

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT ("Agreement") is made as of the 31st day of December, 2012, by and between **COVENANT MANOR APARTMENTS, LLC**, a limited liability company existing under the laws of the State of New York having an address at 8111 Rockside Road, Suite 200, Valley View, OH 44125 (the "Lessee"), and the **COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY**, a corporate government agency constituting a body corporate and politic and a public benefit corporation of the State of New York (the "Agency") having an address at 200 Harrison Street, Jamestown, NY 14701.

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law of the State of New York, Chapter 24 of the Consolidated Laws of the State of New York, as amended (the "Enabling Act") authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, expand, construct, reconstruct, lease, improve, maintain, equip, furnish, and dispose of one or more projects for the purpose of promoting, developing, encouraging, and assisting in the acquisition, expansion, construction, reconstruction, improvement, maintaining, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities, and thereby advance the job opportunities, general prosperity, and economic welfare of the people of the State of New York;

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act and Chapter 71 of the 1972 Laws of New York, as amended (together with the Enabling Act, hereinafter referred to as the "Act"), the Agency, which has been created and established pursuant thereto for the benefit of the County of Chautauqua, proposes to undertake the Project described below;

WHEREAS, the Agency on behalf of Lessee intends to (i) acquire a leasehold interest in certain land more particularly described on Schedule A attached hereto (the "Land") together with the improvements thereon (the "Improvements"); and (ii) possibly acquire and install therein and thereon certain Equipment (as defined in the Lease (as hereinafter defined))(the Land, Improvements and Equipment are hereinafter collectively referred to as the "Project");

WHEREAS, Lessee will be the owner in fee simple of the Land and the Improvements (collectively, the "Facility");

WHEREAS, Lessee will lease the Facility to the Agency pursuant to a Company Lease Agreement dated as of the date hereof entered into between Lessee, as lessor, and the Agency, as lessee (as amended, modified, restated or replaced from time to time, the "Company Lease");

WHEREAS, the Agency proposes to undertake the Project as an authorized project under the Act and to sublease the interest of the Agency to Lessee pursuant to an Agency Lease Agreement dated as of the date hereof entered into between the Agency, as lessor, and Lessee, as lessee (as amended, modified, restated or replaced from time to time, the "Lease");

WHEREAS, under the present provisions of the Act and under the present Section 412-a of the Real Property Tax Law of the State of New York, the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or under its control; and

WHEREAS, the Agency intends to file an application for tax exemption pursuant to Section 412-a of the Real Property Tax Law (an "Application") for only that portion of the Facility identified as Tax Parcel Numbers 387.40 – 3 – 14 and 387.40 - 3 - 50 (collectively, the "Exempt Parcels"), and to not file an Application in connection with the remainder of the Facility.

NOW, THEREFORE, in consideration of the premises and the payments, agreements, and covenants hereinafter contained, Lessee and the Agency formally covenant and agree as follows:

Section 1. Tax-Exempt Status of Facility.

(a) Application. Lessee shall complete, and the Agency shall file, an Application with respect to the Exempt Parcels only. Such application shall be filed with the assessor of each of the various taxing entities having jurisdiction over the Exempt Parcels, including, without limitation, the County of Chautauqua, the City of Jamestown, and the Jamestown Public School District (such taxing entities, and any successors thereto, being hereinafter collectively referred to as the "Taxing Entities" and individually, as a "Taxing Entity"). The Exempt Parcels shall not be entitled to exempt status on the tax rolls of any Taxing Entity until the beginning of the first tax year of such Taxing Entity following the first taxable status date of such Taxing Entity occurring subsequent to the last to occur of (i) the Agency becoming holder of a leasehold estate in the Exempt Parcels, (ii) the filing by the Agency of the appropriate applications for tax exemption, and (iii) the receipt of such applications by the appropriate tax assessors (such date, the "PILOT Commencement Date"). The Agency shall not file an Application with respect to the remainder of the Facility (i.e., all portions of the Facility other than the Exempt Parcels, including, without limitation, Tax Parcel Numbers 387.48-1-5 & 387.40-3-14..A) (the "Remainder of the Facility"), and Lessee represents, acknowledges and agrees that the Remainder of the Facility shall not be entitled to exempt status.

(b) Special Assessments. 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 exemption from special assessments and special ad valorem levies. Lessee will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Exempt Parcels. Lessee will also be required to pay all special assessments and ad valorem levies lawfully levied and/or assessed against the Remainder of the Facility.

