

CLOSING ITEM NO.: A-5

TROY INDUSTRIAL DEVELOPMENT AUTHORITY  
AND  
TROY LIVING, LLC

PAYMENT IN LIEU OF TAX AGREEMENT

DATED AS OF JUNE 1, 2007

RELATING TO 63-65 THIRD STREET, TROY, NEW YORK

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PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT dated as of June 1, 2007 (the "Payment in Lieu of Tax Agreement") by and between TROY INDUSTRIAL DEVELOPMENT AUTHORITY, a public instrumentality organized and existing under the laws of the State of New York 12180 having an office for the transaction of business located at One Monument Square, Troy, New York (the "Authority") and TROY LIVING, LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at c/o J.W. Pfeil & Company, Inc., 340 Broadway, Saratoga Springs, New York 12866 "Company");

WITNESSETH:

WHEREAS, Title 11 of Article 8 of the Public Authorities Law of the State of New York was duly enacted into law as Chapter 759 of the Laws of 1967 of the State of New York as amended (the "Act"); and

WHEREAS, the Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment 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 purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Authority is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, by resolution adopted by the members of the Authority on June 27, 2007 (the "Approving Resolution"), the Authority made a determination to undertake a project (the "Project") consisting of (1) (A) the acquisition of certain real property located at 63-65 Third Street in Troy, New York (the "Land") and the approximately 44,000 square foot building located on the Land (the "Existing Facility"), (B) the renovation of the Existing Facility, (C) the construction of an underground attached parking facility (the "Parking Facility" and together with the Existing Facility, the "Facility"), and (D) the acquisition and installation in the Facility of certain equipment (the "Equipment" and, together with the Land and the Facility, the "Project Facility"); (2) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the

Authority; and (3) the granting of certain "financial assistance" (within the meaning of Section 1951(11) of the New York Public Authorities Law) with respect to the foregoing, including exemption from sales and use taxes, deed transfer taxes, mortgage recording taxes and real property taxes, consistent with the Authority's uniform tax exemption policy (collectively, the "Financial Assistance"). The Project Facility is to be leased by the Company for residential and commercial uses. To preserve the sales tax exemption which forms a major portion of the Financial Assistance, the Authority (A) appointed the Company as agent of the Authority to undertake the acquisition, construction, renovation and installation of the Project Facility, and (B) the Authority executed and delivered to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") relating to the Project.

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQRA Act"), and the regulations (the "Regulations" and collectively with the SEQRA Act, "SEQRA") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (the "DEC"), the members of the Authority adopted a resolution on March 6, 2006 (the "SEQRA Resolution") in which the Authority determined that the acquisition, construction and equipping of the Project Facility will not have a "significant effect" on the "environment", as such quoted terms are defined in the SEQRA Act and issued a negative declaration with respect to the Project; and

WHEREAS, by the Approving Resolution, the Authority determined to grant the financial Assistance and to enter into a lease agreement dated as of June 1, 2007 (the "Lease Agreement") between the Authority and the Company, this Payment in Lieu of Tax Agreement and certain other documents to be executed by the Authority related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents") and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company will execute and deliver to the Authority (1) a certain lease to authority dated as of June 1, 2007 (the "Lease to Authority") from the Company to the Authority, pursuant to which the Company transfers to the Authority leasehold title to the Land and the Facility for the purpose of undertaking and completing the Project, (2) a bill of sale dated as of June 1, 2007 (the "Bill of Sale to Authority"), from the Company to the Authority, pursuant to which the Company will convey to the Authority its interest in the portion of the Project Facility constituting fixtures and other personal property, (B) the Company and Authority will execute and deliver this Payment in Lieu of Tax Agreement pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility and which together with a copy of a New York State Office of Real Property Services Form 412-a (the form required to be filed by the Authority in order for the Authority to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement will be mailed by the Authority to the assessor and the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 1951 of the Act) and (C) the Authority will, upon request of the Company, execute and deliver to the Company one or more letters extending the term of the Sales Tax Exemption letter to coincide with the expected term of the acquisition, construction, renovation and installation of the Project; and

WHEREAS, under the present provisions of the Act and Section 412-of the Real Property Tax Law of the State of New York (the "Real Property Tax Law"), the Authority is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or control; and

