

LAURA S. RUBERTO
lruberto@bsk.com
P: 315.738.1223

June 10, 2021

ELECTRONIC MAIL
RETURN RECEIPT REQUESTED

Joseph Surace, Assessor
City of Rome
198 North Washington Street
Rome NY 13440

Re: *Oneida County Industrial Development Agency 2020 Real Estate Lease*
(Orgill, Inc. Facility)

Dear Mr. Surace:

Please be advised the Payment in Lieu of Tax Agreement dated April 14, 2020 relating to the Orgill, Inc. Facility has been assigned by Orgill, Inc. (the "Company") to Built In A Day (NY), LLC (the "Purchaser"). Attached please find a copy of the Omnibus Assignment Agreement, which is effective June 10, 2021.

To accomplish a conveyance to the Purchaser without interrupting the IDA's interest in the Facility, the deed from the Company to the Purchaser expressly states that the conveyance is subject in all respects to the Lease Agreement and the Leaseback Agreement, and the fee estate will not merge with the leasehold estates.

Should you have any questions on the enclosed, please do not hesitate to contact our offices.

Very truly yours,

BOND, SCHOENECK & KING, PLLC



Laura S. Ruberto
Legal Assistant

Attachment

c: Michelle Kennedy, Esq.
Daniel Hanan, LLC
Attached Distribution List

Distribution List

Anthony J. Picente, Jr.
Oneida County Executive
800 Park Avenue
Utica, New York 13501

Jacqueline M. Izzo, Mayor
City of Rome
Rome City Hall
198 North Washington Street
Rome, New York 13440

Anthony R. Carvelli
Commissioner of Finance
Oneida County Finance Department
800 Park Avenue
Utica NY 13501

David C. Nolan, City Treasurer
City of Rome
Rome City Hall
198 North Washington Street
Rome, New York 13440

Kathy Pilbeam, Director
Real Property Tax Services
Oneida County
800 Park Avenue
Utica, New York 13501

Paul Hagerty, President
Board of Education
Rome City School District
409 Bell Street
Rome, New York 13440

County of Oneida
Receiver of Taxes
800 Park Avenue
Utica, New York 13501

Peter C. Blake
Superintendent of Schools
Rome City School District
409 Bell Street
Rome, New York 13440

Receiver of Taxes
Rome City School District
Attn.: David Dreidel
409 Bell Street
Rome, New York 13440

When recorded, return to:

BUILT IN A DAY (NY) LLC
c/o W. P. Carey Inc.
One Manhattan West,
395 9th Avenue, 58th Floor
New York, New York 10001
Attention: Legal Transactions Department

OMNIBUS ASSIGNMENT AGREEMENT

THIS OMNIBUS ASSIGNMENT AGREEMENT (the “Assignment”), is made as of June 10, 2021 (the “Effective Date”) by and between **ORGILL, INC.**, a corporation organized and existing under the laws of the State of Tennessee, having an address at 3742 Tyndale Drive, Memphis, Tennessee 38125 (“Assignor”) and **BUILT IN A DAY (NY) LLC**, a Delaware limited liability company, having an address at c/o W. P. Carey Inc., One Manhattan West, 395 9th Avenue, 58th Floor, New York, New York 10001 (“Assignee”), and consented to by the **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation organized and existing under the laws of the State of New York (the “State”), having an address at 584 Phoenix Drive, Rome, New York 13441 (“Agency”).

W I T N E S S E T H:

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; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 372 of the Laws of 1970 of the State, as amended (collectively, with the Enabling Act, the “Act”) and is empowered under the Act to undertake the Project (as hereinafter defined) in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, by resolution dated January 17, 2020, the Agency agreed to undertake a project on behalf of the Assignor consisting of the acquisition of an approximately 63.78 acre parcel of land located at Atlas Drive, Griffiss Business and Technology Park, City of Rome, Oneida County, New York as more particularly described on **Exhibit A** (the “Land”), construction on the Land of an approximately 790,000 square foot distribution center (the “Improvements”), and acquisition and installation of equipment in the Improvements (the “Equipment”), all for the purpose of providing a distribution center to service retail customers in the northeast United States (the Land, the Improvements and the Equipment are referred to collectively as the “Facility” and the acquisition, construction and equipping of the Improvements is referred to as the “Project”); and

