</sup> Street Assoc., LLC (the "Company" has presented an application (the "Application") to Albany County Industrial Development Agency (the "Agency"), a copy of which was presented at this meeting and copies of which are on file at the office of the Agency, requesting that the Agency consider undertaking a project (the "Project") consisting of (A)(1) the acquisition of an interest in a parcel of real estate containing approximately 1.46 acres of land located at 122 2<sup>nd</sup> Street in the City of Watervliet, Albany County, New York (the "Land") together with the existing building containing approximately 80,000 square feet of space located thereon (the "Facility"), (2) the reconstruction and renovation of the Facility, and (3) the acquisition and installation thereon and therein of machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment being hereinafter collectively referred to as the "Project Facility"), all of the foregoing to be owned by the Company, to constitute a mixed use retail/residential facility and to be leased by the Company to various commercial and residential tenants and any other directly and indirectly related activities; and

WHEREAS, in connection with the undertaking of the Project, the Company has negotiated with representatives of the City of Watervliet a proposed schedule for payments to the interested taxing authorities (See "Schedule A" annexed hereto) and has indicated its intention to execute and deliver a certain payment in lieu of tax agreement (the "PILOT AGREEMENT") by and between the Agency and the Company pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility; and

WHEREAS, the Agency has requested that the affected taxing jurisdiction indicate their approval of the proposed payment terms (Schedule A);

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of the Watervliet City School District as follows:

Section 1: The Board of Education of the Watervliet City School District hereby approves the proposed payment terms forth in Schedule "A" (annexed hereto), and consents to the inclusion of said payment schedule in the PILOT Agreement to be entered by the Company and the Agency. The Board of Education of the Watervliet City School District expressly reserves judgment on all other terms and conditions of any such PILOT agreement concerning the Project Facility until such time as a complete PILOT Agreement is submitted to the Board of Education for review and approval.

Section 2: This resolution shall take effect immediately.

Dated: November 20, 2014

Jeanette Boardman  
District Clerk  
Watervliet City School District

**SCHEDULE A**  
**PAYMENT TERMS**

In each tax year during the term of the PILOT Agreement, commencing on the first tax year following the date on which the Project Facility shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of all Taxing Entities as a payment in lieu of property tax pursuant to this PILOT Agreement shall be an amount as shown in the following table:

<u>Tax Year Commencing in Calendar Year</u>	<u>PILOT Payment<sup>1</sup></u>
1	\$15,000.00
2	\$15,000.00
3	\$34,100.00
4	\$34,100.00
5	\$37,200.00
6	\$38,750.00
7	\$40,300.00
8	\$40,300.00
9	\$46,500.00
10	\$49,600.00
11	\$51,150.00
12	\$54,250.00
13	\$55,606.25
14	\$56,996.41
15	\$58,421.32
16	\$59,881.85
17	\$61,378.90
18	\$62,913.37
19	\$64,486.20
20	\$66,098.36
Thereafter	100% of Normal Taxes

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<sup>1</sup> The payments in lieu of taxes described in the table above shall be allocated each year to Albany County, the City of Watervliet and the Watervliet City School District in proportion to the respective tax rates of Albany County, the City of Watervliet and the Watervliet City School District.