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July 15, 2013

Scott Snyder  
Binghamton City Assessor  
38 Hawley Street, 2<sup>nd</sup> Floor  
Binghamton, New York 13901

Re: Broome County Industrial Development Agency  
Vitaluna, LLC Lease/Leaseback Transaction

Dear Mr. Snyder:

Enclosed please find an originally executed RP-412-a form, together with a copy of the executed PILOT Agreement, in connection with the above captioned matter.

If you have any questions, or if you require further documentation and/or information, please do not hesitate to contact me.

Very truly yours,

THOMAS, COLLISON, MEAGHER & SEIDEN

Joseph B. Meagher

JBM/smm

Enc.

cc: Jerome Z. Knebel (w/enc.)  
Matthew T. Ryan (w/enc.)  
Peggy J. Wozniak, Ed.D. (w/enc.)  
Debra A. Preston (w/enc.)  
Richard D'Attilio (w/enc.)

RECEIVED  
JUL 17 2013

BY:.....



**NYS DEPARTMENT OF TAXATION & FINANCE  
OFFICE OF REAL PROPERTY TAX SERVICES**

RP-412-a (1/95)

**INDUSTRIAL DEVELOPMENT AGENCIES  
APPLICATION FOR REAL PROPERTY TAX EXEMPTION  
(Real Property Tax Law, Section 412-a and General Municipal Law, Section 874)**

**1. INDUSTRIAL DEVELOPMENT AGENCY (IDA) - 2. OCCUPANT (IF OTHER THAN IDA)**  
(If more than one occupant attach separate listing)

Name Broome County IDA  
Street P.O. Box 1510  
City Binghamton, New York 13902  
Telephone no. Day (607 ) 584-9000  
Evening ( ) N/A  
Contact Richard D'Attilio  
Title Executive Director

Name Vitaluna, LLC  
Street 122 State Street  
City Binghamton, New York 13901  
Telephone no. Day ( 607 ) 772-2408  
Evening ( ) \_\_\_\_\_  
Contact Mark Huebner  
Title Managing Member

**3. DESCRIPTION OF PARCEL**

- a. Assessment roll description (tax map no./roll year) 160.40-2-40
- b. Street address 2 Court Street
- c. City, Town or Village City of Binghamton
- d. School District Binghamton
- e. County Broome
- f. Current assessment \$2,155,000
- g. ~~Deed~~ Memorandum of Lease to IDA (date recorded; liber and page)  
Rec'd: 7/9/13; Book: 2406  
Page: 540

**4. GENERAL DESCRIPTION OF PROPERTY** (if necessary, attach plans or specifications)

- a. Brief description (include property use) Commercial office building with underground parking garage
- b. Type of construction Brick and Masonry
- c. Square footage 60,000+/-
- d. Total cost \$5,000,000
- e. Date construction commenced 1/1/2013
- f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA) December 31, 2024

**5. SUMMARIZE AGREEMENT (IF ANY) AND METHOD TO BE USED FOR PAYMENTS TO BE MADE TO MUNICIPALITY REGARDLESS OF STATUTORY EXEMPTION**

(Attach copy of the agreement or extract of the terms relating to the project).

- a. Formula for payment See attached copy of PILOT Agreement

- b. Projected expiration date of agreement December 31, 2024

c. Municipal corporations to which payments will be made

	Yes	No
County <u>Broome</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Town/City <u>Binghamton</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Village _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>
School District <u>Binghamton</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

d. Person or entity responsible for payment

Name Mark Huebner  
 Title Managing Member  
 Address 122 State Street  
Binghamton, New York 13901

e. Is the IDA the owner of the property?  Yes  No (check one)  
If "No" identify owner and explain IDA rights or interest in an attached statement.

Telephone (607) 772-2408

6. Is the property receiving or has the property ever received any other exemption from real property taxation? (check one)  Yes  No

If yes, list the statutory exemption reference and assessment roll year on which granted:  
exemption \_\_\_\_\_ assessment roll year \_\_\_\_\_

7. A copy of this application, including all attachments, has been mailed or delivered on 7/15/13 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

**CERTIFICATION**

I, RICHARD D'ATTILIO, Executive Director of \_\_\_\_\_

Name Title  
Broome County Industrial Development Agency hereby certify that the information  
Organization

on this application and accompanying papers constitutes a true statement of facts.

7/11/13  
Date

  
Signature

**FOR USE BY ASSESSOR**

1. Date application filed \_\_\_\_\_
2. Applicable taxable status date \_\_\_\_\_
- 3a. Agreement (or extract) date \_\_\_\_\_
- 3b. Projected exemption expiration (year) \_\_\_\_\_
4. Assessed valuation of parcel in first year of exemption \$ \_\_\_\_\_
5. Special assessments and special as valorem levies for which the parcel is liable:

\_\_\_\_\_  
\_\_\_\_\_

Date

Assessor's signature

**PAYMENT IN LIEU OF TAXES AGREEMENT  
VITALUNA, LLC**

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (the "Agreement"), dated as of July 1, 2013, by and among VITALUNA, LLC (the "Company"), a limited liability company organized and existing pursuant to the laws of the State of New York with offices at 122 State Street, Binghamton, New York 13901 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:

WHEREAS,

1. The Company intends to renovate and operate a 60,000+/- square foot building (55,651+/- square feet of leasable space) with an underground 107+/-car parking garage located at 2 Court Street in the City of Binghamton, County of Broome and State of New York , Tax Parcel ID# 160.40-2-40 (the "Property") to be used as a commercial office building (the "Facility"). The Facility and the Property are referred to herein collectively as the "Project Facility".

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 Property to the Agency and has agreed to renovate and operate the Facility thereon.

