
COLUMBIA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

2990 ROUTE 9 REALTY CORPORATION

PAYMENT IN LIEU OF TAX AGREEMENT

DATED AS OF FEBRUARY 15, 2008

RELATING TO THE PREMISES LOCATED AT 2990 U.S.
ROUTE 9 IN THE TOWN OF LIVINGSTON, COLUMBIA
COUNTY, NEW YORK.

TAX MAP NUMBERS: 161. -1 -1

THIS PAYMENT IN LIEU OF TAX AGREEMENT dated as of February 15, 2008 by and between COLUMBIA COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the "Agency"), a public benefit corporation of the State of New York having its office at 610 State Street, Hudson, New York 12534, and 2990 ROUTE 9 REALTY CORPORATION, a New York Corporation having an office at 836 Grand Boulevard, Deer Park, New York 11720 (the "Company").

WITNESSETH:

WHEREAS, Title 1 of 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; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any buildings or other improvements, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its properties, to mortgage and pledge any or all of its properties, whether then owned or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 366 of the Laws of 1976 of the State of New York (collectively with the Enabling Act, the "Act"), and is empowered under the Act to undertake the Project (as hereinafter defined); and

WHEREAS, on October 30, 2007 the members of the Agency adopted a resolution (the "Inducement Resolution") whereby the Agency agreed, subject to numerous conditions, to undertake a project (the "Project") consisting of the following: to purchase a building located at 2990 Route 9 in Hudson, New York and the reconstruction and equipping thereof for use as an ice manufacturing and cold storage facility; and

WHEREAS, in compliance with the provisions of Section 859-a of the Act, the Agency (A) caused notice of a public hearing (the "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 to be mailed on November 6, 2007 to the chief executive officer of the county and of each city, town, village and school district in which the Project is to be located, (B) caused notice of the Public Hearing to be published on November 5, 2007, in a newspaper of general circulation available to the residents of the Town of Livingston (C) conducted the Public Hearing on December 6, 2007 at 9:00 a.m., at the Livingston Town Hall located at 119 County Route 19, Livingston, New York, and

(D) prepared a report of the Public Hearing which fairly summarized the views presented at the Public Hearing and presented same to the members of the Agency; and

WHEREAS, 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, "SEQRA"), the Agency adopted a resolution (the "SEQR Resolution") on December 6, 2007 by which the Agency determined that the Project will not have a significant impact on the environment, and therefore that an environmental impact statement is not required to be prepared with respect to the Project; and

WHEREAS, by resolution adopted by the members of the Agency on December 6, 2007, the Agency determined to grant the Financial Assistance and to enter into a lease-leaseback arrangement (collectively, the "Lease Agreement") between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"); and

WHEREAS, pursuant to the terms of the Lease Agreement, (A) the Company agreed (1) to lease to the Agency the Project and to cause the Project to be undertaken and completed, (2) as agent of the Agency, to undertake and complete the Project, (3) to lease the Project from the Agency, and (4) to make certain installment payments to the Agency as rent for the Project and (B) the Agency agreed to (1) undertake the Project, (2) appoint the Company as agent of the Agency to undertake and complete the Project, and (3) lease the Project to the Company; and

WHEREAS, the cost of the Project is being financed in part through (i) a loan in the principal amount of \$740,000.00 made or to be made by Manufacturers and Traders Trust Company (the "First Mortgage") to the Company (the "First Mortgage Loan"), (ii) a loan in the principal amount of up to \$532,000.00 to be made by Empire State Certified Development Corporation (the "Second Mortgage") to the Company (the "Second Mortgage Loan"), and (iii) equity furnished by the Company and/or the sublessee and/or the proceeds of additional lending; and

WHEREAS, in order to evidence its obligation to repay the First Mortgage Loan, the Company has issued to the First Mortgagee a certain mortgage note, dated December 28, 2007 (the "First Mortgage Note"), in the principal amount of the First Mortgage Loan; and

