

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT (the "Agreement"), dated as of August 31, 2017, by and between 265 INDUSTRIAL PARK DRIVE, LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, with a mailing address of P.O. Box 2, Kirkwood, New York 13795 (the "Company") and the BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public-benefit corporation duly organized and validly existing under the laws of the State of New York, with an office for the transaction of business located at 60 Hawley Street, P.O. Box 1510, Binghamton, New York 13902 (the "Agency.")

WITNESSETH:

WHEREAS, Title 1 of Article 18-A, as amended, 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 of New York (the "State"); and

WHEREAS, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease any or all of its facilities on such terms and conditions as it deems advisable, to issue its bonds for the purpose of carrying out any of its corporate purposes; and, as security for the payment of the principal and redemption price of, and interest on, any such bonds so issued and any agreements made in connection therewith, to pledge the revenues and receipts from its facilities or from the lease thereof; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, Chapter 564 of the Laws of 1970 of the State (collectively, the "Act") created the Broome County Industrial Development Agency (the "Agency"), which is empowered under the Act to undertake the providing, financing and leasing of the facility described below; and

WHEREAS, BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY (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; and

WHEREAS, the Company has agreed to a lease and lease-back transaction, on the real property, more particularly described on Exhibit "A" attached hereto, to facilitate the renovation and equipping of a manufacturing, warehouse, distribution, and commercial center located at 121 Industrial Park Drive in the Town of Kirkwood, Broome County, New York and 265 Industrial Park Drive in the Town of Kirkwood, Broome County, New York (the "Project"), and to lease the Project from the Agency; and

WHEREAS, the Agency will lease the Project back to the Company for a term not to exceed twenty (20) years; and

WHEREAS, the Agency is exempt from the payment of taxes and assessments imposed upon real property, and as a further condition related to the leasing of the Project, the Company has agreed that, notwithstanding such exemption, the Company will nevertheless make payments to the Town of Kirkwood (the "Town"), the Windsor Central School District (the "School District") and the County of Broome (the "County") while occupying the Project in lieu of general tax levies.

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

1. Pursuant to Section 874 of the General Municipal Law and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon the acquisition by lease of the

Project by the Agency and the filing of an Application for Real Property Tax Exemption Form RP-412-a (the "Exemption Form") with respect to the Project, and for so long thereafter as the Agency shall own the Project, the Project shall be assessed by the various taxing entities having jurisdiction over the Project, including, without limitation, the Town, the School District and the County as exempt on their respective assessment rolls prepared subsequent to the acquisition by the Agency by lease of the Project and the filing of the Exemption Form. The parties hereto understand that the Project shall not be entitled to such exempt status on any tax roll until the first tax year following the tax status date subsequent to the date upon which the Agency became the lessee of the Project and an Exemption Form is filed. The Company shall be required to pay all taxes and assessments lawfully levied and/or assessed against the Project, including taxes and assessments levied for the current tax year and all subsequent years until the Project is entitled to exempt status on the tax roll. The Agency will cooperate with the Company to obtain and preserve the tax exempt status of the Project, including the preparation and filing of the Exemption Form.

2. During each tax year in which the Project shall be tax exempt, the Company agrees to pay to the Town, the School District and the County, the PILOT payments as shown on the PILOT Schedule attached hereto as Exhibit "B."

3. The Town, the County, and the School District shall separately bill the Company for each in-lieu-of payment due hereunder. For the purposes of this Agreement, the term "Timely Payment" shall be defined as payment made within thirty (30) days after receipt by the Company of a written bill demanding payment.

4. Should the Company use the Project for other than a manufacturing, warehouse, distribution, and commercial center or allied purposes such as defined in Article 18-A of the General Municipal Law or acquire title during the term of this Agreement to the leased Project from the Agency, this Agreement shall terminate immediately and the Premises shall be returned

to the non-exempt portion of the tax roll and be subject to taxation thereafter, including any portion of a tax year not otherwise covered by this Agreement.

