

CLOSING ITEM NO.: A-8

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CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY

AND

COLUMBIA HARRIMAN 455 LLC

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PAYMENT IN LIEU OF TAX AGREEMENT

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DATED AS OF JANUARY 1, 2013

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RELATING TO A LEASEHOLD INTEREST HELD BY THE  
LANDLORD IN A CERTAIN PARCEL OF LAND LOCATED AT 455  
PATROON CREEK BOULEVARD (TAX MAP NO. 53.00-1-13.2) IN  
THE CITY OF ALBANY, ALBANY COUNTY, NEW YORK.

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## PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT dated as of January 1, 2013 (the "Payment in Lieu of Tax Agreement") by and between CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 21 Lodge Street, Albany, New York (the "Agency"), and COLUMBIA HARRIMAN 455 LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 302 Washington Avenue Extension, Albany, New York (the "Company");

### WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 325 of the Laws of 1974 of the State (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, in November, 2010, Columbia Harriman 455 LLC (the "Company"), a limited liability company duly organized and validly existing under the laws of the State of New York, presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Initial Project") for the benefit of the Company, said Initial Project to include the following: (A) (1) the acquisition of an interest in a parcel of land containing approximately 3.53 acres having an address of 455 Patroon Creek Boulevard (tax map no. 53.00-1-13.2) in the City of Albany, Albany County, New York (the "Land"), (2) the construction on the Land of a building to contain approximately 63,000 square feet of space together with a surface parking facility and related amenities (collectively, the "Initial Facility"), and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment"), all of the foregoing to be owned by the Company for use by the Company as retail offices, commercial, technology and medical uses and other directly and indirectly related activities (the Land, the Initial Facility and the Equipment being collectively referred to as the "Initial Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and

use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Initial Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on December 16, 2010 (the "Public Hearing Resolution"), the Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the "Public Hearing") to hear all persons interested in the Initial Project and the Financial Assistance being contemplated by the Agency with respect to the Initial Project, to be mailed on February 7, 2011 to the chief executive officers of the county and of each city, town, village and school district in which the Initial Project is to be located, (B) caused notice of the Public Hearing to be posted on January 9, 2011 on a public bulletin board located at City Hall Rotunda located in the City of Albany, Albany County, New York, (C) caused notice of the Public Hearing to be published on January 10, 2011 in Albany Times Union, a newspaper of general circulation available to the residents of the City of Albany, New York, (D) conducted the Public Hearing on January 20, 2011 and February 17, 2011 at 12:00 o'clock p.m., local time at the offices of the Agency located at 21 Lodge Street in the City of Albany, Albany County, New York, and (E) prepared a report of the Public Hearing (the "Public Hearing Report") fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Agency on May 19, 2011 (the "SEQR Resolution"), the Agency (A) concurred in the determination by the City of Albany Planning Board (the "Planning Board") to act as "lead agency" with respect to the Initial Project and (B) indicated that the Agency had no information to suggest that the Planning Board was incorrect in issuing a negative declaration (the "Negative Declaration") determining that the Initial Project will not have a "significant effect on the environment" (as such quoted terms are defined in SEQRA); and

WHEREAS, the Agency's Uniform Tax Exemption Policy (the "Policy") provides a standardized method for the determination of payments in lieu of taxes for a facility similar to the Initial Project Facility. In connection with the Application (A) the Company made a request to the Agency (the "Initial Pilot Request") that the Agency deviate from the Policy with respect to Initial Project Facility. In connection with the Initial Pilot Request, the Chief Executive Officer of the Agency sent a notice to the chief executive officers of the "Affected Tax Jurisdictions" (as defined in the Act) pursuant to Section 874(4) of the Act, informing said individuals that the Agency had received the Initial Pilot Request and that the members of the Agency would consider said request at a meeting of the members of the Agency scheduled to be held on May 6, 2011, (B) the Chief Executive Officer of the Agency caused a letter dated April 26, 2011 (the "Initial Pilot Deviation Notice Letter") to be mailed to the chief executive officers of the Affected Tax Jurisdictions, informing said individuals that the Agency would, at its meeting on May 6, 2011, consider a proposed deviation from the Policy with respect to the payment in lieu of tax agreement to be entered into by the Agency with respect to the Initial Project Facility (the "Initial Payment in Lieu of Tax Agreement") and the reasons for the proposed deviation and (C) by resolution adopted by the members of the Agency on May 19, 2011 (the "Pilot Deviation Approval Resolution"), the Agency determined to deviate from its Policy and enter into the Initial Payment in Lieu of Tax Agreement with respect to such deviation; and

WHEREAS, by further resolution adopted by the members of the Agency on May 19, 2011 (the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into a

lease agreement dated as of January 1, 2013 (the "Lease Agreement") between the Agency and the Company and certain other documents related thereto and to the Initial Project (collectively with the Lease Agreement, the "Basic Documents"). Pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Initial Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Initial Project and (B) the Agency will lease the Initial Project Facility to the Company for a lease term ending on the earlier to occur of (1) December 31, 2023 or (2) the date on which the Lease Agreement is terminated pursuant to the optional termination provisions thereof. The Lease Agreement grants to the Company certain options to acquire the Initial Project Facility from the Agency; and

