

SENECA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

MADISON HNJ, LLC

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

Dated as of April 15, 2019

Affected Tax Jurisdictions:

Seneca County

Town of Waterloo

Village of Waterloo

Waterloo Central School District

Tax Map No(s): 09-3-43, 09-3-42, 09-3-41, 09-3-40, 09-3-39

Waterloo Redevelopment Project

at

3-11 West Main Street, Waterloo, New York

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT (the "Agreement"), dated as of the 15th day of April, 2019, by and between **SENECA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, having its offices at 1 DiPronio Drive, Waterloo, New York 13165 (the "Agency") and **MADISON HNJ, LLC**, a limited liability company having offices at 942 Lafayette Avenue, Brooklyn, New York 11221 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 63 of the Laws of 1972 of the State of New York pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has submitted an application, as revised (as so revised, the "Application") to the Agency requesting that the Agency consider undertaking a Project (the "Project") consisting of: (i) the acquisition by the Agency of a leasehold interest in property situated at 3-11 West Main Street, Village of Waterloo, New York, and the buildings and improvements thereon (collectively, the "Property"), (ii) the renovation of the Property to create four commercial units and eight residential units, and related amenities (collectively, the "Improvements"), and (iii) the acquisition and installation by the Company in the Improvements of certain items of equipment and other tangible personal property (the "Equipment" and, collectively with the Property, and the Improvements, the "Facility"); and

WHEREAS, in order to induce the Company to acquire, construct and equip the Facility, the Agency is willing to take title to or a leasehold interest in the Facility pursuant to a lease agreement, dated as of the date hereof, by and between the Company, as lessor, and the Agency, as lessee (the "Lease Agreement"), and thereafter the Agency, as sub-lessor, will lease its interest in the Facility back to the Company, as sub-lessee pursuant to the terms and conditions of a certain Leaseback Agreement, dated as of the date hereof, (the "Leaseback Agreement" and together with the Lease Agreement, the "Lease Agreements"); and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency 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 Charges, as defined by Section 2.1; and

WHEREAS, the Agency 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 Agency for the benefit of Seneca County (the "County"), Town of Waterloo (the "Town"), the Village of Waterloo, and the Waterloo Central School District (the "School") (collectively, the "Affected Tax Jurisdictions"); and

WHEREAS, the Company and the Agency have entered into one or more Agent Agreements (the "Agent Agreement") and Benefit Recapture Agreements (the "Benefit

Recapture Agreement”), and certain other documents (all such documents and agreements, together with the Lease Agreements, being herein referred to as the “Transaction Documents”) providing for certain terms and conditions with respect to the Agency’s involvement in the Facility; and

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:

Section 1.1 Exemption Application. A.) Subject to the completion and filing by the Agency or its designee at the direction of the Agency on or before the taxable status date (**March 1, 2020**) (the "Taxable Status Date") of New York State Form RP-412-a Application For Real Property Tax Exemption (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law and Section 874 of the Act and the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review, the Facility shall be exempt from Real Estate Taxes for the periods set forth in Section 1.3. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the Taxing Jurisdictions. The Company shall provide the Agency with 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 Leaseback 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, specifically including but not limited to Real Estate Taxes for years prior to and after the tax years covered by this Tax Agreement. After giving written notice to the Agency, 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 in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, 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 Agency, and releases the Agency 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 Agency to file the Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

B.) Agreement to Make Payments. The parties agree and acknowledge that payments made under this Agreement are for purposes of obtaining revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are exempt from the payment of real property taxes pursuant to Section 412-a of the Real Property Tax Law and Section 874 of the General Municipal Law. The Company shall annually pay to the Agency, as an in lieu of tax payment, an amount equal to the Tax Payment for the applicable town and county, village and school tax years as set forth on Schedule A (the "Tax Payments"), for the periods described in Section 1.3. The Tax Payments

shall be due from the Company within thirty (30) days following receipt of an invoice from the Agency (the "Payment Date").

All Tax Payments shall be mailed to the Agency at 1 DiPronio Drive, Waterloo, New York 13165 or as otherwise directed by the Agency. The Company hereby agrees to make all such Tax Payments without further notice or invoice from the Agency or the Affected Tax Jurisdictions. All checks shall be made payable as directed by the Agency from time to time.

(i) The Company hereby waives any and all rights it may have to any refund of prior tax payments for the periods prior to the periods described in Section 1.3.

(ii) The parties hereto acknowledge that the Company shall have the right to institute a grievance with respect to the assessment of the Facility pursuant to Article Seven of the Real Property Tax Law. The Company hereby agrees for the benefit of the Affected Tax Jurisdictions to not seek a refund of any taxes or Special Charges paid or to be paid for periods prior to the periods described in Section 1.3.

