

231 MAIN LLC

and

TIOGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
(TIOGA COUNTY, NEW YORK)

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PAYMENT-IN-LIEU-OF-TAX AGREEMENT

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Tioga County Industrial Development Agency  
(231 Main LLC 2006 Facility)

Dated as of February 1, 2006

Village of Owego, Town of Owego, Tioga County, Owego-Apalachin School District

Section: 128.08

Block: 4

Lot: 44.00

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of February 1, 2006 (the "PILOT Agreement"), is between 231 MAIN LLC, a New York limited liability company, having an office at 1803 Castle Gardens Road, Vestal, New York 13850 (the "Company"), and TIOGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, an industrial development agency and a public benefit corporation of the State of New York, having its principal office at County Office Building, 56 Main Street, Owego, New York 13827 (the "Agency").

W I T N E S S E T H:

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 534 of the Laws of 1971 of the State of New York, as the same may be amended from time to time (collectively, the "Act"), the Agency was created with the authority and power, among other things, to assist with certain industrial development projects as authorized by the Act; and

WHEREAS, the Agency has agreed to acquire title to certain real property located at 231 Main Street, Village of Owego, New York, more particularly described in Exhibit B attached hereto, and to renovate and equip thereon a certain industrial development facility, more particularly described in the Lease Agreement, dated as of February 1, 2006 (the "Lease Agreement"), by and between the Agency and the Company; and

WHEREAS, the Agency has agreed to lease the Facility (as defined in the Lease Agreement) to the Company pursuant to the Lease Agreement such that title thereto will remain in the Agency throughout the Lease Term (as such term is defined in the Lease Agreement); and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes and assessments imposed upon real property owned by it, other than special ad valorem levies, special assessments and service charges against real property located in the Village of Owego, Town of Owego, Tioga County (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be wholly or partially located) which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provision for payments in lieu of real estate taxes and such assessments by the Company to the Village of Owego, Town of Owego, any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be wholly or partially located, Tioga County, Owego-Apalachin School District and appropriate special districts (hereinafter the "Taxing Authorities") in which any part of the Facility is or is to be located;

NOW, THEREFORE, in consideration of the foregoing and in consideration of the covenants herein contained, it is mutually agreed as follows:

1. (a) As long as the Lease Agreement is in effect, the Company agrees to make payments in lieu of all real estate taxes and assessments (in addition to paying all special ad valorem levies, special assessments and service charges against real property located in the Village of Owego, Town of Owego, Tioga County (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be wholly or partially located) which are or may be imposed for special improvements or special district improvements) which would be levied upon or with respect to the Facility if the Facility were owned by the Company and not by the Agency (the "Taxes on the Facility"). The amounts of such payments and method for calculation are set forth herein.

(b) After the effective date of this PILOT Agreement, as determined under paragraph 11 of this PILOT Agreement, and until the provisions of paragraph 1(c) become effective, the Company shall pay, as payments in lieu of taxes and assessments, one hundred percent (100%) of the taxes and assessments which would be levied upon the Facility by the respective Taxing Authorities.

(c) Commencing, at the sole option and discretion of the Company, at the earlier of (i) the first fiscal tax year of the Taxing Authorities following the first taxable status date after the issuance of a temporary or permanent certificate of occupancy, or its equivalent, to the Company for the Facility by the appropriate governmental entity, or (ii) written notice from the Company to the Agency setting forth the effective date for commencement of the payments in accordance with Exhibit A hereto (which effective date can be no later than the date set forth in (i) above), the Company shall pay, as payments in lieu of taxes and assessments, the amounts set forth on Exhibit A attached hereto and made a part hereof.

(d) The Company shall within fifteen (15) days pay, or cause to be paid, the amounts set forth in paragraph 1(b) and (c) above, after receipt of notice from the Agency or the Taxing Authorities, as the case may be. Failure to receive a tax bill shall not relieve the Company of its obligation to make all payments required hereunder. If, for any reason, the Company does not receive an appropriate tax bill, the Company shall have the responsibility and obligation to make all reasonable inquiries of the Taxing Authorities and to have such a bill issued, and thereafter to make payment of the same no later than the due dates provided herein. Payments may be made directly to the Agency unless otherwise directed in writing by the Agency. Payments made after the due dates set forth in the applicable tax bills shall accrue interest (and penalties) at the rates set forth in Section 874 of the General Municipal Law of the State of New York.

