

CLOSING ITEM NO.: A-7

CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY

AND

FULLER ROAD MANAGEMENT CORPORATION

PAYMENT IN LIEU OF TAX AGREEMENT

DATED AS OF FEBRUARY 1, 2014

RELATING A CERTAIN PARCEL OF LAND LOCATED AT 575
BROADWAY 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 October 1, 2012 (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 FULLER ROAD MANAGEMENT CORPORATION, a not-for-profit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 257 Fuller Road, 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, the Company presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company and the College of Nanoscale Science and Engineering ("CNSE"), said Project consisting of the following: (A) (1) the acquisition of an interest in a parcel of land containing approximately 1.03 acres and located at 575 Broadway in the City of Albany, Albany County, New York (the "Land") together with the existing approximately 111,693 square foot, four-story structure commonly referred to as Peter D. Kiernan Plaza (the "Facility"), (2) the reconstruction and renovation of the Facility, and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to be owned by the Company and leased to various high-tech growth companies and other commercial entities for use as an incubator focused on increasing educational opportunities, making research more productive and efficient, increasing technology-based investment in the surrounding areas, and other directly and indirectly related activities; (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; 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, pursuant to the authorization contained in a resolution adopted by the members of the Agency on April 25, 2013 (the "Public Hearing Resolution"), the Agency's staff (A) caused notice of a public hearing of the Agency pursuant to Section 859-a(2) of the Act (the "Public Hearing") to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project to be mailed to the chief executive officer of the affected tax jurisdictions in which the Project is to be located, (B) caused notice of the Public Hearing to be published in the Albany Times Union, a newspaper of general circulation available to the residents of the City of Albany, (C) conducted the Public Hearing on May 16, 2013 at 12:15 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 (D) prepared a report of the Public Hearing (the "Report") which fairly summarized the views presented at said public hearing and distributed same 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, being 6NYCRR Part 617, as amended (collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Agency on June 20, 2013 (the "SEQR Resolution"), the Agency (1) determined that the Project constitutes an "Unlisted Action" (as said quoted term is defined in SEQRA), (2) determined that the Project will not have a significant effect on the environment, and (3) prepared a negative declaration with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on June 20, 2013 (the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of February 1, 2014 (the "Lease Agreement") between the Agency and the Company and certain other documents related thereto and to the 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 Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company for a lease term ending on the earlier to occur of (1) January 31, 2029 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 Project Facility from the Agency; 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 February 1, 2014 (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 January 31, 2029; and (2) a bill of sale dated as of February 1, 2014 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency will execute and deliver a payment in lieu of tax agreement dated as of February 1, 2014 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility, (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, (D) the Agency will execute and deliver to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (E) the Agency will file with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report"); 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 not-for-profit corporation 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 directors 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 Certificate of Incorporation, 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 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 directors, 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 Certificate of Incorporation or By-Laws 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 a leasehold interest in 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 or have a leasehold interest in 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 Agency 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"). The parties hereto understand that the Project Facility shall not be designated as exempt from taxation on the assessment rolls of any Taxing Entity until the first such roll prepared following the taxable status date of the applicable 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 based on any assessment roll prepared prior to the time the Project Facility becomes exempt from taxation as provided herein.

(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, including any special assessments or special ad valorem levies based in whole or in part on the assessment of the Project Facility within the meaning of Section 102(2) of the Real Property Tax Law (the "Assessment").

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 ("PILOT Payments") in the amounts and at the times hereinafter provided to the respective Taxing Entities entitled to receive same pursuant to the provisions hereof; provided, however, that the obligations of the Company to make PILOT Payments under this Payment in Lieu of Tax Agreement shall not become effective until the filing of the Real Property Tax Exemption Forms as provided in Section 2.01 hereof. 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) January 31, 2029 or (2) the date on which the Project Facility is re-conveyed by the Agency to the Company pursuant to Lease Agreement.

