

**CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**MAY & MAY ASSOCIATES, LLC**

**PAYMENT IN LIEU OF TAX AGREEMENT**

**DATED AS OF NOVEMBER 1, 2003**

**Affected Tax Jurisdictions:**  
**Cayuga County**  
**Town of Aurelius**  
**Union Springs School District**

## PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT (the "Agreement"), dated as of the 1<sup>st</sup> day of November, 2003, by and between **CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York, with offices located at 160 Genesee Street, Auburn, New York 13021 (the "Agency") and **MAY & MAY ASSOCIATES, LLC**, a limited liability company duly organized and validly existing under the laws of the State of New York, with offices at 5 Green Links Turn, Auburn, New York 13021 (the "Company").

### WITNESSETH:

WHEREAS, the Agency was created by Chapter 688 of the Laws of 1970 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has submitted an application (the "Application") requesting the Agency's assistance with respect to a certain Project (the "Project") consisting of (1) the acquisition of a leasehold interest in a parcel of land commonly known Two Eagle Drive in the Town of Aurelius, Cayuga County, New York (said parcel being identified as tax map number 114-2-27.1) (the "Land"); (2) the construction and equipping on the Land of an approximately 100,000 square-foot building to be used as an office, training and warehouse facility (the "Improvements"); (3) the acquisition of and installation in and around the Improvements of certain machinery and related equipment and items of personal property, including computer hardware and software (the "Equipment" and, collectively with the Land and the Improvements, the "Facility"); and (4) the sublease of the Facility to **JOHNSTON PAPER COMPANY, INC.**; and

WHEREAS, in order to induce the Company to acquire, renovate, construct and equip the Facility, the Agency is willing to take a leasehold interest in the Land, Improvements, Equipment and personal property constituting the Facility and lease said Land, Improvements, Equipment and personal property back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement to be dated on or about the date hereof (the "Lease Agreement"); and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned that it holds title to or a leasehold interest in, other than special ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes by the Company to the Agency for

the benefit of Cayuga County, the Town of Aurelius and the Union Springs School District (collectively, the "Affected Tax Jurisdictions").

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

Section I - Payment in lieu of Ad Valorem Taxes:

1.1 Agreement to Make Payments.

(a) Availability of the QEZE Credit for Real Property Taxes. The parties agree and acknowledge that, subject to the terms of Section 1.1(b) below, as of the date hereof the Company agrees to pay to the Agency (for the benefit of the Affected Tax Jurisdictions), as payment in lieu of taxes, on January 1 of each year for County and Town taxes and on or before September 1 of each year for School taxes, an amount equal to the Total PILOT Payment (as calculated on Schedule A attached hereto, and in accordance with the other provisions set forth in this Agreement). The first such Total PILOT Payment shall be due on September 1, 2004 for School tax year 2004-2005 and on January 1, 2005 for County and Town tax year 2005 and on each September 1 and January 1, respectively, thereafter for the term of this Agreement. Upon the expiration of this Agreement, the Company shall pay the Town, County and School tax bills in the amounts and on the dates when due as if the Agency were not in title.

(b) Repeal of the QEZE Credit for Real Property Taxes (the "Credit"). In the event the State, at any time during the term of this Agreement, repeals the Credit and as a result of such repeal the Company is no longer entitled to claim the Credit as it is available under New York Tax Law as of the date of this Agreement, the Company agrees to make periodic payments in lieu of property taxes on September 1 for the School taxes and January 1 for the County and Town taxes, in the year that such repeal is effective and on each subsequent September 1 and January 1, respectively, during the term of this Agreement in an amount equal to the Total PILOT Payment (as calculated on Schedule B attached hereto).

1.2 Allocation. The Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation.

1.3 Tax Rates. For purposes of determining the allocation of the Total PILOT Payment among the Affected Tax Jurisdictions, the Agency shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For county, town and special district purposes, the tax rates used to determine the allocation of the Total PILOT Payment shall be the tax rates relating to the calendar year which includes the PILOT payment due date. For school district purposes, the tax rates used to determine the PILOT payment shall be the rate relating to the school year which includes the PILOT payment due date.

1.4 Valuation of Future Additions to the Facility: If there shall be a future addition to the Facility constructed or added in any manner after the date of this Agreement, the Company shall notify the Agency of such future addition ("Future Addition"), unless such change is due to the activities of tenants in the normal course of business, result in no substantial change to the structure of the Facility, and are confined to the interior of the Facility. The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the Agency may thereafter request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the Total PILOT Payment. The Agency shall notify the Company of any proposed increase in the Total PILOT Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Additions made by the Agency, then and in that event that valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the increased PILOT payment until a different Total PILOT Payment shall be established. If a lesser Total Annual Payment is determined in any proceeding or by subsequent agreement of the parties, the Total PILOT Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the next succeeding PILOT payment(s).

