

FACILITIES REALTY MANAGEMENT VERNON, LLC

and

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

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PAYMENT-IN-LIEU-OF-TAX AGREEMENT

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Oneida County Industrial Development Agency  
2012 Real Estate Lease  
(Universal Photonics, Inc. Facility)

Oneida County, Town of Vernon, Vernon-Verona-Sherrill School District

Tax Account No.: 324.009-1-3

## PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of July 1, 2012, is by and between **FACILITIES REALTY MANAGEMENT VERNON, LLC**, a New York corporation having an office at 495 West John Street, Hicksville, New York 11801 (the "Company") and **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, an industrial development agency and a public benefit corporation of the State of New York having its principal office at 584 Phoenix Drive, Rome, New York 13441 (the "Agency").

### W I T N E S S E T H:

WHEREAS, the Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law, Chapter 99 of the Consolidated Laws of New York, as amended, (the "Enabling Act"), and Chapter 372 of the Laws of 1970 of the State of New York, as amended, constituting Section 901 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of, among others, industrial facilities for the purpose of promoting, attracting and developing economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, the Company desires to (a) acquire and renovate an existing 77,250 square foot manufacturing and warehouse facility (the "Improvements") located at 10 Ward Street, Town of Vernon, Oneida County, New York (the "Land"); and (b) acquire and install all necessary equipment (the "Equipment"), all to be used in connection with the manufacture and distribution of polyurethane substrates used in the surface finishing industry (the Improvements, the Land and the Equipment referred to collectively as the "Facility"); and

WHEREAS, in order to induce the Company to develop the Facility, the Agency is willing to accept a leasehold interest in the Facility pursuant to a Lease Agreement dated of even date herewith and lease the Facility back to the Company pursuant to the terms and conditions contained in a Leaseback Agreement dated of even date herewith; and

WHEREAS, the Agency has agreed to accept a leasehold interest in the Facility in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, KeyBank National Association (the "Bank") will finance a portion of the costs of the Facility through a loan to the Company in the principal amount of \$2,550,000 to be secured by (a) a Mortgage and Security Agreement dated on or about July 30, 2012 (the "Mortgage") from the Agency and the Company to the Bank and (b) an Assignment of Leases

and Rents dated on or about July 30, 2012 (the "Assignment") from the Agency and the Company to the Bank; and

WHEREAS, the Facility is exempt from real property taxes, general property taxes, general school district taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Facility or the interest therein of the Company or the occupancy thereof by the Company commencing March 1, 2013, the taxable status date, (the "Exempt Taxes"), because the Agency has a leasehold interest in the Facility and the Facility is used for a purpose within the meaning of the applicable Constitutional and statutory provisions, including the Enabling Act, provided, however, such exemption does not extend to special assessments or ad valorem levies; and

WHEREAS, the Company understands that it, as lessee of the Facility leased by the Agency, will, in fact, have Exempt Taxes to pay under the provisions of the Leaseback Agreement from the first date of the Exemption Term (as that date is determined by the parties and described herein) through the term of the Leaseback Agreement (the "Exemption Term"); and

WHEREAS, each year of the Exemption Term is more particularly set forth on Schedule B attached hereto (each year being referred to as an "Exemption Year"); and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provision for payments-in-lieu-of-taxes and such assessments by the Company to the Town of Vernon, or any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be, wholly or partially located, Oneida County, Vernon-Verona-Sherrill School District and appropriate special districts (hereinafter each a "Taxing Authority" and collectively the "Taxing Authorities") in which any part of the Facility is or is to be located; and

WHEREAS, all defined terms herein as indicated by the capitalization of the first letter thereof and not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the Leaseback Agreement.

NOW, THEREFORE, to provide for certain payments to the Taxing Authorities, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Company shall pay to each Taxing Authority:
  - (a) all taxes that are due with respect to the Facility prior to the Exemption Term, no later than the last day during which such payments may be made without penalty; and
  - (b) all special assessments and ad valorem taxes coming due and payable during the term of the Leaseback Agreement and the Leaseback Agreement for which

the Facility is not exempt, no later than the last day during which such payments may be made without penalty.