(B) Fiscal Periods to which PILOT Payments Correspond. This Agreement is intended to provide for payments in lieu of real property taxes that would otherwise be due the City of Albany ("City"), County of Albany ("County") and Albany City School District ("School District") with respect to the Assessments of the Project Facility on the 2014 through 2028 assessment rolls of the City were the Project Facility owned by the Company and not by the Agency, in and for the 2014/15 through 2028/29 tax years of the School District and the 2015 through 2029 tax years of the City and the County. For purposes of this Payment in Lieu of Taxes Agreement, the "Tax Year" of the School District refers to the fiscal year beginning July 1 and ending June 30 of the subsequent year, during which period real property taxes are levied on the latest Assessment Roll of the City made final prior to the beginning of that Tax Year. For the City and the County, the "Tax Year" refers to the January 1 through December 31 calendar year, during which period real property taxes are levied based on the Assessment Roll of the City made final in the preceding calendar year. By way of illustration, real property taxes levied in and for the 2014/15 Tax year for the School District are based on the 2014 assessment roll of the City. Real property taxes levied in and for the 2015 Tax year of the City and County are also based on the 2014 assessment roll of the City.

(C) Amounts of PILOT Payments. The amount payable by the Company to the Receiver of Taxes on behalf of a particular 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 equal to the product of the tax rate of such Taxing Entity for the applicable Tax Year which would apply to the Assessments of the Project Facility if the Project Facility were owned by the Company and were not under the jurisdiction, supervision or control of the Agency, times the sum of \$5,500,000 (the "PILOT Value"). For purposes of illustration, and assuming the Project Facility is designated as exempt from taxation on the 2014 assessment roll of the City (such assessment roll to be the first assessment roll completed following the date on which the Project Facility is anticipated to be assessed as exempt pursuant to this Payment in Lieu of Taxes Agreement), the PILOT Payments due the City and the County for the 2015 Tax Year shall be determined by applying the respective tax rates of the City and County for that Tax Year to the PILOT Value. Again for purposes of illustration, the PILOT Payment due the School District for the 2014/2015 Tax Year shall be determined by applying the tax rate of the School District for that Tax Year to the PILOT Value.

(D) PILOT Payment Due Dates. PILOT Payments due the City and the County shall be made on or before January 31 of each Tax Year in which such a payment is required. PILOT Payments to the School District shall be made on or before September 30 of each Tax Year in which such a payment is required. For purposes of illustration and for the convenience of the parties, and assuming the Project Facility is designated as exempt from taxation on the 2014 assessment roll of the City and remains exempt on each succeeding assessment roll until and including the 2028 assessment roll, the Due Date for the PILOT Payments contemplated by this Payment in Lieu of Taxes Agreement are as set forth below:

PILOT Year	City Assessment Roll Year	City/County Tax Year (Calendar)	City/County Payment Due Date	School Tax Year (Fiscal)	School Payment Date
1	2014	2015	31-Jan-15	2014-15	30-Sep-14
2	2015	2016	31-Jan-16	2015-16	30-Sep-15
3	2016	2017	31-Jan-17	2016-17	30-Sep-16
4	2017	2018	31-Jan-18	2017-18	30-Sep-17
5	2018	2019	31-Jan-19	2018-19	30-Sep-18
6	2019	2020	31-Jan-20	2019-20	30-Sep-19
7	2020	2021	31-Jan-21	2020-21	30-Sep-20
8	2021	2022	31-Jan-22	2021-22	30-Sep-21
9	2022	2023	31-Jan-23	2022-23	30-Sep-22
10	2023	2024	31-Jan-24	2023-24	30-Sep-23
11	2024	2025	31-Jan-25	2024-25	30-Sep-24
12	2025	2026	31-Jan-26	2025-26	30-Sep-25
13	2026	2027	31-Jan-27	2026-27	30-Sep-26
14	2027	2028	31-Jan-28	2027-28	30-Sep-27
15	2028	2029	31-Jan-29	2028-29	30-Sep-28

(E) Invoices for PILOT Payments. At least thirty (30) days prior to the Due Date for any PILOT Payment, the applicable Taxing Entity entitled to same shall present an invoice to the Company stating the amount of the respective PILOT Payment and the date when due. Notwithstanding the Due Date prescribed by subdivision (D) of this Section, should any Taxing Entity neglect to present the invoice required by this subdivision to the Company at least 30 days prior to the Due Date, the Due Date for any PILOT Payment due such Taxing Entity under this Payment in Lieu of Taxes Agreement shall be extended to a date 30 days from the date of such invoice.