(c) Other Charges. If any taxes, assessments, service charges or other governmental charges become payable by the Agency or Lessee on the rents under the Lease or the occupancy of or any interest of the Agency or Lessee in the Facility or any part thereof or any personal property used in connection with the business conducted and located therein, the amount of any tax, assessment or charges shall be paid by Lessee. Furthermore, water charges, sewer rentals, sewage treatment charges, solid waste charges and any other charges in the nature of utility charges shall be paid directly by Lessee and shall not be credited against nor affect in any manner any payment in lieu of general real estate taxes in any year and shall be computed pursuant to the formula adopted by the relevant Taxing Entity.

Section 2. Payments.

(a) Tax Payments.

(i) With respect to the Exempt Parcels, prior to the PILOT Commencement Date, the applicable real estate tax levies, if any, on the Exempt Parcels shall be payable in full by Lessee to the applicable Taxing Entities.

(ii) With respect to the Remainder of the Facility, Lessee shall pay in full all applicable real estate tax levies to the applicable Taxing Entities for the entire term of this Agreement, it being the intention of the Agency and Lessee that the Remainder of the Facility not be exempt from applicable real estate tax levies and that this Agreement not affect in any way Lessee's obligation to pay such taxes. In the event the Remainder of the Facility does become exempt from applicable real estate tax levies as a result of or in connection with this Agreement or the transactions contemplated hereby, whether because of an error at the assessor's office or for any other reason, then Lessee shall make, to the Agency on account and for the benefit of each of the applicable Taxing Entities, payments in lieu of general real estate tax levies on the Remainder of the Facility in an amount equal to the amount of the tax levies which would be payable if the Remainder of Facility were listed on the assessment rolls as fully taxable. Any such payments in lieu of general real estate taxes will be considered PILOT Payments for the purposes of sections 2(c), (d) and (f) below, and such payments will continue until the subject property is no longer exempt.

(b) PILOT Payments on the Exempt Parcels.

(i) PILOT Payments before Abatement Commencement. From the PILOT Commencement Date until the last day of the tax fiscal year of the applicable Taxing Entity in which the Abatement Commencement Date (as hereinafter defined) occurs, Lessee shall make payments in lieu of real property taxes and assessments levied and/or assessed by the Taxing Entities against the Exempt Parcels (collectively, the "PILOT Payments") equal to one hundred percent (100%) of the amount of real property taxes and assessments that would have been levied and/or assessed against the Exempt Parcels if the Facility were owned by Lessee and the Agency were not involved in the Project.

(ii) PILOT Payments after Abatement Commencement. Commencing with the first day of the first tax fiscal year of the applicable Taxing Entity following the Abatement Commencement Date, and for each subsequent tax fiscal year thereafter during the "Term of the PILOT" (as hereinafter defined), Lessee shall pay to the Agency PILOT Payments in the amounts specified in Schedule B attached hereto.

The PILOT payments shall remain as specified in Schedule B during the Term of the PILOT for each applicable Taxing Entity, and shall not increase or decrease from the specified amounts regardless of any increase or decrease in the underlying assessment for the Exempt Parcels or any portion thereof.

The "Term of the PILOT" shall be the period of time from the first day of the first tax fiscal year of the applicable Taxing Entity following the Abatement Commencement Date until the last day of the tax fiscal year of the applicable Taxing Entity following ten (10) annual PILOT Payments to such Taxing Entity. The "Abatement Commencement Date" shall mean June 30, 2013. If the Term of the PILOT for any Taxing Entity shall have expired while the Term of the PILOT for any other Taxing Entity shall not have expired, Lessee shall pay to the Agency, until the termination of this Agreement, PILOT Payments in an amount equal to the amount of the tax levies which would be payable to such Taxing Entity if the Exempt Parcels were listed on the assessment rolls as fully taxable.

(c) Payments to Agency. All PILOT Payments shall be made by Lessee directly to the Agency promptly upon receipt of billings from the Agency.

(d) Due Dates; Interest; and Penalties. The Agency will bill Lessee for the respective PILOT Payments as if the Facility were on the tax rolls at the time when taxes for each Taxing Entity are due. All payments are net if paid on or before the due dates listed below. If any PILOT Payment is not made on or before the due date, such payment shall be delinquent and Lessee shall pay, for the benefit of the applicable Taxing Entity, a late charge equal to five percent (5%) of the payment. For each month, or part thereof, that the payment is delinquent beyond the first month, Lessee shall pay an additional late charge equal to one and one-half percent (1-1/2%) per month of the total amount payable.