WHEREAS, pursuant to the provisions of Section 6.6 of the Lease Agreement, the Company has agreed to make payments in lieu of taxes with respect to the Project Facility in an amount equivalent to normal taxes; provided that, so long as this Payment in Lieu of Tax Agreement shall be in effect, the Company shall during the term of this Payment in Lieu of Tax Agreement make payments in lieu of taxes with respect to the Project Facility in the amounts and in the manner provided in this Payment in Lieu of Tax Agreement, and during such period the provisions of Section 6.6 of the Lease Agreement shall not control the amounts due as payment in lieu of taxes with respect to the Project Facility; and

WHEREAS, all things necessary to constitute this Payment in Lieu of Tax Agreement of valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed and the creation, execution and delivery of this Payment in Lieu of Tax Agreement have in all respects been duly authorized by the Authority and the Company.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PROMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS, TO WIT:

ARTICLE I  
REPRESENTATIONS AND WARRANTIES

SECTION 1.01. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant and covenant as follows:

(A) Power. The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, is duly authorized to do business in the State, and has the power under the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement, and by proper action of its members has been duly authorized to execute, deliver and perform this Payment in Lieu of Tax Agreement.

(B) Authorization. The Company is authorized and has the power under its articles of organization, operating agreement and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement.

(C) Conflicts. The Company is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by (and the execution, delivery and performance of this Payment in Lieu of Tax Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Payment in Lieu of Tax Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its articles of organization or operating agreement or any other law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which the Company or any of its property is bound, and neither the Company's entering into this Payment in Lieu of Tax Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing.

(D) Governmental Consents. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Payment in Lieu of Tax Agreement by the Company or as a condition to the validity of this Payment in Lieu of Tax Agreement.

SECTION 1.02. REPRESENTATIONS OF AND WARRANTIES BY THE AUTHORITY. The Authority does hereby represent, warrant and covenant as follows:

(A) Power. The Authority is a public instrumentality of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into the transactions contemplated by this Payment in Lieu of Tax Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement hereunder.

(B) Authorization. The Authority is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper action on the part of its members, the Authority has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Authority is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Authority is a party or by which the Authority is bound.

ARTICLE II  
COVENANTS AND AGREEMENTS

SECTION 2.01. TAX-EXEMPT STATUS OF THE PROJECT FACILITY.

(A) Assessment of the Project Facility. Pursuant to Section 1963 of the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of the Project Facility by the Authority and the filing by the Authority of a Real Property Tax Exemption Form with respect to the Project Facility, and for so long thereafter as the Authority shall hold a leasehold interest in the Project Facility, the Project Facility shall be assessed by the various taxing entities having jurisdiction over the Project Facility, including, without limitation, any county, city, school district, town, village or other political unit or units wherein the Project Facility is located (such taxing entities being sometimes collectively hereinafter referred to as the "Taxing Entities", and each of such Taxing Entities being sometimes individually hereinafter referred to as a "Taxing Entity") as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the acquisition by the Authority of the Project Facility and the filing of the Real Property Tax Exemption Forms. The Authority shall, promptly following acquisition by the Authority of the Project Facility pursuant to the Lease to Authority, take such action as may be necessary to ensure that the Project Facility shall be assessed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to such acquisition by the Authority, including ensuring that a Real Property Tax Exemption Form shall be filed with the appropriate officer or officers of each respective Taxing Entity responsible for assessing properties on behalf of each such Taxing Entity (each such officer being hereinafter referred to as an "Assessor"). For so long thereafter as the Authority shall have a leasehold interest in the Project Facility, the Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Taxing Entity. The parties hereto understand that the Project Facility shall not be entitled to such tax-exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the tax status date of such Taxing Entity occurring subsequent to the date upon which the Authority becomes the lessee of the Project Facility and the Real Property Tax Exemption Forms are filed. Pursuant to the provisions of the Lease Agreement, the Company will be required to pay all taxes and assessments lawfully levied and/or assessed against the Project Facility, including taxes and assessments levied for the current tax year and all subsequent tax years until the Project Facility shall be entitled to exempt status on the tax rolls of the respective Taxing Entities. The Authority will cooperate with the Company to obtain and preserve the tax-exempt status of the Project Facility.

(B) Special Assessments. The parties hereto understand that the tax exemption extended to the Authority by Section 1963 of the Act and Section 412-a of the Real Property Tax Law does not entitle the Authority to exemption from special assessments and special ad valorem levies. Pursuant to the Lease Agreement, the Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project Facility.