2. (a) The Company shall pay to each Taxing Authority as set forth on Schedule A attached hereto and made a part hereof an amount in lieu of the Exempt Taxes (the "PILOT Payments") during each Exemption Year as follows:

(i) one-third of such taxes from the first through and including the fifth Exemption Year; and

(ii) one-half of such taxes from the sixth through and including the tenth exemption year;

(iii) two-thirds of such taxes from the eleventh through and including the fifteenth Exemption Year; and

(iv) one hundred percent of such taxes after the fifteenth Exemption Year.

Anything herein to the contrary, notwithstanding, this Agreement shall terminate on the date on which the Leaseback Agreement shall terminate and the Agency shall terminate its leasehold interest in the Facility pursuant to the Leaseback Agreement. The benefits under this Agreement are subject to the terms and conditions of a certain Job Creation and Recapture Agreement dated as of July 1, 2012.

(b) Anything herein to the contrary, notwithstanding, upon the failure of the Company in making any payment when due hereunder and upon failure to cure such default within thirty (30) days of receipt of notice as herein provided, the Company shall henceforth pay as PILOT Payments one hundred (100%) percent of the Exempt Taxes together with interest at the rate of nine (9%) percent per annum on any delinquent PILOT Payments together with expenses of collection, including but not limited to, payment of attorneys' fees; provided, however, nothing herein contained shall be deemed to limit any other rights and remedies the Agency may have hereunder or under any other Transaction Document.

3. The Company will make PILOT Payments to each Taxing Authority hereunder for each Exemption Year by making the required payment to such Taxing Authority no later than the last day during which such Exempt Taxes could otherwise be made without penalty as if the Agency did not have a leasehold or other interest in the Facility.

4. The PILOT Payments to be made by the Company pursuant to this Agreement are intended to be in lieu of all Exempt Taxes that would have to be paid on the Facility leased to the Company by the Leaseback Agreement if the Agency did not have a leasehold or other interest in the Facility.

5. If by reason of a change in the Constitution or laws of the State of New York, or an interpretation of the Constitution or the laws of the State of New York by the Court of Appeals (or such lower court from which the time to appeal has expired) of the State of New York, or for any other reason, the Company is required to pay any tax which the payments specified herein are intended to be in lieu of, the Company may deduct the aggregate of any such payments made by it from the amount herein agreed to be paid in lieu of such taxes and need only pay the difference. Furthermore, inasmuch as the PILOT Payments herein agreed to be made by the Company are intended to be in lieu of all Exempt Taxes, it is agreed that said payments shall not, as to any Exemption Year, be in an amount greater than would be payable for such year for such Exempt Taxes, in the aggregate, by a private corporation on account of its ownership of the Facility.

6. This Agreement shall be binding upon the successors and assigns of the parties.

7. It is the intent of the parties that the Company will have all the rights and remedies of a taxpayer with respect to any real property or other tax, service charge, special benefit, ad valorem levy, assessment or special assessment or service charge because of which, or in lieu of which, the Company is obligated to make a payment hereunder, as if and to the same extent as if the Agency did not have a leasehold or other interest in the Facility. It is the further intent of the parties that the Company will have all of the rights and remedies of a taxpayer as if and to the same extent as if the Agency did not have a leasehold or other interest in the Facility with respect to any proposed assessment or change in assessment concerning the property, or any portion thereof, whether through an assessor, board of assessment review, court of law, or otherwise and likewise will be entitled to protest before and be heard by such assessor, board of assessment review, court of law or otherwise and will be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any taxes that would have been payable but for the provisions hereof. In the event, however, that a court of competent jurisdiction shall enter an order or judgment determining or declaring that, by reason of the Agency's interest in the Facility, the Company does not have the right to bring a proceeding to review such assessment under the Real Property Tax Law or any other law, then the Company shall have the right to contest such assessment in the name and as the agent of the Agency, and the Agency agrees to cooperate with the Company in all respects in any such proceeding at the sole cost and expense of the Company.

8. All amounts payable by the Company hereunder will be paid to the respective Taxing Authority and will be payable in such lawful money of the United States of America as at the time of payment is legal tender for the payment of public and private debts, including a check payable in such money.