WHEREAS, in August, 2012, the Company submitted an application (the "**Amended Application**") to the Agency, which **Amended Application** requested that the Agency consider undertaking a project that **amends** the Initial Project (the "Project") for the benefit of the Company, said Project to consist of the following: (A) (1) the acquisition of an interest in a parcel of land containing approximately 3.53 acres having an address of 455 Patroon Creek Boulevard (tax map no. 53.00-1-13.2) in the City of Albany, Albany County, New York (the "Land"), (2) the construction on the Land of a building to contain approximately 42,000 square feet of space, together with a surface parking facility and related amenities (collectively, the "Facility"), and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment"), all of the foregoing to be owned by the Company for use by the Company as retail offices, commercial, technology and medical uses and other directly and indirectly related activities (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, in connection with the **Amended Application**, the Company made a request to the Agency (the "Pilot Request") that the Agency enter into a proposed pilot agreement which terms would deviate from the Agency's Policy and which terms amend the Initial Pilot Request. Pursuant to the Pilot Request, (A) the Chief Executive Officer of the Agency sent a notice to the chief executive officers of the "Affected Tax Jurisdictions" (as defined in the Act) pursuant to Section 874(4) of the Act, informing said individuals that the Agency had received the Pilot Request and that the members of the Agency would consider said request at a meeting of the members of the Agency scheduled to be held on September 20, 2012, (B) the Chief Executive Officer of the Agency caused a letter dated September 12, 2012 (the "Pilot Deviation Notice Letter") to be mailed to the chief executive officers of the Affected Tax Jurisdictions, informing said individuals that the Agency would, at its meeting on September 20, 2012, consider a proposed deviation from the Policy with respect to the payment in lieu of tax agreement to be entered into by the Agency with respect to the Project Facility (the "Payment in Lieu of Tax Agreement") and the reasons for the proposed deviation and (C) by resolution adopted by the members of the Agency on September 20, 2012 (the "Confirming Resolution"), the Agency determined to (1) deviate from its Policy and enter into the Payment in Lieu of Tax Agreement with respect to such deviation, (2) confirm the Approving Resolution and (3) enter into the Basic Documents with respect to the Project Facility; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency dated as of January 1, 2013 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises") for a lease term ending on December 31, 2023 and (2) a certain license agreement dated as of January 1,

2013 (the "License to Agency") by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency (a) a license to enter upon the balance of the Land (the "Licensed Premises") for the purpose of undertaking and completing the Project and (b), in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement, (B) the Company and the Agency will execute and deliver the Payment in Lieu of Tax Agreement, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility and (C) the Agency will file with the assessor and mail to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement; and

WHEREAS, on December 31, 2010 (the "Bond Closing"), Albany County Industrial Development Agency (the "Issuer") issued its Recovery Zone Facility Bond (Columbia Harriman 455 LLC Project), Series 2010A in the principal amount of \$9,050,000 (the "Bond"), for the benefit of the Company, to assist in financing the Project. Simultaneously with the issuance of the Bond, (A) the Company and the Issuer executed and delivered a certain lease agreement dated as of December 1, 2010 (the "Lease to Issuer") by and between the Company, as landlord, and the Issuer, as tenant, pursuant to which the Company leased a portion of the Land and the Facility to the Issuer for a term ending on the completion of the Project, (B) the Company executed and delivered (1) a certain license agreement dated as of December 1, 2010 (the "License to Issuer") by and between the Company, as licensor, and the Issuer, as licensee, pursuant to which the Company granted to the Issuer a license to enter upon the Land for the purpose of undertaking and completing the Project and, in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Land for the purpose of pursuing its remedies under the Installment Sale Agreement (as hereinafter defined), and (2) a bill of sale dated as of December 1, 2010 (the "Bill of Sale to Issuer") from the Company to the Issuer, pursuant to which the Company conveyed to the Issuer its interest in the portion of the Project Facility constituting fixtures and other personal property, (C) the Issuer and the Company executed and delivered an installment sale agreement dated as of December 1, 2010 (the "Installment Sale Agreement") whereby the Issuer agreed to convey the Project Facility to the Company and (D) as security for the Bond, the Company and the Issuer executed and delivered to First Niagara Bank, N.A., as original purchaser of the Bond (the "Holder") (1) a mortgage dated as of December 1, 2010 (the "Mortgage") from the Company and the Issuer to the Holder, which Mortgage granted to the Holder a mortgage lien on, and security interest in, certain property of the Company (the "Mortgaged Property") and (2) an assignment of leases and rents dated as of December 1, 2010 (the "Assignment of Rents"), which Assignment of Rents assigned to the Holder all interest of the Issuer and the Company in all leases affecting the Project Facility and the rents payable thereunder (the above enumerated documents being collectively referred to as the "Bond Documents"); and

WHEREAS, Section 9.4 of the Installment Sale Agreement provides that the Company is prohibited from conveying any portion of the Project Facility without the prior written consent of the Issuer and the Holder. By resolution adopted by the members of the Issuer on April 25, 2012 (the "Resolution Approving City IDA Documents"), the Issuer consented to the conveyance of the Project Facility to the Agency, subject to the consent of the Holder, and to the execution and delivery of any documents necessary in connection with said conveyance (collectively, the "Transaction"); and

WHEREAS, in connection with the Transaction, (A) the Installment Sale Agreement will be modified pursuant to a modification agreement dated as of January 1, 2013 (the "Modification Agreement") by and among, the Issuer, the Holder and the Company, (B) the Lease to Issuer will be terminated pursuant to a termination of Lease to Issuer dated as of January 1, 2013 (the "Termination of

