

SECOND AMENDED PAYMENT IN LIEU OF TAX AGREEMENT: CAYUGA GREEN, LLC

*City of Ithaca Tax Parcel No. 70.-4-5.2
116-128 East Green Street, City of Ithaca*

THIS AGREEMENT is made by and between CAYUGA GREEN, LLC, a limited liability company duly organized and validly existing pursuant to the laws of the State of New York, having its principal offices at 660 Lincoln Avenue, Suite 303, Cincinnati, Ohio 45206, (the "Company"), and the TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its offices at 401 East State Street, Suite 402B, Ithaca, New York 14850 (the "Agency").

WITNESSETH:

WHEREAS, the Agency was created pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York as amended by Chapter 535 of the Laws of 1971, of the State of New York (collectively, the "Act"), as a body corporate of the State of New York, and

WHEREAS, the Agency was asked to participate in the project whereby it took a leasehold interest in a movie theater ("the Facility") constructed by the Company on premises leased by the Company, located in the ground floor of the Green Street Parking Garage at 116-128 East Green Street in the City of Ithaca, County of Tompkins, State of New York, known as City of Ithaca tax parcel 70.-4-5.2; and

WHEREAS, in order to assist the Company in acquiring, constructing and equipping the Facility, the Agency took a leasehold interest in the land, improvements and personal property constituting the Facility (the "Lease Assignment") and lease said land, improvements and personal property back to the Company pursuant to the terms and conditions of a certain Sublease Agreement dated on or about August 9, 2007 (the "Sublease Agreement"); and

WHEREAS, the premises and the buildings thereon are exempt from city, village, town, county and school real estate taxes pursuant to the laws of the State of New York, and

WHEREAS, the Company, however, has agreed to pay sums of money in lieu of real property taxes, and

WHEREAS, the parties entered into a PILOT Agreement on August 9, 2007 (the "PILOT Agreement"), which was amended by an Amended PILOT Agreement dated February 12, 2008 (the "Amended PILOT Agreement"); and

WHEREAS, the parties agreed to amend the PILOT Agreement and Amended PILOT Agreement to delete the adjustment of the abatement percentage based on the return on investment of the Project and the caps on rental rates, and to apply the abatement schedule without any further adjustments in future years;

NOW THEREFORE, in consideration of \$1.00 each to the other in hand paid and receipt of which is hereby acknowledged, and other good and valuable consideration, the parties agree as follows:

1. 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 exemption from special assessments and special *ad valorem* levies, service charges and improvement district charges or similar tax equivalents. Pursuant to the Lease Assignment described herein, the Company is required to pay all special assessments and special *ad valorem* levies, service charges and improvement district charges or similar tax equivalents lawfully levied and/or assessed against the Facility.
2. It is agreed and understood by the parties that the total premises to be leased or acquired by the Company at 235 South Cayuga Street in the City of Ithaca, Tompkins County, New York upon which the Facility is located have been conveyed to the Agency by lease agreement. As long as the Agency or the Agency holds a leasehold interest in the total premises, and said premises are therefore exempt from general real property taxation, the Company agrees to pay annually to such Taxing Jurisdictions, i.e., the City

of Ithaca, the County of Tompkins and the Ithaca City School District (or cause any mortgagee to release any escrow for payments hereunder annually to such Taxing Jurisdiction) as a payment in lieu of general real property taxes respecting the conveyed premises, (i) an amount equal to 100% of the real property taxes which would be due for said premises but for record ownership or leasehold interest by the Agency (but without reference to, or utilization of, Section 485-b of the Real Property Tax Law of the State of New York) based on a current assessment of the total land portion of the conveyed premises, commencing the first tax status date following the date of execution of the Amended PILOT Agreement and (ii) with respect to the portion of the assessed value of the Facility attributable to the approximately 22,000 square feet of commercial space thereon, the following percentages of the general real property taxes which would be due in respect of such constructed buildings (i.e., the assessed value of the newly constructed buildings thereon) but for its record ownership or leasehold interest by the Agency (but without any reference to, or utilization of, Section 485-b of the Real Property Tax law of the State of New York), based on a current assessment of such constructed buildings, commencing the first tax status date following the date of execution of the Amended PILOT Agreement:

<u>YEAR OF EXEMPTION ("Tax Year")</u>	<u>TAXING JURISDICTIONS PAYMENT IN LIEU OF TAX FOR CURRENT ASSESSED VALUE OF BUILDING</u>
1 2009 City tax; 2008-09 School Tax; 2009 Town & County tax	100% (abatement percentage 0%)
2 2010 City tax; 2009-10 School Tax; 2010 Town & County tax	0% (abatement percentage 100%)
3 2011 City tax; 2010-11 School Tax; 2011 Town & County tax	10% (abatement percentage 90%)
4 2012 City tax; 2011-12 School Tax; 2012 Town & County tax	20% (abatement percentage 80%)
5 2013 City tax; 2012-13 School Tax; 2013 Town & County tax	30% (abatement percentage 70%)
6 2014 City tax; 2013-14 School Tax; 2014 Town & County tax	40% (abatement percentage 60%)
7 2015 City tax; 2014-15 School Tax; 2015 Town & County tax	50% (abatement percentage 50%)
8 2016 City tax; 2015-16 School Tax; 2016 Town & County tax	60% (abatement percentage 40%)
9 2017 City tax; 2016-17 School Tax; 2017 Town & County tax	70% (abatement percentage 30%)
10 2018 City tax; 2017-18 School Tax; 2018 Town & County tax	80% (abatement percentage 20%)
11 2019 City tax; 2018-9 School Tax; 2019 Town & County tax	90% (abatement percentage 10%)
12 and thereafter: No abatement; full taxes paid	100% (abatement percentage 0%)

(It being understood and agreed that from the date of execution of this agreement until such tax status date, said date being the first day of March following the execution of this agreement, the Company shall be obligated to pay or cause to be paid annually to the Taxing Jurisdictions normal real property taxes).

