

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (“Agreement”) is made as of the 11th day of July, 2013, by and between **DMP CHADWICK DRIVE, LLC**, a limited liability company existing under the laws of the State of New York, having an address of 3575 Chadwick Drive, Dunkirk, New York 14048 (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, having an address at 200 Harrison Street, Jamestown, New York 14701 (the “Agency”).

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, among others, 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 hereto (the “Land”); (ii) renovate improvements on the Land (the “Improvements”); and (iii) acquire the equipment more particularly described on Exhibit A to the Lease (as hereinafter defined) (the “Equipment”) (the Land, Improvements and Equipment are hereinafter collectively referred to as the “Project”);

WHEREAS, Lessee is 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 sublessor, and Lessee, as sublessee (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.

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 for tax exemption pursuant to Section 412-a of the Real Property Tax Law. Such application shall be filed with the assessor of each of the various taxing entities having jurisdiction over the Facility, including without limitation, the County of Chautauqua, the Town of Sheridan and the Dunkirk City 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 Facility shall not be entitled to exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the taxable status date of such Taxing Entity occurring subsequent to the Agency becoming the holder of a leasehold estate in the Facility, the filing by the Agency of the appropriate applications for tax exemption, and the receipt of such applications by the appropriate tax assessors.

(b) Cost. On the date of this Agreement or as soon as practicable after the Improvements have been completed, Lessee shall deliver to the Agency invoices and summaries of all costs and expenses directly paid by Lessee (collectively, the "Cost of Improvements"). The Agency reserves the right to audit and verify the Cost of Improvements.

(c) Completion Date/Assessment. The Completion Date of the Project ("Completion Date") shall be the date on which (i) the Project is substantially completed, (ii) a certificate of occupancy has been issued, and (iii) the Land and the Improvements thereon are assessed by the appropriate tax assessor(s) as completed in accordance with the Plans and Specifications (as defined in the Lease) on file with the Agency ("Final Assessed Value"), and (iv) the Facility has become entitled to exempt status pursuant to Section 1(a) above. Lessee estimates that the Completion Date will occur before March 1, 2014 ("Estimated Completion Date"). Lessee shall establish a Completion Date within six (6) months following the Estimated Completion Date.

(d) 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. Pursuant to the Lease, Lessee will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Facility.

(e) 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 Company 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. Prior to the Facility becoming entitled to exempt status as set forth in Section 1(a) above, the applicable real estate tax levies on the Facility shall be payable in full by Lessee to the applicable Taxing Entity.

(b) Pilot Payments During Renovation. After the Facility becomes entitled to exempt status until the last day of the tax fiscal year of the applicable Taxing Entity in which the Completion Date occurs, Lessee shall pay to the Agency at its address set forth in the heading of this Agreement, for the account and benefit of each Taxing Entity, payments in lieu of the general real estate tax levies on the Facility (“PILOT Payments”) in an amount equal to the amount of the tax levies which would be payable if the Facility were listed on the assessment rolls as fully taxable. All such payments shall be payable on the same dates on which general real estate taxes are payable.

(c) Pilot Payments after Completion of Renovation. Commencing with the Abatement Commencement Date, and continuing for each subsequent fiscal tax year thereafter for the Term of the PILOT, Lessee shall pay to the Agency for the account and benefit of each Taxing Entity, PILOT Payments as indicated on Schedule B attached hereto. For purposes of the foregoing, (1) “Abatement Commencement Date” shall be deemed to mean the first day of the first fiscal tax year of a taxing jurisdiction following the first taxable status date of such taxing jurisdiction occurring subsequent to the Completion Date, and (2) “Term of the PILOT” shall be deemed to be the period of time from the Abatement Commencement Date until the last day of the fiscal tax year of the applicable taxing entity following twelve (12) annual PILOT payments to such taxing entity.

Thereafter (following the Term of the PILOT), and through the end of the term of the lease with respect to the Facility, the payments shall be equal to the real property taxes that would be payable as if the Facility were listed on the assessment rolls as fully taxable property and subject to taxation at its then current, fully assessed value, as the same may be reassessed from time to time, and subject to tax rate increases imposed by the affected tax jurisdictions.

(d) Maximum Payment. Notwithstanding anything to the contrary herein, the PILOT Payments shall not exceed the amount Lessee would pay under normal calculations for any period. Hence, if the general real estate tax (calculated as if Lessee were the record owner of the Facility and the Agency held no interest therein, and the Facility were assessed at full value for purposes of taxation) otherwise due any Taxing Entity decreases due to a reduction in tax rates or

otherwise below the PILOT Payments specified in Section 2(c) above, then the PILOT Payments due that Taxing Entity shall be decreased to equal the tax that would otherwise be due. If, however, a PILOT Payment has been so reduced, and the taxes that would otherwise be due subsequently increase, the PILOT Payment shall similarly increase, but not in excess of the amount specified in Section 2(c) above. Except as set forth in this paragraph, once the PILOT Payments are calculated in accordance with Section 2(c) above, such PILOT Payments shall not be reduced during the Term of the PILOT, regardless of any reduction in the underlying assessment for the Facility.

