

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

and

ROME INDUSTRIAL DEVELOPMENT CORPORATION

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PAYMENT-IN-LIEU-OF-TAX AGREEMENT

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Oneida County Industrial Development Agency  
2005 Real Estate Transfer  
(RIDC EMI Facility)

County of Oneida

and

City of Rome

and

Rome City School District

Tax Account Number: 222.000-0001-~~072.001~~

072.003

7.64 Acres

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

THIS AGREEMENT, dated as of July 1, 2005, is by and between **ROME INDUSTRIAL DEVELOPMENT CORPORATION**, a public benefit corporation duly organized and validly existing under the laws of the State of New York, having its principal office at 139 West Dominick Street, Rome, New York 13440 (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 153 Brooks Road, Rome, New York 13441-4105 (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 24 of the Consolidated Laws of New York, as amended, (the "Enabling Act"), and Chapter 372 of the 1970 Laws 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 Agency has agreed to accept title to 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 Agency has agreed to lease the Facility to the Company pursuant to a Lease Agreement dated as of July 1, 2005 between the Agency and the Company (the "Lease Agreement") such that title will remain in the Agency throughout the Lease Term (as such term is defined in the Lease Agreement); and

WHEREAS, the Facility will be exempt from, among other things, 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 (the "Real Property Taxes") commencing on the first date of the Exemption Term, as that date is established by the parties and as described herein, because the Facility is, or will be, under the jurisdiction, supervision and/or control of the Agency and used for a purpose within the meaning of the applicable Constitutional and statutory provisions, including the Enabling Act, provided, however, such exemption will 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 not be obligated to pay any Real Property Taxes which become a lien against or are due with respect to the Facility during the period from July 26, 2005 through the term of the Lease Agreement (the "Exemption Term") (each year measured by the twelve month period commencing with July 26, 2005 and thereafter commencing on the last Tuesday of the following July, herein referred to as an "Exemption Year"); and

WHEREAS, as a condition precedent to its obligation to accept title to the Facility and enter into the Lease Agreement, the Agency requires that the Company enter into this Agreement with the Agency whereby the Company would agree (a) to make certain payments to the City of Rome (or any village which may be incorporated after the date hereof within which the Facility is or may be wholly or partially located), the County of Oneida, the Rome City School District and appropriate special districts (hereinafter each a "Taxing Jurisdiction", and collectively, the "Taxing Authorities") in which any part of the Facility is or is to be located in lieu of the Real Property Taxes that the Company would otherwise be obligated to pay if the Facility were not exempt from such Real Property Taxes, (b) to pay all special assessments and ad valorem levies imposed upon the Facility for which the Facility is not exempt, and (c) to pay all real Property Taxes which are or become a lien against, or are to become due, either before the Exemption Term commences or after the Exemption Term ends; 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 Lease Agreement.

NOW, THEREFORE, to provide for certain payments in lieu of taxes 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 Real Property taxes, special assessments and ad valorem levies that are a lien against or due with respect to the Facility prior to the Exemption Term, no later than the last day on which such Real Property Taxes, special assessments and ad valorem levies may be paid without penalty; and

(b) all special assessments and ad valorem levies coming due and payable during the Exemption Term for which the Facility is not exempt, no later than the last day during which such payments may be made without penalty. Notwithstanding anything to the contrary herein contained, with respect to special assessments and ad valorem levies that may be lawfully paid in installments, the Company may elect to pay the same in such installments.



2. The Company shall make to each Taxing Authority as set forth on Schedule A attached hereto and made a part hereof, PILOT Payments in lieu of the Real Property Taxes during each Exemption Year.

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 on which the Real Property Taxes to which each PILOT Payment corresponds could otherwise be made without penalty if the Facility were owned by the Company and not by the Agency.

4. The PILOT Payments to be made by the Company pursuant to this Agreement are intended to be in lieu of all Real Property Taxes that would have to be paid on the Facility leased to the Company by the Lease Agreement.

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 (if such difference is a positive number). Furthermore, inasmuch as the PILOT Payments herein agreed to be made by the Company are intended to be in lieu of all Real Property 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 Real Property Taxes, in the aggregate, by a private corporation (which is not exempt from Real Property Taxes) on account of its ownership of the Facility.

6. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective the successors and assigns.

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 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 Company were the owner of 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 Company were the owner of 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.

