

GOLD DOME II LLC

and

CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY

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PAYMENT-IN-LIEU-OF-TAX AGREEMENT

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City of Utica Industrial Development Agency  
2014 Real Estate Lease  
(Gold Dome II LLC Facility)

Oneida County, City of Utica, Utica City School District

Tax Account No.: 318.050-2-15

## PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of November 25, 2014, is by and between **GOLD DOME II LLC**, a New York limited liability company with an address of 8400 Glen Eagle Drive, P.O. Box 207, Manlius, New York 13104 (the "Company") and **CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at One Kennedy Plaza, Utica, New York 13502 (the "Agency").

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

WHEREAS, the Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law, Chapter 99 of the Consolidated Laws of New York, as amended, (the "Enabling Act"), and Chapter 710 of the Laws of 1981 of the State of New York, as amended, constituting Section 901 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, reconstructing, improving, maintaining, equipping and furnishing of, among others, industrial facilities for the purpose of promoting, attracting and developing economically sound commerce and industry in order 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, the Company desires to acquire and renovate a five-story, 50,000± square foot office building (the "Improvements") located on a 1.0± acre parcel of land situated at 231 Genesee Street, City of Utica, Oneida County, New York (the "Land") and acquire and install machinery and equipment in the Improvements (the "Equipment"), all for the purpose of restoring and developing the Improvements for long-term lease to The Mary Imogene Bassett Hospital, d/b/a The Bassett Medical Center Network, a not-for-profit entity (the "Sublessee") and for the purpose of enhancing economic development in downtown Utica (the Land, Improvements and Equipment collectively, the "Facility"); and

WHEREAS, in order to induce the Company to develop the Facility, the Agency is willing to accept a leasehold interest in the Facility pursuant to a Lease Agreement dated of even date herewith and lease the Facility back to the Company pursuant to the terms and conditions contained in a Leaseback Agreement dated of even date herewith; and

WHEREAS, the Agency has agreed to accept a leasehold interest to the Facility in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, Manufacturers and Traders Trust Company, a New York banking corporation (the "Bank") intends to finance a portion of the costs of the Facility by making (a) a loan to the Company in the principal amount not to exceed \$2,228,505.00, to be secured by (i) a Mortgage, Security Agreement and Fixture Filing dated on or about November 25, 2014 (the "Mortgage") from the Agency and the Company to the Bank; and (ii) a General Assignment of Rents dated on or about November 25, 2014 (the "Assignment") from the Agency and the Company to the Bank; and (b) a Multiple Draw Term Loan to the Company in the principal amount not to exceed \$400,000.00, to be secured by (i) a Mortgage, Security Agreement and Fixture Filing dated on or about November 25, 2014 (the "Term Mortgage") from the Agency and the Company to the Bank; and (ii) a General Assignment of Rents dated on or about November 25, 2014 (the "Term Assignment") from the Agency and the Company to the Bank; and

WHEREAS, the Company intends to sublease the Facility to The Mary Imogene Bassett Hospital, d/b/a Bassett Medical Center Network (the "Sublessee") for its operation, pursuant to the terms of a Sublease Agreement dated October 17, 2014 (the "Sublease Agreement") between the Company and the Sublessee; and

WHEREAS, the Sublessee contemplates that it may further sublease a portion of the Facility (i.e., the second and third floors) for a short-term period (i.e., 3 – 5 years) to another not-for-profit entity (the "Second Sublessee") to assist the Sublessee while it fully absorbs the entire Facility, pursuant to a Second Sublease Agreement to be entered into between the Sublessee and the Second Sublessee and

WHEREAS, the Facility is exempt from real property taxes, general property taxes, general school district taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Facility or the interest therein of the Company or the occupancy thereof by the Company commencing August 1, 2015, the taxable status date, (the "Exempt Taxes"), because the Agency has a leasehold interest in the Facility and the Facility is used for a purpose within the meaning of the applicable Constitutional and statutory provisions, including the Enabling Act, provided, however, such exemption does not extend to special assessments or ad valorem levies; and

WHEREAS, the Company understands that it, as lessee of the Facility leased by the Agency, will, in fact, have Exempt Taxes to pay under the provisions of the Leaseback Agreement from the first date of the Exemption Term (as that date is determined by the parties and described herein) through the term of the Leaseback Agreement (the "Exemption Term"); and

WHEREAS, each year of the Exemption Term is more particularly set forth on Schedule B attached hereto (each year being referred to as an "Exemption Year"); and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provision for payments-in-lieu-of-taxes and such assessments by the Company to the City of Utica, or any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be, wholly or partially located, Oneida County, Utica City School District and appropriate special districts (hereinafter each a "Taxing Authority" and collectively the "Taxing Authorities") in which any part of the Facility is or is to be located; and

WHEREAS, all defined terms herein as indicated by the capitalization of the first letter thereof and not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the Leaseback Agreement.

