

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (the "Agreement"), dated as of February 24, 2016, by and among 19 CHENANGO EMPIRE, LLC, a New York limited liability company, having its principal offices located at 250 Greenpoint Avenue, Brooklyn, New York 11222 ("19 Chenango"), 21 CHENANGO EMPIRE, LLC, a New York limited liability company, having its principal offices located at 250 Greenpoint Avenue, Brooklyn, New York 11222 ("21 Chenango"), and 25 CHENANGO EMPIRE, LLC, a New York limited liability company, having its principal offices located at 250 Greenpoint Avenue, Brooklyn, New York 1122 ("25 Chenango") (19 Chenango, 21 Chenango, and 25 Chenango are hereinafter, collectively, the "Company"), and the BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the "Agency"), a public-benefit corporation organized and existing under the laws of the State of New York with offices at 60 Hawley Street, P.O. Box 1510, Binghamton, New York 13902, collectively, the "Parties."

WITNESSETH:

1. The Company is in the process of undertaking a project consisting of renovating and equipping three buildings into student and tenant housing and retail floor space (the "Facility") on a 0.53 acre parcel of land located at 19 Chenango Street in the City of Binghamton, Broome County, New York, more particularly described as Broome County Tax Map Parcel No. 160.41-1-13 ("19 Chenango Street Land,"), a 0.21 acre parcel of land located at 21 Chenango Street in the City of Binghamton, Broome County, New York, more particularly described as Broome County Tax Map Parcel No. 160.41-1-13.1 ("21 Chenango Street Land,"), and a 0.06 acre parcel of land located at 25 Chenango Street in the City of Binghamton, Broome

County, New York, more particularly described as Broome County Tax Map Parcel No. 160.41-1-13.2 (“25 Chenango Street Land”) (19 Chenango Street Land, 21 Chenango Street Land, and 25 Chenango Street Land are, hereinafter, collectively, the “Land,”) and the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the “Equipment”) (the Facility, the Land, and the Equipment are hereinafter collectively referred to as the “Project.”)

2. The Agency was created as a public benefit corporation pursuant to and for the purposes specified in Title 1 of Article 18-A of the General Municipal Law.

3. The Company has agreed to lease the Project to the Agency and has agreed to renovate and operate the Project thereon.

4. The Agency will lease the Project to the Company for a ten (10) year term from 2016 through 2026.

5. In that the Agency is exempt from the payment of real estate taxes and certain assessments imposed upon real property, the Company has agreed that, notwithstanding such exemption, the Company will nevertheless make payments to the City of Binghamton (the “City,”) the Binghamton City School District (the “School,”) and the County of Broome (the “County”) (collectively, the “Taxing Entities”) during the term of the lease in lieu of general tax levies as provided herein.

6. The Parties to this Agreement acknowledge and agree that the Taxing Entities are third party beneficiaries to this Agreement; having all the rights thereunder; including the ability and rights under law and under contract to enforce this Agreement. The Parties to this Agreement also acknowledge and agree that the Taxing Entities, collectively and individually, have all the rights and remedies available to them under New York State Law to enforce this

Agreement; including but not limited to conversion of a delinquent PILOT payment to unpaid taxes; filing of a tax levy and tax lien; and collection of unpaid taxes using various methods under New York State Law.

NOW, THEREFORE, in consideration of the covenants herein contained, it is mutually agreed as follows:

SECTION 1. TAX-EXEMPT STATUS OF THE PROJECT

a. General Assessment of the Project: Pursuant to General Municipal Law §874 and Real Property Tax Law §412-a, the Parties hereto understand that, upon acquisition of the Project by the Agency in 2016, and provided the Project continues to be leased by the Agency, the Project shall be assessed by the Taxing Entities as exempt upon the assessment rolls of the respective Taxing Entities for the term as provided below.

b. Water and Sewer charges and Special Assessments: The Parties hereto understand that the tax exemption extended to the Agency by General Municipal Law §874 and Real Property Tax Law §412-a does not entitle the Agency to exemption from water and sewer charges, fire district charges, if any, or special assessments and special ad valorem levies. Commencing on the date hereof and continuing during the term of the lease, the Company will be required to pay all water and sewer charges, fire district charges, if any, special assessments and special ad valorem levies lawfully levied and/or assessed against the Project.