3. In addition, the Company agrees to pay on the date of execution and delivery by the Agency of any mortgage on the Facility, as a payment in lieu of mortgage recording tax which would be due in respect of such mortgage on the Facility but for its record ownership by the Agency, a total amount of 3/4 of 1% of the maximum amount secured by any such mortgage, except such amount as reflects repayment of prior indebtedness, to the City of Ithaca.
4. Special district charges, special assessments, and special *ad valorem* levies, unless otherwise exempt, and all water and sewer charges, if any, are to be paid in full in accordance with normal billing practices.
5. The Company shall pay to the Taxing Jurisdictions, at the times real estate taxes are due and prior to incurrence of any penalty, the amounts set forth in paragraph 2.
6. If the Company shall fail to make any payment required by this Agreement when due, its obligation to make the payment so in default shall continue as an obligation of the Company until such payment in default shall have been made in full, and the Company shall pay the same together with interest thereon, to the extent permitted by law, at the same rate per annum as if such amounts were delinquent taxes, until so paid in full.

7. In the event that the Facility is transferred from the Agency to the Company, and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption is less than that described in paragraph 2 herein, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period) to the Taxing Jurisdictions an amount which would have been levied on the Facility if the Facility had been classified as fully taxable, pro rata for the unexpired portion of the year of transfer.
8. The Company agrees that in the event the Facility covered by this Agreement is sold, the purchaser will be required by the Company to continue to make payments in lieu of taxes according to the terms of this Agreement until the property being sold has been returned to the taxable assessment rolls and until payment of property taxes becomes due according to the Real Property Tax Law of the State of New York. Any amounts paid in lieu of taxes will be eligible for proration up to the time of payments of property taxes. The intent of this paragraph is to ensure that the current and future owners are at all times paying either the payment in lieu of taxes or real estate taxes as assessed from time to time on the property conveyed. There shall be no duplication of payments in any year.
9. The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, *ad valorem* levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this Agreement, as if and to the same extent as if the Company were the owner of the Facility.
10. Following the expiration of the term of the Lease Agreement executed concurrently herewith, and the conveyance of the Facility to the Company by the Agency, the Company shall thereafter pay 100% of all such taxes which would be due but for the Agency's ownership of or leasehold interest in the Facility based on the then-current assessment.
11. While the Agency holds a leasehold interest in the Facility, to the extent permitted by law, the Company or any tenant of the Facility shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company or any tenant of the Facility 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 Taxing 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 or the validity or the amount of any tax equivalent provided for herein. The Agency agrees to sign any papers, petitions, notices or other documents to permit the Company or any tenant of the Facility to contest assessments of the Facility and to otherwise cooperate, at the Company's or tenant's cost, with efforts of the Company or tenant to contest assessments of the Facility.
12. To the extent the Facility is declared to be subject to general real property taxation 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.
13. If payments are not made as provided for herein, the Agency and/or the Taxing Jurisdictions, collectively, shall be entitled to pursue any and all remedies afforded a municipal taxing entity at law or in equity.
14. The rights and obligations of the Company hereunder may not be assigned, transferred or assumed without the prior written consent of the Agency which consent shall not be unreasonably withheld or delayed.
15. In consideration for the assistance provided to the Company by the Agency, the Company agrees, if requested by Agency, to fully cooperate and execute and/or re-execute any document that should have been signed at or before the closing of the transaction described in this Agreement, or a corrected or modified version of any such documents, where the document was inadvertently not executed at or before the closing, or the version executed at or before the closing contained any typographical, clerical or mathematical error, or erroneously contained or omitted any provision that does not conform with the statutory authority and established policies of the Agency.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 5th day of AUGUST, 2014.

TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY

CAYUGA GREEN, LLC
by BLOOMFIELD/SCHON + PARTNERS, LLC

By: [Signature]
Michael B. Stamm, Administrative Director

By: [Signature]
KENNETH E. SCHON Member

STATE OF NEW YORK)
COUNTY OF TOMPKINS) ss.:

On the 18 day of August, in the year 2014, before me, the undersigned, a notary public in and for said state, personally appeared MICHAEL B. STAMM, 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 on behalf of whom the individual acted, executed the instrument.

INA K ARTHUR
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01AR6197562
QUALIFIED IN TOMPKINS COUNTY
COMMISSION EXPIRES DECEMBER 1, 2016

[Signature]
Notary Public
Commission Expires: December 1 2016

STATE OF Ohio)
COUNTY OF Hamilton) ss.:

On the 5 day of August, in the year 2014, before me, the undersigned, a notary public in and for said state, personally appeared Kenneth E. Schon, 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 on behalf of whom the individual acted, executed the instrument.



CLAYTON T. LEIMEISTER
Notary Public, State of Ohio
My Comm. Expires Mar. 13, 2019

[Signature]
Notary Public
Commission Expires: March 13, 2019