WHEREAS, in connection with the Project, (A) the Agency acquired a controlling interest in the Project pursuant to a certain lease agreement (the “Lease Agreement”) by and between the Assignor and the Agency dated as of April 14, 2020 pursuant to which the Assignor leased to the Agency the Project and a memorandum of which was recorded in the Oneida County Clerk’s office (the “Clerk’s Office”); (B) the Agency and the Assignor entered into a certain leaseback agreement (the “Leaseback Agreement”) dated as of April 14, 2020, pursuant to which the Assignor agreed to undertake the Project as agent of the Agency and the Assignor further agreed to lease the Project Facility from the Agency, a memorandum of which was recorded in the Clerk’s Office; (C) the Agency and the Assignor entered into a certain payment in lieu of tax agreement (the “PILOT Agreement”) dated April 14, 2020; (D) the Agency and the Assignor entered into a pilot mortgage and security agreement (the “PILOT Mortgage”) dated April 14, 2020; (E) the Agency and the Assignor entered into an environmental compliance and indemnification agreement (the “Environmental Compliance Agreement”) dated April 14, 2020; (F) the Agency and the Assignor entered into a job creation and recapture agreement (the “Recapture Agreement”) dated April 14, 2020; and (G) the Assignor executed various certificates relating to the Project (collectively, with the Lease Agreement, the Leaseback Agreement, the PILOT Agreement, the PILOT Mortgage, the Environmental Compliance Agreement and the Recapture Agreement, the “IDA Documents”); and

WHEREAS, the Assignor has entered into a certain Purchase and Sale Agreement dated May 4, 2021 pursuant to which it will sell the Facility to the Assignee (the “Sale Transaction”), which sale includes the assignment to the Assignee of the IDA Documents (the “Assignment Transaction”); and

WHEREAS, pursuant to Section 6.6 of the Leaseback Agreement the Agency acknowledged that the Assignor intended to sell, assign or transfer its interest in the Facility and in the IDA Documents to corporate entities, limited liability companies, limited liability partnerships, banks, trust companies, insurance companies, real estate investment companies, real estate investment trusts or financial intuitions (or any combination of the foregoing) and that the Agency would not unreasonably withhold, nor delay consent to such sale, assignment or transfer so long as the requirements set out in Section 6.3 (a) of the Leaseback Agreement are met; and

WHEREAS, pursuant to a resolution duly adopted by the Agency on April 30, 2021, the Agency consented to the Sale Transaction and the Assignment Transaction; and

WHEREAS, the parties hereto have agreed that the Assignor will assign to the Assignee all of the Assignor’s rights under the IDA Documents; and

WHEREAS, pursuant to Section 6.3 of the Leaseback Agreement, liability under the Leaseback Agreement shall be expressly apportioned between the Assignor and Assignee; and

WHEREAS, the Assignor and the Assignee expressly agree that the Assignor shall remain liable for all of its covenants, obligations and liabilities under the IDA Documents.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto hereby agree as follows:

SECTION 1. ASSIGNMENT.

(A) Assignor hereby assigns to the Assignee all of its rights, title and interest, under the IDA Documents.

(B) Notwithstanding the foregoing assignment pursuant to paragraph (A) of Section 1, Assignor hereby agrees that it shall continue to be liable for all of its covenants, obligations and liabilities under the IDA Documents.

(C) The Assignor does hereby agree to defend, indemnify and hold harmless Assignee from any liability, damages, causes of action, expenses, losses, claims, obligation, debt, and in addition, any suspension, discontinuation, recapture, and/or termination of the financial assistance as described within the Recapture Agreement, as well as reasonable attorneys' fees incurred by the Assignee, by reason of, or resulting from the foregoing, related to any claims by the Agency against the Assignee under the IDA Documents based on the failure of the Assignor to have fulfilled, performed and discharged all of the various commitments, obligations and liabilities of the Assignor under and by virtue of the IDA Documents arising or accruing both prior to and on and after the date of this Assignment.

(D) Neither the validity nor the enforceability of the IDA Documents shall be adversely affected by this Assignment.

(E) The Assignor shall, within (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of this Assignment.

SECTION 2. ASSIGNEE REPRESENTATIONS.

(A) The Assignee is qualified to transact business in the State and has duly authorized the taking of and has taken any and all actions necessary to carry out and give effect to the transactions contemplated to be performed on its part by the Sale Transaction and the Assignment Transaction.

(B) The Assignee shall take no action that would cause the Project to fail to continue to constitute a "project" under the Act.

