

## AUTHORIZING RESOLUTION

A meeting of the **JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "**Agency**") was convened in public session at 21205 Little Tree Drive, in the City of Watertown, Jefferson County, New York on December 3, 2015 at 8:30 a.m., local time.

The meeting was called to order by the Chairperson and, upon being called, the following members of the Agency were:

**PRESENT:** David J. Converse  
Michelle D. Pfaff  
John Jennings  
Donald DiMonda  
Scott Gray

**ABSENT:** W. Edward Walldroff

**FOLLOWING PERSONS WERE ALSO PRESENT:** Donald Alexander, David Zembiec, Lyle Eaton, Peggy Sampson, F. Marshall Weir, Jay Matteson, W. James Heary, Esq., Dan Estal, Kent Burto, Richard Duvall, and Ted Booker from the Watertown Daily Times

The following resolution was offered by Ms. Pfaff, seconded by Mr. DiMonda, to wit;

Resolution No.:12.03.2015.04

**RESOLUTION TO EXTEND A CERTAIN LEASE AGREEMENT BETWEEN THE JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY ("AGENCY") AND THE WATERTOWN INDUSTRIAL CENTER LOCAL DEVELOPMENT CORPORATION ("COMPANY").**

WHEREAS, the parties entered into a Lease Agreement as of September 21, 1995 which Lease Agreement expires on December 31, 2015; and

WHEREAS, the parties desire to enter into an extension to that Lease Agreement for a period of three (3) months ending March 31, 2016; and

WHEREAS, in order for the Agency to enter into such extension of the Lease Agreement, it will need letters from authorized representatives of the Affected Taxing Jurisdictions agreeing to the Lease extension (Jefferson County, City of Watertown and the Watertown City School District); and

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1 The Agency hereby finds and determines that:

- (A) The Agency may enter into an extension of the Lease Agreement to March 31, 2016 only upon receipt by the Agency of letters of agreement from the Affected Taxing Jurisdictions.
- (B) The Chief Executive Officer of the Agency or any other Officer of the Agency has authority and is empowered to execute and deliver such an extension to the aforesaid Lease Agreement.

Section 2 This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

<u>David J. Converse</u>	VOTING <u>YEA</u>
<u>Michelle D. Pfaff</u>	VOTING <u>YEA</u>
<u>Scott A. Gray</u>	VOTING <u>YEA</u>
<u>John Jennings</u>	VOTING <u>YEA</u>
<u>Donald DiMonda</u>	VOTING <u>YEA</u>
<u>W. Edward Walldroff</u>	VOTING <u>ABSENT</u>
<u>Vacant</u>	VOTING <u>-----</u>

The foregoing Resolution was thereupon declared and duly adopted.

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

I, the undersigned, **Donald C. Alexander**, Chief Executive Officer of the Jefferson County Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the special meeting of the Jefferson County Industrial Development Agency (the "Agency"), including the resolution contained therein, held on the 3<sup>rd</sup> day of December, 2015, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with the Open Meetings Law, constituting Chapter 511 of the Laws of the 1976 of the State of New York, that all members of said Agency had due notice of said meeting and that the meeting was in all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this 4<sup>th</sup> day of December, 2015.

**JEFFERSON COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: *D. C. Alexander, CEO*  
Donald C. Alexander, CEO

Board of Supervisors of the County of Jefferson

Resolution No. 48

Authorizing Payment In Lieu of Taxes Agreement  
Relative to New York Air Brake Corporation/Knorr  
Brake Holding Corporation Project in the  
City of Watertown (Watertown Industrial Center)

By Supervisor William Tuberson  
Chairman, Finance and Rules Committee

Whereas, New York Air Brake Corporation (Company) and Knorr Brake Holding Corporation (Parent Company) have recently acquired certain property located on Starbuck Avenue in the City of Watertown comprising approximately 70 acres of land and certain improvements thereon consisting of manufacturing facilities known as "Buildings 'A', 'B', 'C' and 'D', and

Whereas, In connection with the redevelopment of said land and facilities by the Watertown Industrial Center Local Development Corporation and the Jefferson County Industrial Development Agency, the Company has transferred title to said real property to the Jefferson County Industrial Development Agency, and

Whereas, In conjunction with the City of Watertown and the Watertown City School District the County has discussed providing a series of development incentives in the form of a Payment In Lieu of Tax Agreement to be transacted through the Jefferson County Industrial Development Agency.

Now, Therefore, Be It Resolved, That Jefferson County enter into a Payment In Lieu of Taxes Agreement with the Company, Parent Company, Jefferson County Industrial Development Agency, City of Watertown and Watertown City School District, the substantive terms of which are outlined in Attachment A, and be it further

Resolved, That the Chairman of the Board of Supervisors be and is hereby authorized and directed to execute such an agreement on behalf of Jefferson County.

Seconded by Supervisors [Signature] Leo K. Thompson  
Walter R. Kelly Ronald C. Taylor  
Joseph M. Butler Johanna J. Morgio

State of New York }  
COUNTY OF JEFFERSON

ss.:  
I, the undersigned, Clerk of the Board of Supervisors of the County of Jefferson, New York, do hereby certify that I have compared the foregoing copy of Resolution No. 48 of the Board of Supervisors of said County of Jefferson with the original thereof on file in my office and duly adopted by said Board at a meeting of said Board on the 7th day of February, 19 95 and that the same is a true and correct copy of such Resolution and of the whole thereof.  
In testimony whereof, I have hereunto set my hand and affixed the seal of said County this 8th day of February, 19 95.

John V. Hartigan  
Clerk of the Board of Supervisors

## AUTHORIZING RESOLUTION

A meeting of the **JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "**Agency**") was convened in public session at the offices of the Agency, 800 Starbuck Avenue, in the City of Watertown, Jefferson County, New York on March 3, 2016 at 8:30 a.m., local time.

The meeting was called to order by the Chairperson and, upon being called, the following members of the Agency were:

PRESENT: David Converse, Robert E. Aliasso, Jr., Donald DiMonda, Jeremiah Maxon, Michelle Pfaff (via phone), W. Edward Walldroff

ABSENT: John Jennings

FOLLOWING PERSONS WERE ALSO PRESENT: Donald Alexander, David Zembiec, Lyle Eaton, Peggy Sampson, F. Marshall Weir, Joseph Russell, Esq., Lance Evans, Francis Tom Iorizzo, and Ted Booker from the Watertown Daily Times

The following resolution was offered by Mr. Aliasso seconded by Mr. DiMonda, to wit:

Resolution No.:03.03.2016.04

**RESOLUTION OF THE JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY TAKING OFFICIAL ACTION TOWARD THE CONTINUATION OF A CERTAIN LEASE AGREEMENT BETWEEN THE AGENCY AND THE WATERTOWN INDUSTRIAL CENTER LOCAL DEVELOPMENT CORPORATION DATED SEPTEMBER 21, 1995 BY EXTENDING SUCH LEASE AGREEMENT FOR AN ADDITIONAL PERIOD OF TEN (10) YEARS BY AMENDMENT TO THE LEASE AGREEMENT ON LAND LOCATED AT 800 STARBUCK AVENUE, WATERTOWN, NEW YORK.**

WHEREAS, Jefferson County Industrial Development Agency (the "**Agency**") is authorized and empowered by the provisions of Chapter 1030 of Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "**Enabling Act**") and Chapter 77 of the 1974 Laws of New York, as amended, constituting Section 902 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "**Act**") to promote, develop, encourage and assist in the acquiring, constructing, renovating,

improving, maintaining, equipping and furnishing of commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, pursuant to an application, including a cost benefits analysis (the "**Application**"), the Watertown Industrial Center Local Development Corporation (the "**Company**") requested the Agency extend its current Lease dated September 21, 1995, with the Agency for an additional period of ten (10) years ending March 31, 2026. The Project was defined in the original Authorizing Resolution and is further defined in the PILOT Agreement; and

WHEREAS, the Agency will be granting certain "financial assistance" (within the meaning of Section 854(14) of the Act) abatement of real property taxes for that portion of the Project consisting of real property, pursuant to the Agency's Uniform Tax Exemption Policy adopted in accordance with Section 874 of the Act (collectively, the "**Financial Assistance**"); and

WHEREAS, the Chief Executive Officer of the Agency has (A) caused notice of a public hearing of the Agency to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project (the "**Public Hearing**") to be mailed on November 4, 2015 to the chief executive officer of the County, City and School District in which the Project is to be located, (B) caused notice of the Public Hearing to be published on November 5, 2015 in the Watertown Daily Times, a newspaper of general circulation available to residents of the County of Jefferson, (C) conducted the Public Hearing on November 16, 2015 at 10:00 o'clock a.m., local time at the offices of the Agency, 800 Starbuck Avenue, Watertown, New York, 13601(D) prepared a report of the Public Hearing which fairly summarized the views presented at said Public Hearing and distributed same to the members of the Agency; and

WHEREAS, since there has been no change in the Project by extending the Lease Agreement for an additional ten (10) years, it is not necessary for the Agency to make a new finding pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "**SEQR Act**") and the regulations (the "**Regulations**") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "**SEQRA**"), and may rely on the SEQRA findings adopted when the Lease was initially approved; and

WHEREAS, the Agency has given due consideration to the Application and to the representations by the Company that the granting by the Agency of the Financial Assistance with respect to the Project will be in an inducement to the Company to continue the Project in Jefferson County, New York; and

WHEREAS, the Company, the Agency, and the respective Taxing Jurisdictions have all agreed on a certain Payment in Lieu of Taxes Agreement and Distribution Schedule to the Taxing Jurisdictions of such payments in lieu of taxes in substantially the form and affect and appears at **Exhibit "A"** to this Resolution; and

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1 The Agency hereby finds and determines that:

- (A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and
- (B) The Project continues to be a "project", as such term is defined in the Act; and
- (C) The continuation of the Lease Agreement for an additional period of ten (10) years will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of Jefferson County, New York and the State of New York and improve their standard of living; and
- (D) It is desirable and in the public interest for the Agency grant to the Company the relief provided by the Payment In Lieu of Taxes Agreement, and to enter into the Agency Documents upon the satisfaction of all conditions thereto.
- (E) The Project has not changed since the original Lease Agreement was entered into on September 21, 1995, and therefore does not require a new SEQR determination by the Agency.

