

ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

OMFS PROPERTIES LLC

COPY

FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT

Regarding the acquisition of title to or leasehold interest in land located at 711 Young Street, City of Tonawanda, Erie County, New York (the "Land") together with the existing improvements thereon (the "Existing Improvement"), (ii) the construction of two buildings thereon with an approximate combined 6,500 square feet, for the operation of a state-of-the-art dental research and development facility and a maxillofacial and dental services facility for children of low income, no insurance, and special needs children and adults (collectively, the "Improvements"), and (iii) the acquisition and installation in and around the Existing Improvements and the Improvements by the Company of certain items of machinery, equipment and other tangible personal property (the "Equipment", and collectively with the Land, the Existing Improvements and the Improvements, the "Facility").

Original Dated as of: September 1, 2012

First Amendment Dated as of: August 1, 2013

Termination Date: December 31, 2021

SBL No.: 53.07-3-1.1

Affected Tax Jurisdictions: Erie County
City of Tonawanda
Tonawanda City School District

Prepared by:
Harris Beach PLLC
726 Exchange Street, Suite 1000
Buffalo, New York 14210
(716) 200-5050

FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT

THIS FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT (the "First Amendment to PILOT"), dated as of the 1st day of August, 2013, by and between **ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 143 Genesee Street, Buffalo, New York 14203 (the "Agency") and **OMFS PROPERTIES LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 555 Delaware Street, Tonawanda, NY 14150 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 293 of the Laws of 1970 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Agency and the Company previously entered into that certain Payment In Lieu Of Tax Agreement (the "Original PILOT Agreement"), dated as of September 1, 2012, with respect the Company's property located at 711 Young Street, City of Tonawanda, Erie County, New York (the "Facility"); and

WHEREAS, at the request of the Company, the Agency and the Company have agreed to delay the implementation of the Original PILOT Agreement by one year, amend the expiration date in the Original PILOT Agreement by one year, and to revise Schedule A of the Original PILOT Agreement in accordance with this First Amendment to PILOT; and

WHEREAS, the Agency and the Company desire to amend the PILOT Agreement in accordance with the terms of this First Amendment to PILOT Agreement.

NOW, THEREFORE, in consideration of the covenants contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Section 1, entitled Agency Tax Exemption of the Original PILOT Agreement is amended and restated as follows:

Subject to the completion and filing of a Form RP-412-a, Application for Real Property Tax Exemption (the "RP-412-a"), by the Taxable Status Date of March 1, 2013 (the "Taxable Status Date"), and the approval of the RP-412-a by the Assessor, the Project shall be exempt from real estate taxes commencing with the:

- (a) 2015 tax fiscal year of the County, and
- (b) 2015 tax fiscal year of the City, and
- (b) 2014-2015 tax fiscal year of the School District.

This PILOT Agreement shall expire on December 31, 2021; *provided, however*, the Company shall pay the 2022 County and City tax bills, and the 2021-2022 School District tax bill, on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. The Company shall provide the Agency with all information required to complete the RP-412-a and shall provide such additional information and take such actions as are required by the Assessor in order to process and approve the RP-412-a. In the event the exemption from real estate taxes is denied for any reason, the Company agrees to pay all real estate taxes levied upon the Project as they become due. To the extent permitted by law, the Company shall have the right to protest such denial subject, however, to the conditions set forth in Section 8.1 of the Leaseback Agreement. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company arising from the denial of an exemption from real estate taxes except to the extent that such denial results solely from the failure of the Agency to file the RP-412-a with the Assessor by the Taxable Status Date.

2. Subsection (2) of Section 3, entitled Taxing Authorities and Amounts, of the Original PILOT is hereby amended to revise the respective tax fiscal years within paragraphs (a), (b), and (c):

(a) County PILOT Payments. Payments in lieu of general levy real estate taxes to the County for each of the tax fiscal years **2015 through 2021**, or until termination of the Lease Agreement, whichever date occurs first, shall be in an amount equal to the County Land PILOT Payment plus the County Variable PILOT Payment (as such terms are defined below) for each such tax fiscal year. The County Land PILOT Payment for each tax fiscal year shall be an amount equal to the County tax rate then in effect for such tax fiscal year, applied against the then current assessed valuation of the non-depreciable portion of all tax parcels constituting the Project (assessed as land). The County Variable PILOT Payment for each tax fiscal year shall be an amount equal to the County tax rate in effect for such tax fiscal year, applied to the product of (i) the then current assessed valuation of the depreciable portion of all tax parcels comprising the Project (assessed as buildings or other improvements), and (ii) the abatement factor applicable to such tax fiscal year as shown on Schedule A attached hereto and made a part hereof. Each such payment shall be delivered to County of Erie, Room 100, 95 Franklin Street, Buffalo, NY 14202, or such other place as may be designated from time to time by the County. Payments for each tax fiscal year must be made by May 15 of that year, or such payment shall be considered delinquent.