9. (a) If any term or provision hereof should be for any reason held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such term or provision will be deemed separate and independent and the remainder hereof will remain in full force and effect and will not be invalidated, impaired or otherwise affected by such holding or adjudication.

(b) This Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

(c) All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when mailed by United States registered or certified mail, postage prepaid, return receipt requested, to the Agency or the Company, as the case may be, addressed as follows:

To the Agency: Oneida County Industrial Development Agency  
584 Phoenix Drive  
Rome, New York 13441-4105  
Attn.: Chairman

With a Copy To: Bond, Schoeneck & King, PLLC  
501 Main Street  
Utica, New York 13501  
Attn.: Linda E. Romano, Esq.

To the Company: Facilities Realty Management Vernon, LLC  
495 West John Street  
Hicksville, New York 11801  
Attn.: Alan C. Ritter, Member

With a Copy To: Andrew D. Komaromi, Esq.  
Harris Beach PLLC  
333 Earle Ovington Boulevard, Suite 901  
Uniondale, New York 11553

provided, that the Agency or the Company may, by notice given hereunder to the other, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

(e) This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

[Signature page follows]

## EXHIBIT A

ALL that tract or parcel of land situate in the Town of Vernon County of Oneida, State of NY being part of Lot 49 and Lot 52 in the said Town and being more particularly bounded and described as follows:

BEGINNING at a point in the easterly highway boundary of Ward Street, said point being at the intersection of said easterly line with the northerly line of a parcel of land heretofore conveyed to Monsour by deed recorded in the Oneida County Clerk's Office in Book of Deeds 2287 at page 176; thence along said easterly highway boundary of Ward Street, on a curve to the left, having a radius of 440.75 feet and an arc distance of 217.11 feet to a point of tangency therein, thence continuing along said easterly highway boundary N. 21 deg. 22' 18" W., a distance of 342.90 feet to a point in said easterly highway boundary, said point also being at a southwesterly corner of a parcel of land heretofore conveyed to Durant by deed recorded in the Oneida County Clerk's Office in Book of Deeds 2421 at page 148; thence N. 82 deg. 04' 54" E., along the southerly line of said lands of Durant, a distance of 408.55 feet to an iron pipe at the southeasterly corner thereof thence S. 18 deg. 49' 46" E., a distance of 473.18 feet to a point, said point being at the northeasterly corner of lands of said Monsour (2287/176) thence N. 89 deg. 48' 40" W. along the northerly line of said lands of Monsour, a distance of 244.27 feet to an angle point therein; thence continuing along said northerly line S. 70 deg. 29' 24" W. a distance of 168.75 feet to the point of beginning.

ALSO, ALL that tract or parcel of land situate in the Town of Vernon, County of Oneida, State of New York, being part of Lot 49 and Lot 52 in said Town of Vernon, and being more particularly bounded and described as follows:

BEGINNING at an iron pipe at the northeasterly corner of a parcel of land heretofore conveyed to Durant by deed recorded in the Oneida County Clerk's Office in book of Deeds 2421 at page 148; thence N. 18 deg. 49' 46" W. along the easterly line of said lands of Durant and the easterly line of a parcel of land heretofore conveyed to Edic by deed recorded in the Oneida County Clerk's Office in Book of Deeds 1852 at page 450, a distance of 399.46 feet to an iron pipe at an existing railroad tie fence post in the southerly line of the former West Shore Railroad, now land heretofore conveyed to Cheney by deed recorded in the Oneida County Clerk's Office in Book of Deeds 2625 at page 130, thence N. 85 deg. 31' 51" E. along said southerly line a distance of 916.35 feet to an iron road therein; thence S. 21 deg. 23' 25" E. along the westerly line of other lands of Cheney (2696/186) a distance of 631.79 feet to a corner fence post; thence S. 68 deg. 34' 56" W. along the northerly line of a parcel heretofore conveyed to Ward/Sweet by deed recorded in the Oneida County Clerk's Office in Book of Deeds 2471 at page 63 a distance of 915.24 feet to a point, said point being at the northwesterly corner of lands heretofore conveyed to H.P. Hood, Inc., by deed recorded in the Oneida County Clerk's Office in Book of Deeds 2435 at page 41, said point being at the northeasterly corner of a parcel of lands heretofore conveyed to Monsour by deed recorded in the Oneida County Clerk's Office in Book of Deeds 2287 at page 176; thence N. 18 deg. 49' 46" W., a distance of 506.63 feet to the point of beginning.