(iii) The Agency 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 taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation.

1.2 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, the Company shall notify the Agency of such future addition ("Future Addition"). The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant evidence that the Agency 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 Tax Payment. The Agency shall determine the increase in the Tax Payment by applying the tax rate of the Affected Tax Jurisdictions to the value of the Future Addition as determined by the Agency, and notify the Company of the increase in the Tax Payment related to such Future Addition as soon as practicable after the calculation of such increase is completed. The increase in the Tax Payment related to each Future Addition shall be recomputed annually when the tax rates for each Affected Tax Jurisdiction are set, and shall be due within thirty (30) days after the Company's receipt of an invoice from the Agency. If the Company shall disagree with the determination of value for any Future Additions made by the Agency, then and in that event the Company may apply to have the valuation fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the increased Tax Payment until a different Tax Payment shall be established (by virtue of a re-valuation of a Future Addition by the court or otherwise). If a lesser valuation for a Future Addition is determined in any proceeding or by subsequent agreement of the parties, the additional Tax Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the next succeeding Tax payment(s).

1.3 Period of Benefits. The tax benefits provided for herein shall be deemed to include: (i) the 2021 town and county tax year through the 2035 town and county tax year and (ii) the 2020-2021 school and village tax years through the 2034-2035 school and village tax year. **This Agreement shall expire on December 31, 2035,** provided, however, that the Company shall pay the 2035-2036 school and village taxes and 2036 town and county taxes on the dates and in the amounts as if the Agency had no interest in the Facility 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 of the New York Real Property Tax Law ("RPTL") for the Facility and/or any Future Addition; provided, the foregoing shall not be interpreted to limit the Company and Agency from subsequently agreeing (each in its sole discretion) to additional benefits based upon commitments to make additional improvements or changes in use. 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. In addition to the Tax Payments be made by the Company to the Agency pursuant to this Tax Agreement, the Company shall pay all special assessments, special ad valorem levies, service charges and any other charges for which the Facility shall be subject (the "Special Charges") and not exempt by virtue of the Agency's involvement. Such amounts shall to be paid in full in accordance with normal billing practices.

Section III – Termination of Agreement.

3.1 In the event this Agreement terminates (regardless of whether the Facility is 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 if the Facility had been classified as fully taxable as of the 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, with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions 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 assessment.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any Special Charges as if and to the same extent as if the Company was the owner of the Facility.

4.3 The Company shall (i) permit the appropriate real estate tax assessment office and tax levy offers to assess the Facility and apply tax rates to the respective assessments as if the Facility was owned by the Company, and (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers and provide information to the Agency as requested from time to time.

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. (i) the failure by the Company to make the payments described in Section I within fifteen (15) days following the Payment Date (the "Delinquency Date"); (ii) the failure by the Company to 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 Agent Agreement, the Lease Agreements, the Benefit Recapture Agreement, or any other Transaction Document after the expiration of any applicable cure periods. Upon the occurrence of an Event of Default the Agency may immediately terminate the Lease Agreements and this Agreement. Such right of termination of this Agreement and the Lease Agreements shall be in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, and in the event of such a termination the Facility shall cease to be exempt from Real Estate Taxes as of the effective date of the termination, and the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency 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 Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default under this Agency Tax Agreement pursuant to Section 874(6) of the General Municipal Law and the Company shall immediately notify the Agency 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 defined in Section 6.1 herein, 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.

6.3 Upon the occurrence of an Event of Default hereunder, the liabilities of the Company to the Agency hereunder shall be (i) all amounts due to the Agency pursuant to Section I through but not including the date on which the Facility is no longer exempt from Real Estate Taxes, plus (ii) all other amounts due to the Agency pursuant to Section 6.2 hereof, plus (iii) the difference between the Real Estate Taxes that would have been charged to the Facility absent the Agency's involvement in the Project and the Tax Payments made hereunder to the date of the Event of Default (but assuming the application of the partial exemption schedule provided for by Real Property Tax Law 485-b, with such schedule commencing on the first applicable tax year where the value of the Improvements are included in the Facility's assessment). All of foregoing liabilities shall be immediately due and payable to the Agency upon the occurrence of an Event of Default.

Section VII - Assignment.

7.1 Without the prior written consent of the Agency, which shall not be unreasonably withheld but may be subject to such conditions as the Agency shall reasonably impose, (i) no portion of any interest in this Agreement may be assigned by the Company, (ii) no party other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder, (iii) there shall be no direct or indirect transfers of ownership interests in the Facility, including but not limited to transfers of direct or indirect ownership interests in the Company.