(b) City PILOT Payments. Payments in lieu of general levy real estate taxes for the City for each of the tax fiscal years **2015 through 2021**, or until termination of the Lease Agreement, whichever date occurs first, shall be in an amount equal to the City Land PILOT Payment plus the City Variable PILOT Payment (as such terms are defined below) for each such tax fiscal year. The City Land PILOT Payment for each tax fiscal year shall be an amount equal to the City tax rate then in effect for such tax fiscal year, applied against the then current assessed valuation of the non-depreciable portion of all tax parcels constituting the Project (assessed as land). The City Variable PILOT Payment for each tax fiscal year shall be an amount equal to the City tax rate in effect for such tax fiscal year applied to the product of (i) the then current assessed valuation of the depreciable portion of all tax parcels comprising the Project (assessed as buildings or other improvements), and (ii) the abatement factor applicable to such tax fiscal year as shown on Schedule A attached hereto and made a part hereof. Each such

payment shall be delivered to the City of Tonawanda, Attn: City Assessor or such other place as may be designated from time to time by the City. Fifty-percent (50%) of each required annual payment for each City tax fiscal year must be made by July 31 of that year, with the balance to be made by December 31 of such year unless otherwise required by the City), or such payment shall be considered delinquent.

(c) School District PILOT Payments. Payments in lieu of general levy real estate taxes for the School District for each of the tax fiscal years **2014-2015 through 2020-2021**, or until termination of the Lease Agreement, whichever date occurs first, shall be in an amount equal to the School District Land PILOT Payment plus the School District Variable PILOT Payment (as such terms are defined below) for each such tax fiscal year. The School District Land PILOT Payment for each tax fiscal year shall be an amount equal to the School District tax rate then in effect for such tax fiscal year, applied against the then current assessed valuation of the non-depreciable portion of all tax parcels constituting the Project (assessed as land). The School District Variable PILOT Payment for each tax fiscal year shall be an amount equal to the School District tax rate in effect for such tax fiscal year applied to the product of (i) the then current assessed valuation of the depreciable portion of all tax parcels comprising the Project (assessed as buildings or other improvements), and (ii) the abatement factor applicable to such tax fiscal year as shown on Schedule A attached hereto and made a part hereof. Each such payment shall be delivered to the School District, or such other place as may be designated from time to time by the School District. Payments for each tax fiscal year must be made one half by July 31 of that year and one half by December 31 (unless otherwise required by the School District), or such payments shall be considered delinquent.

6. Schedule A attached to the Original PILOT Agreement is hereby replaced with Schedule A attached hereto.

7. Unless otherwise amended and modified by this First Amendment to PILOT, the terms of the Original PILOT shall remain unchanged and in full force and effect. This First Amendment to PILOT shall in no way be construed as a waiver of any of the rights or remedies of the Agency or a release or waiver by the Agency of any Event of Default under the Original PILOT. The Agency hereby reserves all such rights and remedies.

[Remainder of this page left intentionally blank]

[Signature Page to First Amendment to PILOT]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to PILOT as of the day and year first written above.

**ERIE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

BY: Karen M. Fiala
Name: Karen M. Fiala
Title: Assistant Treasurer

OMFS PROPERTIES LLC

BY: [Signature]
Name: Glen C. Donnarumma
Title: Co-Owner

STATE OF NEW YORK)
COUNTY OF ERIE) SS.:

On the 23 day of September, 2013, before me, the undersigned, personally appeared **KAREN M. FIALA**, 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 signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Dawn M. Boudreau
Notary Public

DAWN M. BOUDREAU
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires May 27, 2015

STATE OF NEW YORK)
COUNTY OF ERIE) SS.:

On the 11 day of September, 2013, before me, the undersigned, personally appeared **GLEN C. DONNARUMMA**, 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.

Kathleen A. Gibson
Notary Public

KATHLEEN A GIBSON
Notary Public - State of New York
No. 01GI4983385
Qualified in Niagara County
My Commission Expires June 24, 2015

PILOT Agreement dated as of September 1, 2012,
as amended by the First Amendment to PILOT Agreement dated as of August 1, 2013,
by and between Erie County Industrial Development Agency,
and OMFS Properties LLC

Address: 711 Young Street, Tonawanda, NY

SBL No.: 53.07-3-1.1

Expiration of Lease: December 31, 2021

SCHEDULE A

Project/PILOT Tax Year	TAX FISCAL YEAR			ABATEMENT FACTOR
	County	City	School District	
Project Year 1	2013	2013	2012-2013	N/A – As if Owned
Project Year 2	2014	2014	2013-2014	N/A – As if Owned
PILOT Year 1	2015	2015	2014-2015	10%
PILOT Year 2	2016	2016	2015-2016	10%
PILOT Year 3	2017	2017	2016-2017	20%
PILOT Year 4	2018	2018	2017-2018	20%
PILOT Year 5	2019	2019	2018-2019	30%
PILOT Year 6	2020	2020	2019-2020	30%
PILOT Year 7	2021	2021	2020-2021	30%