

## PAYMENT IN LIEU OF TAXES AGREEMENT

**THIS PAYMENT IN LIEU OF TAXES AGREEMENT** ("Agreement") is made as of the 13th day of May, 2013 ("Effective Date") by and between **S. HOWES, INC.**, a New York corporation having an address at 25 Howard Street, Silver Creek, New York 14136 (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, New York 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 hereto (the "Land"); (ii) construct certain 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**, the 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; 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 Land identified as Tax Parcel Number 32.18-6-50, together with all improvements thereon, (collectively, the "Exempt Parcel"), 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 the Exempt Parcel.

(a) Application. Lessee shall complete, and the Agency shall file, an Application with respect to the Exempt Parcel only. Such Application shall be filed with the assessor of each of the various taxing entities having jurisdiction over the Exempt Parcel, including, without limitation, the County of Chautauqua, the Town of Hanover, Village of Silver Creek and the Silver Creek Central 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 Parcel 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 Exempt Parcel, the filing by the Agency of the appropriate applications for tax exemption, and the receipt of such applications by the appropriate tax assessors. The Agency shall not file an Application with respect to the remainder of the Facility (i.e., Tax Parcel Number 32.18-6-48 and other portions of the Facility not part of the Exempt Parcel) (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) 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 shall be the date on which (i) the Project is substantially completed, (ii) a certificate of occupancy has been issued, (iii) the Exempt Parcel 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 Exempt Parcel has become

entitled to exempt status pursuant to Section 1(a) above. Lessee estimates that the Completion Date will be September 30, 2013 ("Estimated Completion Date"). Lessee shall establish a Completion Date within ninety (90) days 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 Exempt Parcel. Lessee will also be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Remainder of 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, 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.

(i) With respect to the Exempt Parcel, prior to the Exempt Parcel becoming entitled to exempt status as set forth in Section 1(a) above, the applicable real estate tax levies on the Exempt Parcel 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 (as hereinafter defined) for the purposes of sections 2(e), (f) and (h) below, and such payments will continue until the subject property is no longer exempt.

(b) Pilot Payments on the Exempt Parcel During Construction. After the Exempt Parcel 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 Exempt Parcel ("PILOT Payments") in an amount equal to the amount of the tax levies which would be payable if the Exempt Parcel were listed on the assessment rolls as fully taxable.

(c) Pilot Payments on the Exempt Parcel after Completion of Construction. Commencing with the first tax year for the applicable Taxing Entity following the Completion Date, Lessee shall pay to the Agency for the account and benefit of each Taxing Entity during the "Term of the PILOT" (as hereinafter defined) for each Taxing Entity PILOT Payments in an amount equal to (i) the sum of (A) the Current Actual Assessed Value (as hereinafter defined) and (B) the Effective Percent (as hereinafter defined) of the Assessed Value Increase (as hereinafter defined), times (ii) the tax equalization rate for the applicable Taxing Entity, times (iii) the tax rate for the applicable Taxing Entity in effect on the Completion Date. 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 Completion 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. 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 Facility was listed on the assessment rolls as fully taxable.

For purposes of the foregoing, (i) "Current Actual Assessed Value" shall mean the assessed value of the Exempt Parcel and all appurtenances thereto as of the Effective Date of this Agreement, (ii) "Effective Percent" shall mean the applicable percentage from time to time as specified on the attached Schedule B, and (iii) "Assessed Value Increase" shall mean the difference between the Final Assessed Value and the Current Actual Assessed Value.

(d) Maximum Payment. Notwithstanding anything to the contrary herein, the PILOT Payments should not exceed the amount Lessee would pay under normal calculations for any period. Hence, if the general real estate tax due (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 enumerated in Section 1(a) above, and the Agency shall forward such payments to 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 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:

Village Taxes	June 30th
County and Town Taxes:	January 30 <sup>th</sup>
School Taxes:	September 30 <sup>th</sup>

(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 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, use its best efforts to 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 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 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 thereof by the Agency to Lessee;

(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 (or those portions of the Facility then exempt) 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 (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 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 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 or 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

To Lessee: S. Howes, Inc.  
25 Howard Street  
Silver Creek, New York 14136

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 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.

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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:  \_\_\_\_\_

**S. HOWES, INC.**

By:  \_\_\_\_\_  
Name: \_\_\_\_\_

Doc # 03-126073.1

## SCHEDULE "A"

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the Village of Silver Creek, Town of Hanover, County of Chautauqua and State of New York, being part of Lot No. 74, Township 6, Range 10 of the Holland Land Company's Survey, more particularly described as follows:

BEGINNING at a point in the east line of Howard Street (66 feet wide) 225 feet north of the north line of Central Avenue; thence N 14° 21' 00" E along the east line of Howard Street, a distance of 409.75 feet to the south line of Buffalo Street (66 feet wide); thence easterly along the south line of Buffalo Street forming an interior angle of 95° 44' 26", a distance of 321.66 feet to the west line of North Main Street (66 feet wide); thence S 24° 14' 10" W along the west line of North Main Street, a distance of 455.62 feet to a point; thence N 74° 00' 30" W, a distance of 241.92 feet to the point of beginning.

EXCEPTING therefrom all that part of the above-described premises lying north of Silver Creek.

**Schedule B**

**EFFECTIVE PERCENT**

During the Term of the Pilot, the Effective Percent will change from time to time in accordance with the following chart:

<u>Pilot Year</u>	<u>Effective Percent</u>
Year 1	10%
Year 2	10%
Year 3	20%
Year 4	20%
Year 5	30%
Year 6	30%
Year 7	40%
Year 8	40%
Year 9	50%
Year 10	50%