## SECTION 2.02. PAYMENTS IN LIEU OF TAXES.

(A) The Company agrees that it shall make annual payments in lieu of property taxes in the amounts hereinafter provided to the Authority on behalf of the respective Taxing Entities entitled to receive the same pursuant to the provisions hereof. The Authority also agrees to give the Assessors a copy of this Payment In Lieu of Tax Agreement together with a copy of the Real Property Tax Form. The payments due hereunder shall be paid by the Company to the Authority. The Authority shall in turn convey such payments to the respective appropriate office or officer of the Respecting Taxing Entities charged with receiving payments of the taxes for such Taxing Entities (such officers being collectively hereinafter referred to as the "Receiver of Taxes") for distribution by the Receiver of Taxes to the appropriate Taxing Entities entitled to receive same pursuant to the provisions hereof.

(B) Amount of Payments in Lieu of Taxes. (1) Annual aggregate amounts to be paid by the Company to the Agency on behalf of the Taxing Entities as payments in lieu of taxes shall equal the sum of the fixed payment amount for each of the years as set forth below plus the percentage of the gross revenues of the Company from rents derived from leasing the Project Facility for the immediately preceding calendar year as follows:

<u>Year</u>	<u>Fixed Amount</u>	<u>Percentage of Gross Rents</u>
2008-12	\$12,000	0%
2013	\$14,761	0%
2014	\$17,661	0%
2015	\$20,707	0%
2016	\$23,904	0%
2017	\$27,261	0%
2018	\$30,786	0%
2019	\$34,487	0%
2020	\$38,373	0%
2021	\$42,453	0%
2022	\$46,737	0%
2023	\$46,737	2%
2024	\$46,737	2%
2025	\$46,737	2%
2026	\$46,737	2%
2027	\$46,737	3%
2028	\$46,737	3%
2029	\$46,737	3%
2030	\$46,737	3%
2031	\$46,737	4%
2032	\$46,737	4%
2033	\$46,737	4%
2034	\$46,737	4%
2035	\$46,737	5%

<u>Year</u>	<u>Fixed Amount</u>	<u>Percentage of Gross Rents</u>
2036	\$46,737	5%
2037	\$46,737	5%

Payments shall be due on or before March 1st of each year of the PILOT.

Annually, on or before February 1<sup>st</sup> of each year, commencing February 1, 2023 the Company shall provide the Authority with a schedule of the gross rents derived by the Company from leasing the Project Facility for the immediately prior fiscal year together with such other information reasonably requested by the Authority to confirm such gross rents.

(2) The foregoing payments shall be allocated to the County, the City and School District in proportion to the amount of real property tax would have been received by the County, the City and the School District had the Project Facility not been exempt from real property taxes due to the involvement of the Authority.

(C) Additional Amounts in Lieu of Taxes. Commencing on the first tax year following the date on which any structural addition (beyond the renovation of the Existing Facility and the construction of the Parking Facility) shall be made to the Project Facility or any portion thereof or any additional building or other structure shall be constructed on the Land (such structural additions and additional buildings and other structures being hereinafter referred to as "Additional Facilities") the Company agrees to make additional annual payments in lieu of property taxes (such additional payments being hereinafter collectively referred to as "Additional Payments") to the Receiver of Taxes with respect to such Additional Facilities, such Additional Payments to be computed separately for each Taxing Entity as follows:

(1) Determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Taxing Entity if such Additional Facilities were owned by the Company and not the Authority as follows: (a) multiply the Additional Assessed Value (as hereinafter defined) of such Additional Facilities determined pursuant to subsection (E) of this Section 2.02 by (b) the tax rate or rates of such Taxing Entity that would be applicable to such Additional Facilities if such Additional Facilities were owned by the Company and not the Authority, and (c) reduce the amount so determined by the amounts of any tax exemptions that would be afforded to the Company by such Taxing Entity if such Additional Facilities were owned by the Company and not the Authority.

(2) In each fiscal tax year during the term of this Payment in Lieu of Tax Agreement (commencing in the fiscal tax year when such Additional Facilities would first appear on the assessment roll of any Taxing Entity) if such Additional Facilities were owned by the Company and not the Authority, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax with respect to such Additional Facilities pursuant to this Payment in Lieu of Tax Agreement shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to such Additional Facilities for such fiscal tax

year (unless the Authority and the Company shall enter into a separate written agreement regarding payments in lieu of property taxes with respect to such Additional Facilities, in which case the provisions of such separate written agreement shall control).