As of the date of this Agreement, the due dates for the PILOT Payment are as follows:

| | |
|--------------------|----------------------------|
| County/City Taxes: | January 30 th |
| School Taxes: | September 30 th |

(e) Partial Sale; Transferee's Obligation; Apportionment of Reduction to Local Taxing Entities. During the term of this Agreement, in the event that any portion of the Land or the Improvements located thereon is sold or disposed of, the transferees thereof will thereafter pay the real property taxes on such Improvements as may be located on the portion of the Land sold and on the portion of the Land sold as may be required by applicable law.

(f) Sale; Lessee's Obligation. In the event that the Agency terminates its interest in and/or sells the Facility to any party other than Lessee, Lessee's obligation for PILOT Payments shall be prorated to the date of the closing of the transaction and thereupon all obligations of Lessee for PILOT Payments shall cease, but the Agency shall take such steps with the purchaser other than Lessee to assure that each of the Taxing Entities shall suffer no loss of revenue until the Facility (or such portion thereof that may then be exempt) can be placed back on the tax rolls and taxes levied and billed therefor.

Section 3. Jobs. Lessee covenants and agrees that it shall, throughout the term of this Agreement, maintain, or create within three (3) years from the date of the application submitted to the Agency with respect to the Project, the number of permanent, private sector jobs at the site of the Project as set forth in the application. The Lessee agrees to deliver to the Agency on each annual anniversary of this Agreement a written report describing its compliance or noncompliance with the provisions of this Section 3 and to permit the Agency to audit the books and records of Lessee supporting such report.

Section 4. Effective Date; Duration of Agreement. This Agreement shall become effective upon the delivery of the Lease by Lessee and the Agency and shall continue in effect until the earlier of (i) the termination of this Agreement pursuant to the terms of the Lease or this Agreement, or (ii) the date on which the Agency's interest in the Facility is terminated pursuant to the Lease or this Agreement.

Section 5. Events of Default. The following shall constitute "Events of Default" under this Agreement:

- (a) failure by Lessee to make any payment specified herein within ten (10) days of when due;
- (b) failure by Lessee to comply with or perform any provision of this Agreement other than the payment provisions hereof and the continuance of such failure for a period of thirty (30) days following written notice from the Agency;
- (c) default in the terms of any agreement entered into between the Agency and Lessee (beyond any applicable grace period).

Upon the occurrence and continuance of an Event of Default hereunder, Lessee shall be required to make payments in lieu of general real estate taxes levied by the Taxing Entities on the Facility (or those portions of the Facility then exempt) as if it were owned by Lessee, such amounts to commence to be paid for the period subsequent to the date it is determined by the Agency that there is an Event of Default hereunder. In such event, the tax rate, interest and penalties shall be those then in effect in the jurisdiction(s) in which the Facility is (or those portions of the Facility then exempt are) located.

Upon the occurrence and continuance of an Event of Default hereunder, the Agency shall be entitled to sue to enforce any provision of this Agreement and to recover the payments in default from Lessee, together with all the costs and expenses of the Agency, its

successors or assigns, paid or incurred in such recovery (including court costs and reasonable attorney's fees and expenses) and interest at the rate specified in Section 2(d) above. In addition, the Agency shall have the right to reconvey the Facility to Lessee at any time, and Lessee shall accept any such tender of reconveyance.

The Agency, in enforcing payment by Lessee of said amounts, may take whatever action and exercise any or all of the rights and remedies specified in this Agreement or any other remedy provided by law.

Each and every Event of Default shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises. Lessee irrevocably agrees that any suit, action, or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State of New York, or the courts of the United States located within the State of New York, consents to the jurisdiction of each such court in any such suit, action, or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action, or proceeding in any of such courts.

No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient by the Agency.

In no event shall the Agency be liable to any of the Taxing Entities for the payments specified herein, whether or not Lessee makes such payments. Lessee hereby agrees to indemnify the Agency against any such liability for such payments and against all penalties, interest, and other charges resulting from the delinquency of such payments.

Section 6. Covenants by the Agency. The Agency covenants that, unless otherwise required by law, the Agency will not enact or adopt any laws, ordinances, rules, or regulations imposing any taxes, assessments, or other charges of payments on the Project or Lessee's subleasehold interest or personal property therein, or its use or occupancy thereof or its gross receipts or income therefore, except as Lessee and the Agency have herein agreed, or may agree from time to time in the future.