Lease to Issuer”) by and between the Issuer and the Company, (C) the Mortgage will be extended and spread to extend the Holder’s existing mortgage lien to the Underlying Lease and the Lease Agreement pursuant to a mortgage spreader agreement dated as of January 1, 2013 (the “Mortgage Spreader Agreement (Bond)”) by and among the Agency, the Company and the Holder, (D) a mortgage dated as of December 1, 2010 (the “Bank Mortgage”) from the Company and the Issuer to the Holder, will be extended and spread onto the Lease Agreement pursuant to a mortgage spreader agreement dated as of January 1, 2013 (the “Mortgage Spreader Agreement (Note)”) by and among the Agency, the Company and the Holder and (E) the Assignment of Rents will be amended and spread to the Underlying Lease and the Lease Agreement pursuant to an amendment to the Assignment of Rents dated as of January 1, 2013 (the “Amendment to Assignment of Rents”) by and among the Agency, the Company and the Holder; and

WHEREAS, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York (the “Real Property Tax Law”), 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 control; and

WHEREAS, pursuant to the provisions of Section 6.6 of the Lease Agreement, the Company has agreed to make payments in lieu of taxes with respect to the Project Facility in an amount equivalent to normal taxes, provided that, so long as this Payment in Lieu of Tax Agreement shall be in effect, the Company shall during the term of this Payment in Lieu of Tax Agreement make payments in lieu of taxes in the amounts and in the manner provided in this Payment in Lieu of Tax Agreement, and during such period the provisions of Section 6.6 of the Lease Agreement shall not control the amounts due as payment in lieu of taxes with respect to that portion of the Project Facility which is covered by this Payment in Lieu of Tax Agreement; and

WHEREAS, all things necessary to constitute this Payment in Lieu of Tax Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Payment in Lieu of Tax Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, in consideration of the matters above recited, the parties hereto formally covenant, agree and bind themselves as follows, to wit:



## ARTICLE I

### REPRESENTATIONS AND WARRANTIES

SECTION 1.01. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

(A) Power. The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into the transactions contemplated by this Payment in Lieu of Tax Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement hereunder.

(B) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Agency is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

SECTION 1.02. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant and covenant as follows:

(A) Power. The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, is duly authorized to do business in the State of New York and has the power under the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement, and by proper action of its members has been duly authorized to execute, deliver and perform this Payment in Lieu of Tax Agreement.

(B) Authorization. The Company is authorized and has the power under its Articles of Organization, Operating Agreement and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper action of its members, the Company has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Company is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by (and the execution, delivery and

performance of this Payment in Lieu of Tax Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Payment in Lieu of Tax Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its Articles of Organization or Operating Agreement or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Payment in Lieu of Tax Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Payment in Lieu of Tax Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consent. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Payment in Lieu of Tax Agreement by the Company or as a condition to the validity of this Payment in Lieu of Tax Agreement.

## ARTICLE II

### COVENANTS AND AGREEMENTS

SECTION 2.01. TAX-EXEMPT STATUS OF THE PROJECT FACILITY. (A) Assessment of the Project Facility. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of the Project Facility by the Agency and the filing by the Agency of a New York State Board of Real Property Services Form RP-412-a (a "Real Property Tax Exemption Form") with respect to the Project Facility, and for so long thereafter as the Agency shall own the Project Facility, the Project Facility shall be assessed by the various taxing entities having jurisdiction over the Project Facility, including, without limitation, any county, city, school district, town, village or other political unit or units wherein the Project Facility is located (such taxing entities being sometimes collectively hereinafter referred to as the "Taxing Entities", and each of such Taxing Entities being sometimes individually hereinafter referred to as a "Taxing Entity") as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the acquisition by the Agency of the leasehold interest to the Project Facility created by the Underlying Lease and the filing of the Real Property Tax Exemption Forms. The Company shall, promptly following acquisition by the Agency of the leasehold interest to the Project Facility created by the Underlying Lease, take such action as may be necessary to ensure that the Project Facility shall be assessed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to such acquisition by the Agency, including ensuring that a Real Property Tax Exemption Form shall be filed with the appropriate officer or officers of each respective Taxing Entity responsible for assessing properties on behalf of each such Taxing Entity (each such officer being hereinafter referred to as an "Assessor"). For so long thereafter as the Agency shall own such leasehold interest in the Project Facility, the Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Taxing Entity. The parties hereto understand that the Project Facility shall not be entitled to such tax-exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the tax status date of such Taxing Entity occurring subsequent to the date upon which the Agency becomes the owner of record of such leasehold interest in the Project Facility and the Real Property Tax Exemption Forms are filed with the Assessors. Pursuant to the provisions of the Lease Agreement, the Company will be required to pay all taxes and assessments lawfully levied and/or assessed against the Project Facility, including taxes and assessments levied for the current tax year and all subsequent tax years until the Project Facility shall be entitled to exempt status on the tax rolls of the respective Taxing Entities. The Agency will cooperate with the Company to obtain and preserve the tax-exempt status of the Project Facility.

(B) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act 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 Agreement, the Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project Facility.

SECTION 2.02. PAYMENTS IN LIEU OF TAXES. (A) Agreement to Make Payments. The Company agrees that it shall make annual payments in lieu of property taxes in the amounts hereinafter provided to the respective Taxing Entities entitled to receive same pursuant to the provisions hereof. The Company also agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The payments due hereunder shall be paid by the Company to the respective appropriate officer or officers of the respective Taxing Entities charged with receiving payments of taxes for such Taxing Entities (such officers being collectively hereinafter referred to as the "Receivers of Taxes") for distribution by the Receivers of Taxes to the appropriate Taxing Entities entitled to receive same pursuant to the provisions hereof.