Section 2 In consequence of the foregoing, the Agency hereby determines that the granting of the financial assistance by the Agency with respect to the Project, through the granting of various tax exemptions described herein, and set forth on the exhibits attached hereto, will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of Jefferson County, New York and the State of New York, and improve their standard of living, and thereby serve the public purposes of the Act.

Section 3 In consequence of the foregoing, and subject to the satisfactions of any conditions as imposed herein or as may be required by the Act, the Agency hereby determines to:

- (A) Enter into the Amendment to the Lease Agreement; and

- (B) Continue to lease the Project Facility to the Company pursuant to an Amendment to the Lease Agreement; and
- (C) Enter into the Payment in Lieu of Tax Agreement in the form and substance as attached hereto; and
- (D) Execute and deliver the other Closing Documents upon terms and conditions satisfactory to the Chief Executive Officer; and
- (E) Execute and deliver the Closing Documents upon terms and conditions satisfactory to the Chief Executive Officer; and
- (F) Grant the Financial Assistance with respect to the Project.

Section 4 The Agency is hereby authorized to continue to lease the Project Facility to the Company pursuant to the Amendment to the Lease Agreement.

Section 5 (A) The Chief Executive Officer of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the forms thereof presented to this meeting, with such changes, variations, omissions and insertions thereto as the Chief Executive Officer shall approve, the execution thereof by the Chief Executive Officer to constitute conclusive evidence of such approval.

(B) The Chief Executive Officer of the Agency is hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 6 The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 7 This Resolution shall take effect immediately.



The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

<u>Robert E. Aliasso, Jr.</u>	VOTING <u>YEA</u>
<u>David J. Converse</u>	VOTING <u>Abstained</u>
<u>Donald DiMonda</u>	VOTING <u>YEA</u>
<u>John Jennings</u>	VOTING <u>Absent</u>
<u>Jeremiah J. Maxon</u>	VOTING <u>YEA</u>
<u>Michelle D. Pfaff</u>	VOTING <u>Absent</u>
<u>W. Edward Walldroff</u>	VOTING <u>YEA</u>

The foregoing Resolution was thereupon declared and duly adopted.

**EXHIBIT "A" to AUTHORIZING RESOLUTION  
PAYMENT IN LIEU OF TAXES AGREEMENT**

**THIS AGREEMENT**, by and between **WATERTOWN INDUSTRIAL CENTER LOCAL DEVELOPMENT CORPORATION**, a New York local development corporation having an address of 800 Starbuck Avenue, Watertown, New York 13601 ("**WICLDC**") and **JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, an Industrial Development Agency and a Public Benefit Corporation of the State of New York having an address of 800 Starbuck Avenue, Watertown, New York 13601 ("**Agency**"),

**WITNESSETH:**

WHEREAS, the Agency was created by Chapter 369 of the Laws of 1971 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "**Act**"); and

WHEREAS, the Agency acquired by Deed the WICLDC's facilities known as buildings A, B, C, and D (the "**Facility**") located at 800 Starbuck Avenue, City of Watertown, Jefferson County, New York.; and

WHEREAS, the Agency leased the Facility to the WICLDC pursuant to a Lease Agreement dated September 21, 1995; and

WHEREAS, the parties hereto pursuant to an amendment (the "**Amendment**") to the Lease Agreement wish to extend the term of the Lease to March 31, 2026; and

WHEREAS, the WICLDC sub-leases portions of the Facility primarily to start-up or small businesses engaged in manufacturing or commercial business at a reduced rent thereby giving these businesses an opportunity to get started and grow (the "**Project**"). At the present time, these businesses employ over 187 people.

WHEREAS, pursuant to section 874(1) of the Act, and Section 412(a) of the Real Property Tax Law of the State of New York, the Agency is exempt from the payment of taxes and assessments imposed upon real property and improvements owned by it other than special ad valorem levies, special assessments and service charges against real property located in Jefferson County which are or may be imposed for special improvements or special district improvements; and

WHEREAS, by Resolution dated \_\_\_\_\_, 2016, the Agency authorized the Amendment; and

WHEREAS, the Taxing Jurisdictions, which are, collectively, the City of Watertown ("**City**"), Jefferson County ("**County**") and the Watertown City School District ("**School**"), have the following taxable years: the County January 1 to December 31, the City and the School July 1 to June 30; and

WHEREAS, the Agency and the WICLDC deem it necessary and proper to enter into this agreement making provision for payments in lieu of taxes to the respective Taxing Jurisdictions which the Facility is to be located; and

WHEREAS, it is the intent that the calculated PILOT payments be equal to 100% of the amount of taxes that would be due on the occupied portions of the buildings as if not exempt and that the vacant portions of the building would be 100% tax exempt;

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

1. For the purpose of payments to be made pursuant to this Agreement, they shall begin on July 1, 2016 (the "**Commencement Date**").

2. Commencing on the Commencement Date and for the period set forth below, or until the earlier termination of the Lease Agreement as amended, the WICLDC agrees to pay in lieu of all real estate taxes which would be levied upon the Facility during such tax years as if the Facility were owned by the WICLDC and not by the Agency, the amounts determined according to the following formula:

$$\text{PILOT} = \text{EA} \times \text{ATR}$$

**WHERE**

PILOT = Amount of payment in lieu of taxes due to the Taxing Jurisdictions for the applicable tax year.

EA = Effective Assessment is the sum of the values of the three Component Building Uses minus the value attributed to the unoccupied portions.

ATR = Actual Tax Rate for the respective Taxing Jurisdictions for the applicable year.

Component Building Uses = Office Space, Flex Space and Subpar

Office Space = Areas with a higher level of finish or used as an office open to the public. This will not include offices ancillary to Flex Space that is not separately leasable and whose area is less than 10% of the parent Flex Space.

Flex Space = Areas in a condition and configuration making them usable with minimal or no improvement. All space determined not to be Office Space or Subpar will be considered Flex Space.

Subpar = Areas that require major improvement and/or reconfiguration to be leasable. Space that is actively used with plans for imminent major improvement or replacement may be considered Subpar.

The per square foot value for each Component Building Use, is calculated using the average value of all the space comprising said component, and is subject to change each year based upon major construction/demolitions, market changes and changes to the City's level of assessment.

The component values and the area breakdown for the 2016 tax roll year are as follows:

Component	Office Space	Flex Space	Subpar
Value per Square Foot	\$25.45	\$7.28	\$3.05
Square feet	20,926	85,727	71,279

which results in an assessment of \$1,374,000 for 2016, which then must be reduced by the applicable component vacancy rates to result in the Effective Assessment.

Changes to the classification of spaces are at the discretion of the City Assessor in consultation with a representative of the WICLDC.

The WICLDC retains all rights to grieve assessments as afforded by the Real Property Tax Law.

The WICLDC agrees to notify the City Assessor of any construction/demolition, change of use and the level of occupancy as of each December 1<sup>st</sup> on or before December 15<sup>th</sup>.

3. This Agreement shall terminate, unless it is terminated sooner pursuant to the Lease Agreement or any other provisions of this Agreement, on March 31, 2026 ("Termination Date") at which time the parties agree that the Lease for the Facility shall terminate and that the Agency will convey back the Facility to the WICLDC.

4. The WICLDC shall pay, or cause to be paid the amounts set forth in Paragraph 1(b) hereof within the grace period, without penalty, applicable to taxes, assessments, special ad valorem levies, special service charges or similar tax equivalents, as the case may be, on similar property subject to taxation by the Taxing Jurisdictions during such respective tax years, subject to any late payment penalties pursuant to §874 of the Act if not made within the grace period. Any failure on the part of the WICLDC to timely make any payments pursuant to this Agreement within ten (10) days following written notice from the Agency shall be an event of default ("Event of Default") under this Agreement and under the Lease Agreement. Upon such Event of Default, the Agency shall have any and/or all of the Remedies on Default set forth in the Lease Agreement. Further, upon such Event of Default, the Payments In Lieu of Tax due under this Agreement shall, upon thirty (30) days written notice from the Agency to the WICLDC, immediately the 100% of Real Property taxes would be due if the Facility was owned by the WICLDC rather than by the Agency.

5. In the event that the Facility is transferred from the Agency to the WICLDC, the Facility shall be immediately subject to taxation pursuant to Sections 302 and 520 of the New York Real Property Tax Law, as amended. However, in no event shall the WICLDC be required to pay both a PILOT payment pursuant to the Agreement and real property taxes for a concurrent tax year or portion thereof. Therefore, should the Facility be conveyed to the WICLDC and thus become taxable pursuant to New York RPTL Section 520, any

payments payable under this Agreement as Payments required in Lieu of Taxes shall be reduced by the amount of any taxes which are required to be paid under RPTL Section 520 for any such concurrent tax year or portion thereof, and should such Payment-in-Lieu-of-Taxes already have been made, the Taxing Jurisdictions shall refund any such amounts owing to WICLDC.

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

If to the Agency: Jefferson County Industrial Development Agency  
800 Starbuck Avenue, Suite 800  
Watertown, New York 13601  
Attn: Donald C. Alexander, CEO

With a copy to: Menter, Rudin & Trivelpiece, P.C.  
120 Washington Street, Suite 500  
Watertown, New York 13601  
Attn: Joseph W. Russell, Esq.

If to the WICLDC: Watertown Industrial Center Local Development Corporation  
800 Starbuck Avenue  
Watertown, New York 13601  
Attn: Donald W. Rutherford, President

With a copy to: Schwerzmann & Wise, P.C.  
137 Main Avenue  
Watertown, New York 13601  
Attn: Keith B. Caughlin, Esq.

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

8. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

9. This Agreement may not be assigned by the WICLDC without the Agency's consent.

10. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original for all purposes and all of which shall constitute collectively a single agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

*[Remainder of page intentionally left blank; signature pages to follow]*

**IN WITNESS WHEREOF**, each of the parties hereto has executed this Agreement on the date set forth before the signature of its respective representative.

