

DOYLE HARDWARE BUILDING 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  
2017 Real Estate Lease  
(Doyle Hardware Building LLC Facility)

Oneida County, City of Utica, Utica City School District

Tax Account Nos.: 318.044-1-20 and 318.044-1-24.0/2

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

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of October 1, 2017, is by and between **DOYLE HARDWARE BUILDING LLC**, a limited liability company duly organized and validly existing under the laws of the State of New York, having an address of 5112 West Taft Road, Suite M, Liverpool, New York 13088 (the "Company") and **CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY**, an industrial development agency and a public benefit corporation of the State of New York having its principal office 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 renovate and rehabilitate an existing ±83,000 square foot, four-story building (the "Improvements") situated on two parcels of land totaling 1.108± acres in the aggregate, located at 322 – 328 Main Street and 330 – 334 Main Street, City of Utica, Oneida County, New York (the "Land"), and acquire and install equipment in the Improvements (the "Equipment"), all for the adaptive reuse of the Improvements to create 56 market rate residential units and commercial and/or retail space, all for lease to commercial and/or retail and/or residential tenants and to enhance economic development and retain employment in downtown Utica (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the renovation, rehabilitation and equipping of the Facility is referred to as the "Project"); 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 Company will further sublease the Facility to Doyle Building Master Tenant LLC, a New York limited liability company (the "Master Sublessee") for its operation pursuant to a Master Lease dated October 17, 2017 (the "Master Lease") between the Company and the Master Sublessee; and

WHEREAS, the Company and the Sublessee will execute and deliver to the Agency an Estoppel Certificate to Master Lease dated October 17, 2017 (the "Master Lease



Estoppel"), confirming and certifying that the terms of the Master Lease are subject to the terms of the Leaseback Agreement; and

WHEREAS, the Master Sublessee will further sublease portions of the Facility to certain residential, commercial and/or retail tenants to be identified from time to time (each a "Sublessee" and collectively the "Sublessees"); and

WHEREAS, CPC Funding SPE 1 LLC, a New York limited liability company, whose address is c/o The Community Preservation Corporation, 28 East 28th Street, 9th Floor, New York, New York 10016-7943, as beneficiary, and its successors and assigns (the "Bank") intends to finance a portion of the costs of the Facility by way of (a) a loan to the Company in the maximum principal amount of \$788,000.00 to be secured by a Multifamily Project Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated October 17, 2017 (the "Project Loan Mortgage") from the Agency and the Company to the Bank; and (b) a loan to the Company in the maximum principal amount of \$11,212,000.00 to be secured by a Multifamily Construction Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated October 17, 2017 (the "Construction Loan Mortgage") from the Agency and the Company to the Bank; 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, 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, 2018, 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) The Company shall pay to each Taxing Authority as set forth on Schedule A attached hereto and made a part hereof an amount in lieu of the Exempt Taxes (the "PILOT Payments") during each Exemption Year as follows:

Exemption Year 1	No Exempt Taxes
Exemption Years 2 – 8	100% of Exempt Taxes on the assessed value in 2017 (the "Base Assessment")
Exemption Year 9	100% of Exempt Taxes on the Base Assessment plus 20% of Exempt Taxes on increase between Base Assessment and assessed value of the Facility upon completion of Project as determined by City of Utica Assessor (the "Final Assessment")
Exemption Year 10	100% of Exempt Taxes on the Base Assessment plus 40% of Exempt Taxes on increase between Base Assessment and Final Assessment
Exemption Year 11	100% of Exempt Taxes on the Base Assessment plus 60% of Exempt Taxes on increase between Base Assessment and Final Assessment



Exemption Year 12	100% of Exempt Taxes on the Base Assessment plus 80% of Exempt Taxes on increase between Base Assessment and Final Assessment
Exemption Year 13 and thereafter	100% of Exempt Taxes

(b) 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.

(c) 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.

(d) The Bank has agreed to establish a restricted account for the collection of funds from the Company and payment of PILOT Payments to the Taxing Authorities, which shall not be deemed to limit the Company's obligations under this Agreement, and the Company shall remain wholly responsible for the full and faithful compliance hereunder.

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. The Company hereby unconditionally and irrevocably waives its rights, if any, to apply for and/or receive the benefit of, any other real property tax exemption including, without limitation, any real property tax exemptions that may be available under Section 485-b and Section 485-e of the Real Property Tax Law for so long as the PILOT Agreement is in effect.

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 (i) when mailed by United States registered or certified mail, postage prepaid, return receipt requested or (ii) when delivered by a commercial overnight courier that guarantees next day



delivery and provides a receipt, to the Agency, the Company or the Bank, as the case may be, addressed as follows:

If 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 NY 13501  
Attn.: Linda E. Romano, Esq.