4. The Agency will lease the Project Facility back to the Company for a term of TWELVE (12) years from January 1, 2013 through December 31, 2024.

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.

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

SECTION 1. TAX-EXEMPT STATUS OF THE PROJECT FACILITY

a. General Assessment of the Project Facility: Pursuant to General Municipal Law §874 and Real Property Tax Law §412-a, the Parties hereto understand that, upon acquisition of the Property by lease by the Agency in 2013, and provided the Project Facility 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 Facility.

SECTION 2. AMOUNT OF PAYMENTS IN LIEU OF TAXES

a. Notwithstanding the Agency's tax exempt status,, the Company agrees to make

payments in lieu of taxes in accordance with the schedule set forth in Exhibit A attached hereto. The amounts to be paid in Exhibit A provide a total to be paid and the amount to be paid to each of the Taxing Entities.

b. The payments in lieu of taxes to be made by the Company during the entire term of this Agreement are set forth in Exhibit A attached hereto. The payment schedule is not subject to challenge or adjustment by the Company, the Agency, or the Taxing Entities, even if the City or County conducts a City wide reassessment of all commercial properties.

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. In the event the Company fails to make any payment as required herein in a timely manner, then the Company's obligation to make the payment shall continue as an obligation of the Company until such payment in default shall have been made in full, and the Company shall pay the same together with interest thereon, to the extent permitted by law, at a rate per annum which would be payable if such amounts were delinquent taxes, until so paid in full. In addition, the Company agrees to pay all costs of collection, including reasonable attorneys' fees. The County, or other entity charged with such collection, may sue to enforce such payment, including the commencement and prosecution of an action to foreclose the lien of the "First Mortgage" as provided in Section 5 below.

e. 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 3.     ADDITIONS TO PROJECT

Should the Company, during the term of this Agreement, cause to be constructed on the Property any addition to the Project Facility, 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 4.     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, by certified mail, return receipt requested, of a copy of this Agreement and Real Property Tax Form RP-412-a to the City, the School and the County. If the conditions required above are not completed on or before August 30, 2013, then this Agreement shall become null and void. This Agreement shall continue to remain in effect through December 31, 2024, or the date upon which the leasehold interest to the Project Facility is no longer held by the Agency, including a change of title due to foreclosure, whichever shall be sooner.

SECTION 5.     PRIORITY

The Parties do hereby 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 Property. In addition, the City, School and County shall have the same rights

afforded by the Real Property Tax Law regarding the collection and enforcement of unpaid taxes. The Parties do hereby further agree that a Memorandum of this Agreement may be recorded in the office of the Broome County Clerk.

SECTION 6.     REPRESENTATIONS OF THE COMPANY

The Company represents and warrants that:

a. It is duly organized as a limited liability company in good standing in accordance with the laws of the State of New York.

b. It has full power and authority to execute and deliver this Agreement and to perform its obligations.

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

d. To the best of its 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 it is a party.

e. To the best of its 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 the financial condition of the Company.

SECTION 7.     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 8. 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 9. 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:	Vitaluna, LLC 122 State Street Binghamton, New York 13901 Attn: Managing Member
To the City:	City of Binghamton 38 Hawley Street Binghamton, NY 13901 Attn: Mayor
To the School:	Binghamton City School District 164 Hawley Street Binghamton, NY 13901 Attn: District Superintendent
To the County:	Broome County 60 Hawley Street Binghamton, NY 13901 Attn: County Executive
To the Agency:	Broome County Industrial Development Agency 60 Hawley Street P.O. Box 1510 Binghamton, NY 13902 Attn: Executive Director

b. 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 10. 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 11. 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 12. 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 13. 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.

VITALUNA, LLC

By: \_\_\_\_\_

Mark Huebner  
Managing Member

BROOME COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY

By: \_\_\_\_\_

Richard D. Attilio  
Executive Director



Vitaluna - 2 Court Street

Tax Calculations - PILOT Proposal

Year	Assessment	Effective tax Rate plus 3% per year		
		County	School	City
1/1/2013	1,520,500.00	8.522972	38.072404	40.423
1/1/2014	1,520,500.00	8.778661	39.214576	41.635
1/1/2015	1,520,500.00	9.042021	40.391013	42.884
1/1/2016	1,520,500.00	9.313282	41.602743	44.171
1/1/2017	1,520,500.00	9.592680	42.850825	45.496
1/1/2018	1,520,500.00	9.880460	44.136350	46.861
1/1/2019	1,520,500.00	10.176874	45.460440	48.267
1/1/2020	1,520,500.00	10.482180	46.824253	49.715
1/1/2021	1,973,075.00	10.796645	48.228981	51.206
1/1/2022	2,425,650.00	11.120544	49.675850	52.742
1/1/2023	2,878,225.00	11.454160	51.166126	54.325
1/1/2024	3,330,800.00	11.797785	52.701110	55.954

County	Tax Bills			Totals
	School	City	Totals	
12,959.18	57,889.09	61,463.17	132,311.44	
13,347.95	59,625.76	63,306.02	136,279.73	
13,748.39	61,414.54	65,205.12	140,368.05	
14,160.84	63,256.97	67,162.01	144,579.82	
14,585.67	65,154.68	69,176.67	148,917.02	
15,023.24	67,109.32	71,252.15	153,384.71	
15,473.94	69,122.60	73,389.97	157,986.51	
15,938.16	71,196.28	75,591.66	162,726.09	
21,302.59	95,159.40	101,033.28	217,495.27	
26,974.55	120,496.23	127,933.63	275,404.41	
32,967.65	147,267.62	156,359.57	336,594.85	
39,296.06	175,536.86	186,371.58	401,204.50	
235,778.23	1,053,229.34	1,118,244.83	2,407,252.40	