(B) Valuation of the Project Facility. (1) The assessed value of the Land shall be determined by the appropriate Assessors (the "Land Assessed Value"). The assessed value of the Facility and any portion of the Equipment assessable as real property pursuant to the New York Real Property Tax Law (collectively, with the Facility (the "Improvements") for purposes of determining payments in lieu of property taxes due hereunder (the "PILOT Assessed Value") shall be Three Million Three Hundred Ninety-Three Thousand Dollars (\$3,393,000). The Company understands that the actual assessment of the Improvements on the assessment rolls of Albany County, City of Albany and Albany City School District (the "Actual Assessment") is determined by the Assessor and may vary from the PILOT Assessed Value. The Company further understands that, although the PILOT Assessed Value would be used to determine payment in lieu of taxes due under this Payment in Lieu of Tax Agreement, the Actual Assessment would be used to determine special assessments or special ad valorem levies.

(2) Commencing on the first tax year following the tax status date on which any Taxing Entity switches from its present system of "fractional assessment" (i.e., valuing real property for taxing purposes at a percentage of full value significantly below 100% of full value) to a system of "full value assessment" (i.e., a system of valuing real property for taxing purposes at a percentage of full value approximately equal to 100% of the full value), the PILOT Assessed Value of the Facility for purposes of determining payments in lieu of property taxes due such Taxing Entity hereunder shall be in such new amounts as shall be determined by multiplying the PILOT Assessed Value by a fraction, the numerator of which is 100% and the denominator of which is the state equalization rate for the assessment roll of such Taxing Entity completed immediately prior to such switch to a system of "full value assessment".

(C) Amount of Payments in Lieu of Taxes. The payments in lieu of taxes to be paid by the Company to the Receivers of Taxes annually on behalf of each Taxing Entity pursuant to the terms of this Payment in Lieu of Tax Agreement shall be computed separately for each Taxing Entity as follows:

(1) First, determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Taxing Entity if the Land was owned by the Company and not the Agency by multiplying (a) the Assessed Value of the Land determined pursuant to Subsection (B) of this Section 2.02, by (b) the tax rate or rates of such Taxing Entity that would be applicable to the Land if the Land was owned by the Company and not the Agency.

(2) In each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which the Land shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Land shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to the Land for such tax year.

(3) Next, determine the Normal Tax which would be payable to each Taxing Entity if the Improvements were owned by the Company and not the Agency by multiplying (a) the Assessed Value of the Improvements determined pursuant to Subsection (B) of this Section 2.02, by (b) the tax rate or rates of such Taxing Entity that would be applicable to the Improvements if the Improvements were owned by the Company and not the Agency.

(4) In each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which the Improvements shall be assessed

as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Improvements shall be an amount equal to the applicable percentage of the Normal Tax due each Taxing Entity with respect to the Improvements for such tax year, as shown in the following table:

<u>Tax Year Commencing in Calendar Year</u>	<u>Percentage of Normal Tax City/County</u>	<u>Percentage of Normal Tax School District</u>
2013	100%	50%
2014	50%	55%
2015	55%	60%
2016	60%	65%
2017	65%	70%
2018	70%	75%
2019	75%	80%
2020	80%	85%
2021	85%	90%
2022	90%	95%
2023	95%	100%
Thereafter	100%	100%

(5) In each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which any portion of the Project Facility shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Project Facility shall be the sum of (a) the amount due each Taxing Entity with respect to the Land for such tax year, as determined pursuant to Subsection (C)(2) hereof, **plus** (b) the amount due each Taxing Entity with respect to the Improvements for such tax year, as determined pursuant to Subsection (C)(4) hereof.

(D) Additional Amounts in Lieu of Taxes. Commencing on the first tax year following the date on which any structural addition shall be made to the Project Facility or any portion thereof or any additional building or other structure shall be constructed on the Land (such structural additions and additional buildings and other structures being hereinafter referred to as “Additional Facilities”) the Company agrees to make additional annual payments in lieu of property taxes with respect to such Additional Facilities (such additional payments being hereinafter collectively referred to as “Additional Payments”) to the Receivers of Taxes with respect to such Additional Facilities, such Additional Payments to be computed separately for each Taxing Entity as follows:

(1) Determine the amount of general taxes and general assessments (hereinafter referred to as the “Additional Normal Tax”) which would be payable to each Taxing Entity with respect to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency as follows: (a) multiply the Additional Assessed Value (as hereinafter defined) of such Additional Facilities determined pursuant to subsection (E) of this Section 2.02 by (b) the tax rate or rates of such Taxing Entity that would be applicable to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency, and (c) reduce the amount so determined by the amounts of any tax exemptions that would be afforded to

the Company by such Taxing Entity if such Additional Facilities were owned by the Company and not the Agency.

(2) In each fiscal tax year during the term of this Payment in Lieu of Tax Agreement (commencing in the fiscal tax year when such Additional Facilities would first appear on the assessment roll of any Taxing Entity) if such Additional Facilities were owned by the Company and not the Agency, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax with respect to such Additional Facilities pursuant to this Payment in Lieu of Tax Agreement shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to such Additional Facilities for such fiscal tax year (unless the Agency and the Company shall enter into a separate written agreement regarding payments in lieu of property taxes with respect to such Additional Facilities, in which case the provisions of such separate written agreement shall control).