Date: \_\_\_\_\_, 2016

**WATERTOWN INDUSTRIAL CENTER LOCAL  
DEVELOPMENT CORPORATION**

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_, 2016

**JEFFERSON COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_

Donald C. Alexander, CEO

## PAYMENT IN LIEU OF TAXES AGREEMENT

**THIS AGREEMENT**, by and between **WATERTOWN INDUSTRIAL CENTER LOCAL DEVELOPMENT CORPORATION**, a New York local development corporation having an address of 800 Starbuck Avenue, Watertown, New York 13601 ("**WICLDC**") and **JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, an Industrial Development Agency and a Public Benefit Corporation of the State of New York having an address of 800 Starbuck Avenue, Watertown, New York 13601 ("**Agency**"),

### WITNESSETH:

WHEREAS, the Agency was created by Chapter 369 of the Laws of 1971 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "**Act**"); and

WHEREAS, the Agency acquired by Deed the WICLDC's facilities known as buildings A, B, C, and D (the "**Facility**") located at 800 Starbuck Avenue, City of Watertown, Jefferson County, New York.; and

WHEREAS, the Agency leased the Facility to the WICLDC pursuant to a Lease Agreement dated September 21, 1995; and

WHEREAS, the parties hereto pursuant to an amendment (the "**Amendment**") to the Lease Agreement wish to extend the term of the Lease to December 31, 2025; and

WHEREAS, the WICLDC sub-leases portions of the Facility primarily to start-up or small businesses engaged in manufacturing or commercial business at a reduced rent thereby giving these businesses an opportunity to get started and grow (the "**Project**"). At the present time, these businesses employ over 187 people.

WHEREAS, pursuant to section 874(1) of the Act, and Section 412(a) of the Real Property Tax Law of the State of New York, the Agency is exempt from the payment of taxes and assessments imposed upon real property and improvements owned by it other than special ad valorem levies, special assessments and service charges against real property located in Jefferson County which are or may be imposed for special improvements or special district improvements; and

WHEREAS, by Resolution dated March 3, 2016, the Agency authorized the Amendment; and

WHEREAS, the Taxing Jurisdictions, which are, collectively, the City of Watertown ("**City**"), Jefferson County ("**County**") and the Watertown City School District ("**School**"), have the following taxable years: the County January 1 to December 31, the City and the School July 1 to June 30; and

WHEREAS, the Agency and the WICLDC deem it necessary and proper to enter into this agreement making provision for payments in lieu of taxes to the respective Taxing Jurisdictions which the Facility is to be located; and

WHEREAS, it is the intent that the calculated PILOT payments be equal to 100% of the amount of taxes that would be due on the occupied portions of the buildings as if not exempt and that the vacant portions of the building would be 100% tax exempt;

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

1. For the purpose of payments to be made pursuant to this Agreement, they shall begin on July 1, 2016 (the "**Commencement Date**").

2. Commencing on the Commencement Date and for the period set forth below, or until the earlier termination of the Lease Agreement as amended, the WICLDC agrees to pay in lieu of all real estate taxes which would be levied upon the Facility during such tax years as if the Facility were owned by the WICLDC and not by the Agency, the amounts determined according to the following formula:

$$\text{PILOT} = \text{EA} \times \text{ATR}$$

#### WHERE

PILOT = Amount of payment in lieu of taxes due to the Taxing Jurisdictions for the applicable tax year.

EA = Effective Assessment is the sum of the values of the three Component Building Uses minus the value attributed to the unoccupied portions.

ATR = Actual Tax Rate for the respective Taxing Jurisdictions for the applicable year.

Component Building Uses = Office Space, Flex Space and Subpar

Office Space = Areas with a higher level of finish or used as an office open to the public. This will not include offices ancillary to Flex Space that is not separately leasable and whose area is less than 10% of the parent Flex Space.

Flex Space = Areas in a condition and configuration making them usable with minimal or no improvement. All space determined not to be Office Space or Subpar will be considered Flex Space.

Subpar = Areas that require major improvement and/or reconfiguration to be leasable. Space that is actively used with plans for imminent major improvement or replacement may be considered Subpar.

The per square foot value for each Component Building Use, is calculated using the average value of all the space comprising said component, and is subject to change each



year based upon major construction/demolitions, market changes and changes to the City's level of assessment.

The component values and the area breakdown for the 2016 tax roll year are as follows:

Component	Office Space	Flex Space	Subpar
Value per Square Foot	\$25.45	\$7.28	\$3.05
Square feet	20,926	85,727	71,279

which results in a Total Assessment of \$1,374,060.21 for 2016, which then must be reduced by the occupancy rate to result in the Effective Assessment.

Changes to the classification of spaces are at the discretion of the City Assessor in consultation with a representative of the WICLDC.

The WICLDC retains all rights to grieve assessments as afforded by the Real Property Tax Law.

The WICLDC agrees to notify the City Assessor of any construction/demolition, change of use and the level of occupancy as of each December 1<sup>st</sup> on or before December 15<sup>th</sup>.

3. This Agreement shall terminate, unless it is terminated sooner pursuant to the Lease Agreement or any other provisions of this Agreement, on December 31, 2025 ("Termination Date") at which time the parties agree that the Lease for the Facility shall terminate and that the Agency will convey back the Facility to the WICLDC.

4. The WICLDC shall pay, or cause to be paid the amounts set forth in Paragraph 1(b) hereof within the grace period, without penalty, applicable to taxes, assessments, special ad valorem levies, special service charges or similar tax equivalents, as the case may be, on similar property subject to taxation by the Taxing Jurisdictions during such respective tax years, subject to any late payment penalties pursuant to §874 of the Act if not made within the grace period. Any failure on the part of the WICLDC to timely make any payments pursuant to this Agreement within ten (10) days following written notice from the Agency shall be an event of default ("Event of Default") under this Agreement and under the Lease Agreement. Upon such Event of Default, the Agency shall have any and/or all of the Remedies on Default set forth in the Lease Agreement. Further, upon such Event of Default, the Payments In Lieu of Tax due under this Agreement shall, upon thirty (30) days written notice from the Agency to the WICLDC, immediately the 100% of Real Property taxes would be due if the Facility was owned by the WICLDC rather than by the Agency.

5. In the event that the Facility is transferred from the Agency to the WICLDC, the Facility shall be immediately subject to taxation pursuant to Sections 302 and 520 of the New York Real Property Tax Law, as amended. However, in no event shall the WICLDC be required to pay both a PILOT payment pursuant to the Agreement and real property taxes for a concurrent tax year or portion thereof. Therefore, should the Facility be conveyed to the WICLDC and thus become taxable pursuant to New York RPTL Section 520, any payments payable under this Agreement as Payments required in Lieu of Taxes shall be reduced by the amount of any taxes which are required to be paid under RPTL Section 520 for any such concurrent tax year or portion thereof, and should such Payment-in-Lieu-of-

Taxes already have been made, the Taxing Jurisdictions shall refund any such amounts owing to WICLDC.

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

If to the Agency: Jefferson County Industrial Development Agency  
800 Starbuck Avenue, Suite 800  
Watertown, New York 13601  
Attn: Donald C. Alexander, CEO

With a copy to: Menter, Rudin & Trivelpiece, P.C.  
120 Washington Street, Suite 500  
Watertown, New York 13601  
Attn: Joseph W. Russell, Esq.

If to the WICLDC: Watertown Industrial Center Local Development Corporation  
800 Starbuck Avenue  
Watertown, New York 13601  
Attn: Donald W. Rutherford, President

With a copy to: Schwerzmann & Wise, P.C.  
137 Main Avenue  
Watertown, New York 13601  
Attn: Keith B. Caughlin, Esq.

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

8. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

9. This Agreement may not be assigned by the WICLDC without the Agency's consent.


10. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original for all purposes and all of which shall constitute collectively a single agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

*[Remainder of page intentionally left blank; signature pages to follow]*

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement on the date set forth before the signature of its respective representative.


Date: March 31, 2016

**WATERTOWN INDUSTRIAL CENTER LOCAL  
DEVELOPMENT CORPORATION**

By:   
Name: Donald W. Rutherford  
Title: President

Date: March 31, 2016

**JEFFERSON COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Donald C. Alexander, CEO

**SCHEDULE "A"**  
**(Legal Description of Land)**

**Description to LDC Parcel,**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Watertown, County of Jefferson, State of New York, and being further described as follows: BEGINNING at an Iron pipe set in the easterly street margin of Plaza Drive in the assumed boundary line between the City of Watertown to the south and the Town of Pamela to the north; thence South 67° 52' 42" East along the line between the City of Watertown to the south and the Town of Pamela to the north, a distance of 433.83 feet to an iron pipe set; thence South 33° 39' 43" East, a distance of 453.90 feet to an iron pipe set; thence North 56° 20' 17" East, a distance of 260.00 feet to an iron pipe set; thence South 33° 36' 42" East, a distance of 389.88 feet to an iron pipe set; thence South 55° 39' 48" West, a distance of 64.00 feet to an iron pipe set; thence South 33° 36' 42" East, a distance of 164.00 feet to an iron pipe set; thence North 55° 39' 48" East, a distance of 64.00 feet to an iron pipe set; thence South 33° 36' 42" East, a distance of 132.13 feet to a fence corner post; thence North 55° 30' 06" East, a distance of 195.70 feet to an iron pipe set; thence South 29° 28' 21" East, a distance of 428.39 feet to an iron pipe set; thence South 55° 57' 18" West, a distance of 532.71 feet to an iron pipe set; thence North 33° 40' 36" West, a distance of 52.91 feet to a point; thence South 56° 19' 17" West, a distance of 826.56 feet to a point; thence South 05° 18' 08" East, a distance of 194.78 feet to a point; thence South 65° 21' 39" West, a distance of 168.02 feet to a point in the easterly street margin of Starbuck Avenue; thence North 03° 48' 14" West, along the easterly street margin of Starbuck Avenue, a distance of 1188.36 feet to an iron pipe set; thence North 55° 39' 46" East, along the easterly street margin of Starbuck Avenue, a distance of 19.90 feet to an iron pipe set; thence North 34° 19' 28" West, along the easterly street margin of Starbuck Avenue, a distance of 385.50 feet to an iron pipe set; thence North 04° 41' 28" West, along the easterly street margin of Starbuck Avenue, a distance of 658.67 feet to an iron pipe set; thence North 85° 20' 22" East, along the easterly street margin of Plaza Drive, a distance of 8.00 feet to an iron pipe set; thence North 04° 30' 42" West, along the easterly street margin of Plaza Drive, a distance of 34.69 feet to the point of beginning.

