

BAGGS SQUARE PARTNERS, LLC

and

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

Oneida County Industrial Development Agency
2019 Real Estate Lease
(Baggs Square Partners, LLC Facility)

Oneida County, City of Utica, Utica City School District

Tax Account No.: 318.044-01-44

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of June 4, 2019, is by and between **BAGGS SQUARE PARTNERS, LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with an address of 4828 Cedarvale Road, Syracuse, New York 13215 (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 that the Agency assist in the acquisition of a .924± acre parcel of land located at 310 Broad Street, City of Utica, Oneida County, New York (the "Land") and the four-story, 54,000± square foot vacant historic industrial building situated thereon (the "Improvements"); renovation and rehabilitation of the Improvements to convert 47,460± square feet into 24 residential apartment units, 9,000± square feet into commercial/office space, parking lots, green space, infrastructure and amenities to service the same, and acquisition and installation of equipment in the Improvements (the "Equipment"), all for the purpose of providing a mixed-use building including market rate loft apartments for lease to attract employers and to enhance economic development in the region (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the renovation, rehabilitation and equipping of the Improvements is referred to as the "Project"); and

WHEREAS, M&T Bank (the "Bank") has agreed to finance a portion of costs of the Project by making (a) a construction loan to the Company in the principal sum of \$3,525,000.00 to be secured by a Mortgage dated June 4, 2019 (the "First Mortgage") from the Agency and the Company to the Bank and a General Assignment of Rents dated June 4, 2019 (the "First Assignment") from the Agency and the Company to the Bank; and (b) a loan to the Company in the principal sum of \$2,450,000.00 to be secured by a Mortgage dated June 4, 2019 (the "Second Mortgage") from the Agency and the Company to the Bank and a General Assignment of Rents dated June 4, 2019 (the "Second Assignment") from the Agency and the Company to the Bank; 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, 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 the first taxable status date following completion of the Project, which is estimated to be August 1, 2020 (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 this Agreement in the form of PILOT Payments (defined below) 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 City of Utica 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, the Utica City 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 Lease 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 will pay 100% of all Exempt Taxes until a Certificate of Occupancy is issued. After a Certificate of Occupancy is issued, 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) no Exempt Taxes from the first through and including the fourth Exemption Year; and
- (ii) twenty-five percent (25%) of Exempt Taxes during the fifth Exemption Year; and
- (iii) fifty percent (50%) of Exempt Taxes from the sixth through and including the seventh Exemption Year; and
- (iv) seventy-five percent (75%) of Exempt Taxes during the eighth Exemption Year; and
- (v) ninety percent (90%) of Exempt Taxes from the ninth through and including the tenth Exemption Year; and
- (iii) one hundred percent of Exempt Taxes after the tenth 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 Project Completion and Recapture Agreement dated as of June 4, 2019.

(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, shall constitute an Event of Default under Section 7.1(a)(vi) of the Leaseback Agreement, and the Agency may take any one or all remedial steps afforded it in Section 7.2 of the Leaseback Agreement; 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. PILOT Payments that are delinquent under this Agreement shall be subject to a

late penalty of five percent (5%) of the amount due which shall be paid by the Company to the affected Taxing Authority at the time the PILOT Payment is paid. For each month, or part thereof, that the PILOT Payment is delinquent beyond the first month, interest shall accrue to and be paid to the affected Taxing Authority on the total amount due plus a late payment penalty in the amount of one percent (1%) per month until the payment is made. Anything herein to the contrary, notwithstanding, upon the failure of the Company in making any payment (or causing any payment to be made) when due hereunder and upon failure to cure such default within thirty (30) days of receipt of notice as herein provided, the Agency shall have the right to terminate the Leaseback Agreement and this PILOT Agreement, and the Company shall henceforth pay one hundred (100%) percent of the Exempt Taxes, together with all costs of collection, including but not limited to attorneys' fees. Nothing herein contained shall be deemed to limit any other rights and remedies the Agency may have hereunder or under any other Transaction Document.

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. 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 Sections 485-a, 485-b and 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 (i) mailed by United States registered or certified mail, postage prepaid, return receipt requested or (ii) when delivered by a commercial overnight courier that guarantees next day delivery and provides a receipt, to the Agency, the Bank, Enhanced 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: Baggs Square Partners, LLC
4828 Cedarvale Road
Syracuse, New York 13215
Attn.: Gary Thurston, Managing Member

With a Copy To: Lynn D'Elia Temes & Stanczyk LLC
100 Madison Street
Tower I, Suite 1905
Syracuse, New York 13202
Attn.: Anthony J. D'Elia, Esq.