(F) Method of Payment. The PILOT 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.

The Company shall be entitled to receive receipts for such payments. 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.

(G) Notice to Taxing Entities. 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.

(H) Valuation of the Project Facility. If the Company is dissatisfied with the amount of the assessed value of the Project Facility as initially established or as changed annually, 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 assessed

value, or of a change in such 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 assessed value of the Project Facility, 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 assessed value has been properly established by the Assessor. It is understood that the arbitrators are empowered to confirm the assessed value or to determine a lower assessed value. Any payments in lieu of taxes due upon the Project Facility pursuant to Section 2.02(C) hereof may not be withheld by the Company pending determination of the assessed value by the Arbitrators.

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 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 be obligated to pay in any Tax Year to any Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges levied and/or assessed upon the Project Facility or the interest therein of the Company or the occupancy thereof by the Company ("Taxes or Charges") (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 a PILOT Payment in and for such Tax Year to such Taxing Entity hereunder shall be reduced by the amounts which the Company shall have so paid to such Taxing Entity as Taxes or Charges in and for such Tax Year.

(B) Method of Claiming Credits. If the Company desires to claim a credit against any particular PILOT Payment due hereunder, the Company shall give the governing body of the affected Taxing Entity and the Agency 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 within 30 days of the date on which the Taxes or Charges for which credit is claimed is due. 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, which arbitrators, at the cost and expense of the Company and such Taxing Entity, shall 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 PILOT Payment 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 PILOT Payment 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, and except as authorized by Section 2.03(B) hereof, 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 PILOT Payment 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.

SECTION 2.05. ADJUSTMENT FOR TAXES TO BE PAID. The parties hereto acknowledge and agree that, pursuant to the Real Property Tax Law, as currently in effect, if this Payment in Lieu of Tax Agreement were to terminate prior to or during the Tax Year of a Taxing Entity and the Project Facility were to no longer be assessed as exempt on the then current assessment rolls of such Taxing Entity, then the Company might (but for this Section) be required to pay Taxes or Charges to the Taxing Entity in and for such Tax Year in addition to being required to the payment made to the Taxing Entity pursuant to Section 2.02 hereof. However, it is not the parties' intention that the Company be required to pay more to any Taxing Entity in any Tax Year than the Company would be required to pay to such Taxing Entity during such Tax Year pursuant to Section 2.02 hereof. Accordingly, in the event that one or more Taxing Entities indicates that, on the assessment roll for the year in which this Payment in Lieu of Tax Agreement terminates, such Taxing Entity or Taxing Entities will place the Project Facility on such assessment roll or rolls as non-exempt and demand payment of real property taxes for all or the balance of the Tax Year applicable to such assessment roll or rolls, then the amount required to be paid by the Company pursuant to Section 2.02 hereof for that year to such Taxing Entity or Taxing Entities shall be reduced dollar for dollar by the amount the Company will be required to pay to such Taxing Entity or Taxing Entities for all or the balance of the year in which this Payment in Lieu of Tax Agreement terminates.

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 thirty (30) 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.

(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 or the Act.

(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) January 31, 2029 or (2) the date on which the Project Facility is re-conveyed 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 is re-conveyed to the Company, (2) on or after the date on which the Company obtains the Agency's interest in the Project Facility, the Project Facility is 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 does 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 assessment 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:

Fuller Road Management Corporation
257 Fuller Road
Albany, New York 12203
Attention: John Loonan

WITH A COPY TO:

Whiteman Osterman & Hanna LLP
One Commerce Plaza
Albany, New York 12260
Attention: John L. Allen, Esq.