(e) The Company shall pay all special ad valorem levies, special assessments and service charges against real property located in the Village of Owego, Town of Owego, Tioga County which are or may be imposed for special improvements or special district improvements. The Company shall have the right to contest any such special ad valorem levies, special assessments and service charges against real property, but in no event shall the Agency be responsible to contest or to make payment for such special ad valorem levies, special assessments and service charges against real property, or to reimburse the Company for such contests or payments.

(f) In the event that any structural addition shall be made to the building or buildings included in the Facility subsequent to the Completion Date (as such term is defined in the Lease Agreement), or any additional building or improvement shall be constructed on the real property described on Exhibit B hereto (such structural additions, buildings and improvements being referred to hereinafter as “Additional Facilities”), the Company agrees to make additional payments in lieu of taxes to the Taxing Authorities in amounts equal to the product of the then current ad valorem tax rates which would be levied upon or with respect to the Additional Facilities by the Taxing Authorities if the Additional Facilities were owned by the Company and not the Agency times the assessment or assessments established for that tax year by the Taxing Authorities. All other provisions of this PILOT Agreement shall apply to this obligation for additional payments.

2. In the event that title to the Facility or any part thereof is transferred from the Agency to the Company, or to any other entity (other than an entity exempt from real property taxation), at such time in reference to any taxable status date as to make it impossible to place such Facility or part thereof on the tax rolls of the Village of Owego, Town of Owego, Tioga County, Owego-Apalachin School District, any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be wholly or partially located, or appropriate special districts, as the case may be, by such taxable status date, the Company or such other entity shall pay, at the first time taxes or assessments are due following the taxable status date on which such Facility or part thereof is placed on the tax rolls, an amount equal to the taxes or assessments which would have been levied on such Facility or part thereof had it been on the tax rolls from the time the Company or other entity (other than an entity exempt from real property taxation) took title until the date of the tax rolls following the taxable status date as of which such Facility or part thereof is placed on the tax rolls. There shall be deducted from such amount any amounts previously paid pursuant to this PILOT Agreement by the Agency or the Company to the respective Taxing Authorities relating to any period of time after the date of transfer of title to the Company or such other entity (other than an entity exempt from real property taxation). The provisions of this paragraph 2 shall survive the termination or expiration of the Lease Agreement.

3. (a) Subject to the limitations set forth in paragraph 3(b), the Agency shall have the right to recapture from the Company an amount equal to all taxes and assessments for which the Company has claimed or received an exemption after the effective date hereof, and shall distribute those amounts to the Taxing Authorities in proportion to the taxes abated. Recapture of such benefits shall occur in any the following circumstances: (i) the Company sells, otherwise disposes of or closes the Facility; (ii) there are significant employment reductions at the Facility or there is a failure to meet employment projections at the Facility as set forth in the Company’s application; (iii) there is a change in the use of the Facility to an activity or use in which the Agency is prohibited from engaging under New York State law; or (iv) there is a significant change in the business activities of the Company.

(b) If any of the circumstances described in paragraph 3(a) should arise, the Agency shall have the right to recapture from the Company a portion of benefits previously extended to the Company after the effective date hereof in accordance with the following table:

| <u>Circumstance Arises:</u>           | <u>Percentage Recaptured:</u> |
|---------------------------------------|-------------------------------|
| February 1, 2006, to January 31, 2007 | 100%                          |
| February 1, 2007, to January 31, 2008 | 75%                           |
| February 1, 2008, to January 31, 2009 | 50%                           |
| February 1, 2009, to January 31, 2010 | 25%                           |
| February 1, 2010, and thereafter      | 0%                            |

(c) Notice of recapture shall be made pursuant to paragraph 8, below. Payment of recapture shall be due within fifteen (15) days following the date of notice.

4. In the event the Facility or any part thereof is declared to be subject to real property taxes or assessments by an amendment to the Act or other legislative change or by a final judgment of a court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void; provided, however, there shall be deducted from amounts due after such declaration or final judgment any amounts previously paid pursuant to this PILOT Agreement by the Agency or the Company to the respective Taxing Authorities relating to any period of time after the date of such declaration or final judgment.