SECTION 2. DEFAULT, LOSS OF EXEMPTION STATUS AND TERMINATION OF LEASES

In addition to the expiration of the term of this Agreement, any of the following specified events shall constitute a default hereunder, any default shall terminate any leases

between the Company and the Agency relating to the Project, and the tax exemption herein shall terminate and be of no further force or effect:

- a. The failure of the Company to diligently and consistently undertake the renovation of the Project, subject to force majeure and to pursue the Project to completion with all due speed.
- b. The failure of the Company to make timely payments of the sums due and payable hereunder.
- c. In the event of a failure of the Company to comply with the terms of Section 2(a) or 2(b) above, the Agency or one or more of the Taxing Entities may deliver written notice of such failure to the Company and any Mortgagee or Lender of record and the Company (or the Mortgagee or Lender of record), shall have sixty (60) days to cure any monetary failure and, in the event of a non-monetary failure, sixty (60) days to cure or commence to diligently proceed to cure such failure, if it cannot be reasonably cured within such sixty (60) day period, subject to force majeure. Only upon the passage of such sixty (60) day period, if the Company or any Mortgagee or Lender of record has not cured such failure or default, shall the Agency or any of the Taxing Entities be entitled to the remedies described herein.
- d. The Taxing Entities, collectively and individually, have all the rights and remedies available to them at law, under this Agreement and under New York State Real Property Tax Law and any other relevant laws, statutes and codes to enforce payment of any unpaid monies due under this Agreement. As this Agreement is not meant to be a complete substitution for real property taxes and assessments, the act of a default and/or nonpayment under this Agreement allows the Taxing Entities to convert any nonpayment into a tax levy or tax lien and shall entitle the Taxing Entities to employ the remedies and procedures enumerated in the

New York State Real Property Tax Law and any other relevant laws, statutes and codes to enforce payment of the monies due and owing. In addition, the Company agrees to pay all costs of collection, including reasonable attorney fees.

e. Any nonpayment shall survive bankruptcy, as the Parties agree that a default converts those unpaid monies into unpaid taxes and such protects and empowers the Taxing Entities to proceed as such.

SECTION 3. AMOUNT OF PAYMENTS IN LIEU OF TAXES

a. During the ten (10) year period commencing February 24, 2016, the Company agrees to pay to the Taxing Entities the following percentages of taxes that would otherwise be levied on said property if the same was subject to real property taxation:

| <u>PILOT Year</u> | <u>Percentage of Taxes Due</u>               |
|-------------------|----------------------------------------------|
| Years 1-3         | Taxes Frozen at Existing Level               |
| Years 4-5         | Any Increase over Frozen Level Abated by 50% |
| Years 6-10        | Any Increase over Frozen Level Abated by 25% |

Commencing with the eleventh (11<sup>th</sup>) year and until such time as the Project is conveyed by the Agency to the Company, the Company shall pay the actual taxes of the Project that would have been imposed but for the Agency's tax exemption.

b. The payment schedule is subject to challenge or adjustment by the Company, the Agency, or the Taxing Entities.

c. The County, acting as collecting agent for all the Taxing Entities, shall bill the Company on or about January 1 of each year for the payment due hereunder for the City and County payments and on September 1 of each year for the payment due hereunder for the School payment. The Company shall pay the City and County payments on or before January 31 of each

year and shall pay the School payment on or before September 30 of each year.

d. The County will pay the City and School their respective payments within the same time allowed to pay over taxes collected during the same time period, i.e., the City will be paid on or before February 10 of each year.

#### SECTION 4. ADDITIONS TO PROJECT

Should the Company, during the term of this Agreement, cause to be constructed on the Property any addition to the Project, then such addition shall be assessed and real estate taxes imposed in the same manner as all other non-tax-exempt real property is then being assessed and taxed by the City, County, and School, unless otherwise agreed by all of the Parties hereto.

#### SECTION 5. TERM OF AGREEMENT

This Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon (a) the execution of this Agreement by the Agency and the Company, and (b) the execution and filing of Real Property Tax Form RP-412-a with the Assessor of the City of Binghamton, and (c) the delivery of a copy of this Agreement and Real Property Tax Form RP-412-a to the City, the School and the County. This Agreement shall continue to remain in effect through February 24, 2026, or the date upon which the leasehold interest to the Project is no longer held by the Agency, including a change of title due to foreclosure, whichever shall be sooner. In addition, the City, School and County shall have the same rights afforded by the New York State Real Property Tax Law regarding the collection and enforcement of unpaid taxes.

#### SECTION 6. PRIORITY

The Parties agree that payments due hereunder shall be accorded a lien priority equivalent to the lien of unpaid real property taxes as provided in the Real Property Tax Law of

the State of New York and, as such, shall have priority over any mortgages or other liens filed against the Project. The Parties do hereby further agree that a Memorandum of this Agreement shall be recorded in the office of the Broome County Clerk.

