

**TROY INDUSTRIAL DEVELOPMENT AUTHORITY**

**AND**

**CITYSTATION SOUTH, LLC**

---

**PAYMENT IN LIEU OF TAX AGREEMENT**

---

**Dated as of March 1, 2012**

*Affected Tax Jurisdictions:*

**Rensselaer County  
City of Troy  
Enlarged City School District of Troy**

**Street Address: 104 Ferry St., Troy, New York 12180**

**TMID Nos. and former addresses (as may be merged):**

101.61-13-2.1 - 120 Ferry Street  
101.61-13-4 - Ferry Street (Former Reed Alley)  
101.61-13-12 - 1488 Fifth Avenue  
101.61-13-13 - 116 Ferry Street  
101.61-13-14 - 1494 Fifth Avenue  
101.61-13-3.1 - 124 Ferry Street  
101.61-13-3.2 - Ferry Street  
101.61-13-2.2 - Fifth Avenue  
101.61-13-10.2 - 1486 Fifth Avenue  
101.61-13-11 - 1478 Fifth Avenue

## PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT (the "Agreement"), dated as of the 1<sup>st</sup> day of March 2011, by and between the **TROY INDUSTRIAL DEVELOPMENT AUTHORITY**, a public benefit corporation of the State of New York, having its offices at 1776 Sixth Avenue, Troy, New York 12180 (the "Authority") and **CITYSTATION SOUTH, LLC**, a New York limited liability Company having offices at 300 Jordan Road, Troy, New York 12180 (the "Company").

### WITNESSETH:

WHEREAS, by Title 11 of Article 8 of the Public Authorities Law of the State of New York (the "State"), as amended, and Chapter 759 of the Laws of 1967 of the State of New York, as amended (hereinafter collectively called the "Act"), the Authority was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, **CITYSTATION SOUTH, LLC** (the "Company"), has requested the Authority's assistance with a certain project (the "Project") consisting of (i) the acquisition by the Authority of fee title to or a leasehold interest in one or more parcels of real property located in the vicinity of Fifth Avenue and Ferry Street, Troy, New York 12180 (the "Land", being comprised of approximately 1.80 acres) and the existing site and infrastructure improvements located thereon (the "Existing Improvements"), (ii) the construction and equipping upon the Land and around the Existing Improvements of a four (4) story housing facility consisting of fifty-five (55) units of rental residential housing (collectively, the "Improvements"), such Improvements to be known as "City Station South", and (iii) the acquisition and installation by the Company in and around the Existing Improvements and Improvements of certain items of equipment and other tangible personal property necessary and incidental in connection with the Company's development of the Project in and around the Land and Existing Improvements (the "Equipment", and collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); and

WHEREAS, in order to induce the Company to acquire, renovate, construct and equip the Facility, the Authority is willing to take a fee interest in the land, improvements and personal property constituting the Facility and lease said land, improvements and personal property back to the Company pursuant to the terms and conditions of a certain Lease Agreement to be dated on or about the date hereof (the "Lease Agreement"); and

WHEREAS, pursuant to Section 1963 of the Act, the Authority is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, other than special ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Authority and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes by the Company to the Authority for the benefit of the County of Rensselaer (the “County”), the City of Troy (the “City”), and the Enlarged City School District of Troy (hereinafter the “School District” or “School” and, collectively with the County and the City, the “Affected Tax Jurisdictions”).

NOW, THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

Section I - Payment in lieu of Ad Valorem Taxes:

1.1 A. Acquisition of Land and Existing Improvements; Prior Exemption Continued. Prior to the date hereof, certain portions of the Land and Existing Improvements were owned by the City of Troy (the “City”), including TMID Nos. 101.61-13-2.1 - 120 Ferry Street, 101.61-13-4 - Ferry Street (Former Reed Alley), 101.61-13-12 - 1488 Fifth Avenue, 101.61-13-13 - 116 Ferry Street, and 101.61-13-14 - 1494 Fifth Avenue (collectively, the “City Land”), and therefore such City Land was heretofore exempt from real property taxes pursuant to the Real Property Tax Law. The Company and City have cause title to the City Land to be delivered to the Authority by deed dated March 1, 2012 (the “Deed to Authority”).