(D) Valuation of Additional Facilities. (1) The value of Additional Facilities for purposes of determining payments in lieu of taxes due under Section 2.02(C) hereof shall be determined by the Assessors of each respective Taxing Entity. The parties hereto agree that the Assessors shall (a) appraise the Additional Facilities in the same manner as other similar properties in the general area of the Project Facility, and (b) place a value for assessment purposes (hereinafter referred to as the "Additional Assessed Value") upon the Additional Facilities, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial establishment of such Additional Assessed Value and of any change in such Additional Assessed Value.

(2) If the Company is dissatisfied with the amount of the Additional Assessed Value of the Additional Facilities as initially established or as changed, and if the Company shall have given written notice of such dissatisfaction to the appropriate Assessor and the Authority within thirty (30) days of receipt by the Company of written notice of the initial establishment of such Additional Assessed Value, or of a change in such Additional Assessed Value, then the Company shall be entitled to protest before, and to be heard by, the appropriate Assessor and the Authority. If the Authority, the Company and any Assessor shall fail to reach agreement as to the proper Additional Assessed Value of the Additional Facilities for purposes of determining payments in lieu of taxes due under this Payment in Lieu of Tax Agreement, then such Assessor, the Company and the Authority shall each select one arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall be a qualified real estate appraiser, experienced in valuation for the purposes of tax assessment in the general area of the Project Facility, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Additional Assessed Value of the Additional Facilities has been properly established by the Assessor. It is understood that the arbitrators are empowered to confirm the Additional Assessed Value or to determine a higher or lower Additional Assessed Value. Any payments in lieu of taxes due upon such Additional Facilities pursuant to Section 2.02(C) hereof may not be withheld by the Company pending determination of the Additional Assessed Value by the arbitrators.

(E) Statements. Pursuant to Section 1953(14) of the Act, the Authority agrees to give each Taxing Entity a copy of this Payment in Lieu of Tax Agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy hereof be given to the appropriate officer or officers of the respective Taxing Entities responsible for preparing the tax rolls for said Tax Entities (each, a "Tax Billing Officer") and a request that said Tax Billing Officers submit to the Company and to the Receiver of Taxes periodic statements specifying the amount and due date or dates of the payments due each Taxing Entity hereunder, such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed by such Taxing Entities.

(F) Time of Payments. The Company agrees to pay the amounts due hereunder to the Authority or the Receiver of Taxes, as the case may be, within the period that each Taxing Entity allows payment of taxes levied in each calendar year without penalty; for amounts due to the city and county – January 31; for amounts due to the school district – September 30. The Company shall be entitled to receive receipts for such payments. Except that, there shall be a credit for 2008 City/County taxes as follows: notwithstanding anything in this Payment in Lieu of Tax Agreement to the contrary, the amount of the payment due from the Company pursuant to this Payment in Lieu of Tax Agreement for the year 2008 shall be reduced, dollar for dollar, by the amount of the City/County real estate taxes and assessments levied and/or assessed against the Project Facility for 2008.

(G) Method of Payment. All payments by the Company hereunder shall be paid to the Receiver of Taxes in lawful money of the United States of America. The Receiver of Taxes shall in turn distribute the amounts so paid to the various Taxing Entities entitled to same.

#### SECTION 2.03. CREDIT FOR TAXES PAID.

(A) Amount of Credit. The parties hereto acknowledge and agree that the obligation of the Company to make the payments provided in Section 2.02 of this Payment in Lieu of Tax Agreement shall be in addition to any and all other taxes and governmental charges of any kind whatsoever which the Company may be required to pay under the Lease Agreement. It is understood and agreed, however, that, should the Company pay in any fiscal tax year to any Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Project Facility or the interest therein of the Company or the occupancy thereof by the Company (but not including, by way of example, (1) sales and use taxes, and (2) special assessments, special ad valorem levies or governmental charges in the nature of utility charges, including but not limited to water, solid waste, sewage treatment or sewer or other rents, rates or charges), then the Company's obligation to make payments in lieu of property taxes attributed to such fiscal tax year to such Taxing Entity hereunder shall be reduced by the amounts which the Company shall have so paid to such Taxing Entity in such fiscal tax year, but there shall be no cumulative or retroactive credit as to any payment in lieu of property taxes due to any other Taxing Entity or as to any payment in lieu of property taxes due to such Taxing Entity in any other fiscal tax year.