(C) The execution and delivery by the Assignee of this Assignment, the compliance with the provisions of this Assignment and the consummation of the transactions contemplated herein do not and will not conflict with or constitute on the part of the Assignee a breach of or default under the Assignee's organizational documents or any indenture, mortgage, deed of trust, bank loan or other credit agreement or other agreement or instrument to which the Assignee is a party or by which it or any of its property may be bound or affected for which a valid consent has not been secured; nor is any approval or any action by any governmental authority or agency required in connection with the execution, delivery or performance hereof by the Assignee other than such approvals or actions by any governmental authority or agency already received or taken as of the date hereof.

Any future assignment by Assignee of its rights, title and interest under the IDA Documents shall be subject to and in compliance with Section 6.3 and Section 6.6 of the Leaseback Agreement and subject to the consent of the Agency.

SECTION 3. ASSIGNOR REPRESENTATIONS.

(A) The Assignor is qualified to transact business in the State and has duly authorized the taking of and has taken any and all actions necessary to carry out and give effect to the transactions contemplated to be performed on its part by the Sale Transaction and the Assignment Transaction.

(B) The Assignor shall take no action that would cause the Project to fail to continue to constitute a “project” under the Act.

(C) The execution and delivery by the Assignor of this Assignment, the compliance with the provisions of this Assignment and the consummation of the transactions contemplated herein do not and will not conflict with or constitute on the part of the Assignor a breach of or default under the Assignor’s organizational documents or any indenture, mortgage, deed of trust, bank loan or other credit agreement or other agreement or instrument to which the Assignor is a party or by which it or any of its property may be bound or affected for which a valid consent has not been secured; nor is any approval or any action by any governmental authority or agency required in connection with the execution, delivery or performance hereof by the Assignor other than such approvals or actions by any governmental authority or agency already received or taken as of the date hereof.

(D) The Assignor acknowledges that with this Assignment, insurance and condemnation proceeds are directed to Assignee in accordance with Sections 3.6, 4.1(a)(iii) and 4.2(a)(iii) of the Leaseback Agreement and Article 7 of the Purchase and Sale Agreement.

SECTION 4. NO DEFAULTS.

(A) Assignor hereby represents and warrants to the Agency and the Assignee that as of the date of this Assignment there exists no event of default under the IDA Documents and no event exists which, with the giving of notice or passage of time or both, would become an event of default under any of the IDA Documents.

(B) The Assignee hereby represents and warrants to the Agency that, immediately after giving effect to this Assignment, there exists no event of default under any of the IDA Documents and no event exists which, with the giving of notice or passage of time or both, would become an event of default under any of the IDA Documents.

(C) Based on representations made to it by Assignor and to the best of its knowledge, the Agency hereby represents and warrants to the Assignee that:

(i) As of the date of this Assignment there exists no event of default under any of the IDA Documents and no event exists which, with the giving of notice or passage of time or both, would become an event of default under any of the IDA Documents.

(ii) Other than the IDA Documents, no other agreements concerning the Project, whether oral or written, exist between the Agency and Assignor.

(iii) The Agency has not received written notice that the Agency or Assignor is in violation of any governmental law or regulations applicable to their respective interests in the Project or the operation thereof, including, without limitation, any environmental laws or the Americans with Disabilities Act, and has no reason to believe that there are grounds for any claims of any such violation.

(iv) No voluntary actions or, to the best of the Agency's knowledge, involuntary actions are pending against the Agency under the bankruptcy laws of the United States or any state thereof.

SECTION 5. MISCELLANEOUS.

(A) This Assignment shall be binding upon and inure to the benefit of the Agency, Assignor and the Assignee and their respective successors and assigns.

(B) This Assignment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

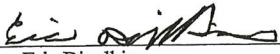
(C) This Assignment shall be governed by, and construed in accordance with, the law of the State.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned have executed this Assignment as of the date first set forth hereinabove.

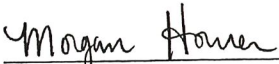
ASSIGNOR:

ORGILL, INC.,
a Tennessee corporation

By: 
Name: Eric Divelbiss
Title: Chief Financial Officer

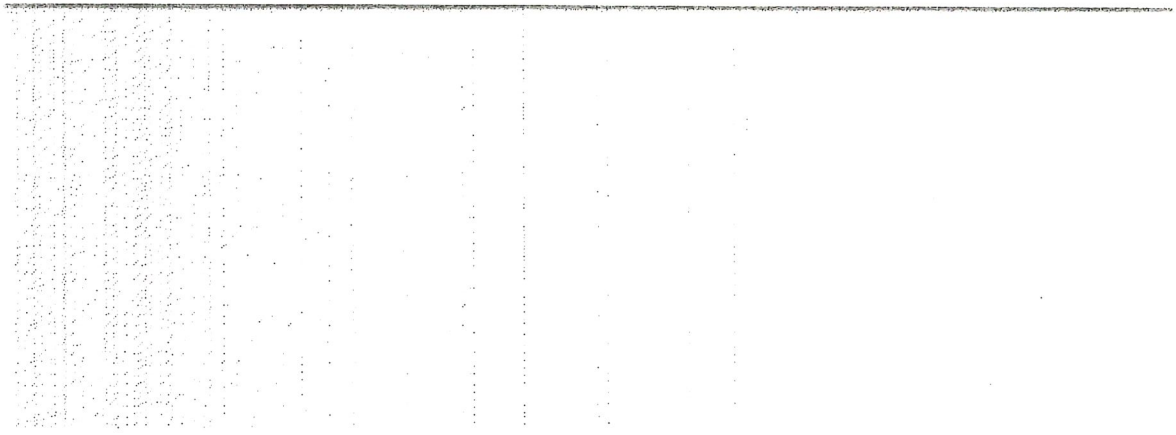
STATE OF TENNESSEE)
) SS.:
COUNTY OF Shelby)

On the 9th day of June in the year 2021 before me, the undersigned, a notary public in and for said state, personally appeared Eric Divelbiss, 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



My Commission Expires Feb.1, 2022



ASSIGNEE:

BUILT IN A DAY (NY) LLC,
a Delaware limited liability company

By: WPC HOLDCO LLC,
a Maryland limited liability
company, its sole member

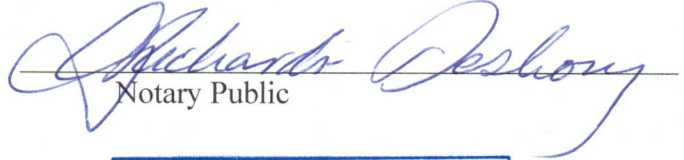
By: W. P. Carey Inc.,
a Maryland corporation,
its sole member

By: 
Name: Tyler Swann
Title: Executive Director

[NOTARY PAGE FOLLOWS]

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

On this 7th day of June, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Tyler Swann, 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

GILLIAN RICHARDS-DESHONG
Notary Public, State of New York
Registration #01R16319653
Qualified In Kings County
Commission Expires 2/23/23

Exhibit A
Description of the Land

ALL THAT PIECE OR PARCEL OF LAND situate at New York State Route 825, City of Rome, County of Oneida, State of New York bounded and described as follows:

BEGINNING at a point in the easterly boundary of the proposed highway boundary for an existing State Highway (New York State Route 825), at its intersection with a proposed realignment of an existing City Street (Atlas Drive) said point being South 03 degrees 02 minutes 06 seconds East 3282.77 feet from a capped iron rod found labeled "DFAS12", said point being the point of beginning;

THENCE the following four courses and distances along the said proposed realignment of the said Atlas Drive;

- (1) On a curve to the left, having a radius of 3213.69 feet, an arc length of 189.85 feet, and a delta angle of 03 degrees 23 minutes 05 seconds to a point;
- (2) On a curve to the left, having a radius of 737.95 feet, and arc length of 291.99 feet, and a delta angle of 22 degrees 40 minutes 13 seconds to a point;
- (3) On a curve to the right, having a radius of 355.13 feet, and arc length of 110.09 feet, and a delta angle of 17 degrees 45 minutes 39 seconds to a point and;
- (4) North 00 degrees 00 minutes 00 seconds West, 187.42 feet to a point in the lien between the remaining lands of Oneida County Industrial Development Agency (OCIDA)(Instrument Number 2008-014913) on the North and the property herein described on the South;

THENCE the following 6 courses and distances through the lands of said OCIDA:

- (1) North 90 degrees 00 minutes 00 seconds East, 756.22 feet to a point;
- (2) South 00 degrees 00 minutes 00 seconds East, 179.01 feet to a capped iron rod set;
- (3) North 90 degrees 00 minutes 00 seconds East, 698.79 feet to a point;
- (4) South 00 degrees 00 minutes 00 seconds East, 532.36 feet to a capped iron rod set;
- (5) South 33 degrees 18 minutes 24 seconds West, 454.75 feet o a capped iron rods set; and
- (6) South 07 degrees 34 minutes 02 seconds East, 544.11 feet to a capped iron rod set in the line between the lands of Joan Anne Kowalski et al (Instrument Number 2006-001609) on the southeast and the property herein described on the northwest;

THENCE South 40 degrees 19 minutes 16 seconds West along the last mentioned division line 393.86 feet to a point in the line between the lands of Tami A. Garland (Liber 2801 of Deeds at Page 54) on the southwest and the property herein described on the northeast;