Pursuant to the Deed to Authority, the Company has also transferred fee title to certain parcels of real property (and existing improvements thereon) constituting portions of the Land and Existing Improvements, including 101.61-13-3.1 - 124 Ferry Street, 101.61-13-3.2 - Ferry Street, 101.61-13-2.2 - Fifth Avenue, 101.61-13-10.2 - 1486 Fifth Avenue, and 101.61-13-11 - 1478 Fifth Avenue (collectively, the “Company Land”).

Pursuant to Section 1963 of the Act, RPTL Section 412, and relevant opinions issued by the New York State Office of Real Property Tax Services, the Authority’s acquisition of a fee interest in (i) the City Land shall have the effect of continuing and maintaining the exempt status (Section Roll 8) of the City Land, and (ii) the Company Land shall have the effect of immediate exempt status (Section Roll 8) of the Company Land.

B. Subject to the completion and filing by the taxable status date of March 1, 2012 (the “Taxable Status Date”) of New York State Form RP-412-a Application For Real Property Tax Exemption (the “Exemption Application”) under RPTL Section 412 and Section 1963 of the Act and the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review, the Land and Existing Improvements, and Improvements once constructed, shall be and continue to be exempt from Real Estate Taxes commencing as of the date hereof, such exemption to include the current tax years and prospectively, the 2013 City and County tax years and the 2012/2013 School tax year through the termination date, as defined herein. For purposes of the foregoing “Real Estate Taxes” means all general levy real estate taxes levied against the Facility by the County, City and School. The Company shall provide to the Authority the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the

Exemption Application. Notwithstanding anything contained herein or in the Lease Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due. After giving written notice to the Authority, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a “project” under the Act; (ii) neither the Facility nor any part of or interest therein has been declared in default under any document for which the Facility could be sold, forfeited or lost; and (iv) neither the Company nor the Authority, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Authority, and releases the Authority from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes except to the extent that such denial results solely from the failure of the Authority to file the Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

B. Payee. As long as the Facility is owned by the Authority and leased by the Authority to the Company pursuant to the Lease Agreement, or under the Authority's jurisdiction, control or supervision, the Company agrees to pay annually to the Affected Tax Jurisdictions as a payment in lieu of taxes, on or before **September 30** of each year (collectively, the “Payment Date”), commencing on **September 30, 2013**, an amount equal to the Total PILOT Payment, as defined in Schedule A hereto. The Authority shall send a single invoice to the Company on or before September 1 of each year which shall state the Total PILOT Payment due.

The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are not on the tax rolls.

In addition to the Total PILOT Payments payable hereunder, the Company shall pay or cause to be paid all Real Estate Taxes due and payable as of the date hereof and relating to the Company Land, including all County and City Real Estate Taxes for the calendar year 2012.

1.2 Allocation. The Authority shall remit to the Affected Tax Jurisdictions amounts received hereunder, if any, within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Authority's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation.

1.3 Tax Rates. For purposes of determining the allocation of the Total PILOT Payment among the Affected Tax Jurisdictions, the Authority shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County, City and special district purposes, the tax rates used to determine the allocation of the Total PILOT Payment shall be the tax rates relating to the calendar year which includes the PILOT payment due date. For School District purposes, the tax rates used to determine the PILOT payment shall be the rate relating to the school year which includes the PILOT payment due date.

1.4 Valuation of Future Additions to the Facility: If there shall be a future addition to the Facility constructed or added in any manner after the date of this Agreement (excluding the Improvements, as defined herein), the Company shall notify the Authority of such future addition (“Future Addition”). The notice to the Authority shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the Authority may thereafter request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the Total PILOT Payment. The Authority shall notify the Company of any proposed increase in the Total PILOT Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Additions made by the Authority, then and in that event that valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Authority, the Company shall pay the increased Total PILOT payment until a different Total PILOT Payment shall be established. If a lesser annual payment is determined in any proceeding or by subsequent agreement of the parties, the Total PILOT Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Authority's sole discretion, such excess payment shall be applied as a credit against the next succeeding PILOT payment(s).

1.5 Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the remainder of 2012 County and City tax years and the 2011-2012 School tax year; and (ii) and prospectively, the 2013 County and City tax year through the 2032 County and City tax year, and (iii) the 2012-2013 School tax year through the 2031-2032 School tax year. This PILOT Agreement shall expire on December 31, 2032; *provided, however,* the Company shall pay the 2033 County and City tax bill and the 2032-2033 School tax bill on the dates and in the amounts as if the Authority were not in title on the tax status date with respect to said tax years. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b and 485-e of the New York Real Property Tax Law (“RPTL”). It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

## Section II - Special District Charges, Special Assessments and Other Charges

2.1 Special district charges, special assessments, and special ad valorem levies (specifically including but not limited to fire district charges), and pure water charges and sewer charges are to be paid in full in accordance with normal billing practices, subject to any applicable exemptions afforded according to the laws of the State, County or City, as may be amended from time to time.