5. If any default shall be made in the payment referred to in Paragraph 2, supra, the Company hereby agrees to pay the same to the extent above specified:

A. Without requiring any notice of non-payment or of default to the Company, the Agency, or to any other person;

B. Without proof of demand.

6. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the General Municipal Law and Section 412-A of the Real Property Tax Law does not entitle the Agency to an exemption from special assessments and special ad valorem levies such as, but without limitation, charges for metered water and sewer rent. The Company hereby agrees to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project.

7. Pursuant to Section 858 (15) of the General Municipal Law, the Agency agrees to give the Town, the School District and the County a copy of this PILOT agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy thereof be given to the appropriate officer or officers with respect to each taxing jurisdiction responsible for preparing the tax rolls for said jurisdiction, together with a request that said officer or officers submit to the Company and the appropriate receiver of taxes periodic statements specifying the amount and due date or dates of the payments due to each hereunder. Such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed by such jurisdictions.

8. The Company agrees to pay the amounts due hereunder to each particular taxing jurisdiction in any calendar year to the appropriate receiver of taxes within the period that such taxing entity allows the payment of taxes levied in such calendar year without penalty. The

Company shall be entitled to receive receipts for such payments.

9. Pursuant to Section 874(5) of the General Municipal Law, if the Company shall fail to make any payment required by this PILOT Agreement when due, the Company shall pay the same, together with a late-payment penalty equal to five (5%) percent of the amount due. If the Company shall remain in default beyond the first month after such payment is due, the Company shall hereafter pay a late-payment penalty of one (1%) percent per month for each month, or part thereof, that the payment due thereunder is delinquent beyond the first month plus interest thereon, to the extent permitted by law, at the greater of (a) one (1%) percent per month, or (b) the rate per annum which would have been payable if such amount were delinquent taxes, until so paid in full.

10. Pursuant to Section 874(6) of the General Municipal Law, if the Company should default in performing any of its obligations, covenants or agreements under this PILOT Agreement and the Agency or any taxing jurisdiction should employ attorneys or incur other expense for the collection of any amounts payable hereunder, or for the enforcement or performance or observation of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefore, pay to the Agency or such taxing jurisdiction, as the case may be, not only the amounts adjudicated due hereunder, together with the late-payment penalty and interest due thereon, but also reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred whether or not an action is commenced.

11. Notwithstanding the foregoing, the Agency reserves the right to terminate, modify, or recapture any benefits provided to the Company pursuant to this PILOT Agreement, as well as any other benefit provided to the Company, in accordance with the policy of the Agency set forth in Exhibit "C" attached hereto.

12. No remedy herein conferred upon or reserved to the Agency or any taxing

jurisdiction is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this PILOT Agreement or now and hereafter existing at law or in equity or by statute. No delay or admission in exercising any such right or power accruing upon a default hereunder shall impair any such right or power or be construed as a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

13. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

If to the Agency: Broome County Industrial Development Agency
60 Hawley Street
P.O. Box 1510
Binghamton, New York 13902

Attn: Executive Director

Copy to. Joseph B. Meagher, Esq.
Thomas, Collison & Meagher
1201 Monroe Street
P.O. Box 329
Endicott, New York 13761-0329

If to the Company: Anthony R. Paniccia
721 Monforte Drive
Endicott, New York 13760

Copy to: Alfred Paniccia, Jr., Esq.
The Law Office of Alfred Paniccia, Jr.
53 Chenango Street
Centre Plaza
Suite 400
Binghamton, New York 13901

14. The Town, the County, the School District, the Agency and the Company as used herein shall include their successors and assigns. The terms of this Agreement shall inure to the benefit of, and shall be binding upon, any future owners of the Project and the Company's successors and assigns.

15. This Agreement shall remain in effect until termination or expiration of the Leaseback Agreement from the Agency to the Company which, by its terms, expires August 31, 2037.