(E) Valuation of Additional Facilities. (1) The value of Additional Facilities for purposes of determining payments in lieu of taxes due under Section 2.02(D) hereof shall be determined by the Assessors of each respective Taxing Entity. The parties hereto agree that the Assessors shall (a) appraise the Additional Facilities in the same manner as other similar properties in the general area of the Project Facility, and (b) place a value for assessment purposes (hereinafter referred to as the "Additional Assessed Value") upon the Additional Facilities, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial establishment of such Additional Assessed Value and of any change in such Additional Assessed Value.

(2) If the Company is dissatisfied with the amount of the Additional Assessed Value of the Additional Facilities as initially established or as changed, and if the Company shall have given written notice of such dissatisfaction to the appropriate Assessor and the Agency within thirty (30) days of receipt by the Company of written notice of the initial establishment of such Additional Assessed Value, or of a change in such Additional Assessed Value, then the Company shall be entitled to protest before, and to be heard by, the appropriate Assessor and the Agency. If the Agency, the Company and any Assessor shall fail to reach agreement as to the proper Additional Assessed Value of the Additional Facilities for purposes of determining payments in lieu of taxes due under this Payment in Lieu of Tax Agreement, then such Assessor, the Company and the Agency shall each select one arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall be a qualified real estate appraiser, experienced in valuation for the purposes of tax assessment in the general area of the Project Facility, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Additional Assessed Value of the Additional Facilities has been properly established by the Assessor. It is understood that the arbitrators are empowered to confirm the Additional Assessed Value or to determine a higher or lower Additional Assessed Value. Any payments in lieu of taxes due upon such Additional Facilities pursuant to Section 2.02(D) hereof may not be withheld by the Company pending determination of the Additional Assessed Value by the arbitrators.

(F) Statements. Pursuant to Section 858(15) of the Act, the Agency agrees to give each Taxing Entity a copy of this Payment in Lieu of Tax Agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy hereof be given to the appropriate officer or officers of the respective Taxing Entities responsible for preparing the tax rolls for said Tax Entities (each, a "Tax Billing Officer") and a request that said Tax Billing Officers submit to the Company and to the appropriate Receiver of Taxes periodic statements specifying the amount and due date or dates of the payments due each Taxing Entity hereunder, such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed by such Taxing Entities.

(G) Time of Payments. The Company agrees to pay the amounts due hereunder to the Receivers of Taxes for the benefit of each particular Taxing Entity in any fiscal tax year to the appropriate Receiver of Taxes within the period that such Taxing Entity allows payment of taxes levied in such fiscal tax year without penalty. The Company shall be entitled to receive receipts for such payments.

(H) Method of Payment. All payments by the Company hereunder shall be paid to the Receivers of Taxes in lawful money of the United States of America. The Receivers of Taxes shall in turn distribute the amounts so paid to the various Taxing Entities entitled to same.

SECTION 2.03. CREDIT FOR TAXES PAID. (A) Amount of Credit. The parties hereto acknowledge and agree that the obligation of the Company to make the payments provided in Section 2.02 of this Payment in Lieu of Tax Agreement shall be in addition to any and all other taxes and governmental charges of any kind whatsoever which the Company may be required to pay under the Lease Agreement. It is understood and agreed, however, that, should the Company pay in any fiscal tax year to any Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Project Facility or the interest therein of the Company or the occupancy thereof by the Company (but not including, by way of example, (1) sales and use taxes, and (2) special assessments, special ad valorem levies or governmental charges in the nature of utility charges, including but not limited to water, solid waste, sewage treatment or sewer or other rents, rates or charges), then the Company's obligation to make payments in lieu of property taxes attributed to such fiscal tax year to such Taxing Entity hereunder shall be reduced by the amounts which the Company shall have so paid to such Taxing Entity in such fiscal tax year, but there shall be no cumulative or retroactive credit as to any payment in lieu of property taxes due to any other Taxing Entity or as to any payment in lieu of property taxes due to such Taxing Entity in any other fiscal tax year.

(B) Method of Claiming Credits. If the Company desires to claim a credit against any particular payment in lieu of tax due hereunder, the Company shall give the governing body of the affected Taxing Entity and the Agency prior written notice of its intention to claim any credit pursuant to the provision of this Section 2.03, said notice to be given by the Company at least thirty (30) days prior to the date on which such payment in lieu of tax is due pursuant to the provisions of Section 2.02(G) hereof. In the event that the governing body of the appropriate Taxing Entity desires to contest the Company's right to claim such credit, then said governing body, the Agency and the Company shall each select an arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall meet the qualifications set forth in Section 2.02(B) hereof, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Company is entitled to claim any credit pursuant to the provisions of this Section 2.03 and, if so, the amount of the credit to which the Company is entitled. It is understood that the arbitrators are empowered to confirm the amount of the credit claimed by the Company or to determine a lower or higher credit. When the Company shall have given notice, as provided herein, that it claims a credit, the amount of any payment in lieu of property taxes due hereunder against which the credit may be claimed may be withheld (to the extent of the credit claimed by the Company, but only to the extent that such credit may be claimed against said payment in lieu of taxes pursuant to the provisions of this Section 2.03) until the decision of the arbitrators is rendered. After the decision of the arbitrators is rendered, the payment in lieu of taxes due with respect to any reduction or disallowance by the arbitrators in the amount of the credit claimed by the Company shall, to the extent withheld as aforesaid, be immediately due and payable and shall be paid by the Company within thirty (30) days of said decision.

