

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT (the "Agreement"), dated as of August 30, 2017, by and between GATEWAY OWEGO, LLC, as Assignee of NELSON DEVELOPMENT GROUP, LLC, a limited liability company organized and validly existing under the laws of the State of New York, with an address for the transaction of business located at 1803 Castle Gardens Road, Vestal, New York 13850 (the "Company") and the TIOGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public-benefit corporation duly organized and validly existing under the laws of the State of New York, with an office for the transaction of business located at 56 Main Street, Owego, New York 13827 (the "Agency,") collectively, the "Parties."

WITNESSETH:

WHEREAS, Title 1 of Article 18-A, as amended, 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 (the "State"); and

WHEREAS, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties 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 facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the 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 to lease any or all of its facilities on such terms and conditions as it deems advisable, to issue its bonds for the purpose

of carrying out any of its corporate purposes; and, as security for the payment of the principal and redemption price of, and interest on, any such bonds so issued and any agreements made in connection therewith, to pledge the revenues and receipts from its facilities or from the lease thereof; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, Chapter 534 of the 1971 Laws of the State of New York, as amended by Chapter 883 of the 1974 Laws of the State of New York (collectively, the "Act") created the Tioga County Industrial Development Agency (the "Agency"), which is empowered under the Act to undertake the providing, financing and leasing of the facility described below; and

WHEREAS, the TIOGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the "Agency") was created as a public benefit corporation pursuant to and for the purposes specified in Title 1 of Article 18-A of the General Municipal Law; and

WHEREAS, the Company has agreed to a lease and lease/back transaction, on the real property more particularly described on Exhibit "A" attached hereto, to facilitate the construction and equipping of an apartment building and office/retail area with public restrooms located 200-202 Front Street and 204 Front Street in the Village and Town of Owego, Tioga County, New York (the "Project") and to lease the Project from the Agency; and

WHEREAS, the Agency will lease the Project to the Company for a term not to exceed fifteen (15) years; and

WHEREAS, the Agency is exempt from the payment of taxes and assessments imposed upon real property, and as a further condition related to the acquisition of the Project, the Company has agreed that, notwithstanding such exemption, the Company will nevertheless make payments to the Village of Owego (the "Village"), the Town of Owego (the "Town"), the Owego Apalachin Central School District (the "School District") and the County of Tioga (the "County") while occupying the Project in lieu of general tax levies.

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

1. Pursuant to Section 874 of the General Municipal Law and Section 412-a of the Real Property Tax Law, the Parties hereto understand that, upon acquisition of the Project by the Agency and the filing of an Equalization and Assessment Form RP-412-a (and “Exemption Form”) with respect to the Project, and for so long thereafter as the Agency shall lease the Project, the Project shall be assessed by the various taxing entities having jurisdiction over the Project, including, without limitation, the Village, the Town, the School District and the County as exempt on their respective assessment rolls prepared subsequent to the acquisition by the Agency of title to the Project and the filing of the Exemption Form. The Parties hereto understand that the Project shall not be entitled to such exempt status on any tax roll until the second tax year following the tax status date subsequent to the date upon which the Agency became the lessee of the Project and an Exemption Form is filed. The Company shall be required to pay all taxes and assessments lawfully levied and/or assessed against the Project, including taxes and assessments levied for the current tax year and all subsequent years until the Project is entitled to exempt status on the tax roll. The Agency will cooperate with the Company to obtain and preserve the tax exempt status of the Project, including the preparation and filing of the Exemption Form.

2. During each tax year in which the Project shall be tax exempt, the Company agrees to pay to the Village, the Town, the School District and the County the PILOT payments as shown on the PILOT Schedule attached hereto as Exhibit “B.”

3. During the term of this Agreement, the Company waives the right to contest the assessment(s) on the Project.

4. The Agency shall bill the Company annually for the total PILOT payments due as set forth in Exhibit “B” attached hereto. For the purposes of this Agreement, the term "Timely

Payment" shall be defined as payment made within thirty (30) days after receipt by the Company of a written bill demanding payment.