Containing 36.315 acres of land, more or less.

Also including an easement for access and turning of vehicles upon the following described parcel of land: BEGINNING at a point located North 05° 18' 08" West, 77.72 feet from a point, said point being North 65° 21' 39" East, 168.02 feet from a point in the easterly street margin of Starbuck Avenue, being the southwesterly corner of the above described 36.315 acre parcel of land; thence North 05° 18' 08" West, a

**SCHEDULE "A" (con't.)**

distance of 117.07 feet to a point; thence North 56° 19' 17" East, a distance of 826.56 feet to a point; thence South 33° 40' 43" East, a distance of 103.00 feet to a point; thence South 56° 19' 17" West, a distance of 882.20 feet to the point of beginning. Containing 2.020 acres of land, more or less.

Subject to easements, covenants and restrictions of record, if any.

It being the intent to describe a portion of the parcel of land conveyed by General Signal Corporation to New York Air Brake Corporation, by deed recorded in the Jefferson County New Clerk's Office in Liber 1436 at Page 31 on December 30, 1994, as surveyed by GYMO, Watertown, New York.

**AMENDMENT**  
**TO**  
**LEASE AGREEMENT**

THIS AMENDMENT TO LEASE AGREEMENT dated as of the 31st day of March, 2016, by and between the **JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, having its office at 800 Starbuck Avenue, Watertown, New York, 13601 (the "IDA"), and **WATERTOWN INDUSTRIAL CENTER LOCAL DEVELOPMENT CORPORATION**, a New York corporation, having its office and place of business at 800 Starbuck Avenue, Watertown, New York, 13601, (the "Company").

**WITNESSETH:**

**WHEREAS**, Title 1 Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York (the "State") as amended; and

**WHEREAS**, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, 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 facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

**WHEREAS**, the Enabling Act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable, to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of, and interest on, any such bonds so issued and any agreements made in connection therewith, to mortgage any or all of its facilities and to pledge the revenues and receipts from the leasing of its facilities; and

**WHEREAS**, pursuant to and in accordance with the provisions of the Enabling Act (which together with Chapter 916 of the Laws of 1969 of the State as amended collectively called the "Act"), IDA is empowered under the Act to undertake leasing of the facility described below; and

**WHEREAS**, said facility shall consist of certain industrial buildings commonly known as Buildings A, B, C and D situate on land owned by the Company herein referred to as the "Facility" and the Facility is a project as defined in the Act; and

**WHEREAS**, by Lease Agreement entered into between the IDA and the Company dated September 21, 1995, the IDA leased the Facility to the Company for a Term of twenty (20) years, which said Term expired on December 31, 2015, a copy of said Lease Agreement being attached hereto and made a part hereof as Exhibit "A", and

**WHEREAS**, prior to the expiration of the Term, the Company requested the IDA to extend the Term and to extend the Payment In Lieu Of Taxes Agreement between the Company and the IDA, which was attached to the Lease Agreement as Exhibit "B", and

**WHEREAS**, in order to provide the Company and the IDA an opportunity to negotiate a renewed Payment In Lieu Of Tax Agreement, the IDA, with the consent of the affected taxing jurisdictions, extended the term for a period of three (3) months from December 31, 2015 to March 31, 2016, and

**WHEREAS**, the IDA and the Company, with the approval and consent of the affected taxing jurisdictions, have agreed on the terms of a revised Payment In Lieu Of Tax Agreement for a period of ten (10) years, and the IDA and the Company now wish to enter into this Amendment to Lease Agreement to extend the term of the Lease Agreement for a period of ten (10) years.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows, to wit:

1. The Lease Agreement dated September 21, 1995 between the Company and the IDA is hereby extended for a period of ten (10) years commencing April 1, 2016, and terminating on March 31, 2026, unless sooner terminated as provided therein (the "Extended Term").
2. Except as may be amended through this instrument, the Lease Agreement dated September 21, 1995, and all of its terms and provisions, shall continue to bind the parties throughout the Extended Term or until sooner terminated as provided in the Lease Agreement.
3. Exhibit "B" to the Lease Agreement, dated September 21, 1995 is hereby replaced in its entirety with the Exhibit "B" attached hereto and made a part hereof and shall, throughout the duration of the Extended Term, control and be binding as Exhibit "B" to the Lease Agreement.
4. Section 12.1 of the Lease Agreement shall hereby be amended to reflect all notices to the IDA to be sent to the following address:

Jefferson County Industrial Development Agency  
800 Starbuck Avenue, Suite 800  
Watertown, New York 13601

with copy to:  
Joseph W. Russell, Esq.  
Menter Rudin & Trivelpiece, PC  
120 Washington Street, Suite 500  
Watertown, New York 13601

and all notices to be sent to the Company as follows:

Watertown Industrial Center Local Development Corporation  
800 Starbuck Avenue  
Watertown, New York 13601

5. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the IDA and the Company have caused this Amendment to Lease Agreement to be executed in their respective names all as of the date first above written.

**JEFFERSON COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Donald C. Alexander, CEO

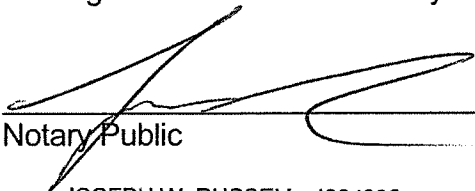
**WATERTOWN INDUSTRIAL CENTER LOCAL  
DEVELOPMENT CORPORATION**

By:   
Donald W. Rutherford, President



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

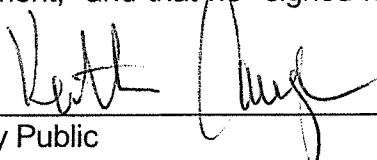
On the 31<sup>st</sup> day of March, 2016, before me personally came **Donald C. Alexander**, to me known, who, being by me duly sworn did depose and say the he resides in Watertown, New York; that he is the CEO of the JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY, the public benefit corporation described in and which executed the above instrument; and that he signed his name thereto by order of the Directors of the corporation.

  
\_\_\_\_\_  
Notary Public

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

JOSEPH W. RUSSELL, 4834336  
Notary Public, State of New York  
Qualified in Jefferson County  
Commission Expires April 30, 2019

On the 31<sup>st</sup> day of March, 2016, before me personally **Donald W. Rutherford**, to me known, who, being by me duly sworn did depose and say the he resides in Watertown, New York; that he is the President of the WATERTOWN INDUSTRIAL CENTER LOCAL DEVELOPMENT CORPORATION, the public benefit corporation described in and which executed the above instrument; and that he signed his name thereto by order of the Directors of the corporation.

  
\_\_\_\_\_  
Notary Public

KEITH B. CAUGHLIN  
Notary Public, State of New York  
Qualified in Jefferson County No. 4076001  
Commission Expires December 31, 2018

EXHIBIT "A"

LEASE AGREEMENT

**THIS LEASE AGREEMENT**, dated as of the 21st day of September, 1995, by and between the **JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, having its office at 175 Arsenal Street, Watertown, New York, 13601, (the "IDA"), and **WATERTOWN INDUSTRIAL CENTER LOCAL DEVELOPMENT CORPORATION**, a New York Corporation, having an office and place of business at 175 Arsenal Street, Watertown, New York, 13601 (the "Company").

**W I T N E S S E T H:**

**WHEREAS**, Title 1 Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York (the "State") as amended; and

**WHEREAS**, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, 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 facilities, including industrial

)  
pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

**WHEREAS**, the Enabling Act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable, to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of, and interest on, any such bonds so issued and any agreements made in connection therewith, to mortgage any or all of its facilities and to pledge the revenues and receipts from the leasing of its facilities; and

**WHEREAS**, pursuant to and in accordance with the provisions of the Enabling Act (which together with Chapter 916 of the Laws of 1969 of the State as amended collectively called the "Act"), IDA is empowered under the Act to undertake leasing of the facility described below; and

**WHEREAS**, said facility shall consist of certain industrial buildings commonly known as Buildings A, B, C and D situate on land owned by the Company herein referred to as the "Facility" and the Facility is a project as defined in the Act; and

**WHEREAS**, the Company proposes to convey to the IDA the Facility and the IDA proposes to lease the Facility to the Company, and the Company desires to rent the Facility from the IDA, upon the terms and conditions hereinafter set forth in this Agreement;

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows, to wit:

ARTICLE I

DEFINITIONS

Section 1.1            CERTAIN DEFINITIONS. (to be supplied)

ARTICLE II

REPRESENTATIONS AND COVENANTS

Section 2.1    REPRESENTATIONS AND COVENANTS OF THE IDA.

The IDA makes the following representations and covenants as the basis for the undertakings on its part herein contained:

- (a)    The IDA is duly established under the provisions of the Act and has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. Based upon the representations of the Company as to the utilization of the Facility, the Facility will constitute a manufacturing, office and warehousing facility . By proper corporate action the IDA has been duly authorized to execute and deliver this Agreement. As a public benefit corporation of the State, the IDA agrees that it shall not make a profit with respect to the Facility.
  
- (b)    The IDA will purchase and acquire the Facility, cause the Facility to be improved and will lease the Facility to the Company pursuant to this Agreement, all for the purpose of promoting the industry, commerce, health, welfare, convenience and prosperity of the inhabitants of the State and improving their standard of living.
  
- (c)    Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of the Act or of any corporate restriction or any agreement or instrument to which the IDA is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon any of the property of the IDA under the terms of any such instrument or agreement or this Agreement.
  
- (d)    IDA, by Resolution duly adopted on August 3, 1995, determined that, based upon review by IDA of the material submitted and representations made by the

Company relating to the Facility and the determination made by the New York State Urban Development Corporation, the Facility would not have a "significant affect" on the environment within the meaning of SEQRA.

- (e) On December 14, 1994, IDA conducted a Public Hearing, at which any person wishing to speak on either the transactions herein contemplated, the location and nature of the Facility, or any of them were provided with a reasonable opportunity to be heard. Notice of said Public Hearing was published on December 2, 1994 in the Watertown Daily Times newspaper with general circulation in Jefferson County, New York. In accordance with Section 859-a of the Act, the Public Hearing was held in the City of Watertown, New York, which is where the Facility is located.
- (f) The financial assistance being offered to the Company is consistent with the Uniform Tax Exemption Policy adopted by IDA pursuant to Section 874 of the Act.
- (g) The IDA has not been notified by the State Comptroller that the IDA may no longer offer "financial assistance" within the meaning of the Act.

