

## SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Settlement Agreement") is entered into by and among 346 WASHINGTON AVE, LLC, having an address at 325 Albany Avenue, Kingston, New York 12401, the CITY OF KINGSTON, having an address at City Hall, 420 Broadway, Kingston, New York 12401, the KINGSTON CITY SCHOOL DISTRICT, having an address at 61 Crown Street, Kingston, New York 12401, and the COUNTY OF ULSTER, having an address at 244 Fair Street, PO Box 1800, Kingston, New York 12402 (collectively the "Parties" and individually "Party").

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 ("the State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any buildings or other improvement, and all real and personal properties, including but not limited to, machinery and equipment deemed necessary in connection therewith;

WHEREAS, the Ulster County Industrial Development Agency, a public benefit corporation, created pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 787 of the Laws of the State of New York; and is empowered under the act to undertake the project in order to advance job opportunities, health, general prosperity and economic welfare of the people of the State;

WHEREAS, 346 Washington Avenue, LLC ("Washington Ave.") is the owner of real property located at 346 Washington Avenue, Kingston, New York (the "Property");

WHEREAS, on or about February 7, 2007, a payment in lieu of tax agreement (the "PILOT Agreement") was entered into between the Ulster County Industrial Development Agency and Washington Ave. pertaining to the Property;

WHEREAS, the PILOT Agreement provides that certain payments in lieu of taxes ("PILOT Payments") must be made for any portion of the Property that is an additional improvement beyond the then current existing property and structures (the "Non- Exempt Portion") and that the Assessor for the City of Kingston ("Assessor") is responsible for determining the amount of the PILOT Payments for any Non-Exempt Portion in accordance with the PILOT Agreement.

WHEREAS, between 2008 and 2013, the Assessor for the City of Kingston applied a full exemption on the Property for purposes of determining the PILOT Payments and included the Non-Exempt Portion;

WHEREAS, the Parties have a dispute regarding the payments owed and the demands of the City of Kingston ("City"), the County of Ulster ("County"), and the Kingston City School District ("School District") for retroactive PILOT Payments;

WHEREAS, the Parties wish to settle their dispute to avoid the uncertainty, expense and burden of litigation.

NOW, THEREFORE, IT IS AGREED BY THE PARTIES FOR THE GOOD AND SUFFICIENT CONSIDERATION SET FORTH BELOW THAT:

1. Consideration

A. Washington Ave. will pay to the City on behalf of all Taxing Entities (as defined in the PILOT Agreement) the sum of One hundred thirty thousand and 00/100 dollars (\$130,000.00) in full satisfaction of any and all unpaid PILOT Payments due under the PILOT Agreement for general tax years 2008 through 2013 and school tax years 2008-2009 through 2012-2013. The payment described above will be sent to the Comptroller of the City within twenty (20) days after the execution and delivery to counsel for Washington Ave of the following documents: (i) four fully executed and acknowledged copies of this Settlement Agreement by all Parties.

B. The City shall process the payment described in paragraph I.A. and the City shall pay to the School District the sum of \$ 72,991.87 and shall pay to the County \$12,507.07 as its applicable share (if any) as required by the PILOT Agreement and Washington Ave shall not be responsible for such payment allocation and distribution or be held accountable with respect thereto.

2. Release of Claims

A. The City knowingly and voluntarily releases and forever discharges Washington Ave. and their respective members, affiliates, successors, and assigns ("Releasee") of and from all claims, actions, causes of action and demands whatsoever in law or equity, including, but not limited to, claims or demands for general, special or punitive damages which the City, its agents, servants, employees, elected officials, attorneys, affiliates, successors, and assigns now have, ever have had, or may in the future have against the Releasee, in relation to any PILOT Payments due under the PILOT Agreement for general tax years 2008 through 2013.

B. The School District knowingly and voluntarily releases and forever discharges Washington Ave. and their respective members, affiliates, successors, and assigns ("Releasee") of and from all claims, actions, causes of action and demands whatsoever in law or equity, including, but not limited to, claims or demands for general, special or punitive damages which the School District, its agents, servants, employees, elected officials, attorneys, affiliates, successors, and assigns now have, ever have had, or may in the future have against the Releasee, in relation to any PILOT Payments due under the PILOT Agreement for school tax years 2008-2009 through 2012-2013.