NOW, THEREFORE, to provide for certain payments to the Taxing Authorities, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Company shall pay to each Taxing Authority:

(a) all taxes that are due with respect to the Facility prior to the Exemption Term, no later than the last day during which such payments may be made without penalty; and

(b) all special assessments and ad valorem taxes coming due and payable during the term of the Leaseback Agreement and the Leaseback Agreement for which the Facility is not exempt, no later than the last day during which such payments may be made without penalty.

2. (a) With respect to any portion of the Facility which the Company subleases to the Sublessee or any other subtenant who uses the Facility for a purpose which the Issuer determines would be exempt from taxation under the Real Property Tax Law, so long as the Sublease is in effect, the Company shall pay an amount in lieu of the Exempt Taxes (the "PILOT Payments") during each Exemption Year as follows:

(i) From the first through and including the tenth Exemption Year: no Exempt Taxes; and

(ii) From the eleventh through and including the twentieth Exemption Year: a fixed annual payment of twenty-five thousand dollars (\$25,000.00); and

(iii) After the twentieth Exemption Year: one hundred percent (100%) of Exempt Taxes.

The PILOT Payments described in subparagraph (ii) above shall be allocated among the Taxing Authorities set forth on Schedule A attached hereto and made a part hereof in the same proportion as ad valorem taxes would have been allocated but for the Agency's involvement, unless the Taxing Authorities have consented in writing to a specific allocation. For the purposes of apportioning PILOT Payments, each Taxing Authority shall use the tax rate that was in effect for the prior Exemption Year.

(b) With respect to any portion of the Facility occupied by the Company, or which the Company or the Sublessee leases to any other subtenant who uses the Facility for a purpose which the Issuer determines would not be exempt from taxation under the Real Property Tax Law, so long as the Sublease is in effect, the Company shall pay an amount in lieu of the Exempt Taxes (the "PILOT Payments") during each Exemption Year as follows:

(i) From the first through and including the second Exemption Year: fifty percent (50%) of Exempt Taxes; and

(ii) From the third through and including the fifth Exemption Year: seventy-five percent (75%) of Exempt Taxes; and

(iii) After the fifth Exemption Year: one hundred percent (100%) of Exempt Taxes.

(c) Anything herein to the contrary, notwithstanding, this Agreement shall terminate on the date on which the Leaseback Agreement shall terminate and the Agency shall terminate its leasehold interest in the Facility pursuant to the Leaseback Agreement.

(d) Anything herein to the contrary, notwithstanding, upon the failure of the Company in making any payment when due hereunder and upon failure to cure such default within thirty (30) days of receipt of notice as herein provided, the Company shall henceforth pay as PILOT Payments one hundred (100%) percent of the Exempt Taxes together with interest at the rate of nine (9%) percent per annum on any delinquent PILOT Payments together with expenses of collection, including but not limited to, payment of attorneys' fees; provided, however, nothing herein contained shall be deemed to limit any other rights and remedies the Agency may have hereunder or under any other Transaction Document.

(e) The financial assistance contained in this PILOT Agreement is conditioned upon the Company meeting the Employment Obligation (as defined in the Leaseback Agreement). Failure to meet the Employment Obligation may subject the Company to recapture under the Leaseback Agreement.

3. The Company will make PILOT Payments to each Taxing Authority hereunder for each Exemption Year by making the required payment to such Taxing Authority no later than the last day during which such Exempt Taxes could otherwise be made without penalty as if the Agency did not have a leasehold or other interest in the Facility.

4. The PILOT Payments to be made by the Company pursuant to this Agreement are intended to be in lieu of all Exempt Taxes that would have to be paid on the Facility leased to the Company by the Leaseback Agreement if the Agency did not have a leasehold or other interest in the Facility.