WHEREAS, in order to secure the obligations of the Company to the First Mortgage under the First Mortgage Note, the Company granted a first mortgage on the Project Facility to the First Mortgagee, pursuant to a certain mortgage and security agreement, dated the December 28, 2007 (the "First Mortgage"), from the Company to the First Mortgagee; and

WHEREAS, in order to evidence its obligation to repay the Second Mortgage Loan, it is anticipated that the Company will, within one(1) year of the date hereof, issue to the Second Mortgagee a certain mortgage note, to be entered into at a future date (the "Second Mortgage Note") in the principal amount of the Second Mortgage Loan; and

WHEREAS, in order to secure the obligations of the Company to the Second Mortgagee under the Second Mortgage Note, it is anticipated that the Company will, grant a second mortgage on the Project Facility to the Second Mortgagee, pursuant to a mortgage to be entered into at a future date (the "Second Mortgage") from the Company to the Second Mortgagee; and

WHEREAS, in order to provide bridge financing for a portion of the anticipated proceeds of the Second Mortgage Loan, the Second Mortgagee agreed to make an advance to the Company in the amount of \$518,000.00 on December 28, 2009 (the "Bridge Loan"); and

WHEREAS, the Bridge Loan is evidenced by a certain mortgage note, dated December 28, 2007 (the "Bridge Loan Mortgage Note"), and secured by a certain mortgage and security agreement, dated December 28, 2007 (the "Bridge Loan Mortgage"), from the Company to the First Mortgagee; and

WHEREAS, the Second Mortgage Loan will be made for the benefit of the Company, and the Company will pay from the proceeds of the Second Mortgage Loan all amounts owing under the Bridge Loan, and the Bridge Loan Mortgage will be satisfied in full; and

WHEREAS, pursuant to the First Mortgage, the Company has or will grant to the First Mortgagee a mortgage lien on and a security interest in the Project Facility as security for the payment of amounts due under the First Mortgage Note. Upon the satisfaction in full of the Bridge Loan Mortgage from the proceeds of the Second Mortgage Loan, the Company will grant to the Second Mortgagee a second mortgage lien on and a security interest in the Project Facility pursuant to the Second Mortgage as security for the payment of amounts due under the Second Mortgage Note.

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

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

NOW, THEREFORE, in consideration of the matters above recited, the parties hereto formally covenant, agree, and bind themselves as follows:

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ARTICLE I

REPRESENTATIONS AND WARRANTIES

SECTION 1.1. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant and covenant as follows:

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

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

(C) Conflicts. The Company is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by (and the execution, delivery and performance of this Payment in Lieu of Tax Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Payment in Lieu of Tax Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its articles of organization or operating agreement or any other corporate restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which the Company or any of its property is bound, and neither the Company's entering into this Payment in Lieu of Tax Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, 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 of the foregoing, and this Payment in Lieu of Tax Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

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

SECTION 1.2. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

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

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

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

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ARTICLE II
COVENANTS AND AGREEMENTS

SECTION 2.1. TAX-EXEMPT STATUS OF THE FACILITY PREMISES. (A) Assessment of the Facility Premises. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of a leasehold interest in the Facility Premises by the Agency and the filing by the Agency of a New York State Board of Real Property Services Form RP-412-a (a "Real Property Tax Exemption Form") with respect to the Facility Premises, and for so long thereafter as the Agency shall have a leasehold interest in the Facilities constituting the Project (the "Facility Premises"), the Facility Premises shall be assessed by the various taxing entities having jurisdiction over the Facility Premises, including, without limitation, any county, city, school district, town, village or other political unit or units wherein the Facility Premises is located (such taxing entities being sometimes collectively hereinafter referred to as the "Taxing Entities," and each of such Taxing Entities being sometimes individually hereinafter referred to as a "Taxing Entity") as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the acquisition by the Agency of a leasehold interest in the Facility Premises and the filing of the Real Property Tax Exemption Forms. The Company shall take such action as may be necessary to ensure that the Facility Premises shall be assessed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to such acquisition by the Agency, including ensuring that a Real Property Tax Exemption Form shall be filed with the appropriate officer or officers of each respective Taxing Entity responsible for assessing properties on behalf of each such Taxing Entity (each such officer being hereinafter referred to as an "Assessor"). For so long thereafter as the Agency shall own or possess a leasehold interest in the Facility Premises, the Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Taxing Entity. The parties hereto understand that the Facility Premises shall not be entitled to such tax-exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the tax status date of such Taxing Entity occurring subsequent to the date upon which the Agency becomes the leasehold owner of record in the Facility Premises and the Real Property Tax Exemption Forms are filed. The Agency will cooperate with the Company to obtain and preserve the tax-exempt status of the Facility Premises.