**SECTION 7.     REPRESENTATIONS OF THE COMPANY**

19 Chenango, 21 Chenango, and 25 Chenango represent and warrant that:

a. They are duly organized as limited liability companies in good standing in accordance with the laws of the State of New York and are authorized to do business in the State of New York.

b. They have full power and authority to execute and deliver this Agreement and to perform their obligations.

c. This Agreement constitutes a legal, valid, and binding obligation of them enforceable in accordance with its terms.

d. To the best of their knowledge, the execution and delivery of this Agreement does not, and the performance of this Agreement will not, violate any law, regulation, ordinance, judicial order, judicial decree, or any agreement, indenture, note, or other instrument to which either is a party.

e. To the best of their knowledge, there is no claim, action, arbitration, or administrative proceeding pending, threatened against, or involving the Company which if adversely determined, would question the validity of this Agreement or would have a material adverse effect on their financial condition.

**SECTION 8.     AMENDMENT OF AGREEMENT**

This Agreement may not be amended, changed, modified, altered or terminated unless such amendment, change, modification, alteration or termination is in writing intended for

such purpose and executed and delivered by each of the Parties hereto.

SECTION 9. BINDING EFFECT

This Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns, regardless of the tax exempt status of any successor or assign.

SECTION 10. NOTICES

All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently deemed given when sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other method as shall provide the sender with documentary evidence of such delivery. The addresses to which notices, certificates or other communications hereunder, shall be delivered are as follows:

|                 |                                                                                                                             |
|-----------------|-----------------------------------------------------------------------------------------------------------------------------|
| To the Company: | 19 Chenango Empire, LLC<br>250 Greenport Avenue<br>Brooklyn, New York 11222<br><br>Attn: Leslie Westreich, Managing Manager |
|                 | 21 Chenango Empire, LLC<br>250 Greenport Avenue<br>Brooklyn, New York 11222<br><br>Attn: Leslie Westreich, Managing Manager |
|                 | 25 Chenango Empire, LLC<br>250 Greenport Avenue<br>Brooklyn, New York 11222<br><br>Attn: Leslie Westreich, Managing Manager |
| To the City:    | City of Binghamton<br>38 Hawley Street<br>Binghamton, New York 13901<br>Attn: Mayor                                         |



To the School: Binghamton City School District  
164 Hawley Street  
Binghamton, New York 13901  
Attn: District Superintendent

To the County: Broome County  
60 Hawley Street  
Binghamton, New York 13901  
Attn: County Executive

To the Agency: Broome County Industrial Development Agency  
60 Hawley Street  
P.O. Box 1510  
Binghamton, New York 13902  
Attn: Executive Director

A duplicate copy of each notice, certificate or other communication given hereunder shall be given to each party. Any person entitled to notice may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

#### SECTION 11. SEVERABILITY

If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent, and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

#### SECTION 12. COUNTERPARTS

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 13. APPLICABLE LAW

This Agreement shall be construed in accordance with the laws of the State of New York. Venue for any action or proceeding shall be in Broome County, New York.

SECTION 14. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the Parties and shall not be modified unless in writing and signed by all of the Parties hereto in the same manner as this Agreement is executed.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be duly executed the date set forth herein.

19 CHENANGO EMPIRE, LC

By: [Signature]  
Leslie Westreich, Managing Manager

Date: February 22, 2016

21 CHENANGO EMPIRE, LLC

By: [Signature]  
Leslie Westreich, Managing Manager

Date: February 22, 2016

25 CHENANGO EMPIRE, LLC

By: [Signature]  
Leslie Westreich, Managing Manager

Date: February 22, 2016

~~CHENANGO EMPIRE, LLC~~

~~By:XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

~~Date: February XXXXXXXX 2016~~

BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By: [Signature]  
Kevin McLaughlin, Executive Director

Date: February 25, 2016

STATE OF NEW YORK :  
:SS.  
COUNTY OF Kings :

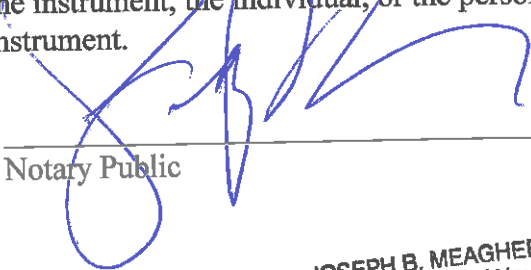
On this 22<sup>nd</sup> day of February, in the year 2016, before me, the undersigned, a notary public in and for said state, personally appeared LESLIE WESTREICH, personally known to me, or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within 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 on behalf of which the individual acted, executed the instrument.

  
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Notary Public

ANNELIE HERRERA  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01HE6135689  
Qualified in Kings County  
My Commission Expires October 24, 2017

STATE OF NEW YORK:  
: ss.  
COUNTY OF BROOME :

On this 25<sup>th</sup> day of February, in the year 2016, before me, the undersigned, a notary public in and for said state, personally appeared KEVIN McLAUGHLIN, 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 on behalf of which the individual acted, executed the instrument.

  
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Notary Public

JOSEPH B. MEAGHER  
Notary Public, State of New York  
Broome County 02ME4974837  
Commission Expires Nov. 26, 2016