5. Should the Company use the Project for other than the construction and equipping of 4,400+/- square feet of office/retail area with public restrooms, 8,800+/- square feet of residential units, and a 400+/- square foot roof top common area for the residential units or allied purposes such as defined in Article 18-A of the General Municipal Law, fail to retain substantially the number of jobs anticipated by the Project, or acquire title during the term of this Agreement to the leased Project from the Agency, this Agreement shall terminate immediately and the premises shall be returned to the non-exempt portion of the tax roll and be subject to taxation thereafter, including any portion of a tax year not otherwise covered by this Agreement.

6. If any default shall be made in the payment referred to in Paragraph 2, supra, the Company hereby agrees to pay the same to the extent above specified:

A. Without requiring any notice of non-payment or of default to the Company, the Agency, or to any other person; and

B. Without proof of demand.

7. The Parties hereto understand that the tax exemption extended to the Agency by Section 874 of the General Municipal Law and Section 412-A of the Real Property Tax Law does not entitle the Agency to an exemption from special assessments and special ad valorem levies such as, but without limitation, charges for metered water and sewer rent. The Company hereby agrees to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project.

8. Pursuant to Section 858 (15) of the General Municipal Law, the Agency agrees to give the Village, the Town, the School District and the County a copy of this PILOT agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy thereof be given to the appropriate officer or officers with respect to each taxing jurisdiction

responsible for preparing the tax rolls for said jurisdiction, together with a request that said officer or officers submit to the Company and the appropriate receiver of taxes periodic statements specifying the amount and due date or dates of the payments due to each hereunder. Such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed by such jurisdictions.

9. The Company agrees to pay the amounts due hereunder to each particular taxing jurisdiction in any calendar year to the appropriate receiver of taxes within the period that such taxing entity allows the payment of taxes levied in such calendar year without penalty. The Company shall be entitled to receive receipts for such payments.

10. Pursuant to Section 874(5) of the General Municipal Law, if the Company shall fail to make any payment required by this PILOT Agreement when due, the Company shall pay the same, together with a late-payment penalty equal to five percent (5%) of the amount due. If the Company shall remain in default beyond the first month after such payment is due, the Company shall hereafter pay a late-payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due thereunder is delinquent beyond the first month plus 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 have been payable if such amount were delinquent taxes, until so paid in full.

11. Pursuant to Section 874(6) of the General Municipal Law, if the Company should default in performing any of its obligations, covenants or agreements under this PILOT Agreement and the Agency or any taxing jurisdiction should employ attorneys or incur other expenses for the collection of any amounts payable hereunder, or for the enforcement or performance or observation of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefore, pay to the Agency or such taxing jurisdiction, as the case may be, not only the amounts adjudicated due hereunder,

together with the late-payment penalty and interest due thereon, but also reasonable, actual fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred whether or not an action is commenced.

12. Notwithstanding the foregoing, the Agency reserves the right to terminate, modify, or recapture any benefits provided to the Company pursuant to this PILOT Agreement as well as any other benefit provided to the Company in accordance with the policy of the Agency set forth in Exhibit "C" attached hereto.

13. No remedy herein conferred upon or reserved to the Agency or any taxing jurisdiction is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this PILOT Agreement or now and hereafter existing at law or in equity or by statute. No delay or admission in exercising any such right or power accruing upon a default hereunder shall impair any such right or power or be construed as a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

14. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

If to the Agency: Tioga County Industrial Development Agency  
56 Main Street  
Owego, New York 13827

Attn: Chairman

With a Copy to. Joseph B. Meagher, Esq.  
Thomas, Collison & Meagher  
1201 Monroe Street  
P.O. Box 329  
Endicott, New York 13761-0329

If to the Company: Gateway Owego, LLC  
1803 Castle Gardens Road  
Vestal, New York 13850

Attn: Bruce R. Nelson, Sole Member

With a Copy to: Kurt Schrader, Esq.  
Pope, Schrader & Pope, LLP  
2 Court Street, 4<sup>th</sup> Floor  
P.O. Box 510  
Binghamton, New York 13902

15. The Village, the Town, the County, the School District, the Agency and the Company as used herein shall include their successors and assigns. The terms of this Agreement shall inure to the benefit of, and shall be binding upon, any future owners of the Project and the Company's successors and assigns.