(B) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease Agreement, the Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Facility Premises.

SECTION 2.2. PAYMENTS IN LIEU OF TAXES. (A) Agreement to Make Payments. The Company agrees that it shall make annual payments in lieu of property taxes in the amounts and at the times, hereinafter provided, to the Agency. The payments due hereunder shall be paid by the Company to the Agency for distribution to the appropriate Taxing Entities entitled to same pursuant to the provisions hereof.

(B) Amount and Timing of Payments in Lieu of Taxes. Commencing on the execution of this Payment in Lieu of Tax Agreement, the Company shall make payments in lieu of taxes for a fifteen year period based upon an initial assessed valuation of \$500,000 applicable to taxes levied by the Hudson City school district for its 2008-09 fiscal year and for the 2009 County of Columbia and Town of Livingston fiscal year. The assessed valuation will automatically increase each year thereafter by \$50,000 so that in the last year of this Payment in Lieu of Tax Agreement the assessed valuation will be \$1,250,000.

The Company acknowledges that the payment in lieu of taxes for the 2009 calendar year is in lieu of the taxes levied by the Hudson City school district for the July 1, 2008 to June 30, 2009 fiscal tax year and the taxes levied by the County of Columbia and Town of Livingston for the 2009 calendar tax year. The Company acknowledges that all subsequent annual payments in lieu of taxes are in lieu of taxes for such corresponding fiscal and calendar tax years. In the event this Payment in Lieu of Tax Agreement terminates on a date between July 1 and December 31, the Company shall pay to the Agency a payment in lieu of taxes in an amount equal to the amount the Company would pay in school taxes if the Facility Premises and the Additional Facilities were privately owned by the Company and not deemed owned or under the jurisdiction, control or supervision of the Agency, pro rated for the period from July 1 through the date of termination.

Payments with respect to the school district are payable to the Agency on or before September 20 each year commencing on September 20, 2008. Payments with respect to the Town and County are payable to the Agency on or before January 21 each year commencing on January 21, 2009.

There shall also be paid to the Agency annually on or before September 20 each year, commencing September 20, 2008, a \$1,000 administrative fee.

(C) Additional Amounts in Lieu of Taxes. Commencing on January 21 of the first taxable year following completion of construction of any additional buildings or structures on the Land ("Additional Facilities") other than the PILOT Facility, the Company agrees to make annual additional payments in lieu of taxes ("Additional Payments") to the Agency with respect to such Additional Facilities. The amount of such Additional Payments shall be equal the product of (i) an assessed value of the Additional Facilities equal to the Construction Costs (as hereinafter defined) multiplied by the equalization rates then in effect for the Taxing Entities, and (ii) the tax rates for the respective Taxing Entities in effect on the date the Additional Payments are made, reduced by the amount of any tax exemptions that would be afforded to the Company by such Taxing Entity if such Additional Facilities were privately owned by the Company and not deemed owned by or under the jurisdiction, control or supervision of the Agency.

"Construction Costs" shall be defined as the actual costs of the building materials, equipment and labor incurred by the Company or the occupant of the Additional Facilities in connection with the construction of the foundations and structures comprising the Additional Facilities exclusive of movable materials and equipment. The Company agrees to promptly furnish copies of all construction contracts during all phases of the construction period to the Agency.

The provisions of this subsection (C) shall not apply in the event the Agency and the Company enter into a separate payment in lieu of tax agreement with respect to any Additional Facilities. If the Construction Costs are not provided to the Agency in reasonable detail in order for the Agency to determine the amount of the Additional Payments prior to the date any Additional Payments is due, then the Additional Payment shall be an amount equal to the assessed value of the Additional Facilities multiplied by the tax rate or rates of each Taxing Entity that would be applicable to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency.

