

# **Exhibit B**

Draft No. 1  
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Transcript Document No. 4

*LT Group, LLC*  
~~NEW HARTFORD OFFICE GROUP, LLC~~

and

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

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PAYMENT-IN-LIEU-OF-TAX AGREEMENT

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Oneida County Industrial Development Agency  
2008 Real Estate Lease  
(New Hartford Office Group, LLC Facility)

Oneida County, Town of New Hartford, New Hartford Central School District

Tax Account Nos.: 328.000-3-7

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

THIS AGREEMENT, dated as of May 1, 2008, is by and between **NEW HARTFORD OFFICE GROUP, LLC**, a limited liability company duly organized and validly existing under the laws of the State of New York, having an address of 6007 Fair Lakes Road, East Syracuse, New York 13057 (the "Company") and **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, an industrial development agency and a public benefit corporation of the State of New York having its principal office at 153 Brooks Road, Rome, New York 13441-4105 (the "Agency").

### WITNESSETH:

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 372 of the Laws of 1970 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 construct a 80 – 100-room hotel and public roadways and utility infrastructure to service the same (collectively, the "Improvements") on a certain 4.0± acre parcel of land situated on Woods Road in the Town of New Hartford, Oneida County, New York (the "Land"), and acquire and install in the Improvements certain machinery and equipment (the "Equipment") (the Land, the Improvements and the Equipment being collectively referred to as the "Facility"), all to be used by the Company in connection with providing quality hotel facilities to service the New Hartford Office Park and surrounding area; and

WHEREAS, in order to induce the Company to develop the Facility, the Agency is willing to take a leasehold interest in the land and the personal property and improvements constituting the Facility and lease said land, improvements and personal property the Company pursuant to the terms and conditions of a Leaseback Agreement dated on or about the date hereof (the "Leaseback Agreement"); 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 will be 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 March 1, 2009, the taxable status date, (the "Exempt Taxes"), because the Agency has a leasehold or other interest in the Facility and the Facility is, or will be, used for a purpose within the meaning of the applicable Constitutional and statutory provisions,

including the Enabling Act, provided, however, such exemption will 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 no Exempt Taxes to pay under the provisions of the Leaseback Agreement from March 1, 2009 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 and made a part hereof, and each year shall be defined 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 that would otherwise be paid by the Company to the Town of New Hartford, Oneida County, New Hartford Central School District and appropriate special districts (hereinafter each a "Taxing Authority" and collectively the "Taxing Authorities"); and

WHEREAS, in accordance with and pursuant to the authority set forth in Section 858 (15) of the General Municipal Law, the Agency and the Taxing Authorities have entered into an Agreement Allocating PILOT Payments dated \_\_\_\_\_, 2008 (the "Agreement Allocating PILOT Payments") that dictates the allocation of the PILOT Payments received by the Agency (and the interest income generated thereby, if any) among the Taxing Authorities; 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 at the addresses set forth on Schedule A attached hereto:

(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 for which the Facility is not exempt, no later than the last day during which such payments may be made without penalty.

2. The Company shall pay to the Agency an amount in lieu of the Exempt Taxes (the "PILOT Payments") equal to one hundred percent (100%) of the Exempt Taxes during each Exemption Year. The Agency shall promptly deposit the PILOT Payments in accordance with the instructions set forth in the Agreement Allocating PILOT Payments.

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.

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.

3. The Company will make PILOT Payments hereunder for each Exemption Year by making the required payment to the Agency no later than the last day during which such Exempt Taxes could otherwise be made without penalty as if 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 Company were the owner of 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 Company were the owner of 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 ownership of 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 Agency 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:

If to the Agency:

Oneida County Industrial Development Agency  
153 Brooks Road  
Rome, New York 13441-4105  
Attn.: Chairman

With a Copy to:

Bond, Schoeneck & King, PLLC  
501 Main Street  
Utica NY 13501  
Attn.: Linda E. Romano, Esq.

If to the Company:

New Hartford Office Group, LLC  
6007 Fair Lakes Road  
East Syracuse, New York 13057  
Attn.: Lawrence R. Adler, Member

With a Copy to:

Hiscock and Barclay  
One Park Place  
300 South State Street  
Syracuse NY 13202  
Attn.: Gerald Stack, 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.

10. Notwithstanding anything to the contrary herein contained, the Company shall not assign its rights or delegate its duties or obligations under this Agreement without the prior written consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed. The Agency shall have the right to assign this Agreement to any person or entity. The Agency shall notify the Company of any assignment and send a copy of the assignment agreement to the Company.

11. This Agreement shall remain in effect and the Company shall make PILOT Payments to the Agency in accordance with the provisions hereof until such time as the Facility is placed on the tax roll as a non-exempt property and Exempt Taxes first become due and payable.

12. Notwithstanding anything to the contrary contained herein, this Agreement shall survive until the performance of the obligations of the Company to make payments hereunder have been paid or otherwise satisfied.

[signature page follows]

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

NEW HARTFORD OFFICE GROUP, LLC

By:

\_\_\_\_\_  
Lawrence R. Adler  
Member

ONEIDA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By:

\_\_\_\_\_  
David C. Grow  
Chairman



SCHEDULE A

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

TOWN OF NEW HARTFORD  
Hilarie C. Elefante, Receiver of Taxes  
Butler Hall  
48 Genesee Street  
New Hartford, New York 13413

NEW HARTFORD CENTRAL SCHOOL DISTRICT  
Hilarie C. Elefante, Receiver of Taxes  
Butler Hall  
48 Genesee Street  
New Hartford, New York 13413

**SCHEDULE B**

**EXEMPTION YEARS**

<b>Exemption Year</b>	<b>Town and County Taxes</b>	<b>School Taxes</b>
Year One	January 1, 2010 – December 31, 2010	July 1, 2009 – June 30, 2010
Year Two	January 1, 2011 – December 31, 2011	July 1, 2010 – June 30, 2011
Year Three	January 1, 2012 – December 31, 2012	July 1, 2011 – June 30, 2012
Year Four	January 1, 2013 – December 31, 2013	July 1, 2012 – June 30, 2013
Year Five	January 1, 2014 – December 31, 2014	July 1, 2013 – June 30, 2014
Year Six	January 1, 2015 – December 31, 2015	July 1, 2014 – June 30, 2015
Year Seven	January 1, 2016 – December 31, 2016	July 1, 2015 – June 30, 2016
Year Eight	January 1, 2017 – December 31, 2017	July 1, 2016 – June 30, 2017
Year Nine	January 1, 2018 – December 31, 2018	July 1, 2017 – June 30, 2018
Year Ten	January 1, 2019 – December 31, 2019	July 1, 2018 – June 30, 2019
Year Eleven	January 1, 2020 – December 31, 2020	July 1, 2019 – June 30, 2020
Year Twelve	January 1, 2021 – December 31, 2021	July 1, 2020 – June 30, 2021
Year Thirteen	January 1, 2022 – December 31, 2022	July 1, 2021 – June 30, 2022
Year Fourteen	January 1, 2023 – December 31, 2023	July 1, 2022 – June 30, 2023
Year Fifteen	January 1, 2024 – December 31, 2024	July 1, 2023 – June 30, 2024