SECTION 2.04. LATE PAYMENTS. (A) First Month. Pursuant to Section 874(5) of the Act, if the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due,

the Company shall pay the same, together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter. If the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the affected Taxing Entity until such payment in default shall have been made in full, and the Company shall pay the same to the affected Taxing Entity together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.



## ARTICLE III

### LIMITED OBLIGATION

SECTION 3.01. NO RECOURSE; LIMITED OBLIGATION OF THE AGENCY. (A) No Recourse. All obligations, covenants, and agreements of the Agency contained in this Payment in Lieu of Tax Agreement shall be deemed to be the obligations, covenants, and agreements of the Agency and not of any member, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Payment in Lieu of Tax Agreement, or otherwise based upon or in respect of this Payment in Lieu of Tax Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent (other than the Company), servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Payment in Lieu of Tax Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement, it being expressly understood that this Payment in Lieu of Tax Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company), servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Payment in Lieu of Tax Agreement by the Agency.

(B) Limited Obligation. The obligations, covenants and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or City of Albany, New York, and neither the State of New York nor City of Albany, New York shall be liable thereon, and further such obligations, covenants and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Lease Agreement).

(C) Further Limitation. Notwithstanding any provision of this Payment in Lieu of Tax Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (1) the Agency shall have been requested to do so in writing by the Company, and (2) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity and an agreement from the Company to defend and hold harmless the Agency satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

## ARTICLE IV

### EVENTS OF DEFAULT

SECTION 4.01. EVENTS OF DEFAULT. Any one or more of the following events shall constitute an event of default under this Payment in Lieu of Tax Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Payment in Lieu of Tax Agreement, any one or more of the following events:

(A) Failure of the Company to pay when due any amount due and payable by the Company pursuant to this Payment in Lieu of Tax Agreement and continuance of said failure for a period of fifteen (15) days after written notice to the Company stating that such payment is due and payable;

(B) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed hereunder (other than as referred to in paragraph (A) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Company shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days in the aggregate from the date of default; or

(C) Any warranty, representation or other statement by or on behalf of the Company contained in this Payment in Lieu of Tax Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Payment in Lieu of Tax Agreement and (1) shall be materially adverse to the Agency at the time when the notice referred to below shall have been given to the Company and (2) if curable, shall not have been cured within thirty (30) days after written notice of such incorrectness shall have been given to a responsible officer of the Company, provided that if such incorrectness cannot reasonably be cured within said thirty-day period and the Company shall have commenced action to cure the incorrectness within said thirty-day period and, thereafter, diligently and expeditiously proceeds to cure the same, such thirty-day period shall be extended for so long as the Company shall require, in the exercise of due diligence, to cure such default.

SECTION 4.02. REMEDIES ON DEFAULT. (A) General. Whenever any Event of Default shall have occurred with respect to this Payment in Lieu of Tax Agreement, the Agency (or if such Event of Default concerns a payment required to be made hereunder to any Taxing Entity, then with respect to such Event of Default such Taxing Entity) may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Payment in Lieu of Tax Agreement.

(B) Cross-Default. In addition, an Event of Default hereunder shall constitute an event of default under Article X of the Lease Agreement. Upon the occurrence of an Event of Default hereunder resulting from a failure of the Company to make any payment required hereunder, the Agency shall have, as a remedy therefor under the Lease Agreement, among other remedies, the right to terminate the Lease Agreement and convey the Project Facility to the Company, thus subjecting the Project Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State.

(C) Separate Suits. Each such 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.

(D) Venue. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Payment in Lieu of Tax Agreement may be brought in the courts of record of the State, 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.

SECTION 4.03. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. Pursuant to Section 874(6) of the Act, if the Company should default in performing any of its obligations, covenants or agreements under this Payment in Lieu of Tax Agreement and the Agency or any Taxing Entity should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency or such Taxing Entity, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.04. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or any Taxing Entity is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Payment in Lieu of Tax Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. 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.

(C) Notice Not Required. In order to entitle the Agency or any Taxing Entity to exercise any remedy reserved to it in this Payment in Lieu of Tax Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Payment in Lieu of Tax Agreement.

(D) No Waiver. In the event any provision contained in this Payment in Lieu of Tax Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Payment in Lieu of Tax Agreement shall be established by conduct, custom or course of dealing.

## ARTICLE V

### MISCELLANEOUS

SECTION 5.01. TERM. (A) General. This Payment in Lieu of Tax Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the approval of this Payment in Lieu of Tax Agreement by resolution of the Agency and the execution and delivery of this Payment in Lieu of Tax Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Payment in Lieu of Tax Agreement shall continue to remain in effect until the earlier to occur of (1) December 31, 2023 or (2) the date on which the Project Facility is reconveyed by the Agency to the Company pursuant to Article X or XI of the Lease Agreement.

(B) Extended Term. In the event that (1) the Project Facility shall be reconveyed to the Company, (2) on the date on which the Company obtains the Agency's interest in the Project Facility, the Project Facility shall be assessed as exempt upon the assessment roll of any one or more of the Taxing Entities, and (3) the fact of obtaining title to the Agency's interest in the Project Facility shall not immediately obligate the Company to make pro-rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of the State (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), this Payment in Lieu of Tax Agreement shall remain in full force and effect and the Company shall be obligated to make payments to the Receiver of Taxes in amounts equal to those amounts which would be due from the Company to the respective Taxing Entities if the Project Facility were owned by the Company and not the Agency until the first tax year in which the Company shall appear on the tax rolls of the various Taxing Entities having jurisdiction over the Project Facility as the legal owner of record of the Project Facility.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Payment in Lieu of Tax Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENTS. This Payment in Lieu of Tax Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy or (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, property addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Notices Given by Taxing Entities. Notwithstanding the foregoing, notices of assessment or reassessment of the Project Facility and other notices given by a Taxing Entity under Article II hereof shall be sufficiently given and shall be deemed given when given by the Taxing Entity in the same manner in which similar notices are given to owners of taxable properties by such Taxing Entity.