(D) Receipt of Payments. The Company shall be entitled to receive receipts for payments in lieu of taxes made hereunder.

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

SECTION 2.3. CREDIT FOR TAXES PAID. (A) Amount of Credit. The parties hereto acknowledge and agree that the obligation of the Company to make the payments provided in Section 2.2 of this Payment in Lieu of Tax Agreement shall be in addition to any and all other taxes and governmental charges of any kind whatsoever which the Company may be required to pay under the Lease Agreement. It is understood and agreed, however, that, should the Company pay in any calendar tax year to the Agency any amounts in the nature of general property taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Facility Premises or the interest therein of the Company or the occupancy thereof by the Company (but not including, by way of example, (1) sales and use taxes, and (2) special assessments, special ad valorem levies or governmental charges in the nature of utility charges, including but not limited to water, solid waste, sewage treatment or sewer or other rents, rates or charges), then the Company's obligation to make payments in lieu of property taxes attributed to such calendar year to such Taxing Entity hereunder shall be reduced by the amounts which the Company shall have so paid to the Agency in such calendar year, but there shall be no cumulative or retroactive credit as to any payment in lieu of property taxes due to any other Taxing Entity or as to any payment in lieu of property taxes due to the Agency in any other calendar year.

(B) Method of Claiming Credits. If the Company desires to claim a credit against any particular payment in lieu of taxes due hereunder, the Company shall give the appropriate Taxing Entity and the Agency prior written notice of its intention to claim any credit pursuant to the provision of this Section 2.3, said notice to be given by the Company at least ten (10) days prior to the final date on which such payment in lieu of taxes is due pursuant to the provision of Section 2.2 hereof. In the event that the Taxing Entity desires to contest the Company's right to claim such credit, then the Taxing Entity may institute appropriate proceedings to determine whether the Company is entitled to claim any credit pursuant to the provisions of this Section 2.3 and, if so, the amount of the credit to which the Company is entitled. When the Company shall have given notice as provided herein, that it claims a credit, the amount of any payment in lieu of taxes due hereunder which the credit may be claimed may be withheld (to the extent of the credit claimed by the Company, but only to the extent that such credit may be claimed against a payment in lieu of taxes pursuant to the provisions of this Section 2.3) until a final decision of the appropriate court. After a

final decision of the appropriate court is rendered, the payment in lieu of taxes due with respect to any reduction or disallowance in the amount of the credit claimed by the Company shall, to the extent withheld as aforesaid, be immediately due and payable and shall be paid by the Company within thirty (30) days of said decision.

SECTION 2.4. LATE PAYMENTS. (A) First Month. Pursuant to Section 874(5) of the Act, if the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due, the Company shall pay the same, together with a late payment penalty equal to five percent (5%) of the amount due.

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

SECTION 2.5. RECAPTURE. In the event that (a) the Premises Facility is sold, except to the extent such sale is approved by the Agency, or closed or (b) the number of jobs at the Project Facility is reduced below 7 after January 1, 2009 or once the Project Facility is operational, whichever is earlier, or (c) the Company fails to comply with any of the material provisions set forth in the application to the Agency requesting financial assistance (each, a "Recapture Event"), the Company shall pay to the Agency, based on the formula set forth below, a portion of the Aggregate Tax Savings which the Company realized as a result of the Agency undertaking the Project. For purposes of this Section, "Aggregate Tax Savings" shall mean the amount by which the real property taxes which the Company would have paid if the Premises Facility were owned by the Company and not deemed owned by or under the jurisdiction or control or supervision of the Agency exceeds the payments in lieu of taxes actually paid by the Company.

<u>Date of Recapture Event</u>	<u>Percentage of Aggregate Tax Savings Recaptured</u>
Prior to July 1, 2010	75%
July 1, 2010 - June 30, 2011	60%
July 1, 2011 - June 30, 2012	40%
July 1, 2012 - June 30, 2013	20%
After July 1, 2013	0%

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ARTICLE III

LIMITED OBLIGATION

SECTION 3.1. NO RECOURSE; LIMITED OBLIGATION OF THE AGENCY. (A) No Recourse.