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

265 INDUSTRIAL PARK DRIVE, LLC

By: 

Todd Grubham, Member

BROOME COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 

Kevin McLaughlin
Executive Director

EXHIBIT "A"

(SEE ATTACHED LEGAL DESCRIPTION)

SCHEDULE A

PARCEL 1

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Kirkwood, County of Broome, State of New York, bounded and described as follows:

Beginning at a point on the Southerly boundary of a proposed roadway, said point being 80 feet distant Southwesterly measured at right angles from the Southwesterly boundary of Interstate Route 81 and the last mentioned point being 1,482± feet distant Southeasterly measured along the Southwesterly boundary of Interstate Route 81 from the intersection with the Southeasterly boundary of Colesville Road extension; thence S 41° 18' 00" E along the Southwesterly boundary of a proposed roadway a distance of 203.97 feet to a point; thence continuing Southeasterly along the last mentioned roadway boundary on a curve to the left with a radius of 440 feet a distance of 141.56 feet to a point; thence continuing along the last mentioned roadway boundary S 59° 44' 00" E a distance of 812.06 feet to a point; thence continuing Southwesterly along the last mentioned roadway boundary on a curve to the right with a radius of 390 feet a distance of 319.80 feet to a point; thence S 12° 45' 00" E along the Westerly boundary of the last mentioned roadway a distance of 221.54 feet to a point; thence continuing Southerly along the last mentioned roadway boundary on a curve to the right with a radius of 360 feet a distance of 71.83 feet to a point; thence continuing along the Westerly boundary of a proposed roadway S 01° 19' 04" E a distance of 465.60 feet to a point; thence continuing Southerly along the last mentioned roadway boundary on a curve to the right with a radius of 360 feet a distance of 252.62 feet to a point; thence N 51° 25' 41" W a distance of 2,051.90 feet to a point; thence N 38° 34' 19" E; 780.99 feet to the point of beginning.

Excepting and reserving the following two parcels of land:

(1) ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Kirkwood, County of Broome, State of New York, bounded and described as follows:

Beginning at a point 80 feet distant Southwesterly measured at right angles from the Southwesterly boundary of Interstate Route 81, the last mentioned point being 1,482± feet distant Southeasterly measured along the Southwesterly boundary of Interstate Route 81 from the intersection with the Southeasterly boundary of Colesville Road extension;

Thence S 41° 18' 00" E parallel and 80 feet distant from the Southwesterly boundary of Interstate Route 81 a distance of 203.97 feet to a point;

Thence continuing Southeasterly on a curve to the left with a radius of 440 feet a distance of 141.56 feet to a point on the Southwesterly boundary of a proposed roadway;

Thence N 59° 44' 00" W a distance of 33.31 feet to a point;

Thence continuing Northwesterly on a curve to the right with a radius of 440 feet a distance of 117.41 feet to a point;

Thence continuing N 44° 26' 42" W a distance of 193.15 feet to a point;

The last three courses to be a portion of the southerly boundary of the public roadway lying between the premises of party of the first part and said Interstate Route 81;

Thence N 38° 34' 19" E a distance of 20.70 feet to the point of beginning.

(2) ALL THAT TRACT OR PARCEL OF LAND in the Town of Kirkwood, County of Broome, and State of New York, bounded and described as follows:

BEGINNING at a 5/8 inch rebar with cap on the existing Westerly boundary of Perimeter Road (C.R. #317), said rebar being Southeasterly, Southwesterly, Southeasterly and Southerly from the Southeasterly boundary of Colesville Road Extension (C.R. #74) at its intersection with the Southwesterly boundary of N.Y.S. Route 17 and Interstate Route 81 the following three (3) courses and distances: (1) Southeasterly along the Southwesterly boundary of said N.Y.S. Route 17 and Interstate Route 81, a distance of 1,482 feet more or less to a point; (2) thence Southwesterly across said Perimeter Road, a distance of 80 feet to a point; (3) thence Southeasterly and Southerly along the Southwesterly and Westerly boundary of said Perimeter Road, a distance of 1,594.67 feet to the POINT OR PLACE OF BEGINNING; RUNNING THENCE Southerly along the last mentioned boundary the following four (4) courses and distances; (1) South 12 degrees 45 minutes 00 seconds East, a distance of 104.26 feet to a 5/8 inch rebar with cap at a point of curvature; (2) thence on a curve to the right having a radius of 360.00 feet, an arc distance of 71.83 feet to a 5/8 inch rebar with cap at a point of tangency, said curve being subtended by a chord having a bearing of South 07 degrees 02 minutes 02 seconds East and a length of 71.71 feet; (3) thence South 01 degrees 19 minutes 04 seconds East, a distance of 465.60 feet to a 5/8 inch rebar with cap at a point of curvature; (4) thence on a curve to the right having a radius of 360.00 feet; an arc distance of 252.62 feet to a 5/8 inch rebar with cap at its intersection with the division line between the property owned by The Singer Company, Link Flight Simulation Division (General Precision, Inc.) on the Northeast, and the property now or formerly owned by New Industries for Broome Inc. on the Southwest, the last mentioned curve being subtended by a chord having a bearing of South 18 degrees 47 minutes 06 seconds West and a length of 247.47 feet; thence North 51 degrees 25 minutes 41 seconds West along said division line, a distance of 515.00 feet to a 5/8 inch rebar with cap; thence North 38 degrees 34 minutes 19 seconds East through the property owned by said (General Precision, Inc.), a distance of 705.43 feet to the POINT OR PLACE OF BEGINNING.