(C) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

Columbia Harriman 455 LLC  
302 Washington Avenue Extension  
Albany, New York 12203  
Attention: Richard A. Rosen

WITH A COPY TO:

Debra Lambek, Esq.  
Columbia Development Companies  
302 Washington Avenue Extension  
Albany, New York 12203

IF TO THE AGENCY:

City of Albany Industrial Development Agency  
21 Lodge Street  
Albany, New York  
Attention: Chairman

WITH A COPY TO:

John J. Reilly, Esq.  
City Hall, Eagle Street - Room 106  
Albany, New York 12207

and

A. Joseph Scott, III, Esq.  
Hodgson Russ LLP  
677 Broadway, Suite 301  
Albany, New York 12207

(D) Copies. A copy of any notice given hereunder by the Company which affects in any way a Taxing Entity shall also be given to the chief executive officer of such Taxing Entity.

(E) Change of Address. The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 5.06. **BINDING EFFECT.** This Payment in Lieu of Tax Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns. The provisions of this Payment in Lieu of Tax Agreement are intended to be for the benefit of the Agency and the respective Taxing Entities.

SECTION 5.07. **SEVERABILITY.** If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Payment in Lieu of Tax Agreement shall for any reason be held or

adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Payment in Lieu of Tax Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION 5.08. COUNTERPARTS. This Payment in Lieu of Tax Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.09. APPLICABLE LAW. This Payment in Lieu of Tax Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

BY:   
(Vice) Chairman

COLUMBIA HARRIMAN 455 LLC  
By Campus Associates, L.L.C., its Managing Member

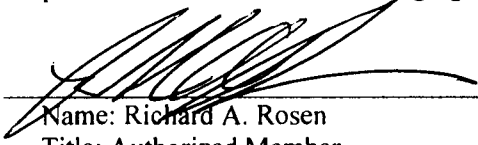
By: \_\_\_\_\_  
Name: Richard A. Rosen  
Title: Authorized Member

IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
(Vice) Chairman

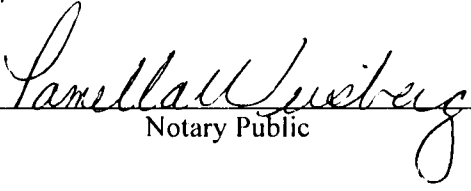
COLUMBIA HARRIMAN 455 LLC  
By Campus Associates, L.L.C., its Managing Member

By:  \_\_\_\_\_  
Name: Richard A. Rosen  
Title: Authorized Member



STATE OF NEW YORK     )  
  )ss:  
COUNTY OF ALBANY     )

On the 28th day of December, in the year 2012, before me, the undersigned, personally appeared Anthony Ferrara, 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.

  
\_\_\_\_\_  
Notary Public

Pamella Weisberg  
Notary Public, State of New York  
Qualified in Rensselaer County  
No. 01WE4943734  
Commission Expires October 31, 2014

STATE OF NEW YORK     )  
  )ss:  
COUNTY OF ALBANY     )

On the 26 day of December, in the year 2012, before me, the undersigned, personally appeared RICHARD A. ROSEN, 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.

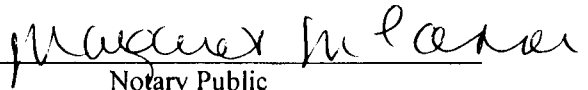
  
\_\_\_\_\_  
Notary Public  
MARGARET M. LANNI  
Notary Public, State of New York  
Qualified in Schoenectady County  
No. 4830041  
Commission Expires February 16, 2014

EXHIBIT A

**DESCRIPTION OF THE LEASED LAND**

A leasehold interest created by a certain lease to agency dated as of January 1, 2013 (the "Lease to Agency") between Columbia Harriman 455 LLC (the "Company"), as landlord, and City of Albany Industrial Development Agency (the "Agency"), as tenant, in an approximately 3.53 acre parcel of land (the "Leased Land") located at 455 Patroon Creek Boulevard (tax map no. 53.00-1-13.2) in the City of Albany, Albany County, New York, said Leased Land being more particularly described below), together with any improvements now or hereafter located on the Leased Land (the Leased Land and all such improvements being sometimes collectively referred to as the "Leased Premises"):

ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND situate, lying and being in the City of Albany, Albany County, New York, bounded and described as follows:

**- SEE ATTACHED -**

**FIDELITY NATIONAL TITLE INSURANCE COMPANY**

*Issued by*

**SNEERINGER MONAHAN PROVOST REDGRAVE  
TITLE AGENCY, INC.**

**SCHEDULE A DESCRIPTION**

**LEGAL  
DESCRIPTION**

All that certain piece or parcel of land, commonly known as 455 Patroon Creek Boulevard, situate in the City of Albany, County of Albany, State of New York, being more particularly described as follows:

Beginning at a point located North 37 deg. 36 min. 07 sec. East, a distance of 227.31 from the intersection between the north line of the road known as Road "B" North Access Ring Road as shown on a certain map filed in the Albany County Clerk's Office on May 17, 2006 as Map No. 118107 and the division line between the herein described premises on the west and the lands on the east conveyed to The Spanos Corporation by deed dated October 24, 2007 and recorded October 30, 2007 in Book 2901 page 706; and runs thence along the division line between No. 455 Patroon Creek Boulevard (the herein described parcel) to the north and No. 555 Patroon Creek Boulevard to the south the following three courses and distances:

1. North 52 deg. 23 min. 56 sec. West a distance of 288.31 feet to a point of curvature;
2. thence northwesterly along a curve to the right, having a radius of 63.00 feet, included angle of 30 deg. 06 min. 20 sec. for an arc length of 33.10 feet to a point of tangency;
3. North 22 deg. 17 min. 36 sec. West a distance of 94.91 feet to a point;

Thence North 67 deg. 42 min. 24 sec. East a distance of 3.14 feet to a point of curvature; thence northeasterly along a curve to the left, having a radius of 206.00 feet, included angle of 30 deg. 08 min. 55 sec. for an arc length of 108.40 feet to a point of tangency; thence North 37 deg. 33 min. 29 sec. East a distance of 84.48 feet to a point of curvature; thence northerly along a curve to the left, having a radius of 69.59 feet, included angle of 15 deg. 34 min. 30 sec. for an arc length of 69.59 feet to a point of tangency; thence North 21 deg. 58 min. 59 sec. East a distance of 14.45 feet to a point of curvature; thence northeasterly along a curve to the right having a radius of 244.00 feet, included angle of 15 deg. 37 min. 06 sec. for a distance of 66.51 feet to a point of tangency; thence North 37 deg. 36 min. 04 sec. East a distance of 13.07 feet to a point; thence South 52 deg. 23 min. 56 sec. East along the division line between the lands now or formerly of City of Albany Industrial Development Agency as described in Book 2676 of Deeds at Page 809 to the north and the herein described parcel to the south a distance of 395.07 feet to a point; thence South 37 deg. 36 min. 07 sec. West along the division line between No. 255 Patroon Creek Boulevard to the east and the herein described parcel to the west a distance of 408.91 feet to the point of beginning. Containing 153,982 S.F. or 3.53 Acres of land more or less.

TOGETHER WITH a non-exclusive easement for the installation, operation, repair and maintenance of a water main, subsurface utilities and communications facilities over lands of the State of New York ("State") running from the northeasterly bounds of Road B - North Access Ring Road to and along the southeasterly bounds of the Premises, said easement identified as "Relocated Easement J-1" in the Correction Letters Patent dated April 21, 2006 from the State to Washington Ave. Campus, LLC, recorded in the Albany County Clerk's Office on May 17, 2006 in Liber 2844 cp 155.

ALSO TOGETHER WITH a non-exclusive easement for ingress and egress, over lands of the State identified as "Relocated Easement A" in the above mentioned Correction Letters Patent and as shown on the map filed on May 17, 2006 as Map No. 118107.

ALSO TOGETHER WITH a non-exclusive right-of-way over the roadways of the State of New York as such now exist and as may be necessary for ingress and egress from the above described Premises

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Order No. A-0121011

Date: December 13, 2010

Sneeringer Monahan Provost Redgrave Title Agency, Inc. - FIDELITY NATIONAL TITLE INSURANCE COMPANY - Sneeringer Monahan Provost Redgrave Title Agency, Inc.

**FIDELITY NATIONAL TITLE INSURANCE COMPANY**

*Issued by*

**SNEERINGER MONAHAN PROVOST REDGRAVE  
TITLE AGENCY, INC.**

to Washington Avenue, a public street in the City of Albany, and for ingress and egress from the Premises to New York State Route 85 (Albany Crosstown Arterial) and Interstate Route 90, subject, however, to the right reserved by the State to discontinue such roadways and to relocate said right-of-way, as set forth in the deed recorded in Liber 2844 cp 179.

ALSO TOGETHER WITH any other easement rights appurtenant to the Premises granted to SWF, L.P., ADC, L.L.C. and CARD of NY, LLC from the People of the State New York by Letters Patent dated April 26, 2006 and recorded in the Albany County Clerk's Office on May 17, 2006 in Liber 2844 cp 179, said easements being non-exclusive.

ALSO TOGETHER WITH the rights appurtenant to the above described premises in common with others and subject to the terms and provisions of the Reciprocal Easement Agreement dated October 24, 2007 between Columbia Harriman, LLC and The Spanos Corporation recorded October 30, 2007 in Book No. 2901 of Deeds page 804.

ALSO TOGETHER with the rights appurtenant to the above described premises in common with others and subject to the terms and provisions of the Sewer Easement dated October 19, 2007 made by Washington Ave. Campus, LLC to Columbia Harriman, LLC recorded October 30, 2007 in Book No. 2901 of Deeds, page 842.

ALSO TOGETHER WITH the rights appurtenant to the above described premises in common with others and subject to the terms and provisions of the Reciprocal Easement Agreement dated April 24, 2008 between Columbia Harriman, 455, LLC and Columbia Harriman 555, LLC recorded in the Albany County Clerk's Office May 6, 2008 in Book No. 2918 of Deeds, page 1127.

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Order No. **A-0121011**

Date: **December 13, 2010**

Sneeringer Monahan Provost Redgrave Title Agency, Inc. - FIDELITY NATIONAL TITLE INSURANCE COMPANY - Sneeringer Monahan Provost Redgrave Title Agency, Inc.