

99 OTIS STREET, LLC

and

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

Oneida County Industrial Development Agency
2018 Real Estate Lease
(99 Otis Street, LLC/NYSTEC Facility)

Oneida County, City of Rome, Rome City School District

Tax Account Nos.: 243.000-1-1.1.6
243.000-1-1.33

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of November 20, 2018, is by and between **99 OTIS STREET, LLC**, a New York limited liability company with an address of 584 Phoenix Drive, Rome, New York 13441 (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 has requested the Agency's assistance in connection with construction of a two-story, 32,110± square foot building (the "Improvements") situated on a 6.1± acre parcel of land located at the southwest corner of Hangar Road and Otis Street, Griffiss Business and Technology Park, City of Rome, Oneida County, New York (the "Land") and acquisition and installation of equipment in the Improvements (the "Equipment"), all for the purpose of leasing the second floor (comprising 16,779± square feet) to New York State Technology Enterprise Corporation ("NYSTEC") and creating first-floor office suites for future technology tenants (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the construction and equipping of the Improvements is referred to as the "Project"); and

WHEREAS, the Agency owns the Land and leases it, together with other land, to Griffiss Local Development Corporation ("GLDC") pursuant to (a) a Lease Agreement dated as of July 1, 2012 (the "GLDC 2012 Lease"), a memorandum of which was recorded on July 30, 2012 in the Oneida County Clerk's Office at Instrument No. R2012-000894 and (b) a Lease Agreement dated as of March 1, 2008 (the "GLDC 2008 Lease"), a memorandum of which was recorded on September 3, 2008, in the Oneida County Clerk's Office as Instrument No. R2008-001174; and

WHEREAS, the Agency and GLDC will release the Land from the GLDC Lease, the Company will lease the Equipment to the Agency, and the Agency will lease the Facility to the Company pursuant to a Lease Agreement (the "Lease Agreement"); and

WHEREAS, the Company will sublease a 16,779± square foot portion of the Facility (the "NYSTEC Facility") to NYSTEC for its operation pursuant to a Sublease Agreement (the "Sublease Agreement"), which Sublease Agreement may be amended from time to time; and

WHEREAS, the Company intends to sublease the balance of the Facility to other technology companies, to be identified at a later time (NYSTEC and the future tenants are each a "Sublessee" and collectively the "Sublessees"); and

WHEREAS, M&T Bank (the "Bank") will finance a portion of the costs of the Facility by making a loan to the Company in the maximum sum of \$3,000,000.00, to be secured by (a) a Mortgage and Security Agreement (the "Mortgage") from the Agency and the Company to the Bank and (b) a General Assignment of Rents (the "Assignment") from the Agency and the Company to the Bank; and

WHEREAS, the Bank will finance a portion of the costs of the build-out of the first floor of the Facility by making a loan to the Company in the maximum sum of approximately \$841,820.00, to be advanced when a first floor Sublessee is identified, and which will be secured by (a) a Mortgage and Security Agreement (the "Second Mortgage") from the Agency and the Company to the Bank and (b) a General Assignment of Rents (the "Second Assignment") from the Agency and the Company to the Bank; and

WHEREAS, Economic Development Growth Enterprises Corporation ("EDGE") will finance a portion of the costs of the Facility by making a loan to the Company in the maximum sum of \$525,000.00, to be secured by (a) a Mortgage and Security Agreement (the "EDGE Mortgage") from the Agency and the Company to EDGE and (b) an Assignment of Leases and Rents (the "EDGE Assignment"); and

WHEREAS, Mohawk Valley Economic Development District, Inc. ("MVEDD") will finance a portion of the costs of the Facility by making a loan to the Company in the maximum sum of \$375,000.00, to be secured by (a) a Mortgage and Security Agreement (the "MVEDD Mortgage") from the Agency and the Company to MVEDD and (b) an Assignment of Leases and Rents from the Agency and the Company to MVEDD (the "MVEDD Assignment"); and

WHEREAS, in order to induce the Company to develop the Facility, the Agency is willing to maintain its fee ownership of the Land and Improvements and acquire a leasehold interest in the Equipment constituting the Facility; and