All obligations, covenants, and agreements of the Agency contained in this Payment in Lieu of Tax Agreement shall be deemed to be the obligations, covenants and agreements of the Agency and not of any member, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Payment in Lieu of Tax Agreement, or otherwise based upon or in respect of this Payment in Lieu of Tax Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent (other than the Company), servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Payment in Lieu of Tax Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement, it being expressly understood that this Payment in Lieu of Tax Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company), servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Payment in Lieu of Tax Agreement by the Agency.

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

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

ARTICLE IV

EVENTS OF DEFAULT

SECTION 4.1. EVENTS OF DEFAULT. (A) The following shall constitute an Event of Default or default hereunder:

(a) Failure of the Company to pay any amount due and payable by the Company pursuant to this Payment in Lieu of Tax Agreement and continuance of said failure for a period of thirty (30) days;

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

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

(d) Any Event of Default under the Lease Agreement.

(B) Cross Default. In addition, an Event of Default hereunder shall constitute an event of default under the Lease Agreement. Upon the occurrence of an Event of an Event or Default hereunder resulting from a failure of the Company to make any payment required hereunder the Agency shall have as a remedy therefore under the Lease Agreement, among other remedies, the right to terminate the Lease Agreement, thus subjecting the Project Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State. The Company appoints

counsel to the Agency power of attorney to so terminate the Lease Agreement and execute any documents necessary to record such transaction.

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

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

(D) The Agency agrees to provide notice to the Lender as soon as possible, but not later than five (5) business days after knowledge thereof, of an Event of Default hereunder.

SECTION 4.2. REMEDIES ON DEFAULT. Whenever any Event of Default shall have occurred with respect to this Payment in Lieu of Tax Agreement, the Agency (or if such Event of Default concerns a payment required to be made hereunder to any Taxing Entity, then with respect to such Event of Default such Taxing Entity) may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Payment in Lieu of Tax Agreement.

SECTION 4.3. PAYMENT OF ATTORNEYS' FEES AND EXPENSES. Pursuant to Section 874(6) of the Act, if the Company should default in performing any of its obligations, covenants or agreements under this Payment in Lieu of Tax Agreement and the Agency or any Taxing Entity should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency or such Taxing Entity, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.4. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or any Taxing Entity is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Payment in Lieu of Tax Agreement or now or hereafter existing at law or in equity or by statute.

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

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

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

[BALANCE OF PAGE LEFT INTENTIONALLY BLANK]

ARTICLE V
MISCELLANEOUS

SECTION 5.1. TERM. (A) General. This Payment in Lieu of Tax Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the approval of this Payment in Lieu of Tax Agreement by resolution of the Agency and the execution and delivery of this Payment in Lieu of Tax Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Payment in Lieu of Tax Agreement shall continue to remain in effect.

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

SECTION 5.2. FORM OF PAYMENTS. The amounts payable under this Payment in Lieu of Tax Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.3. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.4. AMENDMENTS. This Payment in Lieu of Tax Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.5. NOTICES. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) sent to the applicable address stated below by United States registered or certified mail, postage prepaid, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

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

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

TO THE COMPANY: 2990 Route 9 Realty Corporation
836 Grand Boulevard
Deer Park, New York 11720

IF TO THE AGENCY: Columbia County Industrial Development Agency
610 State Street
Hudson, New York 12534
Attention: Chairman

WITH A COPY TO: Guterman & Alford, PLLC
441 East Allen Street
Hudson, New York 12534
Attention: Theodore Guterman, II, Esq.

IF TO THE LENDER: Empire State Certified Development Corporation
And U.S. Small Business Administration
50 Beaver Street
Albany, New York 12201-0738
Attention: _____

Manufacturers and Traders Trust Company
Its Successors and Assigns
M&T Center
One Fountain Plaza, 9th Floor
Buffalo, New York 14203-1495
Attention: _____

(D) Copies. A copy of any notice given hereunder by the Company which affects in any way a Taxing Entity shall also be given to the chief executive officer of such Taxing Entity.