Section 2.2                    REPRESENTATIONS AND COVENANTS OF THE COMPANY.

The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

- (a) The Company is a not-for-profit corporation duly organized and existing in good standing under the laws of the State of New York and has full power and authority to execute and deliver, the Lease Agreement executed by it and to carry out its obligations hereunder and has duly authorized the execution, delivery and performance of the Lease Agreement and will remain qualified to do business in the State during the term of this Lease Agreement.
- (b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of the Company's Certificate of Incorporation, any order or judgment, or any restriction, agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such order, judgment, instrument or agreement except for this Agreement.
- (c) The providing of the Facility by the IDA and the leasing thereof by the IDA to the Company (i) will not result in the removal of a facility or other commercial

activity of the Company from one area of the State to another area of the State nor result in the abandonment of one or more facilities of the Company located within the State, and (ii) is reasonably necessary to preserve the Company's competitive position in its industry.

- (d) The Facility and the operation thereof will comply with all applicable building, zoning, environmental, (including without limitation those relating to hazardous substances) planning and subdivision laws, ordinances, rules and regulations of all Federal, State and Municipal governments, departments, commissions, boards and offices (the "Governmental Authorities") having jurisdiction over the Facility (the applicability of such being determined both as if the IDA were the owner of the Facility and as if the Company and not the IDA were the owner of the Facility).
- (e) Any new employment opportunities created in connection with the Facility shall be listed with the New York State Department of Labor Job Service Division and with the administrative entity of the service delivery area created pursuant to the Job Training Company Act (P.L. 97-300) in which the Facility is located. In compliance with Executive Order No. 84, the Company shall deliver to the IDA, the local service delivery area office for the area in which the Facility is located, the office of the local job service superintendent, and the Regional Office of the New York State Department of Commerce, an employment plan detailing the number and types of employment opportunities projected to be generated by the Facility. The Company shall also provide such other information as the IDA may request with respect to the Facility.
- (f) No part of the Facility will be located outside of the County of Jefferson, New York.

### ARTICLE III

#### FACILITY SITE

##### Section 3.1 AGREEMENT TO CONVEY TO IDA.

The Company will convey to the IDA all of its interest in the Facility. The Company agrees that the Title to the Facility vested in the IDA will be sufficient for the purposes intended by this Agreement.

ARTICLE IV

THE FACILITY

Section 4.1           THE FACILITY.

- (a)   The Company agrees that, on behalf of the IDA, it will renovate, construct and equip the Facility.
  
- (b)   The IDA hereby appoints the Company its true and lawful agent, and the Company hereby accepts such agency, (i) to construct, renovate and equip the Facility in substantial accordance with the plans and specifications as prepared by the Company, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other persons, and in general to do all things which may be requisite or proper, all for improving the Facility with the same powers and with the same validity as the IDA could do if acting in its own behalf, (iii) to pay all fees, costs and expenses incurred in the improvement of the Facility from funds made available therefor in accordance with this Agreement, (iv) to ask, demand, sue for, levy, recover and receive all such sums or money, debts, dues and other demands whatsoever which may be due, owing, payable to the IDA under the terms of any contract, order, receipt, or writing in connection with improvement and completion of the Facility and to enforce the provisions of any contract, agreement, obligation, bond or other performance security.

Section 4.2           Intentionally Omitted.

Section 4.3           REMEDIES TO BE PURSUED AGAINST CONTRACTORS AND SUBCONTRACTORS AND THEIR SURETIES.

In the event of default of any contractor or subcontractor under any contract made by it in connection with the Facility or in the event of a breach of warranty with respect to any materials, workmanship, or performance guaranty, the Company may proceed, at its expense, either separately or in conjunction with others, to pursue any and all remedies of the Company and the IDA against the contractor or subcontractor so in default and against such surety for the performance of such contract. The Company may, in its own name or in the name of the IDA, prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor or surety which the Company deems reasonably necessary, and in such event the IDA, at the Company's expense, hereby agrees to cooperate fully with the Company

and to take all action necessary to effect the substitution of the Company for the IDA in any such action or proceeding.

## ARTICLE V

### DEMISING CLAUSES AND RENTAL PROVISIONS

#### Section 5.1                    DEMISE OF FACILITY.

The IDA hereby demises and leases the Facility to the Company and the Company hereby hires and takes the Facility from the IDA upon the terms and conditions of this Agreement.

#### Section 5.2                    DURATION OF LEASE TERM:    QUIET ENJOYMENT.

- (a)    The IDA shall deliver to the Company sole and exclusive possession of the Facility (subject to the provisions of Section 8.2 hereof) and the leasehold estate created hereby shall commence on the date hereof and the Company shall accept possession of the Facility on such date.
  
- (b)    Except as provided in Section 10.2 hereof, the Leasehold estate created hereby shall terminate at 11:59 P.M. on December 31, 2015 or on such earlier date as may be herein provided, provided in any Payment In Lieu Of Tax Agreement that may be entered into among the IDA, the Company and appropriate taxing jurisdictions and in a certain Environmental Compliance and Indemnification Agreement entered into this date among the Company, Knorr Brake Holding Corporation and the IDA.
  
- (c)    The IDA shall take no action, other than pursuant to Article XI of this Agreement, to prevent the Company from having quiet and peaceable possession and enjoyment of the Facility during the Lease Term and will, at the request of the Company and at the Company's cost, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Facility during the Lease Term.

#### Section 5.3                    RENTS AND OTHER AMOUNTS PAYABLE.

The Company shall pay rent for the Facility leased hereunder as follows:

- (a)    Within thirty (30) days of the receipt of demand therefor, the amounts set forth in the Payment in Lieu of Tax Agreement attached hereto and made a part hereof as Exhibit "B".



- (b) In addition to the payments of rent pursuant to Section 5.3(a) hereof, throughout the Lease Term, the Company shall pay to the IDA as additional rent, within thirty (30) days of the receipt of demand therefor, an amount equal to the sum of the expenses of the IDA and the members thereof incurred by reason of the IDA's ownership, financing or leasing of the Facility.

Section 5.4                      OBLIGATIONS OF COMPANY HEREUNDER  
UNCONDITIONAL.

The obligations of the Company to make the payments required in Section 5.3 hereof and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation of the Company and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counter-claim it may otherwise have against the IDA. The Company agrees it will not (i) suspend, discontinue or abate any payment required by Section 5.3 hereof or (ii) fail to observe any of its other covenants or agreements in this Agreement or (iii) except as provided in Sections 11.1 or 11.2 hereof, terminate this Agreement for any cause whatsoever. Nothing contained in this Section 5.4 shall be construed to release the IDA from the performance of any of the agreements on its part contained in this Agreement or to affect the right of the Company to seek reimbursement and in the event the IDA should fail to perform any such agreement, the Company may institute such action against the IDA as the Company may deem necessary to compel performance or recover damages for non-performance and the IDA covenants that it will not take any voluntary action which will adversely affect, or create any defect in its title to the Facility or which will otherwise adversely affect the rights or estate of the Company hereunder, except upon written consent of the Company.

ARTICLE VI

MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 6.1                      MAINTENANCE AND MODIFICATIONS OF FACILITY BY  
COMPANY.

- (a) The Company agrees that during the Lease Term it will (i) keep the Facility in as reasonably safe condition as its operations shall permit; (ii) make all necessary repairs and replacements to the Facility as appropriate for the Company's level of operation (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); and (iii) operate the Facility in a sound and economic manner and in compliance with all applicable Federal, State and local laws, rules, regulations and orders; and (iv) indemnify and hold the IDA harmless from any liability or expenses from the failure by the Company to comply with (i), (ii), or (iii) above.

- (b) With the written consent of the IDA , which shall not be unreasonably withheld, but may be subject to such conditions as the IDA may require, the Company from time to time may make any structural additions, modifications, improvements or demolitions to the Facility or any part thereof which it may deem desirable. All such structural additions, modifications or improvements so made by the Company shall become a part of the Facility.

Section 6.2 INSTALLATION OF ADDITIONAL EQUIPMENT.

The Company from time to time may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall become, or be deemed to become, a part of the Facility.

Section 6.3 TAXES AND ASSESSMENTS .

- (a) The Company agrees to pay, as the same respectively become due (i) for as long as the Facility is owned by the IDA and leased to the Company, in lieu of all real estate taxes that would have been assessed against the Facility as if it were owned by a taxable entity, such as the Company, an amount equal to 100% of real estate taxes as if the Facility were owned by a taxable entity, such payments in lieu of real estate taxes to be due and payable at the time such taxes are normally due and payable without penalty; (ii) all other taxes and any other governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Facility and any machinery, equipment or other property installed or brought therein or thereon, including without limiting the generality of the foregoing any taxes levied upon or with respect to the income or revenues of the IDA from the Facility (iii) all utility and other charges, including "service charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Facility, and (iv) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Agreement to pay only such installments as are required to be paid during the Lease Term. It is the intention of the parties hereto to enter into a Payment In Lieu Of Tax Agreement among them and the appropriate taxing jurisdictions. In the event the parties enter into such an agreement, the payments in lieu of taxes required to be paid pursuant to that agreement shall supercede and replace the Company's obligation to make payments in lieu of taxes pursuant to Section 6.3(a)(i) above.

- (b) The Company shall defend, indemnify and hold the IDA harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of subsection (a) of this Section 6.3.
- (c) In the event the Company fails to make any in lieu of tax payments as required by this Paragraph, then the IDA may, thirty (30) days after giving written notice to the Company, and if such in lieu of tax payments are still unpaid convey the Facility back to the Company and this Lease shall be thereby terminated.
- (d) The Company shall have all 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 Section, as if and to the same extent as if the Company were the owner of the Facility.
- (e) The Company shall have all 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 taxing authority 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 amount of any tax equivalent provided for herein.

Section 6.4                    INSURANCE REQUIRED.