5. If by reason of a change in the Constitution or laws of the State of New York, or an interpretation of the Constitution or the laws of the State of New York by the Court of Appeals (or such lower court from which the time to appeal has expired) of the State of New York, or for any other reason, the Company is required to pay any tax which the payments specified herein are intended to be in lieu of, the Company may deduct the aggregate of any such payments made by it from the amount herein agreed to be paid in lieu of such taxes and need only pay the difference. Furthermore, inasmuch as the PILOT Payments herein agreed to be made by the Company are intended to be in lieu of all Exempt Taxes, it is agreed that said payments shall not, as to any Exemption Year, be in an amount greater than would be payable for such year for such Exempt Taxes, in the aggregate, by a private corporation on account of its ownership of the Facility.

6. This Agreement shall be binding upon the successors and assigns of the parties.

7. It is the intent of the parties that the Company will have all the rights and remedies of a taxpayer with respect to any real property or other tax, service charge, special benefit, ad valorem levy, assessment or special assessment or service charge because of which, or in lieu of which, the Company is obligated to make a payment hereunder, as if and to the same extent as if the Agency did not have a leasehold or other interest in the Facility. It is the further intent of the parties that the Company will have all of the rights and remedies of a taxpayer as if and to the same extent as if the Agency did not have a leasehold or other interest in the Facility with respect to any proposed assessment or change in assessment concerning the property, or any portion thereof, whether through an assessor, board of assessment review, court of law, or otherwise and likewise will be entitled to protest before and be heard by such assessor, board of assessment review, court of law or otherwise and will 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 taxes that would have been payable but for the provisions hereof. In the event, however, that a court of competent jurisdiction shall enter an order or judgment determining or declaring that, by reason of the Agency's interest in the Facility, the Company does not have the right to bring a proceeding to review such assessment under the Real Property Tax Law or any other law, then the

Company shall have the right to contest such assessment in the name and as the agent of the Agency, and the Agency agrees to cooperate with the Company in all respects in any such proceeding at the sole cost and expense of the Company. Notwithstanding anything herein to the contrary, for so long as this Agreement is in effect, the Company hereby unconditionally and irrevocably waives its right, if any, to apply for and/or receive the benefit of any other real property tax exemption with respect to the Facility, including, without limitation, any real property tax exemption that may be available under Section 485-b and Section 485-e of the Real Property Tax Law.

8. All amounts payable by the Company hereunder will be paid to the respective Taxing Authority and will be payable in such lawful money of the United States of America as at the time of payment is legal tender for the payment of public and private debts, including a check payable in such money.

9. (a) If any term or provision hereof should be for any reason held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such term or provision will be deemed separate and independent and the remainder hereof will remain in full force and effect and will not be invalidated, impaired or otherwise affected by such holding or adjudication.

(b) This Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

(c) All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when mailed by United States registered or certified mail, postage prepaid, return receipt requested, to the Agency or the Company, as the case may be, addressed as follows:

To the Agency: City of Utica Industrial Development Agency  
One Kennedy Plaza  
Utica, New York 13502  
Attn.: Executive Director

With a Copy To: Bond, Schoeneck & King, PLLC  
501 Main Street  
Utica, New York 13501  
Attn.: Linda E. Romano, Esq.

To the Company: Gold Dome II LLC  
8400 Glen Eagle Drive  
P.O. Box 207  
Manlius, New York 13104  
Attn.: Kurt Wendler

With a Copy To: Costello, Cooney & Fearon, PLLC  
500 Plum Street, Suite 300  
Syracuse, New York 13204  
Attn.: Dennis Hennigan, Esq.

provided, that the Agency or the Company may, by notice given hereunder to the other, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

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

[Signature page follows]



IN WITNESS WHEREOF, the parties have executed this **PILOT Agreement** as of the date first above written.