PARCEL 2

ALSO, ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Kirkwood, Broome County, New York, described as follows: Beginning at a new iron pin set on the division line between the property of General Precision, Incorporated (reputed owner) on the northeast, and the property of New Industries for Broome, Inc. (reputed owner) on the southwest, said iron pin being 490.0 feet distant south 51° 25' 41" east, measured along said division line from its intersection with the division line between the property of said General Precision, Incorporated (reputed owner) on the southeast and the property of said New Industries for Broome, Inc. (reputed owner) on the northwest; thence south 51° 25' 41" east, along the division line between the property of said General Precision, Incorporated (reputed owner) on the northeast, and the property of said New Industries for Broome, Inc. (reputed owner) on the southwest, a distance of 720.0 feet to a new iron pin; thence south 38° 34' 19" west, through the property of said New Industries for Broome, Inc. (reputed owner), a distance of 754.4 feet to a new iron pin set on the northeasterly boundary of said County Road No. 317; thence along the last mentioned boundary the following three courses and distances: North 58° 04' 08" west, a distance of 329.8 feet to a new iron pin; thence on a curve to the right, having a radius of 360.0 feet, a distance of 107.1 feet to a new iron pin; thence north 41° 01' 49" west, a distance of 290.6 feet to a new iron pin; thence north 38° 34' 19" east, through the property of said New Industries for Broome, Inc. (reputed owner), a distance of

736.6 feet to the point of beginning, being 12.8 acres more or less. All bearings referred to True North.

This conveyance is made subject to all easements and restrictions of record including the following:

1. Unrecorded easement given to American Telephone & Telegraph Company dated August 6, 1923.
2. Easement given to New York State Electric & Gas Corporation recorded in the Broome County Clerk's Office on November 16, 1965 in Book 1098 of Deeds at Page 691.
3. Easement given to New York Telephone Company recorded in the Broome County Clerk's Office on April 9, 1973 in Book 1199 of Deeds at Page 1083.
4. Agreement with New York Telephone Company recorded in the Broome County Clerk's Office on February 6, 1975 in Book 1223 of Deeds at Page 86.
5. Easement given to New York Telephone Company recorded in the Broome County Clerk's Office on March 19, 1986 in Book 1519 of Deeds at Page 122.
6. Declaration of Protective Covenants recorded in the Broome County Clerk's Office on August 4, 1964 in Book 1081 at Page 887.
7. Easement given to New York State Electric & Gas Corporation recorded in the Broome County Clerk's Office on June 25, 1965 in Book 1092 of Deeds at Page 982.
8. Easement given to Columbia Gas of New York, Inc. recorded in the Broome County Clerk's Office on January 4, 1966 in Book 1100 of Deeds at Page 365.
9. Easement given to New York State Electric & Gas Corporation recorded in the Broome County Clerk's Office on October 28, 1992 in Book 1815 of Deeds at Page 1168.