16. This Agreement shall remain in effect until termination or expiration of the Leaseback Agreement from the Agency to the Company which, by its terms, expires August 30, 2032.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be duly executed the date set forth hereinabove.

TIOGA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

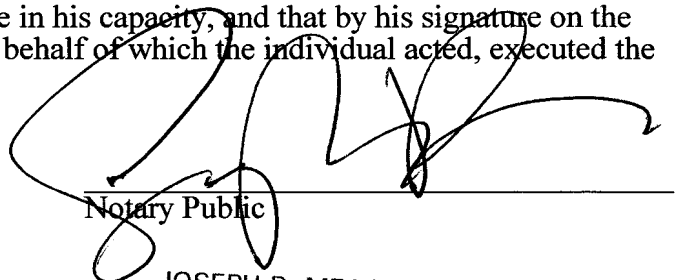
By:   
Ralph E. Kelsey, Chairman

GATEWAY OWEGO, LLC

By:   
Bruce R. Nelson, Sole Member

STATE OF NEW YORK:  
: ss.:  
COUNTY OF BROOME:

On this 29<sup>th</sup> day of August, 2017, before me, the undersigned, personally appeared RALPH E. KELSEY, 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.

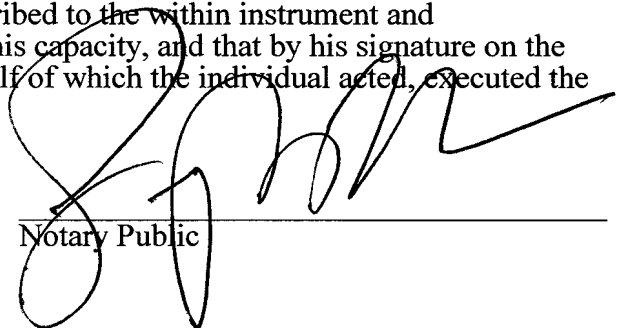


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Notary Public  
JOSEPH B. MEAGHER  
Notary Public, State of New York  
Broome County 02ME4974837  
Commission Expires Nov. 26, 20 19

STATE OF NEW YORK:  
: ss.:  
COUNTY OF BROOME:

On this 30<sup>th</sup> day of August, 2017, before me, the undersigned, personally appeared BRUCE R. NELSON, 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.



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Notary Public  
JOSEPH B. MEAGHER  
Notary Public, State of New York  
Broome County 02ME4974837  
Commission Expires Nov. 26, 20 19



EXHIBIT "A"

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 star drill hole set on the south line of Front Street which lies 37.8 feet northeasterly of the east line of Lake Street extended south to the intersection of the north line of Front Street;

THENCE N 55-43-41 E for a distance of 54.04 feet to a star drill hole set;

THENCE S 34-19-13 E for a distance of 29.39 feet to a point;

THENCE N 55-18-09 E for a distance of 2.06 feet to a point;

THENCE S 34-19-13 E for a distance of 62.88 feet to a ¾" rebar set with cap;

THENCE S 54-26-32 W for a distance of 56.11 feet to a ¾" rebar set with cap;

THENCE N 34-19-13 W for a distance of 93.51 feet to the Point of Beginning; containing 5,150 sq. ft. of land.

EXHIBIT "B"

(SEE ATTACHED PILOT SCHEDULE)

**PROPOSED PAYMENT-IN-LIEU-OF-TAX**

The following PILOT has been requested by Nelson Development Group, LLC. It calls for a deviation from the standard PILOT to allow for a fixed amount ramp up for the first ten (10) years and then a 20% of total tax ramp up of over the next five (5) years; fully taxed after year fifteen (15).