C. The County knowingly and voluntarily releases and forever discharges Washington Ave. and their respective members, affiliates, successors, and assigns ("Releasee") of and from all claims, actions, causes of action and demands whatsoever in law or equity, including, but not limited to, claims or demands for general, special or punitive damages which the County, its agents, servants, employees, elected officials, attorneys, affiliates, successors, and assigns now have,

ever have had, or may in the future have against the Releasee, in relation to any PILOT Payments due under the PILOT Agreement for general tax years 2008 through 2013.

D. 346 Washington Avenue knowingly and voluntarily releases and forever discharges The City of Kingston, the School District and the County and their respective members, affiliates, successors and assigns (“Releasee”) of and from all claims, actions, causes of action and demands whatsoever in law or equity, including, but not limited to, claims or demands for general, special or punitive damages which 346 Washington, its agents, servants, employees, elected officials, attorneys, affiliates, successors, and assigns now have, ever have had, or may in the future have against the Releasee, in relation to any PILOT payments due under the PILOT Agreement for tax years 2008 -2013.

E.. The foregoing releases in paragraphs 2.A., 2.B., 2.C. and 2.D. shall not be deemed to apply to any violation of any of the terms of this Settlement Agreement.

3. No Admission

The Parties acknowledge that the consideration described above is made to compromise a disputed claim and is not to be construed as an admission of any liability on the part of any Party, or the validity of any Party's claim or defense to a claim. Neither this Settlement Agreement, nor any actions taken hereto and thereto, shall constitute evidence admissible against the Parties in any action or proceeding other than one to enforce this Settlement Agreement.

4. Contract Terms To Be Exclusive

This Settlement Agreement, and all exhibits, constitute the entire agreement among the Parties as to the subject matter contained herein.

5. Governing Law

This Settlement Agreement shall be construed in accordance with the laws of the State of New York.

6. Severability

In the event that any portion of this Settlement Agreement is found to be unenforceable for any reason whatsoever, the unenforceable provision shall be considered to be severable, and the remainder of this Settlement Agreement shall continue in full force and effect except should such severed unenforceable provision materially affect a Party's right hereunder which is an essential element of and material to and integral to the agreements contained herein, such provision shall not be severed.

7. Modification

The terms of this Settlement Agreement may be altered or amended, in whole or in part, only upon the written consent of the Parties. No oral agreement may modify any term of this Settlement

Agreement.

8. Waiver

The waiver of any terms of this Settlement Agreement shall not constitute a waiver of any other terms, whether or not similar, nor shall any waiver be a continuing waiver. A waiver shall not be binding unless executed in writing by the Party making the waiver. Any Party may waive any provision of this Settlement Agreement intended for its benefit, but such waiver shall in no way excuse the other Party from the performance of any of its other obligations under this Settlement Agreement.

9. Signature Pages

The Parties may execute multiple counterparts of this Settlement Agreement and each is intended to be considered as an original. The Parties may substitute telecopy signature pages for original signatures and may transmit such signature pages via facsimile or electronic mail.

10. Costs and Expenses

The Parties agree to bear their own costs, including, but not limited to, attorney's fees, filing fees, and related expenses, in connection with this dispute and the performance under this Settlement Agreement. No Party shall make a claim against any other Party seeking reimbursement for such costs.

11. Further Assurances

The Parties will cooperate in signing any other documents necessary to effectuate the terms of this Settlement Agreement.

This Settlement Agreement may be used as evidence in any subsequent proceeding alleging a breach of this Settlement Agreement.

Dated: \_\_\_\_\_

The City of Kingston

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

Steven T. Noble, Mayor

Dated: \_\_\_\_\_

Kingston City School District

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

Dated: \_\_\_\_\_

County of Ulster

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

Dated: \_\_\_\_\_

346 Washington Avenue, LLC

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

The foregoing is consented and agreed to by the Ulster County Industrial Development Agency, which shall not take any action in contravention thereof:

Dated: \_\_\_\_\_

Ulster County Industrial Development Agency

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