5. In the event the Company shall enter into a subsequent Payment-in-Lieu-of-Tax Agreement or Agreements with respect to the Taxes on the Facility directly with any or all Taxing Authorities in the jurisdiction of which the Facility is located, the obligations of the Company hereunder, which are inconsistent with such future Agreement or Agreements, shall be superseded and shall, to such extent, be null and void.

6. As long as this PILOT Agreement is in effect, the Agency and the Company agree that the Company shall be deemed to be the owner of the Facility and any Additional Facilities for purposes of instituting, and shall have the right to institute, judicial review of an assessment of the real estate with respect to the Facility and any Additional Facilities pursuant to the provisions of Article 7 of the Real Property Tax Law or any other applicable law, as the same may amended from time to time. Notwithstanding the foregoing, in the event that the assessment of the real estate with respect to the Facility and any Additional Facilities is reduced as a result of any such judicial review and a refund or rebate of taxes paid is ordered from such Taxing Authority by such judicial review, any such refund or rebate shall be made to the Company and shall not inure to the benefit of the Agency. In the event that the assessment of the real estate with respect to the Facility and any Additional Facilities is reduced as a result of any such judicial review and a refund or rebate of taxes paid is not ordered by such judicial review, the Company shall not be entitled to receive a refund or refunds from the Agency of the payments in lieu of taxes and assessments paid pursuant to this PILOT Agreement.

7. The Company, in recognition of the benefits provided under the terms of this PILOT Agreement, including, but not limited to, the formula for Payments-In-Lieu-of-Taxes set forth in Exhibit A hereto, and for as long as the Lease Agreement is in effect, expressly waive any rights it may have for any exemption under Section 485 or 485-b of the Real Property Tax Law or any other exemption under any other law or regulation (except, however, for the exemption provided by Title 1 of Article 18-A of the General Municipal Law) with respect to the Facility. The Company, however, reserves any such rights with

respect to all special ad valorem levies, special assessments and service charges levied against the Facility as referred to in paragraph 1(e) and with respect to the assessment and/or exemption of the Additional Facilities as referred to in paragraph 1(f).

8. Except as otherwise provided herein, any notice required to be given under this PILOT Agreement shall be deemed to have been duly given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, return receipt requested, addressed to the respective parties hereto at their respective addresses specified below or such other addresses as either party may specify in writing to the other:

The Agency:

Tioga County Industrial Development Agency  
County Office Building  
56 Main Street  
Owego, New York 13827  
Attention: Chairman

The Company:

231 Main LLC  
1803 Castle Gardens Road  
Vestal, New York 13850  
Attention: Bruce R. Nelson. Member

With a copy to:

Pope, Schrader & Murphy, LLP  
20 Hawley Street  
East Tower – 7<sup>th</sup> Floor  
P.O. Box 510  
Binghamton, New York 13902  
Attention: Kurt D. Schrader, Esq.

Notice by mail shall be effective when delivered but if not yet delivered shall be deemed effective at 12:00 p.m. on the third Business Day (as defined in the Lease Agreement) after mailing.

9. Failure by the Agency in any instance to insist upon the strict performance of any one or more of the obligations of the Company under this PILOT Agreement, or to exercise any election herein contained, shall in no manner be or be deemed to be a waiver by the Agency of any of the Company's defaults or breaches hereunder or of any of the rights and remedies of the Agency by reason of such defaults or breaches, or a waiver or relinquishment of any and all of the Company's obligations hereunder. No waiver, amendment, release or modification of this PILOT Agreement shall be established by conduct, custom or course of dealing. Further, no payment by the Company or receipt by the Agency of a lesser amount than the correct amount or in a manner of payment other than the

manner due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction, and the Agency may accept any checks or payments as made without prejudice to the right to recover the balance or pursue any other remedy in this PILOT Agreement or otherwise provided at law or in equity.

10. In the event that the Company fails to make any payment required hereunder, including recapture payments, when due, the Company shall be liable to the Agency for the amount of the statutory penalties allowed under Section 874 of the General Municipal Law of the State of New York. In addition, whenever any payment is more than thirty (30) days overdue, the Agency shall have the right to declare the Company in default and to terminate this PILOT Agreement and the Lease Agreement pursuant to the terms and conditions set forth in the Lease Agreement.

11. This PILOT Agreement shall become effective as of the first taxable status date of the Town of Owego after the date the Agency acquires title to the Facility. All taxes, assessments, special assessments, service charges, special ad valorem levies or similar tax equivalents due or to become due based upon prior taxable status dates shall be paid by the Company when due. Upon termination of the Lease Agreement and reconveyance of title to the Facility to the Company this PILOT Agreement shall terminate.