## Section III - Transfer of Facility.

3.1 In the event that the Facility is transferred from the Authority to the Company and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section I herein, or this Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility (taking into account any Total PILOT Payment previously made by the Company for the applicable PILOT year) if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

#### Section IV - Assessment Challenges.

4.1 The Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Facility only with respect to any proposed special district charge and/or special assessment resulting from a change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions relating to any and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any proposed special district charge, special assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions. However, the Company shall in all events make timely payments of all Total PILOT Payments due hereunder and no assessment challenge by the Company shall affect or cause to invalidate the amount of any tax equivalent provided for herein.

4.2 Where appropriate pursuant to the provisions of this Section IV, the Company shall (i) cause the appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply tax rates to the respective assessments as if the Facility were owned by the Company, (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

#### Section V - Changes in Law.

5.1 To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

#### Section VI - Events of Default.

6.1 The following shall constitute "Events of Default" hereunder. The failure by the Company (or any authorized assignee hereunder) to: (i) make the payments described in Section I within thirty (30) days of the Payment Date (the "Delinquency Date"); (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; or (iii) the occurrence and continuance of any events of default under the Lease Agreement after the expiration of any applicable notice or cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right

or remedy the Authority and/or the Affected Tax Jurisdictions may have at law or in equity, the Authority and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Authority with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Authority and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to applicable provisions of the Act and the Company shall immediately notify the Authority of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

6.2 If payments pursuant to Section I herein are not made by the Delinquency Dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows. With respect to payments to be made pursuant to Section I herein, if said payment is not received by the Delinquency Date as defined in Section 6.1 herein, the Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

#### Section VII - Assignment.

7.1 No portion of any interest in this Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

#### Section VIII - Miscellaneous.

8.1 This Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

8.2 All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

##### To the Authority:

Troy Industrial Development Authority  
1776 Sixth Avenue  
Troy, New York 12180  
Attn: Executive Director

To Authority Counsel:

Harris Beach PLLC  
677 Broadway, Suite 1101  
Albany, New York 12207  
Attn: Justin S. Miller, Esq.

To the Company:

CityStation South, LLC  
300 Jordan Road  
Troy, New York 12180  
Attn: Michael J. Uccellini

To Company Counsel:

Roemer Wallens Gold & Mineaux LLP  
13 Columbia Circle  
Albany, New York 12203  
Attn.: John R. Mineaux, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

8.3 This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal courts located in the City of Albany, New York and/or state courts located in the City of Troy, New York.

8.4 Notwithstanding any other term or condition contained herein, all obligations of the Authority hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Authority by the Company. Neither member of the Authority nor any person executing this Agreement on its behalf shall be liable personally under this Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Authority, or of any successor or political subdivision, either directly or through the Authority or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Agreement.

8.5 Notwithstanding anything contained herein to the contrary, the Authority, at its sole discretion and on a case-by-case basis, may determine, (but shall not be required to do so) with respect to a particular project, that a project has failed to meet its intended goals and to require the project applicant to agree to the recapture by the Authority of the value of any or all exemptions from taxation granted with respect to the project by virtue of the Authority's involvement. Events that the Authority may determine will trigger recapture may include, but not limited to (i) sale or closure of facility; (ii) significant employment reduction; (iii) significant change in use in facility; (iv) significant change in business activities or project applicant or operator; or (v) material noncompliance with or breach of terms of Authority transaction documents or of zoning or land use laws or regulations or federal, state or local environmental laws or regulations. If the Authority determines to provide for the recapture with respect to a particular project, the Authority also shall, in its sole discretion and on a case-by-case basis, determine the timing and percentage of recapture. The Authority shall notify the Company in writing within thirty (30) days of any such Event of Default of its intent to recapture the benefits conveyed pursuant to this PILOT Agreement (or any portion thereof).