Section 7. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given, if by delivery, when delivered and, if delivered by mail, on the second day following the day on which mailed by certified mail, postage prepaid, addressed as follows:

To the Agency: County of Chautauqua Industrial Development Agency
200 Harrison Street
Jamestown, New York 14701
Attention: Administrative Director/CEO

With a copy to:

Phillips Lytle LLP
201 West Third Street, Suite 205
Jamestown, New York 14701
Attn: Jonathan P. Taber, Esq.

To Lessee: Covenant Manor Apartments, LLC
8111 Rockside Road, Suite 200
Valley View, OH 44125
Attn: Frank Sinito

With a copy to:

Covenant Manor Apartments, LLC
8111 Rockside Road, Suite 200
Valley View, OH 44125
Attn: Laura Anderson

The Agency or Lessee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

Section 8. Assignment of Agreement. This Agreement shall be binding upon the successors and assigns of Lessee, but no assignment shall be effective to relieve Lessee of any of its obligations hereunder unless expressly authorized and approved in writing by the Agency.

Section 9. Independent Agreement. Notwithstanding any other provision of this Agreement, including the recitals hereof, the parties agree that the Lease and the Company Lease executed between the parties hereto shall be separate and independent document from this Agreement, and irrespective of whether any provision of this Agreement or the entirety hereof shall be held invalid or unenforceable by any court of competent jurisdiction, the Lease and the Company Lease shall be construed, interpreted, and otherwise regarded separate and apart from this Agreement. The parties hereto specifically note that the considerations and terms provided for in this Agreement and provided for in the Lease and the Company Lease are the only considerations and terms for which the parties hereto have executed this Agreement.

Section 10. Amendments. This Agreement may not be modified, amended, supplemented, or changed without the written consent of the Agency and Lessee.


Section 11. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12. Prior Agreements; Counterparts. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, whether written or oral, among the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 13. Delivery of Agreement. The Agency agrees to use commercially reasonable efforts to deliver to each Taxing Entity a copy of this Agreement within fifteen (15) days after its execution by the Agency.

IN WITNESS WHEREOF, the Agency and Lessee have executed this Agreement as of the date first above written.

**COUNTY OF CHAUTAUQUA
INDUSTRIAL DEVELOPMENT AGENCY**

By: 
William J. Daly, Administrative Director/CEO

COVENANT MANOR APARTMENTS, LLC

By: Cedar Valley Associates, LP, its Sole Member

By: Cedar Valley Apartments, LLC, its General Partner

By: _____
Frank T. Sinito, its Managing Member

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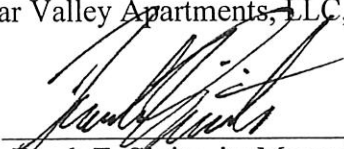
**COUNTY OF CHAUTAUQUA
INDUSTRIAL DEVELOPMENT AGENCY**

By: _____
William J. Daly, Administrative Director/CEO

COVENANT MANOR APARTMENTS, LLC

By: Cedar Valley Associates, LP, its Sole Member

By: Cedar Valley Apartments, LLC, its General Partner

By: 

Frank T. Sinito, its Managing Member

Schedule A

PARCEL A

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Jamestown, County of Chautauqua and State of New York, being part of Lot 34, Township 2, Range 11 of the Holland Land Company's Survey and being more particularly described as follows:

BEGINNING at the intersection of the southerly street line of West Third Street and the easterly street line of Cherry Street; thence North $77^{\circ} 38' 40''$ East along the southerly street line of West Third Street, a distance of 122.37 feet to the intersection of the southerly street line of West Third Street and the westerly line of Mechanics Alley; thence South $12^{\circ} 19' 40''$ East along the westerly line of Mechanics Alley, a distance of 175.50 feet to a point; thence South $77^{\circ} 52' 10''$ West, a distance of 122.45 feet to a point on the easterly street line of Cherry Street; thence North $12^{\circ} 18' 05''$ West along the easterly street line of Cherry Street, a distance of 175.02 feet to the point of beginning.