(B) Method of Claiming Credits. If the Company desires to claim a credit against any particular payment in lieu of tax due hereunder, the Company shall give the governing body of the affected Taxing Entity and the Authority prior written notice of its intention to claim any credit pursuant to the provision of this Section 2.03, said notice to be given by the Company at least thirty (30) days prior to the date on which such payment in lieu of tax is due pursuant to the provisions of Section 2.02(F) hereof. In the event that the governing body of the appropriate Taxing Entity desires to contest the Company's right to claim such credit, then said governing body, the Authority and the Company shall each select an arbitrator in accordance with the rules of the American Arbitration Association, each of whom be a qualified real estate appraiser, experienced in valuation for the purposes of tax assessment in the general jurisdiction of the Project Facility, which arbitrators shall, at the sole cost and expense of the Company, determine

whether the Company is entitled to claim any credit pursuant to the provisions of this Section 2.03 and, if so, the amount of the credit to which the Company is entitled. It is understood that the arbitrators are empowered to confirm the amount of the credit claimed by the Company or to determine a lower or higher credit. When the Company shall have given notice, as provided herein, that it claims a credit, the amount of any payment in lieu of property taxes due hereunder against which the credit may be claimed may be withheld (to the extent of the credit claimed by the Company, but only to the extent that such credit may be claimed against said payment in lieu of taxes pursuant to the provisions of this Section 2.03) until the decision of the arbitrators is rendered. After the decision of the arbitrators is rendered, the payment in lieu of taxes due with respect to any reduction or disallowance by the arbitrators in the amount of the credit claimed by the Company shall, to the extent withheld as aforesaid, be immediately due and payable and shall be paid by the Company within thirty (30) days of said decision.

#### SECTION 2.04. LATE PAYMENTS.

(A) First Month. Pursuant to Section 1964-a(6) of the Act, if the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due, the Company shall pay the same, together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter. If the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the affected Taxing Entity until such payment in default shall have been made in full, and the Company shall pay the same to the affected Taxing Entity together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) 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 be payable if such amount were delinquent taxes, until so paid in full.

### ARTICLE III

#### LIMITED OBLIGATION

#### SECTION 3.01. NO RE COURSE; LIMITED OBLIGATION OF THE AUTHORITY.

(A) No Recourse. All obligations, covenants, and agreements of the Authority contained in this Payment in Lieu of Tax Agreement shall be deemed to be the obligations, covenants, and agreements of the Authority and not of any member, officer, agent, servant or employee of the Authority in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Payment in Lieu of Tax Agreement, or otherwise based upon or in respect of this Payment in Lieu of Tax Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent (other than the Company), servant or employee, as such, of the Authority

or any successor public benefit corporation or political subdivision or any person executing this Payment in Lieu of Tax Agreement on behalf of the Authority, either directly or through the Authority or any successor public instrumentality or political subdivision or any person so executing this Payment in Lieu of Tax Agreement, it being expressly understood that this Payment in Lieu of Tax Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company), servant or employee of the Authority or of any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Payment in Lieu of Tax Agreement by the Authority.

(B) Limited Obligation. The obligations, covenants and agreements of the Authority contained herein shall not constitute or give rise to an obligation of the State of New York or Troy, New York, and neither the State of New York nor Troy, New York shall be liable thereon, and further such obligations, covenants and agreements shall not constitute or give rise to a general obligation of the Authority, but rather shall constitute limited obligations of the Authority payable solely from the revenues of the Authority derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Authority with respect to the Unassigned Rights, as defined in the Lease Agreement).

(C) Further Limitation. Notwithstanding any provision of this Payment in Lieu of Tax Agreement to the contrary, the Authority shall not be obligated to take any action pursuant to any provision hereof unless (1) the Authority shall have been requested to do so in writing by the Company, and (2) if compliance with such request is reasonably expected to result in the incurrence by the Authority (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Authority shall have received from the Company security or indemnity and an agreement from the Company to defend and hold harmless the Authority satisfactory to the Authority for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

## ARTICLE IV

### EVENTS OF DEFAULT

SECTION 4.01. EVENTS OF DEFAULT. Any one or more of the following events shall constitute an event of default under this Payment in Lieu of Tax Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Payment in Lieu of Tax Agreement, any one or more of the following events:

(A) Failure of the Company to pay any amount due and payable by the Company pursuant to this Payment in Lieu of Tax Agreement and continuance of said failure for a period of fifteen (15) days after written notice to the Company stating that such payment is due and payable;

(B) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed hereunder (other than as referred to in paragraph (A) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Company shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days in the aggregate from the date of default; or

(C) Any warranty, representation or other statement by or on behalf of the Company contained in this Payment in Lieu of Tax Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Payment in Lieu of Tax Agreement and (1) shall be materially adverse to the Authority at the time when the notice referred to below shall have been given to the Company and (2) if curable, shall not have been cured within thirty (30) days after written notice of such incorrectness shall have been given to a responsible officer of the Company, provided that if such correctness cannot reasonably be cured within said thirty-day period and the Company shall have commenced action to cure the incorrectness within said thirty-day period and, thereafter, diligently and expeditiously proceeds to cure the same, such thirty-day period shall be extended for so long as the Company shall require, in the exercise of due diligence, to cure such default.

#### SECTION 4.02. REMEDIES ON DEFAULT.

(A) General. Whenever any Event of Default shall have occurred with respect to this Payment in Lieu of Tax Agreement, the Authority (or if such Event of Default concerns a payment required to be made hereunder to any Taxing Entity, then with respect to such Event of Default such Taxing Entity) may take whatever action at law or in equity as 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 Payment in Lieu of Tax Agreement.

(B) Cross-Default. In addition, an Event of Default hereunder shall constitute an event of default under Article X of the Lease Agreement. Upon the occurrence of an Event of Default hereunder resulting from a failure of the Company to make any payment required hereunder (including any deposit required by Section 2.02(G) hereof), the Authority shall have, as a remedy therefor under the Lease Agreement, among other remedies, the right to terminate the Lease Agreement and convey the Project Facility to the Company, thus subjecting the Project

Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State.

(C) Separate Suits. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.

(D) Venue. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Payment in Lieu of Tax Agreement may be brought in the courts of record of the State, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

SECTION 4.03. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. Pursuant to Section 1964-a of the Act, if the Company should default in performing any of its obligations, covenants or agreements under this Payment in Lieu of Tax Agreement and the Authority or any Taxing Entity should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Authority or such Taxing Entity, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.04. REMEDIES; WAIVER AND NOTICE.

(A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority or any Taxing Entity is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Payment in Lieu of Tax Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required. In order to entitle the Authority or any Taxing Entity to exercise any remedy reserved to it in this Payment in Lieu of Tax Agreement it shall not be necessary to give any notice, other than such notice as may be expressly required in this Payment in Lieu of Tax Agreement.

(D) No Waiver. In the event any provision contained in this Payment in Lieu of Tax Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or

modification of this Payment in Lieu of Tax Agreement shall be established by conduct, custom or course of dealing.

## ARTICLE V

### MISCELLANEOUS

#### SECTION 5.01. TERM.

(A) General. This Payment in Lieu of Tax Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the approval of this Payment in Lieu of Tax Agreement by resolution of the Authority and the execution and delivery of this Payment in Lieu of Tax Agreement by the Company and the Authority. Unless otherwise provided by amendment hereof, this Payment in Lieu of Tax Agreement shall continue to remain in effect until the earlier to occur of (1) December 31, 2037, or (2) the date on which the Project Facility is reconveyed by the Authority to the Company pursuant to the Lease Agreement.

(B) Extended Term. In the event that (1) the Project Facility shall be reconveyed to the Company, (2) on the date on which the Company obtains the Authority's interest in the Project Facility, the Project Facility shall be assessed as exempt upon the assessment roll of any one or more of the Taxing Entities, and (3) the fact of obtaining the Authority's interest in the Project Facility shall not immediately obligate the Company to make pro-rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of the State (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), this Payment in Lieu of Tax Agreement shall remain in full force and effect and the Company shall be obligated to make payments to the Receiver of Taxes in amounts equal to those amounts which would be due from the Company if the Project Facility were owned by the Company and not the Authority until the first tax year in which the Company shall appear on the tax rolls of the various Taxing Entities having jurisdiction over the Project Facility as the legal owner of record of the Project Facility.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Payment in Lieu of Tax Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENTS. This Payment in Lieu of Tax Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES.