To the Bank: M&T Bank
One M&T Plaza
Buffalo, New York 14203
Attn.: Office of General Counsel

With a Copy To: Hancock Estabrook, LLP
1500 AXA Tower I
100 Madison Street
Syracuse, New York 13202
Attn.: Robert D. Poyer, Esq.

To Enhanced: EC Federal Broad Street, LLC
201 St. Charles Avenue, Suite 3400
New Orleans, LA 70170
Attn.: Shane McCarthy

With a Copy To: Stinson Leonard Street LLP
1299 Farnam Street, Suite 1500
Omaha, Nebraska 68102
Attn.: David Lutz


provided, that the Agency, the Bank, Enhanced 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]

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

BAGGS SQUARE PARTNERS, LLC
A New York limited liability company
By: Baggs Square Partners MM LLC
Its: Managing Member

By: 

Gary V. Thurston
Manager

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

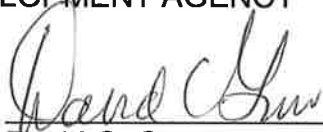
By: _____
David C. Grow
Chairman

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

BAGGS SQUARE PARTNERS, LLC
A New York limited liability company
By: Baggs Square Partners MM LLC
Its: Managing Member

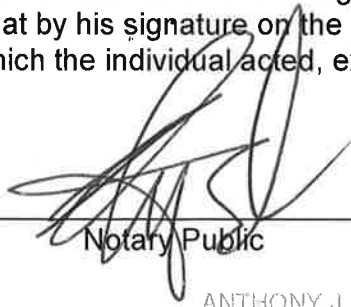
By: _____
Gary V. Thurston
Manager

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By:  _____
David C. Grow
Chairman

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

On the 13 day of June 2019 before me, the undersigned a notary public in and for said state, personally appeared **Gary V. Thurston**, 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

ANTHONY J. D'ELIA
Notary Public in the State of New York
Qualified in Onondaga County
No. 02DE5056520
My Commission Expires March 4, 2022

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

On the ___ day of May 2019 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 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

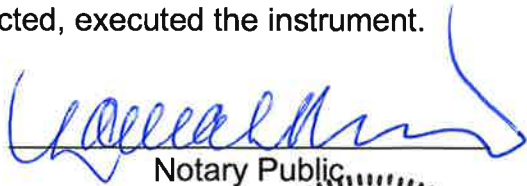
STATE OF NEW YORK)
 : ss.:
COUNTY OF ONONDAGA)

On the ___ day of _____ 2019 before me, the undersigned a notary public in and for said state, personally appeared **Gary V. Thurston**, 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

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

On the 31st day of May 2019 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 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



SCHEDULE A

COUNTY OF ONEIDA

Receiver of Taxes
800 Park Avenue
Utica, New York 13501

CITY OF UTICA

Receiver of Taxes
One Kennedy Plaza
Utica, New York 13502
Attn.: City Treasurer

UTICA CITY SCHOOL DISTRICT

106 Memorial Drive
Utica, New York 13501
Attn.: Pamela Backman, Treasurer

SCHEDULE B

EXEMPTION YEARS

(TO BE ADJUSTED BASED UPON COMPLETION DATE OF FACILITY)

Exemption Year (Assessment Roll Year)	County Taxes	City Taxes	School Taxes
Year One (08/01/2020)	01/01/2021 – 12/31/2021	05/01/2021 – 04/30/2022	07/01/2021 – 06/30/2022
Year Two (08/01/2021)	01/01/2022 – 12/31/2022	05/01/2022 – 04/30/2023	07/01/2022 – 06/30/2023
Year Three (08/01/2022)	01/01/2023 – 12/31/2023	05/01/2023 – 04/30/2024	07/01/2023 – 06/30/2024
Year Four (08/01/2023)	01/01/2024 – 12/31/2024	05/01/2024 – 04/30/2025	07/01/2024 – 06/30/2025
Year Five (08/01/2024)	01/01/2025 – 12/31/2025	05/01/2025 – 04/30/2026	07/01/2025 – 06/30/2026
Year Six (08/01/2025)	01/01/2026 – 12/31/2026	05/01/2026 – 04/30/2027	07/01/2026 – 06/30/2027
Year Seven (08/01/2026)	01/01/2027 – 12/31/2027	05/01/2027 – 04/30/2028	07/01/2027 – 06/30/2028
Year Eight (08/01/2027)	01/01/2028 – 12/31/2028	05/01/2028 – 04/30/2029	07/01/2028 – 06/30/2029
Year Nine (08/01/2028)	01/01/2029 – 12/31/2029	05/01/2029 – 04/30/2030	07/01/2029 – 06/30/2030
Year Ten (08/01/2029)	01/01/2030 – 12/31/2030	05/01/2030 – 04/30/2031	07/01/2030 – 06/30/2031