At all times throughout the Lease Term, including without limitation during any period of renovation or construction of the Facility, the Company shall, at its sole expense, maintain insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

- (a) Workmen's compensation insurance, disability benefits insurance, and each other form of insurance which the IDA or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Facility.
- (b) Insurance protecting the Company and the IDA against loss or losses from liabilities imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 8.2 hereof) and arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or occurrence with a limit of liability of not less than \$1,000,000/\$2,000,000.

- (c) IN THE EVENT, THE LIABILITY INSURANCE REQUIRED PURSUANT TO THIS PARAGRAPH LAPSES, OR IF IT IS FOR A LESSER AMOUNT THAN REQUIRED PURSUANT TO THIS PARAGRAPH, THEN, IN EITHER SUCH EVENT, THE IDA ON OR AFTER SUCH DATE MAY, WITHOUT NOTICE TO ANY PARTY, CONVEY THE FACILITY TO THE COMPANY AND THIS LEASE SHALL BE THEREBY TERMINATED.

Section 6.5                    ADDITIONAL PROVISIONS RESPECTING INSURANCE.

- (a) All insurance required by Section 6.4 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State of New York. The company issuing the policies required by subparagraphs 6.4(a) and (b) hereof shall be rated "A" or better by A.M. Best Co., Inc. in Best's Key Rating Guide. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged, except as otherwise provided herein. All policies evidencing such insurance shall provide for (i) payment of the losses to the Company and the IDA as their respective interests may appear, and (ii) at least thirty (30) days prior written notice of the cancellation or modification thereof to the Company and the IDA, and shall provide for notice to the Company and the IDA of all material claims made thereunder. The policies required by Section 6.4(b) shall also name the IDA as named insured.
- (b) The Policy(s) (or binder) of insurance required herein, together with proof of the payment of the premium therefor, shall be delivered to the IDA on the Closing Date. The Company shall deliver to the IDA annually a certificate reciting that there is in full force and effect insurance coverage of the types and in the amounts required by Section 6.4 hereof and complying with the additional requirements of Section 6.5(a) hereof. Prior to the expiration of each such policy, the Company shall furnish the IDA with evidence that such policy has been renewed or replaced or is no longer required. The Company shall provide such further information with respect to the insurance coverage required by Section 6.4 hereof as the IDA may from time to time reasonably require.

Section 6.6                    Intentionally Omitted.

Section 6.7                    Intentionally Omitted.

## ARTICLE VII

### DAMAGE, DESTRUCTION AND CONDEMNATION

#### Section 7.1            DAMAGE OR DESTRUCTION.

- (a) If the Facility shall be damaged or destroyed (in whole or in part) other than by voluntary demolition by the Company at any time during the Lease Term:
- (i) The IDA shall have no obligation to replace, repair, rebuild or restore the Facility;
  - (ii) There shall be no abatement or reduction in the amounts payable by the Company under this Agreement (whether or not the Facility is replaced, repaired, rebuilt or restored);
  - (iii) The Company shall promptly give notice thereof to the IDA . The Notice shall state whether or not the Company intends to replace, repair, rebuild or restore the Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction. If the Company elects not to do so, this Lease shall terminate. If the Company elects to do so, it shall proceed promptly to replace, repair, rebuild or restore the Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, provided that such replacements, repairs, rebuildings or restorations do not so change the nature of the Facility that it does not constitute a "Project" as such quoted term is defined in the Act.

#### Section 7.2            CONDEMNATION.

- (a) If at any time during the Lease Term the whole or any part of title to, or the use of, the Facility shall be taken by Condemnation, the IDA shall have no obligation to restore or replace the Facility and there shall be no abatement or reduction in the amounts payable by the Company under this Agreement and the Company shall promptly give notice thereof to the IDA. The notice shall also state whether or not the Company intends to promptly restore the Facility to substantially the same condition and value as an operating entity as existed prior to such condemnation or, in the alternative, it exercises its option to terminate this Agreement pursuant to Section 11.1 hereof.
- (b) Intentionally Omitted.
- (c) Intentionally Omitted.

- (d) The IDA shall, at the expense of the Company cooperate fully with the Company in the handling and conduct of any Condemnation proceeding with respect to the Facility.

## ARTICLE VIII

### SPECIAL COVENANTS

Section 8.1            NO WARRANTY OF CONDITION OR SUITABILITY BY THE IDA.

THE IDA MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE FACILITY OR THAT IT IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.

Section 8.2            HOLD HARMLESS PROVISIONS.

The Company hereby releases the IDA from, agrees that the IDA shall not be liable for, and agrees to defend, indemnify and hold the IDA harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any person or property on, in or about the Facility or (ii) liability arising from or expense incurred by the IDA's financing, construction, renovation, equipping, owning and leasing of the Facility, including without limiting the generality of the foregoing, all claims arising from the exercise by the Company of the authority conferred upon it pursuant to Section 4.1(b) of this Agreement and all causes of action and attorneys fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing, provided that, with respect to the IDA, any such losses, damages, liabilities or expenses are not incurred or do not result from the intentional or willful wrongdoing of the IDA or any of its members, agents or employees. The foregoing indemnities shall apply notwithstanding and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The IDA and the Company are parties to a certain Environmental Compliance and Indemnification Agreement of even date which is their sole and exclusive Agreement as to the matters covered therein. Nothing in this Section 8.2 or in Section 8.4 shall apply to the matters covered by such separate Agreement.

Section 8.3            RIGHT TO INSPECT THE FACILITY.

The IDA shall have the right at all reasonable times to inspect the Facility.

Section 8.4

COMPLIANCE WITH ORDERS, ORDINANCES, ETC.

- (a) The Company agrees that it will, throughout the Lease Term, promptly comply with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof and shall defend, indemnify and hold the IDA harmless from any liability or expenses resulting from any failure by the Company to so comply.
- (b) The IDA makes no warranty or representation, either express or implied, as to any prior or current use of, or contamination by, Hazardous Materials at or affecting the Facility.

Section 8.5

NO RECOURSE: SPECIAL OBLIGATION

- (a) The obligations and agreements of the IDA contained herein and in any other instrument or document executed in connection herewith or therewith, and any instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the IDA, and not of any member, officer, agent (other than the Company) or employee of the IDA in his individual capacity, and the members, officers, agents (other than the Company) and employees of the IDA shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the IDA contained herein or therein shall not constitute or give rise to an obligation of the State or of the County of Jefferson, and neither the State nor the County of Jefferson, shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the IDA, but rather shall constitute limited obligations of the IDA, payable solely from the revenues of the IDA derived and to be derived from the lease, sale or other disposition of the Facility
- (b) No order or decree of specific performance with respect to any of the obligations of the IDA hereunder or thereunder shall be sought or enforced against the IDA unless (i) the party seeking such order or decree shall first have requested the IDA in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the IDA shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10)

days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, and (ii) if the IDA refuses to comply with such request and the IDA's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the IDA an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) if the IDA refuses to comply with such request and the IDA's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify and hold harmless the IDA and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand, and (b) if requested by the IDA, furnish to the IDA satisfactory security to protect the IDA and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

Section 8.6                    AUTHORIZATION TO CONDUCT BUSINESS IN THE STATE.

Throughout the Lease Term, the Company shall continue to be duly authorized to conduct its business in the State and in the Jefferson County, New York.

Section 8.7                    AGREEMENT TO PROVIDE INFORMATION.

The Company agrees, whenever requested by the IDA, to provide and certify or cause to be provided and certified such information concerning the Company, its finances, and other topics necessary to enable the IDA to make any reports required by law, governmental regulation, or this Agreement or any other such information as may reasonably be requested by the IDA in connection with this Agreement.

Section 8.8                    Intentionally omitted.

Section 8.9                    DISCHARGE OF LIENS AND ENCUMBRANCES.

- (a) The Company shall not permit or create or suffer to be permitted or created any Lien, except for Permitted Encumbrances, upon the Facility or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof and shall defend, indemnify and hold harmless from any liability or expenses resulting from any failure by the Company to so comply.
- (b) Notwithstanding the provisions of subsection (a) of this Section 8.9, the Company may in good faith contest any such Lien. In such event, the Company may permit



the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom.

Section 8.10                    IDENTIFICATION OF MACHINERY AND EQUIPMENT.

All machinery and equipment which is or may become the property of the IDA pursuant to the provisions of this Agreement shall be properly identified by the Company by such appropriate records, including computerized records. In this regard all improvements, machinery, equipment and other property of whatever nature affixed or attached to the Land or any of the Buildings or used by the Company in connection with the Facility shall be deemed presumptively to be owned by the IDA, rather than the Company, unless the same were installed by the Company and title thereto was retained by the Company and such improvements, machinery, equipment and other property were properly identified by appropriate records as being owned by the Company.

Section 8.11                    DEPRECIATION DEDUCTIONS AND TAX CREDITS.

The parties agree that (as between them) the Company shall be entitled to all depreciation deductions and accelerated cost recovery system deductions with respect to any portions of the Facility pursuant to Sections 167 and 168 of the Internal Revenue Code of 1986, as amended (the "Code") and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Facility which constitutes "Section 38 Property" and to all other state and/or federal income tax deductions and credits which may be available with respect to the Facility.

ARTICLE IX

ASSIGNMENT AND SUBLEASING:

Section 9.1                    RESTRICTION ON SALE OF FACILITY.

Except as otherwise specifically provided herein, the IDA shall not sell, convey, transfer, encumber or otherwise dispose of the Facility or any part thereof or any of its rights under this Agreement, without the prior written consent of the Company.

Section 9.2                    ASSIGNMENT AND SUBLEASING.

This Agreement may not be assigned in whole or in part without the written consent of the IDA, nor may the Facility be subleased in whole or in part without such written consent. Provided, however the Company may sublease portions of Facility pursuant to a plan to be approved by the IDA. Once the plan has been approved by the IDA, no further consent to the subleasing of the Facility pursuant to the plan need be obtained from the IDA.

Section 9.3 Intentionally omitted.

Section 9.4 MERGER OF IDA.

- (a) Nothing contained in this Agreement shall prevent the consolidation of the IDA with, or merger of the IDA into, or transfer of title to the Facility as an entirety to, any other public benefit corporation which has the legal authority to own and lease the Facility, provided that:
  - (i) In the opinion of independent counsel upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Agreement to be kept and performed by the political subdivision or public benefit corporation resulting from such consolidation or surviving such merger or to which the Facility shall be transferred.
- (b) Within twenty (20) days after the consummation of any such consolidation, merger or transfer of title, the IDA shall give notice thereof in reasonable detail to the Company. The IDA promptly shall furnish such additional information with respect to any such transaction as the Company reasonably may request.