GOLD DOME II LLC  
By Sphere Holdings, LLC, its sole member

By:   
Kurt Wendler  
Managing Member

CITY OF UTICA INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Joseph H. Hobika, Sr.  
Chairman

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

On the 15 day of ~~November~~<sup>DECEMBER</sup> 2014 before me, the undersigned a notary public in and for said state, personally appeared **Kurt Wendler**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
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SCOTT R. HATZ  
Notary Public, State of New York  
No. 02HA4888687  
Qualified in Onondaga Co.  
Commission Exp. March 16, 2015

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

On the 24<sup>th</sup> day of November 2014 before me, the undersigned a notary public in and for said state, personally appeared **Joseph H. Hobika, Sr.**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
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Notary Public

LAURA S. RUBERTO  
Notary Public, State of New York  
Appointed in Oneida County  
Reg. No. 01RU5031396  
Commission Expires August 1, 2018

SCHEDULE A

COUNTY OF ONEIDA  
Receiver of Taxes  
800 Park Avenue  
Utica, New York 13501

CITY OF UTICA  
Receiver of Taxes  
One Kennedy Plaza  
Utica, New York 13502  
Attn.: City Treasurer

UTICA CITY SCHOOL DISTRICT  
Receiver of Taxes  
106 Memorial Parkway  
Utica, New York 13501

## SCHEDULE B

### EXEMPTION YEARS

<b>Exemption Year (Assessment Roll Year)</b>	<b>County Taxes</b>	<b>City Taxes</b>	<b>School Taxes</b>
Year One (08/01/2015)	01/01/2016 – 12/31/2016	04/01/2016 – 03/31/2017	07/01/2016 – 06/30/2017
Year Two (08/01/2016)	01/01/2017 – 12/31/2017	04/01/2017 – 03/31/2018	07/01/2017 – 06/30/2018
Year Three (08/01/2017)	01/01/2018 – 12/31/2018	04/01/2018 – 03/31/2019	07/01/2018 – 06/30/2019
Year Four (08/01/2018)	01/01/2019 – 12/31/2019	04/01/2019 – 03/31/2020	07/01/2019 – 06/30/2020
Year Five (08/01/2019)	01/01/2020 – 12/31/2020	04/01/2020 – 03/31/2021	07/01/2020 – 06/30/2021
Year Six (08/01/2020)	01/01/2021 – 12/31/2021	04/01/2021 – 03/31/2022	07/01/2021 – 06/30/2022
Year Seven (08/01/2021)	01/01/2022 – 12/31/2022	04/01/2022 – 03/31/2023	07/01/2022 – 06/30/2023
Year Eight (08/01/2022)	01/01/2023 – 12/31/2023	04/01/2023 – 03/31/2024	07/01/2023 – 06/30/2024
Year Nine (08/01/2023)	01/01/2024 – 12/31/2024	04/01/2024 – 03/31/2025	07/01/2024 – 06/30/2025
Year Ten (08/01/2024)	01/01/2025 – 12/31/2025	04/01/2025 – 03/31/2026	07/01/2025 – 06/30/2026
Year Eleven (08/01/2025)	01/01/2026 – 12/31/2026	04/01/2026 – 03/31/2027	07/01/2026 – 06/30/2027
Year Twelve (08/01/2026)	01/01/2027 – 12/31/2027	04/01/2027 – 03/31/2028	07/01/2027 – 06/30/2028
Year Thirteen (08/01/2027)	01/01/2028 – 12/31/2028	04/01/2028 – 03/31/2029	07/01/2028 – 06/30/2029
Year Fourteen (08/01/2028)	01/01/2029 – 12/31/2029	04/01/2029 – 03/31/2030	07/01/2029 – 06/30/2030
Year Fifteen (08/01/2029)	01/01/2030 – 12/31/2030	04/01/2030 – 03/31/2031	07/01/2030 – 06/30/2031
Year Sixteen (08/01/2030)	01/01/2031 – 12/31/2031	04/01/2031 – 03/31/2032	07/01/2031 – 06/30/2032
Year Seventeen (08/01/2031)	01/01/2032 – 12/31/2032	04/01/2032 – 03/31/2033	07/01/2032 – 06/30/2033
Year Eighteen (08/01/2032)	01/01/2033 – 12/31/2033	04/01/2033 – 03/31/2034	07/01/2033 – 06/30/2034
Year Nineteen (08/01/2033)	01/01/2034 – 12/31/2034	04/01/2034 – 03/31/2035	07/01/2034 – 06/30/2035
Year Twenty (08/01/2034)	01/01/2035 – 12/31/2035	04/01/2035 – 03/31/2036	07/01/2035 – 06/30/2036