(A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) sent to the applicable address stated below by United States registered or certified mail, postage prepaid, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Notices Given by Taxing Entities. Notwithstanding the foregoing, notices of assessment or reassessment of the Project Facility and other notices given by a Taxing Entity under Article II hereof shall be sufficiently given and shall be deemed given when given by the Taxing Entity in the same manner in which similar notices are given to owners of taxable properties by such Taxing Entity.

(C) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

Troy Living, LLC  
c/o J.W. Pfeil & Company, Inc.  
340 Broadway  
Saratoga Springs, NY 12866  
Attention: Jeffrey W. Pfeil, President

IF TO THE AUTHORITY:

Troy Industrial Development Authority  
One Monument Square  
Troy, New York 12180  
Attention: Chairman

(D) Copies. A copy of any notice given hereunder by the Company which affects in any way a Taxing Entity shall also be given to the chief executive officer of such Taxing Entity. A duplicate copy of each notice, certificate or other communication hereunder shall also be given to the Bank.

(E) Change of Address. The Authority, the Company, or any Taxing Entity may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

SECTION 5.06. BINDING EFFECT. This Payment in Lieu of Tax Agreement shall inure to the benefit of, and shall be binding upon, the Authority, the Company and their respective successors and assigns. The provisions of this Payment in Lieu of Tax Agreement are intended to be for the benefit of the Authority and the respective Taxing Entities.

SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Payment in Lieu of Tax Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Payment in Lieu of Tax 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.

SECTION 5.08. COUNTERPARTS. This Payment in Lieu of Tax Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

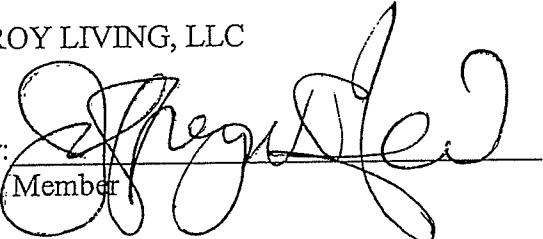
SECTION 5.09. APPLICABLE LAW. This Payment in Lieu of Tax Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Authority and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly Authorized Representatives thereof, all being done as of the date first above written.

TROY INDUSTRIAL  
DEVELOPMENT AUTHORITY

By:   
Chairman

TROY LIVING, LLC

By:   
Member

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF RENSSELAER ) July

On the 5th day of June, in the year 2007, before me, the undersigned, a notary public in and for said state, personally appeared JAMES A. WALSH, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Penny A. Bashford  
Notary Public, State of New York  
Qualified in Rensselaer County  
Registration No.: 01BAS180283  
Commission Expires 02/05/2011

Penny A. Bashford  
Notary Public

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF RENSSELAER ) July

On the 13<sup>th</sup> day of June, in the year 2007, before me, the undersigned, a notary public in and for said state, personally appeared JEFFREY W. PFEIL, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Jeffrey W. Pfeil  
Notary Public

JENNIFER A. HANS  
Notary Public, State of New York  
No. 01HA6136461  
Qualified in Rensselaer County  
Commission Expires November 7, 2009

**EXHIBIT A**  
**DESCRIPTION OF LAND**

All that certain tract, piece or parcel of land situate, lying and being in the City of Troy, County of Rensselaer, State of New York, lying Easterly of Franklin Street Southerly of State Street and Westerly of Third Street, and being more particularly bounded and described as follows:

BEGINNING at a point at the intersection of the Easterly boundary of Franklin Street with the Southerly boundary of State Street and runs thence from said point of beginning South 81 deg. 59 min. 17 sec. East along the Southerly boundary of State Street 131.33 feet to its intersection with the Westerly boundary of Third Street; thence South 08 deg. 00 min. 43 sec. West along the Westerly boundary of Third Street 72.00 feet to its intersection with the division line between the lands now or formerly of Troy Living, LLC as described in Book 3090 of Deeds at Page 82 on the North and the lands now or formerly of Ronald Nicholas as described in Deed Roll 46 at Page 1680 on the South; thence North 81 deg. 59 min. 17 sec. West along the above last mentioned division line 131.33 feet to its intersection with the above mentioned Easterly boundary of Franklin Street; thence North 08 deg. 00 min. 43 sec. East along the Easterly boundary of Franklin Street 72.00 feet to the point or place of beginning.

Being Lot No. 190 and the Northerly 22 feet of Lot 189 as shown on Barton's Map of said City of Troy; both on the westerly side of Third Street, and together forming one parcel and bounded as follows: On the north by State Street; on the east by Third Street; on the south by a line drawn parallel to the south line of State Street and distant 72 feet southerly there from, and on the west by the public alley and being 72 feet in width and 130 feet in depth more or less according to said map.