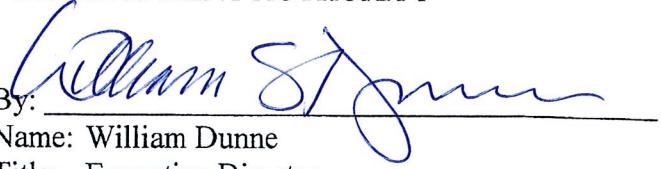
8.6 PILOT Mortgage. As an inducement for the Authority to enter into this Agreement, and commensurate herewith, the Authority and the Company have executed a certain PILOT Mortgage, dated as of the date hereof (the "PILOT Mortgage"), wherein the Authority and Company, as mortgagors, have mortgaged their respective interests in the Facility to the Authority on behalf of the Affected Tax Jurisdictions, as mortgagees, for the purpose of securing the Company's performance and payment obligations hereunder, including the Company's obligation to make timely Total PILOT payments, as defined herein. The PILOT Mortgage, when recorded, shall constitute a priority lien against the Facility in an amount equal to any and all unpaid and defaulted Total PILOT Payments, such priority lien to be subordinate only to any other additional mortgage liens secured against the Facility that the Authority may approve from time to time (the "Additional Mortgages"); PROVIDED, HOWEVER, THE PAYMENT OBLIGATIONS OF THE COMPANY (AND ANY SUCCESSOR THERETO) UNDER THIS AGREEMENT AND THE PILOT MORTGAGE HAVE A PRIORITY RIGHT OF PAYMENT OVER AMOUNTS PAYABLE UNDER ANY SUCH ADDITIONAL MORTGAGES AND THE PAYMENT OBLIGATIONS CREATED HEREIN AND BY THE PILOT MORTGAGE ARE IN NO WAY SUBORDINATED TO THE PAYMENT OBLIGATIONS UNDER ANY ADDITIONAL MORTGAGES.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

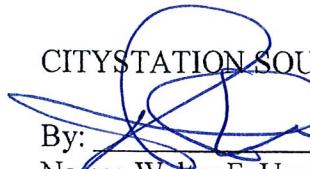
[Signature Page to PILOT Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

TROY INDUSTRIAL  
DEVELOPMENT AUTHORITY

By:   
Name: William Dunne  
Title: Executive Director

CITYSTATION SOUTH, LLC

By:   
Name: Walter F. Uccellini  
Title: Manager

**SCHEDULE A**  
 TO  
**PILOT AGREEMENT DATED AS OF MARCH 1, 2012,**  
**TROY INDUSTRIAL DEVELOPMENT AUTHORITY**  
**CITYSTATION SOUTH, LLC**

“Total PILOT Payment” shall be calculated as follows:

For each PILOT Year and Payment Date commencing September 30, 2013, the Company shall pay to the Authority an amount equal to the Total PILOT Payment, as defined and calculated herein.

<u>PILOT Year</u>	<u>City and County Tax Year</u>	<u>School Tax Year</u>	<u>Total PILOT Payment</u>
Interim	2012	2011/2012	---*
Year 1	2013	2012/2013	\$24,750.00
Year 2	2014	2013/2014	\$25,492.50
Year 3	2015	2014/2015	\$26,257.28
Year 4	2016	2015/2016	\$27,044.99
Year 5	2017	2016/2017	\$27,856.34
Year 6	2018	2017/2018	\$35,750.00
Year 7	2019	2018/2019	\$36,822.50
Year 8	2020	2019/2020	\$37,927.18
Year 9	2021	2020/2021	\$39,064.99
Year 10	2022	2021/2022	\$40,236.94
Year 11	2023	2022/2023	\$46,750.00
Year 12	2024	2023/2024	\$48,152.50
Year 13	2025	2024/2025	\$49,597.08
Year 14	2026	2025/2026	\$51,084.99
Year 15	2027	2026/2027	\$52,617.54
Year 16	2028	2027/2028	\$57,750.00
Year 17	2029	2028/2029	\$59,482.50
Year 18	2030	2029/2030	\$61,266.98
Year 19	2031	2030/2031	\$63,104.98
Year 20	2032	2031/2032	\$64,998.13

The Total PILOT Payment reflects an initial base payment of \$450 per unit for 55 units, escalating at 3% per year. In PILOT Year 6, the base per-unit figure increases to \$650 per unit. In year 11, the base per-unit figure increases to \$850 per unit. In year 16, the base per-unit figure increases to \$1,050 per unit.

\* - Pursuant to and in accordance with Section 1.1(B) hereof, and in addition to the Total PILOT Payments payable hereunder, the Company shall pay or cause to be paid all Real Estate Taxes due and payable as of the date hereof and relating to the Company Land, including all County and City Real Estate Taxes for the calendar year 2012.