1.5 Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the 2004/2005 School tax year through the 2023/2024 School tax year and (ii) the 2005 County and Town tax years through the 2024 County and Town tax years. This PILOT Agreement shall expire on December 31, 2024; provided, however, the Company shall pay the 2024/2025 School tax bill and the 2025 County and Town tax bills on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b of the New York Real Property Tax Law ("RPTL"). It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

## Section II - Special District Charges, Special Assessments and other charges.

2.1 Special district charges, special assessments, and special ad valorem levies (specifically including but not limited to fire district charges), and pure water charges and sewer charges are to be paid in full in accordance with normal billing practices.

### Section III - Transfer of Facility.

3.1 In the event that the Facility is transferred from the Agency to the Company (the lease/leaseback agreements are terminated), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section I herein, or this Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

### Section IV - Assessment Challenges.

4.1 The Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Facility, with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this Agreement, as if and to the same extent as if the Company were the owner of the Facility.

### Section V - Changes in Law.

5.1 To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

### Section VI - Events of Default.

6.1 The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section I within thirty (30) days of the Payment Date (the "Delinquency Date"); (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; or (iii) the occurrence and continuance of any events of default under the Lease Agreement after any applicable cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further

notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default.

6.2 If payments pursuant to Section I herein are not made by the Delinquency Dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows. With respect to payments to be made pursuant to Section I herein, if said payment is not received by the Delinquency Date defined in Section 6.1 herein, Company shall pay, in addition to said payment, a late charge equal to six percent (6%) of the amount due plus interest on said payment equal to one percent (1%) per month or fraction thereof until said amount is paid in full. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

#### Section VII - Assignment.

7. No portion of any interest in this Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency, which shall not be unreasonably withheld or delayed.

#### Section VIII - Miscellaneous.

8.1 This Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

8.2 All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Agency: Cayuga County Industrial Development Agency  
P.O. Box 190  
160 Genesee Street  
Auburn, New York 13021

With a Copy to: Raymond P. Sant, Esq.  
13147 South Street  
Cato, New York 13033

-and to-

Riccardo T. Galbato, Esq.,  
Karpinski, Stapleton, Galbato & Tehan, P.C.  
110 Genesee Street, Suite 200  
Auburn, New York 13021

And To: Harris Beach LLP  
99 Garnsey Road  
Pittsford, New York 14534  
Attn.: Shawn M. Griffin, Esq.

To the Company: May & May Associates, LLC  
5 Green Links Turn  
Auburn, New York 13021  
Attn: Thomas Lewis

With a Copy to: Johnston Paper Company, Inc.  
21 Allen Street  
Auburn, New York 13021  
Attn: Mr. Thomas Lewis

With a Copy to: Hogan & Rossi  
1441 Route 22, Suite 204B  
Brewster, New York 10509  
Attn: Donald M. Rossi, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

8.3 This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Cayuga County, New York.

8.4 Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. Neither member of the Agency nor any person executing this Agreement on its behalf shall be liable personally under this Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CAYUGA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: Joseph T. Michaud  
Name: Joseph T. Michaud  
Title: Chairman

MAY & MAY ASSOCIATES, LLC

By: Michael D. May  
Name:  
Title:



## **SCHEDULE A**

Total PILOT Payment means the then assessed value of the Facility, multiplied by the respective tax rate for the Affected Tax Jurisdiction (after application of any applicable equalization rate) multiplied by the applicable percentage determined from the figures below:

<u>School Tax Year</u>	<u>County/Town Tax Year</u>	<u>Percentage of Empire Zone Credit on Property Taxes</u>	<u>Percentage of Property Taxes Exempted by Agency PILOT</u>
2004/2005	2005	100	0
2005/2006	2006	100	0
2006/2007	2007	100	0
2007/2008	2008	100	0
2008/2009	2009	100	0
2009/2010	2010	100	0
2010/2011	2011	100	0
2011/2012	2012	100	0
2012/2013	2013	100	0
2013/2014	2014	100	0
2014/2015	2015	80	0
2015/2016	2016	60	0
2016/2017	2017	40	0
2017/2018	2018	20	0
2018/2019	2019	0	20
2019/2020	2020	0	20
2020/2021	2021	0	20
2021/2022	2022	0	30
2022/2023	2023	0	40
2023/2024	2024	0	50

## **SCHEDULE B**

Total PILOT Payment means the then assessed value of the Facility, multiplied by the respective tax rate for the Affected Tax Jurisdiction (after application of any applicable equalization rate) multiplied by the applicable percentage below:

<u>School Tax Year</u>	<u>County/Town Tax Year</u>	<u>Percentage</u>
2004/2005	2005	0
2005/2006	2006	10
2006/2007	2007	20
2007/2008	2008	30
2008/2009	2009	40
2009/2010	2010	50
2010/2011	2011	60
2011/2012	2012	70
2012/2013	2013	80
2013/2014	2014	90