Section VIII- Miscellaneous.

8.1 Counterparts. 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 Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, or to a nationally recognized courier such as Federal Express, addressed as follows:

To the Agency:

Seneca County Industrial Development Agency
1 DiPronio Drive
Waterloo, New York 13165
Attn: Executive Director

And to:

The Halpin Firm

4588 Route 224
Montour Falls, New York 14865
Attn: Robert L. Halpin, Esq.

To the Company:

Madison HNJ, LLC
942 Lafayette Avenue
Brooklyn, NY 11221

And to:

Murray P. Heaton, Esq.
Heaton & Venuti, LLP
118 Genesee Street
Geneva, NY 14456

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. Any notice hereunder may be given by counsel for a party with the same force and effect as if given by such party.

8.3 Governing Laws. 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 or state courts located in Seneca County, New York.

8.4 Non-Recourse to Agency. Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. Neither member of the Agency 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 Agency, or of any successor or political subdivision, either directly or through the Agency 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.

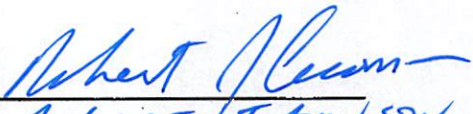
8.5 Incorporation of Benefit Recapture Agreement. This Agreement is subject to the terms of the Benefit Recapture Agreement, which is incorporated herein by reference.

SIGNATURE PAGE FOLLOWS

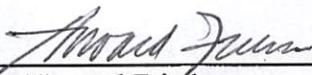
[Signature Page to Tax Agreement]

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

SENECA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Name: Robert J. Anderson
Title: EXECUTIVE DIRECTOR

MADISON HNJ, LLC

By: 
Name: Howard Friedman
Title: Member

SCHEDULE A

PAYMENT IN LIEU AGREEMENT DATED AS OF APRIL 15, 2019,
BY AND BETWEEN SENECA COUNTY INDUSTRIAL DEVELOPMENT AGENCY AND
MADISON HNJ, LLC

Pursuant to the terms of Section 1.1 of this Tax Agreement, "Tax Payments" shall mean an amount per annum calculated by multiplying the "Valuation" as set forth below times the tax rate for each applicable Taxing Jurisdiction for the tax year corresponding to the Valuation.

SCHOOL TAX YEAR	VILLAGE TAX YEAR	COUNTY & TOWN TAX YEAR	VALUATION
2020-21	2020-21	2021	2018 Assessed Value – See Valuation Chart Below
2021-22	2021-22	2022	2018 Assessed Value – See Valuation Chart Below
2022-23	2022-23	2023	2018 Assessed Value – See Valuation Chart Below
2023-24	2023-24	2024	2018 Assessed Value – See Valuation Chart Below
2024-25	2024-25	2025	2018 Assessed Value – See Valuation Chart Below
2025-26	2025-26	2026	100% Assessed Value of Land plus 25% Assessed Value of Improvements, 2025 Assessment
2026-27	2026-27	2027	100% Assessed Value of Land plus 25% Assessed Value of Improvements, 2026 Assessment
2027-28	2027-28	2028	100% Assessed Value of Land plus 25% Assessed Value of Improvements, 2027 Assessment
2028-29	2028-29	2029	100% Assessed Value of Land plus 25% Assessed Value of Improvements, 2028 Assessment
2029-30	2029-30	2030	100% Assessed Value of Land plus 25% Assessed Value of Improvements, 2029 Assessment
2030-31	2030-31	2031	100% Assessed Value of Land plus 50% Assessed Value of Improvements, 2030 Assessment
2031-32	2031-32	2032	100% Assessed Value of Land plus 50% Assessed Value of Improvements, 2031 Assessment
2032-33	2032-33	2033	100% Assessed Value of Land plus 50% Assessed Value of Improvements, 2032 Assessment
2033-34	2033-34	2034	100% Assessed Value of Land plus 50% Assessed Value of Improvements, 2033 Assessment
2034-35	2034-35	2035	100% Assessed Value of Land plus 50% Assessed Value of Improvements, 2034 Assessment

Valuation Chart:

Tax Map No	Address	Assessment
09-3-43	3 W Main Street	\$ 66,100
09-3-42	5 W Main Street	\$ 73,000
09-3-41	7 W Main Street	\$ 62,800
09-3-40	9 W Main Street	\$ 86,600
09-3-39	11 W Main Street	\$ 80,500

\$ 369,000