(e) Payments to Agency. All PILOT Payments shall be made by Lessee directly to the Agency promptly upon receipt of billings from the Agency. It is understood that the Agency shall receive the PILOT Payments in trust for each of the Taxing Entities, and the Agency shall forward such payments to each such Taxing Entity within thirty (30) days after receipt thereof.

(f) 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 percent (1%) 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 and Town Taxes:	January 30 th
School Taxes:	September 30 th

(g) Partial Sale; Transferee's Obligation; Apportionment of Reduction to Local Taxing Entities. During the term of this Agreement, in the event that the Agency's interest in any portion of the Land or the Improvements located thereon is sold or disposed of by the Agency, 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.

(h) Sale; Lessee's Obligation. In the event that the Agency terminates its interest in and/or transfers 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 such Facility 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 (as defined in the Lease). The Company 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 and the Company Lease by Lessee and the Agency and shall continue in effect until the earlier of (i) last day prior to the taxable status date following the final tax fiscal year of a Taxing Entity in which a PILOT Payment is payable pursuant to Section 2(c) above, 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 and the continuance of such failure for a period of ten (10) days following written notice from the Agency or any Taxing Entity;

(b) failure by Lessee to observe and perform any covenant, condition or agreement in this Agreement other than the payment provisions hereof and the continuance of such failure for a period of thirty (30) days following written notice to Lessee specifying the nature of such failure and requesting that it be remedied.

(c) failure by Lessee to establish a Completion Date within six (6) months after the Estimated Completion Date; and/or

(d) 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 as if it were owned by Lessee and the Agency held no interest therein, 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 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 attorney's fees and expenses) and interest at the rate specified in Section 2(f) above. In addition, the Agency shall have the right to terminate the Lease and the Company Lease at any time.

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, defend (with counsel selected by the Agency) and hold harmless the Agency from and 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, NY 14701
Attention: Jonathan P. Taber, Esq.

To the Lessee: DMP Chadwick Drive, LLC
3575 Chadwick Drive
Dunkirk, New York 14048

With a copy to: Louis C. Fessard, Esq.
Acquest Development, LLC
In House Counsel
80 Curtwright Drive, Suite 5
Williamsville, New York 14221

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 documents 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, Lessee and any Taxing Entity which is affected by the amendment.

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 its best efforts to deliver to each Taxing Entity a copy of this Agreement within fifteen (15) days after its execution by the Agency.

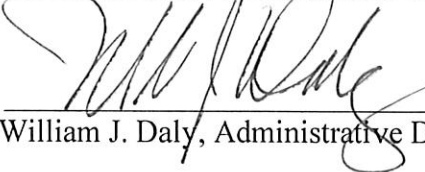
Section 14. Applicable Law. This Agreement shall be governed and construed under the internal laws of the State of New York, as the same may be in effect from time to time, without regard to principles of conflicts of law.

Section 15. WAIVER OF JURY TRIAL. THE AGENCY AND LESSEE HEREBY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING IN CONNECTION WITH THIS AGREEMENT.


[Remainder of This Page Intentionally Left Blank]

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

DMP CHADWICK DRIVE, LLC

By: 
Jean Gaulin
Manager

SCHEDULE "A"

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Sheridan, County of Chautauqua and State of New York, being part of Lot 70, Town 6 and Range 11 of the Holland Land Company's survey and further bounded and described as follows:

COMMENCING at an iron stake in the northerly line of Progress Drive, where said northerly line of Progress Drive intersects with the easterly line of Chadwick Drive;

thence N 67°-04'-08" E, along the northerly line of Progress Drive, 540.00 feet to an iron stake marking the southeasterly corner of Grafco and the POINT OF BEGINNING of the parcel hereinafter described;

thence N 22°-55'-52" W, along the easterly line of Grafco, 970.00 feet to a point in the southerly line of Chadwick Drive;

thence N 67°-04'-8" E, along the southerly line of Chadwick Drive, 499.30 feet to a point;

thence continuing northeasterly along the southerly line of Chadwick Drive, on a curve to the right, 6.02 feet to an iron stake, said curve having a radius of 350.00 feet and a chord N 67°-33'-41" E, 6.02 feet;

thence S 22°-55'-52" E, 379.95 feet to an iron stake;

thence S 67°-04'-08" W, 202.00 feet to an iron stake;

thence S 22°-55'-52" E, 590.00 feet to an iron stake in the northerly line of Progress Drive;

thence S 67°-04'-08" W, along the northerly line of Progress Drive, 303.32 feet to the point of beginning containing 370,969 square feet or 8.52 acres of land to be the same more or less.

SUBJECT TO any utility easements, rights of ways, agreements and restrictions of record that may validly affect the premises.

Schedule B

PILOT PAYMENTS

<u>Pilot Year</u>	<u>PILOT Amount</u>
1	\$0
2	\$4,200
3	\$6,300
4	\$8,400
5	\$10,500
6	\$12,600
7	\$12,600
8	\$14,700
9	\$16,800
10	\$18,900
11	\$21,000
12	\$23,100