## ARTICLE X

### EVENTS OF DEFAULT AND REMEDIES

Section 10.1 EVENTS OF DEFAULT DEFINED.

- (a) The following shall be "Events of Default" under this Agreement and the terms "Event of Default" or "Default" shall mean, whenever they are used in this Agreement, any one or more of the following events:
  - (i) The failure by the Company to pay or cause to be paid, within thirty (30) days of the date required, the amounts specified to be paid pursuant to Section 5.3 hereof;
  - (ii) Any representation or warranty of the Company herein or in the Environmental Compliance and Indemnification Agreement or the application submitted to the IDA by the Company in this transaction is false or misleading in any material respect;
  - (iii) The failure by the Company to observe and perform any covenant, condition or agreement hereunder, on its part to be observed or performed

for a period of thirty (30) days after Notice and Demand by the IDA or such shorter period or different Notice provision as may herein be specifically provided;

- (iv) The receivership or liquidation of the Company or the filing of a voluntary or involuntary petition in bankruptcy, on the part of the Company.
- (v) Failure of the Company to comply with any of the material terms, covenants or conditions of the Environmental Compliance and Indemnification Agreement, which Agreement is incorporated herein by reference, and a copy of which is attached hereto as Exhibit "C".

Section 10.2            REMEDIES ON DEFAULT.

- (a) Whenever any Event of Default shall have occurred and be continuing, the IDA may take, to the extent permitted by law, one or more of the following remedial steps:
  - (i) Without the consent of the Company, convey the Facility to the Company at the Company's cost and expense, and the Company agrees to accept the conveyance of the Facility thereby terminating this Lease.
  - (ii) Take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder, and to enforce the obligations, agreements or covenants of the Company under this Agreement, the Environmental Compliance and Indemnification Agreement and the other executed by the Company in this transaction.
- (b) No action taken pursuant to this Section 10.2 shall relieve the Company from its obligation to make all payments required by Section 5.3 hereof.

Section 10.3            REMEDIES CUMULATIVE.

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

Section 10.4 AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.

In the event the Company should default under any of the provisions of this Agreement and the IDA should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the IDA the reasonable fees of such attorneys and such other expenses so incurred.

Section 10.5 NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.

In the event any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.6 CERTAIN REAL PROPERTY TAX FORMS DELIVERED BY COMPANY TO IDA.

The Company, as of this date, has executed and delivered to the IDA a TP-580 Form and a TP-584 Form duly executed by the Company to be held by the IDA and completed by it in the event the IDA conveys the Facility to the Company pursuant to this section.

ARTICLE XI

EARLY TERMINATION OF AGREEMENT:  
OPTIONS IN FAVOR OF COMPANY

Section 11.1 EARLY TERMINATION OF AGREEMENT.

The Company shall have the option at any time to terminate this Agreement upon the filing with the IDA a certificate stating the Company's intention to do so pursuant to this Section 11.1 and upon compliance with the requirements set forth in Section 11.2 hereof.

Section 11.2 CONDITIONS TO EARLY TERMINATION OF AGREEMENT.

In the event the Company exercises its option to terminate this Agreement in accordance with the provisions of Section 11.1 hereof, the Company shall comply with the requirements set forth in the following three subsections:

- (a) The following payments shall be made:
  - (i) Any amounts due pursuant to Section 5.3

- (ii) To the IDA: an amount certified by the IDA sufficient to pay all unpaid fees and expenses of the IDA incurred and required to be paid by the Company under this Agreement; and
  - (iii) To the appropriate person: an amount sufficient to pay all other fees, expenses or charges, if any, then due and payable under or with respect to this Agreement.
- (b) The certificate required to be filed pursuant to Section 11.1 permitting early termination of this Agreement shall also specify the date upon which the payments pursuant to subdivision (a) of this Section 11.2 shall be made, which date shall be not less than ten (10) nor more than sixty (60) days from the date such certificate is filed with the IDA.

Section 11.3            DUTY TO PURCHASE FACILITY.

Upon termination of this Lease Agreement or upon the expiration of the Lease Term, in accordance with Section 5.2(b) or Section 1.1 hereof, the Company will purchase the Facility from the IDA for the purchase price of One Dollar (\$1.00). The Company shall purchase by giving written notice to the IDA (which may be contained in the certificate referred to in Section 11.2(b) hereof) (i) declaring the Company's intent to purchase, and (ii) fixing the date of closing such purchase, which shall be the date on which this Agreement is to be terminated.

Section 11.4            CONVEYANCE ON PURCHASE.

At the closing of any purchase of the Facility pursuant to Section 11.3 hereof, the IDA shall, at the Company's expense, upon receipt of the purchase price, deliver to the Company all necessary documents:

- (a) To convey to the Company its interests in the Facility being purchased, as such Facility exists, subject only to the following:
  - (i) Any liens to which title to such Property was subject when conveyed to the IDA;
  - (ii) Any liens created at the request of the Company or to the creation of which the Company consented or in the creation of which the Company acquiesced;
- (b) To release and convey to the Company all of the IDA's rights and interest in and to any rights of action or any net proceeds of insurance or condemnation awards with respect to the Facility, and

ARTICLE XII

MISCELLANEOUS

Section 12.1            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 registered mail, postage prepaid, addressed as follows, and if delivered by facsimile, copies shall be transmitted to the fax number stated below:

To the IDA:            Jefferson County Industrial Development Agency  
                             175 Arsenal Street  
                             Watertown, New York 13601  
                             Fax Number - (315) 785-5083

with copy to:  
James Heary, Esq.  
Heary & Jackson  
120 Washington St., Ste 500  
Watertown, New York 13601  
Fax Number - (315) 785-8478

To the Company:      WATERTOWN INDUSTRIAL CENTER LOCAL  
                             DEVELOPMENT CORPORATION  
                             175 Arsenal Street  
                             Watertown, NY 13601  
                             Fax Number - (315) 785-5083

The IDA and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

Section 12.2            BINDING EFFECT.

This Agreement shall inure to the benefit of and shall be binding upon the IDA, the Company and their respective heirs, successors and assigns.

Section 12.3            SEVERABILITY.

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

Section 12.4 AMENDMENTS, CHANGES AND MODIFICATIONS.

This Agreement may not be amended, changed, modified, altered or terminated without the written consent of each party.

Section 12.5 EXECUTION OF COUNTERPARTS.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.6 APPLICABLE LAW.

This Agreement shall be governed exclusively by the applicable laws of the State.

Section 12.7 RECORDING AND FILING.

This Agreement, or a Memorandum thereof, may be recorded in the Jefferson County Clerk's Office.

Section 12.8 SECTION HEADINGS NOT CONTROLLING.

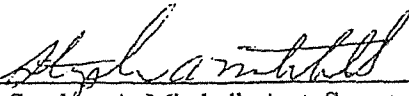
The headings of the several Sections in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Agreement.

IN WITNESS WHEREOF, the IDA and the Company have caused this Lease Agreement to be executed in their respective names, all as of the date first above written.

**JEFFERSON COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

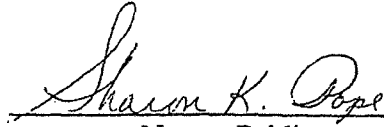
By:   
Stephen A. Mitchell, Asst. Secretary

**WATERTOWN INDUSTRIAL CENTER  
LOCAL DEVELOPMENT CORPORATION**

By:   
Stephen A. Mitchell, Asst. Secretary/Treasurer

STATE OF NEW YORK )  
: SS.  
COUNTY OF JEFFERSON )

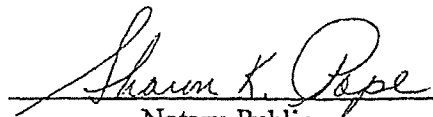
On the 21st day of September, 1995, before me personally came Stephen A. Mitchell, to me known, who, being by me duly sworn did depose and say the he resides in Watertown, New York; that he is the Asst. Secretary of the JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY, the public benefit corporation described in and which executed the above instrument; and that he signed his name thereto by order of the Directors of the corporation.

  
\_\_\_\_\_  
Notary Public

SHARON K. POPE  
Notary Public, State of New York  
Qualified in Jefferson County  
Commission Expires 9/30/96

STATE OF NEW YORK )  
: SS.  
COUNTY OF JEFFERSON )

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\_\_\_\_\_  
Notary Public

SHARON K. POPE  
Notary Public, State of New York  
Qualified in Jefferson County  
Commission Expires 9/30/96



SCHEDULE "A"

Description to LDC Parcel

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Watertown, County of Jefferson, State of New York, and being further described as follows: BEGINNING at an iron pipe set in the easterly street margin of Plaza Drive in the assumed boundary line between the City of Watertown to the south and the Town of Pamela to the north; thence South 67° 52' 42" East along the line between the City of Watertown to the south and the Town of Pamela to the north, a distance of 433.83 feet to an iron pipe set; thence South 33° 39' 43" East, a distance of 453.90 feet to an iron pipe set; thence North 56° 20' 17" East, a distance of 260.00 feet to an iron pipe set; thence South 33° 36' 42" East, a distance of 389.88 feet to an iron pipe set; thence South 55° 39' 48" West, a distance of 64.00 feet to an iron pipe set; thence South 33° 36' 42" East, a distance of 164.00 feet to an iron pipe set; thence North 55° 39' 48" East, a distance of 64.00 feet to an iron pipe set; thence South 33° 36' 42" East, a distance of 132.13 feet to a fence corner post; thence North 55° 30' 06" East, a distance of 195.70 feet to an iron pipe set; thence South 29° 28' 21" East, a distance of 428.39 feet to an iron pipe set; thence South 55° 57' 18" West, a distance of 532.71 feet to an iron pipe set; thence North 33° 40' 36" West, a distance of 52.91 feet to a point; thence South 56° 19' 17" West, a distance of 826.56 feet to a point; thence South 05° 18' 08" East, a distance of 194.78 feet to a point; thence South 65° 21' 39" West, a distance of 168.02 feet to a point in the easterly street margin of Starbuck Avenue; thence North 03° 48' 14" West, along the easterly street margin of Starbuck Avenue, a distance of 1188.36 feet to an iron pipe set; thence North 55° 39' 46" East, along the easterly street margin of Starbuck Avenue, a distance of 19.90 feet to an iron pipe set; thence North 34° 19' 28" West, along the easterly street margin of Starbuck Avenue, a distance of 385.50 feet to an iron pipe set; thence North 04° 41' 28" West, along the easterly street margin of Starbuck Avenue, a distance of 658.67 feet to an iron pipe set; thence North 85° 20' 22" East, along the easterly street margin of Plaza Drive, a distance of 8.00 feet to an iron pipe set; thence North 04° 30' 42" West, along the easterly street margin of Plaza Drive, a distance of 34.69 feet to the point of beginning.