12. Whenever the Company fails to comply with any provision of this PILOT Agreement, the Agency may, but shall not be obligated to, take whatever action at law or in equity 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 PILOT Agreement.

13. This PILOT Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

14. The Company agrees to indemnify and hold the Agency harmless from and against any liability arising from any default by the Company in performing its obligations hereunder or any expense incurred under this PILOT Agreement, including any expenses of the Agency, including without limitation attorneys' fees.

15. This PILOT Agreement may be modified only by written instrument duly executed by the parties hereto.


16. This PILOT Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, heirs, distributees and assigns.

17. If any provision of this PILOT Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such provision so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this PILOT 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.

18. If the Company fails to make any payment when due hereunder, the Agency, in addition to any remedy or right it or any Taxing Authority may have pursuant to this PILOT Agreement, shall have the rights and remedies provided for in the Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this PILOT Agreement as of the date first written above.

231 MAIN LLC

By:   
Name: Bruce R. Nelson  
Title: Member

TIOGA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Name: Aaron Gowan  
Title: Chairman

EXHIBIT A

Formula for In-Lieu-of-Taxes Payment: Tioga County, Town of Owego, Village of Owego (including any existing incorporated village and any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located), Owego-Apalachin School District and Appropriate Special Districts

Definitions

X = assessment of the Facility.

Normal Tax Due = Those payments for taxes and assessments, other than special ad valorem levies, special assessments and service charges against real property located in the Town of Owego (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located) which are or may be imposed for special improvements or special district improvements, that the Company would pay without exemption.

Payment

Tax Year (following first taxable status date after the election by Company, more specifically set forth in paragraph 1(c) of this PILOT Agreement)

|                   | <u>Formula</u>       |
|-------------------|----------------------|
| 1                 | 0% normal tax on X   |
| 2                 | 0% normal tax on X   |
| 3                 | 0% normal tax on X   |
| 4                 | 0% normal tax on X   |
| 5                 | 0% normal tax on X   |
| 6                 | 0% normal tax on X   |
| 7                 | 0% normal tax on X   |
| 8                 | 0% normal tax on X   |
| 9                 | 0% normal tax on X   |
| 10                | 0% normal tax on X   |
| 11                | 20% normal tax on X  |
| 12                | 40% normal tax on X  |
| 13                | 60% normal tax on X  |
| 14                | 80% normal tax on X  |
| 15 and thereafter | 100% normal tax on X |

EXHIBIT B

Legal Description of Real Property

ALL THAT TRACT OR PARCEL OF LAND, situate in the Village and Town of Owego, County of Tioga and State of New York, bounded and described as follows:

BEGINNING at a ¾" rebar with cap in the northwesterly street line of Main Street, which lies 124.60 feet northeasterly from the intersection of the northeasterly street line of Church Street and the northwesterly street line of Main Street.

THENCE N 34° 04' 46" W, 293.12 feet to a point.

THENCE N 33° 09' 58" W, 28.01 feet to an existing iron marker.

THENCE N 56° 32' 56" E, 64.00 feet to a mark in a concrete wall.

THENCE N 33° 02' 07" W, 156.37 feet to a ¾" rebar with cap in the southeasterly street line of Temple Street.

THENCE N 56° 32' 56" E, 120.86 feet along the southeasterly street line of Temple Street to a ¾" rebar with cap.

THENCE S 33° 18' 07" E, 155.85 feet to a ¾" rebar with cap.

THENCE N 56° 18' 27" E, 26.90 feet to a ¾" rebar with cap.

THENCE S 34° 12' 23" E, 141.88 feet to a point.

THENCE S 34° 33' 28" E, 59.51 feet to a ¾" rebar with cap.

THENCE S 28° 23' 56" E, 30.18 feet to an existing iron marker.

THENCE S 34° 18' 48" E, 89.48 feet to a ¾" rebar along the northwesterly street line of Main Street.

THENCE S 56° 19' 09" W, 211.13 feet along the northwesterly street line of Main Street to the POINT OF BEGINNING for Parcel 1.

CONTAINING 1.999 acres of land shown as Parcel 1 on a map by Scott E. Edsall, L.S. No. 49784, dated May 28, 2003.