

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**4675 TRANSIT ROAD LLC**

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**FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT**

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*Regarding the leasehold interest in (i) a 2.8+/- acre parcel of land (the "Land") together with an existing 22,000+/- SF building thereon (the "Existing Improvements"), (ii) the construction, renovation, expansion, upgrading and equipping of the Existing Improvements thereon together with the construction and equipping of a 10,000+/- SF addition into office, showroom, and manufacturing space, and a shipping and receiving dock (the "Improvements"), and (iii) the acquisition and installation 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") located at 4675 Transit Road, Town of Clarence, Erie County, New York.*

Dated as of: June 1, 2013

First Amendment Dated as of: September 1, 2014

Termination Date: December 31, 2025

SBL No.: 70.03-1-21.12

Affected Tax Jurisdictions: Erie County  
Town of Clarence  
Clarence Central 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 September, 2014, 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 95 Perry Street, Suite 403, Buffalo, New York 14203 (the "Agency") and **4675 TRANSIT ROAD 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 4675 Transit Road, Clarence, New York 14031 (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 "PILOT Agreement"), dated as of June 1, 2013, with respect the Company's property located at 4675 Transit Road, Town of Clarence, Erie County, New York (the "Facility"); and

WHEREAS, the Company, via correspondence received by the Agency on September 16, 2014 advised the Agency that the Project (as such term is defined in the PILOT Agreement and related documents) was not 100% completed by the March 1, 2014 Tax Status Date (as hereinafter defined); and

WHEREAS, pursuant to the request of the Company to the Agency to delay the implementation of the PILOT Agreement, as set forth in detail in the aforementioned correspondence to the Agency, the Agency and the Company have agreed to delay the implementation of the PILOT Agreement by one year, and amend and extend the expiration date in the PILOT Agreement by one year, and to revise Schedule A of the 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 PILOT Agreement is amended and restated as follows:

Section 1. Agency Tax Exemption. 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, 2014 (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) 2016 tax fiscal year of the County,
- (b) 2016 tax fiscal year of the Town, and
- (c) 2015-2016 tax fiscal year of the School District

Prior to the 2016 County, 2016 Town, and 2015-2016 School District tax fiscal years, the Company shall make payments in lieu of taxes as if the Company owned the Facility and the Agency had no interest in the Facility. This PILOT Agreement shall expire on December 31, 2025; *provided, however*, the Company shall pay the 2026 County, the 2026 Town, and the 2025-2026 School District tax bills, on the dates and in the amounts as if the Agency did not have an interest in the Project 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 Application. 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 PILOT Agreement 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 **2016 through 2025**, or until termination of the Leaseback Agreement, whichever date occurs first, shall be in an amount equal to the County Land PILOT payment plus the County Existing Improvements 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 in 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 Land PILOT Payment for each tax fiscal year shall be in an amount equal to the County tax rate in effect for such tax fiscal year, applied against the then current assessed valuation of the non-depreciable portion of all tax parcels comprising the Project (assessed as land). The County Existing Improvements PILOT Payment for each tax fiscal year shall be in an amount equal to the County tax rate in effect for such tax fiscal year, applied against the Pre-Project Assessment. The County Variable 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 to the product of (i) the difference between (1) the then current assessed valuation of the depreciable portion of all tax parcels comprising the Project (assessed as buildings or other improvements), multiplied by (2) the Pre-Project Assessment; 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 February 15 of that year, or such payment shall be considered delinquent.

(b) Town PILOT Payments. Payments in lieu of general levy real estate taxes for the Town for each of the tax fiscal years **2016 through 2025**, or until termination of the Leaseback Agreement, whichever date occurs first, shall be in an amount equal to the Town Land PILOT Payment plus the Town Existing Improvements PILOT Payment plus the Town Variable PILOT Payment (as such terms are defined below) for each such tax fiscal year. The Town Land PILOT Payment for each tax fiscal year shall be in an amount equal to the Town 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 Town Existing Improvements PILOT Payment for each tax fiscal year shall be in an amount equal to the Town tax rate in effect for such tax fiscal year, applied against the Pre-Project Assessment. The Town Variable PILOT Payment for each tax fiscal year shall be an amount equal to the Town tax rate then in effect for such tax fiscal year, applied to the product of (i) the difference between (1) the then current assessed valuation of the depreciable portion of all tax parcels comprising the Project (assessed as buildings or other improvements); and (2) the Pre-Project Assessment, multiplied by (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 Town of Clarence, Attn: Receiver of Taxes, or such other place as may be designated from time to time by the Town. Payments for each Town tax fiscal year must be made by February 15 of that year, (unless otherwise required by the Town), 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 **2015-2016 through 2024-2025**, or until termination of the Leaseback Agreement, whichever date occurs first, shall be in an amount equal to the School District Land PILOT Payment plus the School District Existing Improvement 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 in 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 Existing Improvements PILOT Payment for each tax fiscal year shall be in an amount equal to the School District tax rate in effect for such tax fiscal year, applied against the Pre-Project Assessment. The School District Variable 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 to the product of (i) the difference between (1) the then current assessed valuation of the depreciable portion of all tax parcels comprising the Project (assessed as buildings or other improvements), and (2) the Pre-Project Assessment, multiplied by (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 by October 15 of that year, (unless otherwise required by the School District), or such payment shall be considered delinquent.

6. Schedule A attached to the 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 PILOT Agreement 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 PILOT Agreement. 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

**4675 TRANSIT ROAD LLC**

BY: Raymond C. Bialkowski  
Name: Raymond C. Bialkowski  
Title: Sole Member

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

*December*

On the 16 day of ~~October~~, 2014, 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 30<sup>th</sup> day of October, 2014, before me, the undersigned, personally appeared **RAYMOND C. BIALKOWSKI**, 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.

Maria F. Manocchio  
Notary Public

MARIA F. MANOCCHIO  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN ERIE COUNTY  
MY COMMISSION EXPIRES DECEMBER 7, 2014

PILOT Agreement dated as of June 1, 2013,  
as amended by the First Amendment to PILOT Agreement dated as of September 1, 2014,  
by and between Erie County Industrial Development Agency  
and 4675 Transit Road LLC

Address: 4675 Transit Road, Clarence, NY  
SBL No.: 70.02-1-21.12  
Expiration of Lease: December 31, 2025

**SCHEDULE A**

<b>Project/ PILOT Tax Year</b>				<b>ABATEMENT FACTOR</b>
	<b>County</b>	<b>Town</b>	<b>School District</b>	
Project Year 1	2015	2015	2014-2015	<b>N/A-as if owned</b>
PILOT Year 1	2016	2016	2015-2016	10%
PILOT Year 2	2017	2017	2016-2017	10%
PILOT Year 3	2018	2018	2017-2018	10%
PILOT Year 4	2019	2019	2018-2019	20%
PILOT Year 5	2020	2020	2019-2020	20%
PILOT Year 6	2021	2021	2020-2021	20%
PILOT Year 7	2022	2022	2021-2022	30%
PILOT Year 8	2023	2023	2022-2023	30%
PILOT Year 9	2024	2024	2023-2024	30%
PILOT Year 10	2025	2025	2024-2025	30%