WHEREAS, the Agency has agreed to continue its fee and leasehold ownership of 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, the Land has been 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 Land or the interest therein of GLDC or the occupancy thereof by GLDC commencing July 31, 2012 (the "Exempt

Taxes”), because the Agency owns the Land and the Land has been 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, GLDC has been making payments in lieu of the Exempt Taxes (“PILOT Payments”) pursuant to a Payment-In-Lieu-of-Tax Agreement dated as of July 1, 2012 (the “Existing PILOT Agreement”); 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 Lease 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 Lease 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 this agreement making provision for PILOT Payments and such assessments by the Company to the City of Rome, 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, Rome City School District and appropriate special districts (hereinafter each a “Taxing Authority” and collectively the “Taxing Authorities” more particularly set forth on Schedule A attached hereto and made a part hereof) in which any part of the Facility is or is to be located; and

WHEREAS, upon release of the Land from the GLDC Lease and execution of this PILOT Agreement, GLDC will cease making PILOT Payments under the Existing PILOT Agreement only with respect to the Facility;

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 Lease 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 all special assessments and ad valorem taxes coming due and payable during the term of the Lease 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 will pay no PILOT Payments on the NYSTEC Facility during each Exemption Year;

(b) The Company shall pay PILOT Payments on the balance of the Facility during each Exemption Year as follows:

Exemption Year 1	\$7,778
Exemption Year 2	\$11,666
Exemption Year 3	\$15,555
Exemption Year 4	\$15,866
Exemption Year 5	\$16,184
Exemption Year 6	\$19,444
Exemption Year 7	\$19,833
Exemption Year 8	\$20,229
Exemption Year 9	\$20,634
Exemption Year 10	\$21,047
Exemption Year 11	\$23,333
Exemption Year 12	\$23,799
Exemption Year 13	\$24,275
Exemption Year 14	\$24,761
Exemption Year 15	\$25,256
Exemption Year 16	\$27,766
Exemption Year 17	\$28,321
Exemption Year 18	\$28,888
Exemption Year 19	\$29,466
Exemption Year 20	\$30,055
Exemption Year 21 and thereafter	100% of Exempt Taxes

Such PILOT Payments shall be billed by the Taxing Authorities to the Company in the same proportion as taxes would have been billed but for the Agency's involvement, unless the Taxing Authorities have consented in writing to a specific allocation (For the purposes of preparing a PILOT bill, each Taxing Authority shall use the tax rate for the prior Exemption Year).

(b) Anything herein to the contrary, notwithstanding, this Agreement shall terminate on the date on which the Lease Agreement shall terminate and the Agency shall terminate its interest in the Facility pursuant to the Lease Agreement. The benefits under this Agreement are subject to the terms and conditions of a certain Job Creation and Recapture Agreement by the Company and NYSTEC for the benefit of the Agency dated as of November 20, 2018.

(c) 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 own 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 under the Lease Agreement if the Agency did not own 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 own 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 own 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 ownership of 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. Notwithstanding anything herein to the contrary, for so long as this Agreement is in effect, the Company hereby unconditionally and irrevocably waives its right, if any, to apply for and/or receive the benefit of any other real property tax exemption with respect to the Facility, including, without limitation, any real property tax exemption that may be available under Section 485-b and Section 485-e of the Real Property Tax Law.

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, or by a commercial overnight courier that guarantees next day delivery and provides a receipt, to the Agency and 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: 99 Otis Street, LLC
c/o Griffiss Local Development Corporation
584 Phoenix Drive
Rome, New York 13441
Attn.: Steven J. DiMeo

and

99 Otis Street, LLC

c/o New York State Technology Enterprise Corporation
500 Avery Lane
Rome, New York 13441
Attn.: Michele Salisbury, CFO

With a Copy To: Saunders Kahler, L.L.P.
185 Genesee Street, Suite 1400
Utica, New York 13501
Attn.: Camille T. Kahler, Esq.

To NYSTEC: New York State Technology Enterprise Corporation
500 Avery Lane
Rome, New York 13441
Attn.: Michele Salisbury, CFO

With a Copy To: The Matt Law Firm, PLLC
1701 Genesee Street
Utica, New York 13501
Attn.: John A. Jadhon, Esq.