Year	PILOT	Estimated Total Property Tax	Estimated PILOT Payment	Estimated Property Tax Abatement
1	fixed	\$11,815	\$1,540	\$10,275
2	fixed	\$12,051	\$1,681	\$10,370
3	fixed	\$12,292	\$1,823	\$10,469
4	fixed	\$12,538	\$1,965	\$10,573
5	fixed	\$12,789	\$2,109	\$10,680
6	fixed	\$13,045	\$2,253	\$10,792
7	fixed	\$13,306	\$2,398	\$10,908
8	fixed	\$13,572	\$2,544	\$11,028
9	fixed	\$13,843	\$2,691	\$11,152
10	fixed	\$14,120	\$2,839	\$11,281
11	20%	\$14,402	\$2,920	\$11,482
12	40%	\$14,690	\$5,906	\$8,784
13	60%	\$14,984	\$9,011	\$5,973
14	80%	\$15,284	\$12,238	\$3,046
15	100%	\$15,590	\$15,590	\$0
<b>Total</b>		<b>\$204,321</b>	<b>\$67,508</b>	<b>\$136,813</b>

\*Note: Real Property Taxes estimated for \$200,000 assessment based on a 2015/2016 Town, Village, County, School and Recycle combined tax rate of 58.874374 for first year and increased by 2% each following year. Library tax is .200525/1000 assessed value at 100% all years.

\*Note: Year one (1) is fixed at \$1,500 plus Library tax; years two (2) through ten (10) increases each previous year by \$100 plus Library tax.

\*Note: The subject property is currently listed as tax exempt; there are no Real Property Taxes being paid on the subject property at this time.

**According to this estimated PILOT financial model, over a period of fifteen (15) years, Nelson Development Group, LLC, would be afforded an estimated real property tax abatement of \$136,813.**

EXHIBIT "C"

(SEE ATTACHED AGENCY POLICY FOR  
TERMINATION, MODIFICATION AND/OR RECAPTURE OF AGENCY BENEFITS)

**TIOGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
POLICY FOR TERMINATION, MODIFICATION  
AND/OR RECAPTURE OF AGENCY BENEFITS**

The goal of this Policy is to establish and provide a procedure as required by Section 875 of the New York State General Municipal Law for the termination, modification and/or recapture of Broome County Industrial Development Agency (the “Agency”) benefits provided to an applicant in order to induce such applicant to undertake a project in Broome County. For purposes of this policy, Agency benefits shall include and any or all of the following:

- (i) exemptions from New York State and local sales and use tax;
- (ii) an exemption from the New York State mortgage recording tax; and/or
- (iii) an abatement from real property taxes provided through a payment-in-lieu-of-tax (“PILOT”) Agreement.

The Agency reserves the right to terminate, modify, or recapture Agency benefits if :

- (i) an applicant or its sub-agency (if any) authorized to make purchases for the benefit of the project is not entitled to the sales and use tax exemption benefits;
- (ii) sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the applicant or its sub-agents;
- (iii) sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the project;
- (iv) the applicant has made material, false, or misleading statements in its application for financial assistance;
- (v) the applicant has committed a material violation of the terms and conditions of a Project Agreement; and/or
- (vi) there is a material shortfall in job creation and retention projections as set forth in its application.

Upon the occurrence of any of the above conditions, the Agency Board may, upon

recommendation of the Executive Director, terminate, modify and/or recapture the Agency benefits provided to a specific project. Prior to undertaking such action, the Agency shall give written notice of its intention to terminate, modify and/or recapture Agency benefits to the applicant specifying the reasons why the Agency is considering such action. The applicant shall have twenty (20) days to respond to the Agency, either in writing or in person, providing such information and documentation as it deems appropriate for the Board to consider prior to making its decision. All such recaptured Agency benefits shall be redistributed to the appropriately affected taxing jurisdictions unless agreed to otherwise by such jurisdictions.

Notwithstanding the foregoing, the Agency retains the right to terminate Agency benefits as otherwise provided in project transaction documents including, but not limited to, failure of the applicant to make timely PILOT payments, to provide required reports, or to cooperate with Agency personnel in providing data regarding project progress.