If to the Company:

Doyle Hardware Building LLC  
c/o Jeffrey A. Foster  
5112 West Taft Road, Suite M  
Liverpool, New York 13088

c/o Charles F. Breuer  
148 Berwyn Avenue  
Syracuse, New York 13210

With a Copy to:

Timothy M. Lynn, Esq.  
Lynn D'Elia Temes & Stanczyk LLC  
100 Madison Street, Suite 1905  
Syracuse, New York 13202

If to the Bank:

CPC Funding SPE 1 LLC  
c/o The Community Preservation Corporation  
28 East 28th Street, 9th Floor  
New York, New York 10016-7943  
Attention: Director of Portfolio Services  
Loan No.: 70570

With a Copy to:

Mazzotta, Sherwood & Vagianelis, P.C.  
9 Washington Square  
Albany, New York 12205

Attention: John N. Vagianelis, Esq.

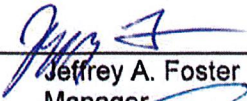
provided, that the Agency, the Bank or the Company may, by notice given hereunder to the other, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

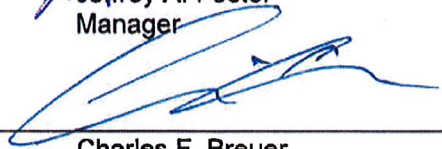
(e) This Agreement shall be governed by and construed in accordance with the laws of the State of New York.



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

DOYLE HARDWARE BUILDING LLC  
A New York limited liability company  
By: DOYLE BUILDING MANAGING MEMBER LLC  
Its: Managing Member

By:   
Jeffrey A. Foster  
Manager

By:   
Charles F. Breuer  
Manager

CITY OF UTICA INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Vincent J. Gilroy, Jr.  
Vice Chairman

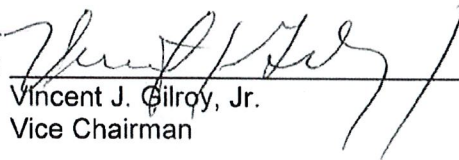
IN WITNESS WHEREOF, the parties have executed this **PILOT Agreement** as of the date first above written.

DOYLE HARDWARE BUILDING LLC  
A New York limited liability company  
By: DOYLE BUILDING MANAGING MEMBER LLC  
Its: Managing Member

By: \_\_\_\_\_  
Jeffrey A. Foster  
Manager

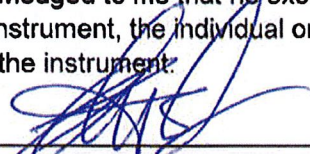
By: \_\_\_\_\_  
Charles F. Breuer  
Manager

CITY OF UTICA INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
\_\_\_\_\_  
Vincent J. Gilroy, Jr.  
Vice Chairman

STATE OF NEW YORK )  
 )  
COUNTY OF *Oneida* ) : ss.:

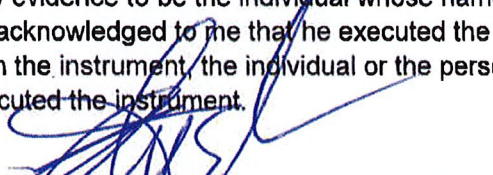
On the 12 day of October 2017 before me, the undersigned a notary public in and for said state, personally appeared **Charles F. Breuer**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged 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.

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

ANTHONY J. D'ELIA  
Notary Public, State of New York  
Onon. Co. No. 02DE505720  
My Comm. Exp. March 4, 2018

STATE OF NEW YORK )  
 )  
COUNTY OF *Oneida* ) : ss.:

On the 12 day of October 2017 before me, the undersigned a notary public in and for said state, personally appeared **Jeffrey A. Foster**, 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.

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

ANTHONY J. D'ELIA  
Notary Public, State of New York  
Onon. Co. No. 02DE505720  
My Comm. Exp. March 4, 2018

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

On the \_\_\_ day of October 2017 before me, the undersigned a notary public in and for said state, personally appeared **Vincent J. Gilroy, Jr.**, 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.

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



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

On the \_\_\_\_ day of October 2017 before me, the undersigned a notary public in and for said state, personally appeared **Charles F. Breuer**, 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.

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

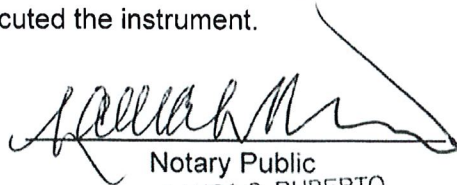
STATE OF NEW YORK            )  
  : ss.:  
COUNTY OF                    )

On the \_\_\_\_ day of October 2017 before me, the undersigned a notary public in and for said state, personally appeared **Jeffrey A. Foster**, 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.

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

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

On the 13<sup>th</sup> day of October 2017 before me, the undersigned a notary public in and for said state, personally appeared **Vincent J. Gilroy, Jr.**, 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.

  
\_\_\_\_\_  
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  
City Hall  
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**

<b>Exemption Year</b>	<b>County Tax Year</b>	<b>City Tax Year</b>	<b>School Tax Year</b>
1	2019	2019-20	2019-20
2	2020	2020-21	2020-21
3	2021	2021-22	2021-22
4	2022	2022-23	2022-23
5	2023	2023-24	2023-24
6	2024	2024-25	2024-25
7	2025	2025-26	2025-26
8	2026	2026-27	2026-27
9	2027	2027-28	2027-28
10	2028	2028-29	2028-29
11	2029	2029-30	2029-30
12	2030	2030-31	2030-31