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

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

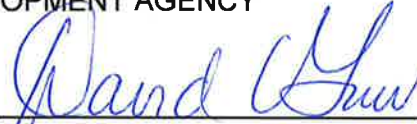
IN WITNESS WHEREOF, the parties have executed this **PILOT AGREEMENT** as of the date first above written.

[signature pages follow]

FIRST SIGNATURE PAGE OF A PILOT AGREEMENT BETWEEN ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY AND 99 OTIS STREET, LLC

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By:



David C. Grow
Chairman

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


On the 19th day of November 2018 before me, the undersigned a notary public in and for said state, personally appeared **David C. Grow**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

SECOND SIGNATURE PAGE OF A PILOT AGREEMENT BETWEEN ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY AND 99 OTIS STREET, LLC

99 OTIS STREET, LLC by its member:

GRIFFISS LOCAL DEVELOPMENT CORPORATION

By: 
Steven J. DiMeo
Authorized Representative

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

On the 20th day of November 2018 before me, the undersigned a notary public in and for said state, personally appeared **Steven J. DiMeo**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.


Notary Public



THIRD SIGNATURE PAGE OF A PILOT AGREEMENT BETWEEN ONEIDA COUNTY
INDUSTRIAL DEVELOPMENT AGENCY AND 99 OTIS STREET, LLC

99 OTIS STREET, LLC by its member:

NEW YORK STATE TECHNOLOGY
ENTERPRISE CORPORATION

By:


Michele Salisbury
Chief Financial Officer

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

On the 20th day of November 2018 before me, the undersigned a notary public in and for said state, personally appeared **Michele Salisbury** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.


Notary Public



SCHEDULE A

COUNTY OF ONEIDA

Receiver of Taxes
800 Park Avenue
Utica, New York 13501

CITY OF ROME

Receiver of Taxes
Rome City Hall
198 North Washington Street
Rome, New York 13440
Attn.: City Treasurer

ROME CITY SCHOOL DISTRICT

409 Bell Street
Rome, New York 13440
Attn.: David Dreidel, District Treasurer

SCHEDULE B
EXEMPTION YEARS

Exemption Year	County/City Taxes	School Taxes
Year One	01/01/2020 – 12/31/2020	07/01/2020 – 06/30/2021
Year Two	01/01/2021 – 12/31/2021	07/01/2021 – 06/30/2022
Year Three	01/01/2022 – 12/31/2022	07/01/2022 – 06/30/2023
Year Four	01/01/2023 – 12/31/2023	07/01/2023 – 06/30/2024
Year Five	01/01/2024 – 12/31/2024	07/01/2024 – 06/30/2025
Year Six	01/01/2025 – 12/31/2025	07/01/2025 – 06/30/2026
Year Seven	01/01/2026 – 12/31/2026	07/01/2026 – 06/30/2027
Year Eight	01/01/2027 – 12/31/2027	07/01/2027 – 06/30/2028
Year Nine	01/01/2028 – 12/31/2028	07/01/2028 – 06/30/2029
Year Ten	01/01/2029 – 12/31/2029	07/01/2029 – 06/30/2030
Year Eleven	01/01/2030 – 12/31/2030	07/01/2030 – 06/30/2031
Year Twelve	01/01/2031 – 12/31/2031	07/01/2031 – 06/30/2032
Year Thirteen	01/01/2032 – 12/31/2032	07/01/2032 – 06/30/2033
Year Fourteen	01/01/2033 – 12/31/2033	07/01/2033 – 06/30/2034
Year Fifteen	01/01/2034 – 12/31/2034	07/01/2034 – 06/30/2035
Year Sixteen	01/01/2035 – 12/31/2035	07/01/2035 – 06/30/2036
Year Seventeen	01/01/2036 – 12/31/2036	07/01/2036 – 06/30/2037
Year Eighteen	01/01/2037 – 12/31/2037	07/01/2037 – 06/30/2038
Year Nineteen	01/01/2038 – 12/31/2038	07/01/2038 – 06/30/2039
Year Twenty	01/01/2039 – 12/31/2039	07/01/2039 – 06/30/2040