EXHIBIT "B"

(SEE ATTACHED PILOT PAYMENT SCHEDULE)

**265 AND 121 INDUSTRIAL PARK DRIVE PILOT SCHEDULE
FOR 265 INDUSTRIAL PARK LLC**

<u>YEAR</u>	<u>% INCREASE</u>	<u>PILOT PAYMENT</u>	<u>Full Taxes</u>	
2018	0%	\$275,943.07	\$425,106.00	\$149,162.93
2019	0%	\$275,943.07	\$433,608.12	\$157,665.05
2020	0%	\$275,943.07	\$442,280.28	\$166,337.21
2021	1%	\$278,702.50	\$451,125.89	\$172,423.39
2022	1%	\$281,489.53	\$460,148.41	\$178,658.88
2023	1%	\$284,304.42	\$469,351.37	\$185,046.95
2024	1%	\$287,147.47	\$478,738.40	\$191,590.94
2025	1%	\$290,018.94	\$488,313.17	\$198,294.23
2026	1%	\$292,919.13	\$498,079.43	\$205,160.30
2027	1%	\$295,848.32	\$508,041.02	\$212,192.70
2028	2%	\$301,765.29	\$518,201.84	\$216,436.55
2029	2%	\$307,800.59	\$528,565.88	\$220,765.29
2030	2%	\$313,956.60	\$539,137.20	\$225,180.59
2031	2%	\$320,235.74	\$549,919.94	\$229,684.20
2032	2%	\$326,640.45	\$560,918.34	\$234,277.89
2033	2%	\$333,173.26	\$572,136.71	\$238,963.45
2034	2%	\$339,836.73	\$583,579.44	\$243,742.71
2035	2%	\$346,633.46	\$595,251.03	\$248,617.57
2036	2%	\$353,566.13	\$607,156.05	\$253,589.92
2037	2%	\$360,637.45	\$619,299.17	\$258,661.72
		\$6,142,505.21	\$10,328,957.69	\$4,186,452.47

Water and Sewer and Fire District Charges Will be billed at 100%

Based on a Fair Market Value of \$11,693,585 and an Assessed Vaule of \$9,296,400

EXHIBIT "C"

(SEE ATTACHED AGENCY POLICY FOR
TERMINATION, MODIFICATION AND/OR RECAPTURE OF AGENCY BENEFITS)

**BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY
POLICY FOR TERMINATION, MODIFICATION
AND/OR RECAPTURE OF AGENCY BENEFITS**

The goal of this Policy is to establish and provide a procedure as required by Section 875 of the New York State General Municipal Law for the termination, modification and/or recapture of Broome County Industrial Development Agency (the “Agency”) benefits provided to an applicant in order to induce such applicant to undertake a project in Broome County. For purposes of this policy, Agency benefits shall include any or all of the following:

- (i) exemptions from New York State and local sales and use tax;
- (ii) an exemption from the New York State mortgage recording tax; and/or
- (iii) an abatement from real property taxes provided through a payment-in-lieu-of-tax (“PILOT”) Agreement.

The Agency reserves the right to terminate, modify, or recapture Agency benefits if :

- (i) an applicant or its sub-agency (if any) authorized to make purchases for the benefit of the project is not entitled to the sales and use tax exemption benefits;
- (ii) sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the applicant or its sub-agents;
- (iii) sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the project;
- (iv) the applicant has made material, false, or misleading statements in its application for financial assistance;
- (v) the applicant has committed a material violation of the terms and conditions of a Project Agreement; and/or
- (vi) there is a material shortfall in job creation and retention projections as set forth in its application.

Upon the occurrence of any of the above conditions, the Agency Board may, upon

recommendation of the Executive Director, terminate, modify and/or recapture the Agency benefits provided to a specific project. Prior to undertaking such action, the Agency shall give written notice of its intention to terminate, modify and/or recapture Agency benefits to the applicant specifying the reasons why the Agency is considering such action. The applicant shall have twenty (20) days to respond to the Agency, either in writing or in person, providing such information and documentation as it deems appropriate for the Board to consider prior to making its decision. All such recaptured Agency benefits shall be redistributed to the appropriately affected taxing jurisdictions unless agreed to otherwise by such jurisdictions.

Notwithstanding the foregoing, the Agency retains the right to terminate Agency benefits as otherwise provided in project transaction documents including, but not limited to, failure of the applicant to make timely PILOT payments, to provide required reports, or to cooperate with Agency personnel in providing data regarding project progress.