Also known of record as the following:

ALL THAT TRACT OR PACEL OF LAND situate in the City of Jamestown, County of Chautauqua and State of New York, being bounded and described as follows:

BEGINNING at a point in the southerly line of Third Street where it is intersected by the easterly line of Cherry Street; running thence North $77^{\circ} 38' 40''$ East along the southerly line of Third Street, 122.37 feet to the westerly line of Mechanic's Alley; thence South $12^{\circ} 7' 40''$ East along the westerly line of Mechanic's Alley a distance of 175.50 feet to a point; thence running South $77^{\circ} 40'$ West 60.73 feet to a point; thence North $12^{\circ} 21' 20''$ West 15.99 feet to a point; thence South $77^{\circ} 40'$ West 0.54 feet to a point; thence North $12^{\circ} 21' 20''$ West 19.76 feet to a point; thence South $77^{\circ} 38' 40''$ West 59.58 feet to a point in the easterly bounds of said Cherry Street; thence North $12^{\circ} 18' 05''$ West along said easterly street line of Cherry Street 140.28 feet to the point of beginning. According to a survey made by George N. Dimas, Surveyor, Jamestown, New York, dated July 19, 1976 and designated as Job No. 4100.

ALSO, ALL THAT TRACT OR PARCEL OF LAND situate in the City of Jamestown, County of Chautauqua and State of New York, being bounded and described as follows:

BEGINNING at a point in the easterly street line of Cherry Street South $12^{\circ} 18' 05''$ East 140.28 feet as measured along said easterly line from its intersection with the southerly street line of West Third Street; running thence North $77^{\circ} 38' 40''$ East parallel to said southerly line of West Third Street 59.58 feet to a point; thence South $12^{\circ} 21' 20''$ East 19.76 feet to a point; thence North $77^{\circ} 40'$ East 0.54 feet to a point; thence South $12^{\circ} 21' 20''$ East 15.99 feet to a point; thence South $77^{\circ} 40'$ West 60.49 feet to a point in the easterly line of said Cherry Street; thence North $12^{\circ} 18' 05''$ West along said easterly line of Cherry Street 35.27 feet to the point of beginning.

PARCEL B

TOGETHER WITH the benefits of an Easement Agreement made between City of Jamestown and Walcott Corporation dated August 5, 1977 and recorded December 29, 1977 in Liber 1740 of Deeds at page 290.

PARCEL C

TOGETHER WITH the benefits of an Easement Agreement made between City of Jamestown and Covenant Manor Housing Development Fund Company, Inc. dated December 10, 1979 and recorded January 10, 1980 in Liber 1855 of Deeds at page 94.

PARCEL D

ALL THAT TRACT OR PARCEL OR LAND situate in the City of Jamestown, County of Chautauqua and State of New York and being part of Lot 34, Town 2, Range 11 of the Holland Land Company's Survey and bounded and described as follows:

BEGINNING at the intersection of the southerly line of West Second Street and the easterly line of Foundry Alley; and running thence southerly along the easterly line of said Foundry Alley, 100 feet to an iron stake; thence easterly parallel with the said southerly line of West Second Street and 100 feet therefrom, 39 feet; thence northerly parallel with the first described line and 39 feet easterly therefrom, 100 feet to the said southerly line of West Second Street; and thence westerly along said southerly line of West Second Street, 39 feet to the place of beginning.

The above lands are also bounded and described as follows:

BEGINNING at an iron stake at the intersection of the east bounds of Foundry Alley and the southerly bounds of West Second Street; thence north $77^{\circ} 44' 00''$ east along the southerly bounds of West Second Street a distance of 39.10 feet to a point; thence south $12^{\circ} 23' 40''$ east 100 feet to a point; thence south $77^{\circ} 44' 00''$ west 39.10 feet to a point in the easterly bounds of Foundry Alley; thence north $12^{\circ} 23' 40''$ west along the easterly bounds of Foundry Alley 100 feet to the point and place of beginning, according to a survey of Steven A. Carlson, L.L.S., dated July 1, 1995 and designated as Job No. 7-6-95.

PARCEL E

TOGETHER WITH the benefits of an easement for light and air as set forth in a Deed made by Arthur M. Wellman and Ada O. Wellman, his wife to Henry F. Love dated October 1, 1925 and recorded December 21, 1925 in Liber 529 of Deeds at page 302.

Schedule B

PILOT PAYMENTS

| <u>Year</u> | <u>PILOT Amount</u> |
|-------------|---------------------|
| 1 | \$37,847.00 |
| 2 | \$38,604.00 |
| 3 | \$39,376.00 |
| 4 | \$40,163.00 |
| 5 | \$40,967.00 |
| 6 | \$41,786.00 |
| 7 | \$42,622.00 |
| 8 | \$43,474.00 |
| 9 | \$44,344.00 |
| 10 | \$45,230.00 |