TOGETHER with easements granted by the City of Troy, New York to Troy Living, LLC in Easement Agreements dated December 28, 2006 and recorded January 11, 2007 in Liber 3910 cp 337 and Liber 3911 cp 1.

**DESCRIPTION  
PROPOSED EASEMENT  
LANDS NOW OR FORMERLY OF THE CITY OF TROY, NEW YORK  
GRANTED TO STATE AND THIRD, LLC  
CITY OF TROY, COUNTY OF RENSSELAER, STATE OF NEW YORK**

**Easement No. 1**

All that certain tract, piece or parcel of land situate, lying and being in the bed of Franklin Street and State Street, City of Troy, County of Rensselaer, State of New York, and being more particularly bounded and described as follows:

**EASEMENT 1**

BEGINNING at a point at the intersection of the Easterly boundary of Franklin Street with the division line between the lands now or formerly of State and Third, LLC as described in Deed

Roll 185 at Page 86 on the North and the lands now or formerly of Ronald Nicholas as described in Deed Roll 46 at Page 1680 on the South and runs thence from said point of beginning through the bed of Franklin Street the following two (2) courses: 1) North 81 deg. 59 min. 17 sec. West 17.16 feet to a point on the Westerly curb line of Franklin Street; and 2) thence North 08 deg. 06 min. 53 sec. East along the said existing curb line 72.00 feet to its intersection with the Southerly boundary of State Street; thence through the bed of State Street the following three (3) courses: 1) North 08 deg. 06 min 53 sec. East along the Northerly projection of the existing Westerly curb line of Franklin Street 13.43 feet to its intersection with the Southerly curb line of State Street; thence South 82 deg. 13 min.10 sec. East along said curb line 17.01 feet to its intersection with the Northerly projection of the above mentioned Easterly boundary of Franklin Street; thence South 08 deg. 00 min. 43 sec. West along the Northerly projection of the Easterly boundary of Franklin Street 13.50 feet to a point, said point being at the intersection of the Southerly boundary of State Street with the Easterly boundary of Franklin Street; thence South 08 deg. 00 min. 43 sec. West along the above mentioned Easterly boundary of Franklin Street 72.00 feet to a point or place of beginning and containing 1,460± square feet or 0.03 acre of land, more or less.

**DESCRIPTION  
PROPOSED EASEMENT  
LANDS NOW OR FORMERLY OF THE CITY OF TROY, NEW YORK  
GRANTED TO STATE AND THIRD, LLC  
CITY OF TROY, COUNTY OF RENSSELAER, STATE OF NEW YORK**

**Easement No. 2**

All that certain tract, piece or parcel of land situate, lying and being in the bed of State Street and Third Street, City of Troy, County of Rensselaer, State of New York, and being more particularly bounded and described as follows:

**EASEMENT 2**

BEGINNING at a point at the intersection of the Easterly boundary of Franklin Street with the Southerly boundary of State Street and runs thence from said point of beginning North 08 deg. 00 min. 43 sec. East along the Northerly projection of the Easterly boundary of Franklin Street through the bed of State Street 13.50 feet to its intersection with the Southerly curb line of State Street; thence South 82 deg. 13 min. 10 sec. East continuing through the bed of State Street along said curb line 162.84 feet to its intersection with a Northerly projection of the Westerly curb line of Third Street; thence South 08 deg. 04 min. 25 sec. West continuing in part through the bed of State Street along said curb line and through the bed of Third Street and along the said Westerly curb line 86.09 feet to its intersection with the Easterly projection of the division line between the lands now or formerly of State and Third, LLC on the North and the lands now or formerly of Ronald Nicholas as described in Deed Roll 46 at Page 1680 on the South; thence North 81 deg. 59 min. 17 sec. West along the projection of said division line continuing through the bed of Third Street 14.40 feet to its intersection with the Westerly boundary of Third Street; thence North 08 deg. 00 min. 43 sec. East along the Westerly boundary of Third Street 72.00 feet to its intersection with the above mentioned Southerly boundary of State Street; thence North 81 deg.

59 min. 17 sec. West along the Southerly boundary of State Street 131.34 feet to the point or place of beginning and containing 3,051± square feet or 0.07 acre of land, more or less.