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

SECTION 5.6. BINDING EFFECT. This Payment in Lieu of Tax Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and

assigns. The provisions of this Payment in Lieu of Tax Agreement are intended to be for the benefit of the Agency and the respective Taxing Entities.

SECTION 5.6. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Payment in Lieu of Tax Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Payment in Lieu of Tax Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.


SECTION 5.8. COUNTERPARTS. This Payment in Lieu of Tax Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.9. APPLICABLE LAW. This Payment in Lieu of Tax Agreement shall be governed by and construed in accordance with the laws of the State of New York.


[SIGNATURE APPEAR ON NEXT PAGE]

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

COLUMBIA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

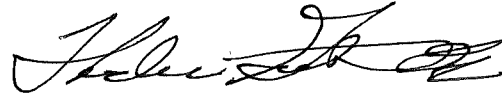
By: 
(Vice) Chairman

2990 ROUTE 9 REALTY CORPORATION

By: 
Title:

State of New York)
) ss.:
County of Columbia)

On the 29 day of February, in the year 2008 before me, the undersigned, personally appeared Bruce Bohnsack, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(is), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public

NOTARY PUBLIC
STATE OF NEW YORK
QUALIFIED IN SUFFOLK COUNTY
COMMISSION EXPIRES 2/28/11

State of New York)
) ss.:
County of Suffolk)

On the 27th day of February, in the year 2008 before me, the undersigned, personally appeared CONO CIMINO, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(is), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public

KALINA ZIEBA
Notary Public, State of New York
Qualified in Suffolk County
My Commission Expires Dec. 8, 2009

SCHEDULE "A"
LEGAL DESCRIPTION

ALL that piece or parcel of land with the buildings and improvements thereon situate in the Town of Livingston, County of Columbia, State of New York is bounded and described as follows:

BEGINNING at a railroad spike recovered at the intersection of the easterly side of N.Y.S. Route U.S. 9 and the southerly side of Schneider Road, a town road, said railroad spike recovered is the northwesterly corner of the herein described parcel. Thence along the southerly side of Schneider Road S49-00-00E 159.42 feet, S53-50-00E 247.52 feet, on a curve to the left and tangent to the preceding course having a radius of 140.00 feet for a length of 137.00 feet and N70-06-00E 27.77 feet to an iron rod recovered. Thence along lands of SSD Associates and along a wire fence S29-44-00W 344.00 feet and S24-47-00W 432.93 feet to an iron rod found. Thence along other lands of Apple Partners, LLC N58-01-00W 415.72 feet to an iron rod set and N58-01-00W 193.86 feet to an iron rod set on the easterly side of N.Y.S. Route U.S. 9. Thence along the easterly side of said N.Y.S. Route U.S. 9 N31-59-00E 741.23 feet to the point of beginning.

ALL as shown on a survey map entitled "SURVEY OF PROPERTY OF APPLE PARTNERS, LLC TO BE CONVEYED TO ICE CUBE, INC.," dated 7 November 2007 by Plass, Rockefeller & Nucci, LLC.

TOGETHER with the easements for conveying and discharging waste water into the existing lagoons as set forth in the deed from the Columbia County Industrial Development Agency to Apple Partners, LLC dated December 26, 2007 and recorded in the Columbia County Clerk's Office on January 2, 2008 in Book 627 of Official Records at Page 1709.