IF TO THE AGENCY:

City of Albany Industrial Development Agency
21 Lodge Street
Albany, New York 12207
Attention: Chairman

WITH A COPY TO:

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

and

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

(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

FULLER ROAD MANAGEMENT CORPORATION

BY: _____
Authorized Officer

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

FULLER ROAD MANAGEMENT CORPORATION

BY: Walter G. Barber
Authorized Officer

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

On the 25th day of February, in the year 2014, before me, the undersigned, personally appeared ANTHONY J. 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

Allison J. Squires
Notary Public, State of New York
Qualified in Rensselaer County
No. 01SQ8208657 17
Commission Expires July 8, 20__

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

Walter G Barber On the *27th* day of February, in the year 2014, before me, the undersigned, personally appeared Walter G Barber 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

J STEPHEN REILLY
Notary Public, State of New York
Qualified in Saratoga County
No. 4711851
Commission Expires June 30, 20*14*

EXHIBIT A

DESCRIPTION OF THE LEASED LAND

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the 4th District of the 2nd Ward of the City of Albany, State of New York, bounded and described as follows:

PARCEL A

Beginning at a point on the Easterly boundary of Broadway at its intersection with the former Northerly boundary of Steuben Street, said point also being the Southwesterly corner of Parcel 253, Map 201, acquired by The People of the State of New York in conjunction with the construction of Interstate Route Connection 540-1-1-2, Green Street to Columbia Street section; thence along the said Easterly boundary of Broadway North 27 deg. 11' 38" East, 347.78 feet to a point, said point being the Northwesterly corner of Parcel 254, Map 201 acquired in conjunction with the aforementioned Interstate Route Connection; thence along the Northerly boundary of said Parcel 254 and partially along the Northerly boundary of Parcel 273, Map 203 acquired in conjunction with the aforementioned Interstate Route Connection South 79 deg. 45' 32" East 76.69 feet and South 65 deg. 56' 36" East, 71.70 feet to a point; thence through lands of The People of the State of New York South 27 deg. 11' 38" West 377.82 feet to a point in the aforementioned Northerly boundary of former Steuben Street; thence along said Northerly street boundary North 61 deg. 19' 22" West 145.00 feet to the point and place of beginning. Containing 53,244 square feet, more or less, or 1.2223 acres, more or less.

PARCEL B

Beginning at a point on the Northerly boundary of former Steuben Street, said point being South 61 deg. 19' 22" East 145.00 feet as measured along said Northerly street boundary, from its intersection with the Easterly boundary of Broadway; thence through lands of The People of the State of New York South 61 deg. 19' 22" East 80.00 feet and North 15 deg. 18' 20" East 388.22 feet to a point, said point being the Northeasterly corner of Parcel "A"; thence along the Easterly boundary of said Parcel "A" South 27 deg. 11' 38" West 377.82 feet to the point and place of beginning. Containing 15,108 square feet, more or less, or 0.3468 acres, more or less.

All bearings referred to true North at the 74 deg. 20' meridian of West longitude.

Excepting from the above described parcel, all that certain parcel conveyed to the City of Albany and The City of Albany Parking Authority by deed dated February 14, 1986 and recorded February 21, 1986 in Liber of Deeds 2304 at page 193, described as follows:

All that strip, piece or parcel of land situate, lying and being located on the Easterly side of Broadway in the City of Albany, County of Albany and State of New York, being more particularly bounded and described as follows;

Beginning at a point in the Southerly line of Parcel "B" as described in a deed between the New York State Urban Development Corporation to Norstar Bancorp Inc., dated December 17, 1984 and recorded in the Albany County Clerk's Office in Liber 2276 of Deeds, page 607, said point being distant South 61 deg. 19' 22" East, 192.12 feet measured along the Northerly line of former Steuben Street and its Easterly extension and prolongation from the intersection of said Northerly line of former Steuben Street with the Easterly line of Broadway; running thence Easterly along the Southerly line of Parcel "B" -

Lands of Norstar Bancorp Inc., South 61 deg. 19' 22" East, 32.88 feet to a point; thence Northerly along the Easterly line of Parcel "B" - Lands of Norstar Bancorp Inc., North 15 deg. 18' 20" East, 388.22 feet to a point in the Southerly line of Columbia Street; thence Southerly along the division line between Parcel "B" on the East and Parcel "A" on the West-Lands of Norstar Bancorp Inc., South 27 deg. 11' 38" West, 148.06 feet to a point; thence Southerly through Parcel "B"-Lands of Norstar Bancorp Inc., South 15 deg. 40' 00" West, 235.74 feet to the point or place of beginning and containing 0.223 acres, more or less.