"Survey titled Map of Lands of Oneida Container Co., Inc. (Schiffenhaus Realty), part of lots 49 & 52, Village of Vernon, Oneida County New York made by David A. Vredenburgh LS 49159, dated June 25, 1998, shows:

1. Overhead electric lines and poles entering the property across the boundary designated N. 21 deg. 22'18" W., 342.90' feet at or just west of the most westerly property corner, and thence running through the premises along a line parallel to course designated N. 82 deg. 04' 54" E., 408.55'±, thence running southeasterly to a point located within the property. No easement of record.
2. Hydrants located within the property.
3. Old railroad fence running on and along course designated N. 85 deg. 31' 51" E., 916.35 feet.
4. Traces of an old wire fence running along course designated S. 21 deg. 23' 25" E., 631.79 feet.
5. Traces of an old wire fence running along course designated S. 68 deg. 34' 56" W., 915.25 feet.
6. Pole and overhead electric wires running outside and along course designated S. 70 deg. 29'24" W. 168.75 feet, continuing in an easterly direction and entering the property over course designated N. 89 deg. 48'24" W. 244.75 feet, said pole and wire continuing through the property in an easterly direction south, and then east of the existing Manufacturing and Warehouse building located on the premises.
7. No other violations or encroachments.



**SCHEDULE A**

**COUNTY OF ONEIDA**  
Receiver of Taxes  
800 Park Avenue  
Utica, New York 13501

**TOWN OF VERNON**  
Tax Collector  
4305 Peterboro Road  
Vernon, New York 13476

**VERNON-VERONA-SHERRILL CENTRAL SCHOOL DISTRICT**  
Receiver of Taxes  
P.O. Box 128  
Verona, New York 13478

**SCHEDULE B**

**EXEMPTION YEARS**

<b>Exemption Year (Assessment Roll Year)</b>	<b>County/Town Taxes</b>	<b>School Taxes</b>
Year One (03/01/2013)	01/01/2014 – 12/31/2014	07/01/2013 – 06/30/2014
Year Two (03/01/2014)	01/01/2015 – 12/31/2015	07/01/2014 – 06/30/2015
Year Three (03/01/2015)	01/01/2016 – 12/31/2016	07/01/2015 – 06/30/2016
Year Four (03/01/2016)	01/01/2017 – 12/31/2017	07/01/2016 – 06/30/2017
Year Five (03/01/2017)	01/01/2018 – 12/31/2018	07/01/2017 – 06/30/2018
Year Six (03/01/2018)	01/01/2019 – 12/31/2019	07/01/2018 – 06/30/2019
Year Seven (03/01/2019)	01/01/2020 – 12/31/2020	07/01/2019 – 06/30/2020
Year Eight (03/01/2020)	01/01/2021 – 12/31/2021	07/01/2020 – 06/30/2021
Year Nine (03/01/2021)	01/01/2022 – 12/31/2022	07/01/2021 – 06/30/2022
Year Ten (03/01/2022)	01/01/2023 – 12/31/2023	07/01/2022 – 06/30/2023
Year Eleven (03/01/2023)	01/01/2024 – 12/31/2024	07/01/2023 – 06/30/2024
Year Twelve (03/01/2024)	01/01/2025 – 12/31/2025	07/01/2024 – 06/30/2025
Year Thirteen (03/01/2025)	01/01/2026 – 12/31/2026	07/01/2025 – 06/30/2026
Year Fourteen (03/01/2026)	01/01/2027 – 12/31/2027	07/01/2026 – 06/30/2027
Year Fifteen (03/01/2027)	01/01/2028 – 12/31/2028	07/01/2027 – 06/30/2028