2990 Rte 9
Realty Corp

AMENDMENT OF
PAYMENT IN LIEU OF TAX AGREEMENT

This is an amendment of the Payment in Lieu of Tax Agreement between **COUNTY OF COLUMBIA INDUSTRIAL DEVELOPMENT AGENCY**, having an address at 610 State Street, Hudson, New York 12534, and **APPLE PARTNERS, LLC**, having an address at 2990 Route 9, Livingston, New York 12541, as follows:

WHEREAS, the parties entered into a Payment in Lieu of Tax Agreement (the "PILOT"), dated as of November 1, 2001, relating to certain premises located in the Town of Livingston, Columbia County, New York, and

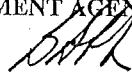
WHEREAS, the parties wish to amend this Agreement, but otherwise provide for the continuance of this Agreement in full force and effect,

NOW, THEREFORE, for good and valuable consideration given and received, the parties agree as follows:

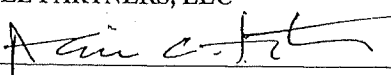
1. The PILOT is amended by deleting therefrom the property referenced as Parcel 2 as set forth on a survey dated June 22, 1987 made by Rockefeller and Nucci of Claverack, New York 12513, as shown upon their map, said survey entitled "Property of James H. Kaltsas". The legal description of the property so deleted from the PILOT is set forth on Schedule A annexed hereto.
2. The remaining property, which is covered by this PILOT, continues to be covered by this PILOT.
3. All of the other provisions of this PILOT shall continue in full force and effect, including the requirements for PILOT payments, as set forth on Exhibit B of said PILOT Agreement. The assessment amounts referenced on Exhibit B shall remain the same and shall be applicable to the remaining premises.

IN WITNESS WHEREOF the parties have executed this amendment to PILOT the _____
day of December, 2007.

COUNTY OF COLUMBIA INDUSTRIAL
DEVELOPMENT AGENCY

By: 

APPLE PARTNERS, LLC

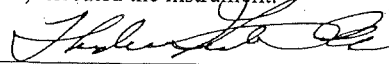
By: 

STATE OF NEW YORK

COUNTY OF COLUMBIA

)
) ss.:
)

On the 26th day of December, in the year Two Thousand Seven, before me, the undersigned, personally appeared BRUCE BOHNSACK, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Signature and Office of Individual
Taking Acknowledgment

STATE OF NEW YORK

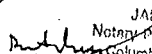
COUNTY OF COLUMBIA

)
) ss.:
)

2/28/11

On the 27th day of December, in the year Two Thousand Seven, before me, the undersigned, personally appeared ALAIN C. FOSTER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and Office of Individual
Taking Acknowledgment


JAMES M. MCMAHON
Notary Public, State of New York
Columbia County, #00000000
Commission Expires 2010

SCHEDULE "A"

ALL that piece or parcel of land with the buildings and improvements thereon situate in the Town of Livingston, County of Columbia, State of New York is bounded and described as follows:

BEGINNING at a railroad spike recovered at the intersection of the easterly side of N.Y.S. Route U.S. 9 and the southerly side of Schneider Road, a town road, said railroad spike recovered is the northwesterly corner of the herein described parcel. Thence along the southerly side of Schneider Road S49-00-00E 159.42 feet, S53-50-00E 247.52 feet, on a curve to the left and tangent to the preceding course having a radius of 140.00 feet for a length of 137.00 feet and N70-06-00E 27.77 feet to an iron rod recovered. Thence along lands of SSD Associates and along a wire fence S29-44-00W 344.00 feet and S24-47-00W 432.93 feet to an iron rod found. Thence along other lands of Apple Partners, LLC N58-01-00W 415.72 feet to an iron rod set and N58-01-00W 193.86 feet to an iron rod set on the easterly side of N.Y.S. Route U.S. 9. Thence along the easterly side of said N.Y.S. Route U.S. 9 N31-59-00E 741.23 feet to the point of beginning.

FOR CLOSING INSTRUMENTS ONLY, NOT FOR POLICY: (Containing 9.365 acres of land.)

ALL as shown on a survey map entitled "SURVEY OF PROPERTY OF APPLE PARTNERS, LLC TO BE CONVEYED TO ICE CUBE, INC.," dated 7 November 2007 by Plass, Rockefeller & Nucci, LLC.

TOGETHER with an easement for access to and over, under and through the adjoining lands of Apple Partners, LLC for the purpose of installing, maintaining, repairing, and replacing pipes, conduits and lines necessary to convey waste water into the existing Lagoons on the adjoining lands.

TOGETHER with an easement for the right to discharge, convey and dispose of waste water in the Lagoons.