

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT (the "Agreement"), dated as of December 1, 2020, by and between ONE NORTH DEPOT LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, with an address for the transaction of business located at 1 N. Depot Street, Binghamton, New York 13901 (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 FIVE South College Drive, Suite 201, Binghamton, New York 13905 (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, renovate, 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 or renovation, 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, 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/leaseback transaction, on the real property, more particularly described on Exhibit "A" attached hereto, to facilitate the renovation and equipping of a mixed use development building located at 1 N. Depot Street in the City of Binghamton, Broome County, New York (the "Project"), and to lease the Project from the Agency; and

WHEREAS, the Agency will lease the Project from the Company pursuant to a certain lease agreement (the "Lease Agreement,") and the Agency will lease the Project back to the Company pursuant to a certain leaseback agreement (the "Leaseback Agreement") 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 City of Binghamton (the "City"), the Binghamton 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 has a leasehold interest in the Project, the Project shall be assessed by the various taxing entities having jurisdiction over the Project, including, without limitation, the City, 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 acquires a leasehold interest in 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 City, the School District and the County, the PILOT payments as shown on the PILOT Schedule attached hereto as Exhibit "B."

3. The City, 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 mixed use development building 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 Land 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 City, 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 thereafter 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 expenses 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. All notices, demands or communications required to be given under this Agreement shall be forwarded simultaneously by certified mail or Federal Express or other similar overnight delivery service, to the respective addresses of the parties hereinafter set forth or to such other place(s) as any of the parties hereto may, from time to time, designate by written notice to the other.

If to the Agency: Broome County Industrial Development Agency
 FIVE South College Drive
 Suite 201
 Binghamton, New York 13905

 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: One North Depot LLC
 1 N. Depot Street
 Binghamton, New York 13901

 Attn: Josh Bishop, Managing Member

Copy to: Lillian L. Levy, Esq.
Hinman, Howard & Kattell, LLP
80 Exchange Street
P.O. Box 5250
Binghamton, New York 13902

14. The City, 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.

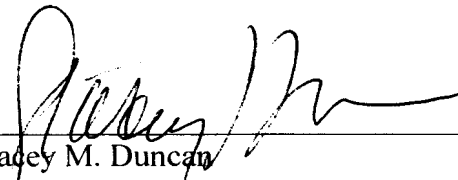
15. This Agreement shall remain in effect until termination or expiration of the Leaseback Agreement from the Agency to the Company which, by its terms, expires December 1, 2040.

16. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. In addition, the parties may transmit signed copies of this Agreement by e-mail and/or facsimile and all parties intend to be bound by the signatures on any document which is transmitted by e-mail and/or facsimile. Each party is aware that the other party will rely on the e-mail and/or facsimile transmitted signatures, and all parties hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

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

BROOME COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

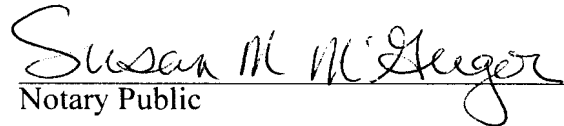
ONE NORTH DEPOT LLC

By: 
Stacey M. Duncan
Executive Director

By: _____
Josh Bishop, Managing Member

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

On this 1st day of December, 2020, before me, the undersigned, personally appeared STACEY M. DUNCAN, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public


~~SUSAN M. MCGREGOR
Notary Public, State of New York
No. 01MC6215671
Qualified in Broome County
Commission Expires January 4, 2022~~

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

On this _____ day of _____, 2020, before me, the undersigned, personally appeared JOSH BISHOP, 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

By: _____
Stacey M. Duncan
Executive Director

By: _____

Josh Bishop, Managing Member


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

On this _____ day of _____, 2020, before me, the undersigned, personally appeared STACEY M. DUNCAN, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

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

On this 3rd day of Dec, 2020, before me, the undersigned, personally appeared JOSH BISHOP, 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

LILLIAN L. LEVY
Notary Public, State of New York
No. 021.E4002893
Residing in Broome County
My Commission Expires November 30 2021

EXHIBIT "A"

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Binghamton, County of Broome, State of New York, being a portion of the property now or formerly of the County of Broome described in Liber 2391 Page 59 as recorded in the Broome County Clerk's Office on December 11, 2012 (portion of TM# 160.25-2-20), bounded and described as follows:

BEGINNING at a point on the southeasterly boundary of Prospect Avenue at its intersection with the division line between the property now or formerly of the D & H Railroad on the south and the property now or formerly of the County of Broome per L. 2391 P. 59 (TM# 160.25-2-20) on the north;

RUNNING THENCE along said Prospect Avenue the following four (4) courses and distances:

- 1) N 39° 23' 37" E, a distance of 136.49 feet to a point;
- 2) N 58° 34' 32" E, a distance of 71.52 feet to a point;
- 3) N 39° 05' 01" E, a distance of 118.27 feet to a point;
- 4) N 51° 46' 01" E, a distance of 26.20 feet to a point at its intersection with the southerly boundary of Eldredge Street; thence N 85° 04' 01" E along said Eldredge Street, a distance of 7.80 feet to a point; thence S 04° 26' 43" E through said County of Broome, a distance of 132.60 feet to a point at its intersection with the division line between the property now or formerly of Arise Development, LLC per L. 2059 P. 525 (TM# 160.25-2-16) on the south and said County of Broome on the north; thence along the division lines between said Arise Development and said County of Broome the following two (2) courses and distances:
 - 1) S 85° 28' 41" W, a distance of 57.33 feet to a point;
 - 2) S 00° 26' 09" E, a distance of 80.48 feet to a point, the last mentioned course also being along a party wall; thence continuing S 00° 26' 09" E through said County of Broome, a distance of 30.00 feet to a point at its intersection with said D & H Railroad on the south and said County of Broome on the north; thence S 88° 48' 21" W along the last mentioned division line, a distance of 204.58 feet to the POINT OF BEGINNING.

EXHIBIT "B"

(SEE ATTACHED PILOT PAYMENT SCHEDULE)

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.