THENCE North 73 degrees 51 minutes 09 seconds West along the last mentioned division line, and along the lands of Brian Norris et al (Instrument Number 2004-026651), 313.28 feet to an iron pipe found in the lien Edward J. Jarosz et al (Liber 2786 of Deeds at Page 660) on the southwest and the property herein described on the northeast;

THENCE North 60 degrees 49 minutes 23 seconds West along the last mentioned division line, and along the lands of Guy Pirillo (Instrument Number 2011-018882) 1054.98 feet to a concrete monument found in the line between the lands of Ronald P. Gualtieri (Instrument Number 2007-008836) on the southwest and the property herein described on the northeast;

THENCE North 65 degrees 32 minutes 12 seconds West along the last mentioned division line, and along the lands of Griffiss Local Development Corporation (Instrument Number 2007-008834), 167.20 feet to a point in the line between the lands of the said Gualtieri on the northwest and the property herein described on the southeast;

THENCE the following three courses and distances along the lands of the said Gualtieri:

- (1) North 63 degrees 29 minutes 40 seconds East, 48.63 feet to a point;
- (2) North 07 degrees 20 minutes 45 seconds West, 149.18 feet to a point; and
- (3) South 82 degrees 28 minutes 22 seconds West, 226.72 feet to a point in the

easterly boundary of the proposed highway boundary of the above reference New York State Route 825;

THENCE the following three courses and distances along the proposed highway boundary:

- (1) North 07 degrees 20 minutes 37 seconds West, 97.15 feet to an iron rod found;
- (2) North 01 degrees 49 minutes 11 seconds West, 591.81 feet to a capped iron rod found; and
- (3) North 01 degrees 53 minutes 08 seconds East, 151.13 feet to the point of beginning, containing 63.78 acres. All bearings are referred to Grid North of Central Meridian.

The above-described premises are shown on a map entitled "ALTA Map of Property of Orgill, Inc. to be Conveyed by Oneida County Industrial Development Agency, T.M #243.00-1-1.2 (part of), City of Rome, County of Oneida, State of New York" made by Susan M. Anacker, L.S. Lic #50321 dated March 17, 2020 and filed in the Oneida County Clerk's Office as of May 1, 2020 as Map No. 2020-000060.

BEING the same premises conveyed by Griffiss Local Development Corporation to the party of the first part by Bargain and Sale Deed dated April 17, 2020 and recorded in the Oneida County Clerk's Office as Instrument No. 2020-0044743.#

Together with an easement for ingress and egress as described in an Easement Agreement dated April 14, 2020 and recorded April 17, 2020 in the Oneida County Clerk's Office as Instrument No. R2020-000507.


CONSENT

The Oneida County Industrial Development Agency (the “Agency”) hereby (a) acknowledges notice of and consents to the assignment by **ORGILL, INC.**, (the “Assignor”) to **BUILT IN A DAY (NY) LLC**, a Delaware limited liability company (the “Assignee”) of the IDA Documents, as described in the Omnibus Assignment Agreement dated as of June 10, 2021 (the “Effective Date”) by and between the Assignor and the Assignee (the “Assignment”); (b) consents to the conveyance of the Project from the Assignor to the Assignee; (c) consents to the assignment by the Assignee of the Assignor’s rights, title and interest under the IDA Documents as contemplated by this Assignment; and (d) acknowledges that the Assignor shall remain liable for all of its covenants, agreements, obligations, liability, claims, actions and judgments under the IDA Documents arising prior to and on and after the Effective Date. The undersigned hereby agrees, understands and acknowledges, that it shall not have any claim against the Assignee, for any damage, loss, cost, expense (including reasonable attorney’s fees), claim, liability, obligation or debt arising out of any obligations or liabilities of Assignor pursuant to the IDA Documents.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Agency has signed the above Consent as of the date first listed above.

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

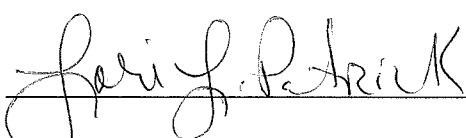
By: 
NAME: DAVID C. GROW
TITLE: CHAIRMAN

STATE OF NEW YORK)

) SS.:

COUNTY OF ONEIDA)

On the 3rd day of May in the year 2021 before me, the undersigned, a notary public in and for the State of New York, 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

LORI L. PATRICK
Notary Public, State of New York
No. 01PA6034055
Qualified in Oneida County
My Commission Expires Dec. 6, 2021