Containing 36.315 acres of land, more or less.

Also including an easement for access and turning of vehicles upon the following described parcel of land: BEGINNING at a point located North 05° 18' 08" West, 77.72 feet from a point, said point being North 65° 21' 39" East, 168.02 feet from a point in the easterly street margin of Starbuck Avenue, being the southwesterly corner of the above described 36.315 acre parcel of land; thence North 05° 18' 08" West, a distance of 117.07 feet to a point; thence North 56° 19' 17" East, a distance of 826.56 feet to a point; thence South 33° 40' 43" East, a distance of 103.00 feet to a point; thence South 56° 19' 17" West, a distance of 882.20 feet to the point of beginning.

Containing 2.020 acres of land, more or less.

Subject to easements, covenants and restrictions of record, if any.

It being the intent to describe a portion of the parcel of land conveyed by General Signal Corporation to New York Air Brake Corporation, by deed recorded in the Jefferson County New York Clerk's Office in Liber 1436 at Page 31 on December 30, 1994, as surveyed by GYMO, P.C., Watertown, New York.

EXHIBIT "B"

**PAYMENT IN LIEU OF TAXES AGREEMENT**

**THIS AGREEMENT**, by and between **WATERTOWN INDUSTRIAL CENTER LOCAL DEVELOPMENT CORPORATION**, a New York local development corporation having an address of 800 Starbuck Avenue, Watertown, New York 13601 ("**WICLDC**") and **JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, an Industrial Development Agency and a Public Benefit Corporation of the State of New York having an address of 800 Starbuck Avenue, Watertown, New York 13601 ("**Agency**"),

**WITNESSETH:**

WHEREAS, the Agency was created by Chapter 369 of the Laws of 1971 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "**Act**"); and

WHEREAS, the Agency acquired by Deed the WICLDC's facilities known as buildings A, B, C, and D (the "**Facility**") located at 800 Starbuck Avenue, City of Watertown, Jefferson County, New York.; and

WHEREAS, the Agency leased the Facility to the WICLDC pursuant to a Lease Agreement dated September 21, 1995; and

WHEREAS, the parties hereto pursuant to an amendment (the "**Amendment**") to the Lease Agreement wish to extend the term of the Lease to December 31, 2025; and

WHEREAS, the WICLDC sub-leases portions of the Facility primarily to start-up or small businesses engaged in manufacturing or commercial business at a reduced rent thereby giving these businesses an opportunity to get started and grow (the "**Project**"). At the present time, these businesses employ over 187 people.

WHEREAS, pursuant to section 874(1) of the Act, and Section 412(a) of the Real Property Tax Law of the State of New York, the Agency is exempt from the payment of taxes and assessments imposed upon real property and improvements owned by it other than special ad valorem levies, special assessments and service charges against real property located in Jefferson County which are or may be imposed for special improvements or special district improvements; and

WHEREAS, by Resolution dated March 3, 2016, the Agency authorized the Amendment; and

WHEREAS, the Taxing Jurisdictions, which are, collectively, the City of Watertown ("**City**"), Jefferson County ("**County**") and the Watertown City School District ("**School**"), have the following taxable years: the County January 1 to December 31, the City and the School July 1 to June 30; and

WHEREAS, the Agency and the WICLDC deem it necessary and proper to enter into this agreement making provision for payments in lieu of taxes to the respective Taxing Jurisdictions which the Facility is to be located; and

WHEREAS, it is the intent that the calculated PILOT payments be equal to 100% of the amount of taxes that would be due on the occupied portions of the buildings as if not exempt and that the vacant portions of the building would be 100% tax exempt;

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

1. For the purpose of payments to be made pursuant to this Agreement, they shall begin on July 1, 2016 (the "**Commencement Date**").

2. Commencing on the Commencement Date and for the period set forth below, or until the earlier termination of the Lease Agreement as amended, the WICLDC agrees to pay in lieu of all real estate taxes which would be levied upon the Facility during such tax years as if the Facility were owned by the WICLDC and not by the Agency, the amounts determined according to the following formula:

$$\text{PILOT} = \text{EA} \times \text{ATR}$$

WHERE

PILOT = Amount of payment in lieu of taxes due to the Taxing Jurisdictions for the applicable tax year.

EA = Effective Assessment is the sum of the values of the three Component Building Uses minus the value attributed to the unoccupied portions.

ATR = Actual Tax Rate for the respective Taxing Jurisdictions for the applicable year.

Component Building Uses = Office Space, Flex Space and Subpar

Office Space = Areas with a higher level of finish or used as an office open to the public. This will not include offices ancillary to Flex Space that is not separately leasable and whose area is less than 10% of the parent Flex Space.

Flex Space = Areas in a condition and configuration making them usable with minimal or no improvement. All space determined not to be Office Space or Subpar will be considered Flex Space.

Subpar = Areas that require major improvement and/or reconfiguration to be leasable. Space that is actively used with plans for imminent major improvement or replacement may be considered Subpar.

The per square foot value for each Component Building Use, is calculated using the average value of all the space comprising said component, and is subject to change each

year based upon major construction/demolitions, market changes and changes to the City's level of assessment.

The component values and the area breakdown for the 2016 tax roll year are as follows:

Component	Office Space	Flex Space	Subpar
Value per Square Foot	\$25.45	\$7.28	\$3.05
Square feet	20,926	85,727	71,279

which results in a Total Assessment of \$1,374,060.21 for 2016, which then must be reduced by the occupancy rate to result in the Effective Assessment.

Changes to the classification of spaces are at the discretion of the City Assessor in consultation with a representative of the WICLDC.

The WICLDC retains all rights to grieve assessments as afforded by the Real Property Tax Law.

The WICLDC agrees to notify the City Assessor of any construction/demolition, change of use and the level of occupancy as of each December 1<sup>st</sup> on or before December 15<sup>th</sup>.

3. This Agreement shall terminate, unless it is terminated sooner pursuant to the Lease Agreement or any other provisions of this Agreement, on December 31, 2025 ("Termination Date") at which time the parties agree that the Lease for the Facility shall terminate and that the Agency will convey back the Facility to the WICLDC.

4. The WICLDC shall pay, or cause to be paid the amounts set forth in Paragraph 1(b) hereof within the grace period, without penalty, applicable to taxes, assessments, special ad valorem levies, special service charges or similar tax equivalents, as the case may be, on similar property subject to taxation by the Taxing Jurisdictions during such respective tax years, subject to any late payment penalties pursuant to §874 of the Act if not made within the grace period. Any failure on the part of the WICLDC to timely make any payments pursuant to this Agreement within ten (10) days following written notice from the Agency shall be an event of default ("Event of Default") under this Agreement and under the Lease Agreement. Upon such Event of Default, the Agency shall have any and/or all of the Remedies on Default set forth in the Lease Agreement. Further, upon such Event of Default, the Payments In Lieu of Tax due under this Agreement shall, upon thirty (30) days written notice from the Agency to the WICLDC, immediately the 100% of Real Property taxes would be due if the Facility was owned by the WICLDC rather than by the Agency.

5. In the event that the Facility is transferred from the Agency to the WICLDC, the Facility shall be immediately subject to taxation pursuant to Sections 302 and 520 of the New York Real Property Tax Law, as amended. However, in no event shall the WICLDC be required to pay both a PILOT payment pursuant to the Agreement and real property taxes for a concurrent tax year or portion thereof. Therefore, should the Facility be conveyed to the WICLDC and thus become taxable pursuant to New York RPTL Section 520, any payments payable under this Agreement as Payments required in Lieu of Taxes shall be reduced by the amount of any taxes which are required to be paid under RPTL Section 520 for any such concurrent tax year or portion thereof, and should such Payment-in-Lieu-of-

Taxes already have been made, the Taxing Jurisdictions shall refund any such amounts owing to WICLDC.

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

If to the Agency: Jefferson County Industrial Development Agency  
800 Starbuck Avenue, Suite 800  
Watertown, New York 13601  
Attn: Donald C. Alexander, CEO

With a copy to: Menter, Rudin & Trivelpiece, P.C.  
120 Washington Street, Suite 500  
Watertown, New York 13601  
Attn: Joseph W. Russell, Esq.

If to the WICLDC: Watertown Industrial Center Local Development Corporation  
800 Starbuck Avenue  
Watertown, New York 13601  
Attn: Donald W. Rutherford, President

With a copy to: Schwerzmann & Wise, P.C.  
137 Main Avenue  
Watertown, New York 13601  
Attn: Keith B. Caughlin, Esq.

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

8. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

9. This Agreement may not be assigned by the WICLDC without the Agency's consent.

10. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original for all purposes and all of which shall constitute collectively a single agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

*[Remainder of page intentionally left blank; signature pages to follow]*

**IN WITNESS WHEREOF**, each of the parties hereto has executed this Agreement on the date set forth before the signature of its respective representative.

Date: \_\_\_\_\_, 2016

**WATERTOWN INDUSTRIAL CENTER LOCAL  
DEVELOPMENT CORPORATION**

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_, 2016

**JEFFERSON COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_

Donald C. Alexander, CEO

**SCHEDULE "A"**  
**(Legal Description of Land)**

**Description to LDC Parcel,**

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## SCHEDULE "A" (con't.)

distance of 117.07 feet to a point; thence North 56° 19' 17" East, a distance of 826.56 feet to a point; thence South 33° 40' 43" East, a distance of 103.00 feet to a point; thence South 56° 19' 17" West, a distance of 882.20 feet to the point of beginning. Containing 2.020 acres of land, more or less.

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