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. Unless provision to the contrary is set forth on Schedule B, this Agreement supersedes any prior agreements for PILOT Payments between the Agency and the Company pertaining to the Facility.

10. (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 received or upon refusal of receipt 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:

If to the Agency:

Oneida County Industrial Development Agency  
153 Brooks Road  
Rome, New York 13441-4105  
Attn: Robert R. Calli, Chairman

With a copy to:

Kernan & Kernan, P.C.  
258 Genesee Street, Suite 600  
Utica, New York 13502-4691  
Attn: Michael H. Stephens, Esq.

If to the Company:

Rome Industrial Development Corporation

139 West Dominick Street  
Rome, New York 13440  
Attn: Mark Kaucher, Executive Director

With a copy to:

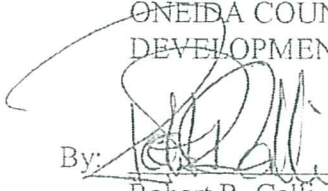
David Rapke, Esq.  
Rapke & Plumley  
320 North George Street  
P.O. Box 928  
Rome, New York 13440

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.

(d) This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without reference to its choice of law, rules or principles.

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

ONEIDA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

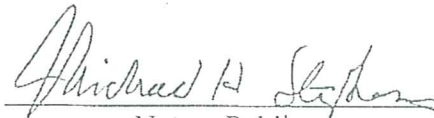
By:   
Robert R. Calli  
Its Chairman

ROME INDUSTRIAL DEVELOPMENT  
CORPORATION

By:   
Mark Kaucher  
Executive Director

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

On the 21 day of July 2005 before me, the undersigned a notary public in and for said state, personally appeared **Robert R. Calli**, 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.



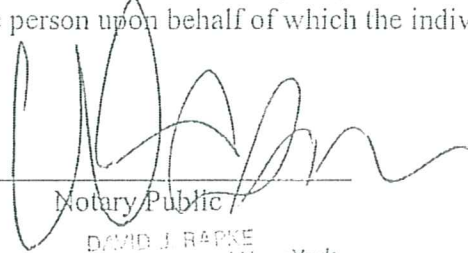
Notary Public

MICHAEL H. STEPHENS  
Notary Public, State of New York  
Reg # 02ST6108758  
Appointed in Oneida County  
My Commission Expires Apr. 19, 20 28



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

On the 21 day of July 2005 before me, the undersigned a notary public in and for said state, personally appeared **Mark Kaucher**, 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  
DAVID J. RAPKE  
Notary Public, State of New York  
No. 4744031  
Qualified in Oneida County  
Commission Expires: 2/28/06

SCHEDULE A

Receiver of Taxes  
Oneida County  
800 Park Avenue  
Utica, NY 13501

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

Receiver of Taxes  
Rome City School District  
112 East Thomas Street  
Rome, New York 13440  
Attn.: Michelle Boek, Treasurer

PAYMENT SCHEDULE

<u>Year</u>	<u>Percentage of Taxes to be Paid</u>
1	50% - 06
2	50% - 07
3	50% - 08
4	50% - 09
5	50% - 10
Thereafter	100%

Payments to be allocated among tax in jurisdictions based upon the ratio of each jurisdiction's normal tax to the total of normal taxes for the facility.

**SCHEDULE B**

None

SCHEDULE A

5180  
~~5880~~ Success Drive  
Tax Map 222.000-0001-~~072.001~~  
072.003

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Rome, County of Oneida and State of New York, designated as Lots 1, 2, 3, 4, 5, and 6 shown on a Map entitled Map and Plan of West Rome Industrial Development Corporation made by Dale Engineering Company, dated May 12, 1972 and filed in the Oneida County Clerk's Office on May 15, 1972 Map Roll 827.

TOGETHER with all right, title and interest in and to the premises, the land lying in the streets and roads adjoining the premises, and all easements and rights-of-way now or hereafter existing in connection therewith.

SUBJECT to all easements, restrictions, covenants, conditions, reservations, and rights-of-way of record.

BEING part of the same premises conveyed by Coe College of Iowa to Rome Industrial Development Corporation by Warranty Deed dated December 2, 1969, and recorded in the Oneida County Clerk's Office on December 31, 1969, in Book 1906 of Deeds at Page 355.

7.64 Acres