

AGENT AGREEMENT

THIS AGENT AGREEMENT, made as of the 14th day of March 2013 (the "Agent Agreement"), is by and between the **CITY OF HORNELL INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, having its offices at 40 Main Street, Hornell, New York 14843 (the "Agency") and **IRON HORSE DEPOT, LLC**, a limited liability company duly organized and validly existing under the laws of the State of New York, with offices at 111 Loder Street, Hornell, New York 14843 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 670 of the Laws of 1974 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 requested the Agency's assistance with a certain project (the "Project") consisting of: (i) the retention by the Agency of title to or a leasehold interest in an approximately 1.47-acre parcel of land located at 111 Loder Street, Hornell, New York (the "Land") and the existing building located thereon (the "Existing Improvements"); (ii) the leasing of the Land and Existing Improvements by the Agency to the Company; (iii) the renovation, reconstruction, and upgrading of the Existing Improvements by the Company as agent to accommodate office space for the Company's businesses including Onics Direct and Universal Health Network, and related office suites for medical professionals (collectively, the "Improvements"); and (iv) the acquisition in and around the Existing Improvements and the Improvements of certain items of equipment, machinery and other personal property (the "Equipment" and, together with the Land, the Existing Improvements and the Improvements, the "Facility"); and

WHEREAS, by resolution adopted on March 14, 2013 (the "Resolution"), the Agency authorized the Company to act as its agent for the purposes of undertaking the Project subject to the Company entering into this Agent Agreement.

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:

1. Scope of Agency. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Resolution to acts reasonably related to the acquisition, construction, reconstruction and equipping of the Facility. The right of the Company to act as agent of the Agency shall expire on **December 31, 2013**, unless extended as contemplated by the Resolution. The aggregate amount of work performed as Agent for the Agency shall not exceed the amounts described in the Application of the Company in this matter. All contracts entered into as agent for the Agency shall include the following language:

"This contract is being entered into by Iron Horse Depot, LLC (the "Agent"), as agent for and on behalf of the City of Hornell Industrial Development Agency (the "Agency"), in connection with a certain project of the Agency for the Agent consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in certain premises located at 111 Loder Street, Hornell, New York (the "Premises"). The machinery, equipment and building materials to be incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York if the acquisition thereof is effected in accordance with the terms and conditions set forth in the attached sales tax exemption letter of the Agency; and the Agent hereby represents that this contract is in compliance with the terms of the sales tax exemption letter. This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

2. Representations and Covenants of the Company. The Company makes the following representations and covenants in order to induce the Agency to proceed with the Project:

(a) The Company is a limited liability company duly formed and validly existing under the laws of the State of New York (the "State"), has the authority to enter into this Agreement and has duly authorized the execution and delivery of this Agreement.

(b) Neither the execution and delivery of this Agent Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agent Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The Facility and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (c).

(d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Agent Agreement.

(e) The Company covenants that its facilities will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on its facilities except in compliance with all material applicable laws, (ii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto its facilities or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on its facilities, (iv) that no underground storage tanks will be located on its facilities, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company, upon receiving any information or notice contrary to the representations contained in this Section, shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents (except the Company), representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to its facilities, the Company agrees to pay the expenses of same to the Agency upon demand, and agrees that upon failure to do so, its obligation for such expenses shall be deemed to be additional rent.

3. Hold Harmless Provision. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, directors, officers, members employees, agents (except the Company), representatives, successors and assigns harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project or arising by reason of or in connection therewith or breach by the Company of this Agent Agreement or (ii) liability arising from or expense incurred by the Agency's financing, rehabilitating, constructing, renovation, equipping, owning and leasing of the Facility, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, officers, agents (except the Company) or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified.

4. Insurance Required. Effective as of the date hereof and until the Agency consents in writing to a termination, the Company shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) (i) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company or (ii) as an alternative to the above requirements (including the requirement of periodic appraisal), the Company may insure the Facility under a blanket insurance policy or policies covering not only the Facility but other properties as well.

(b) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Facility.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than **\$1,000,000** per accident or occurrence on account of personal injury, including death resulting therefrom, and **\$1,000,000** per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workers' compensation law; and a blanket excess liability policy in the amount not less than **\$3,000,000**, protecting the Company against any loss or liability or damage for personal injury or property damage.

5. Additional Provisions Respecting Insurance.

(a) All insurance required by Section 4(a) above shall name the Agency as a named insured and all other insurance required under Section 4 above shall name the Agency as an additional insured. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Company and the Agency as their respective interest may appear, and (ii) at least thirty (30) days prior written notice of the cancellation thereof to the Company and the Agency.

(b) All such policies of insurance, or a certificate or certificates of the insurers that such insurance is in force and effect, shall be deposited with the Agency on the date hereof. Prior to expiration of any such policy, the Company shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agent Agreement.

6. This Agent 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.

7. 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: City of Hornell Industrial Development Agency
40 Main Street
Hornell, New York 14843
Attn: Executive Director

With Copy To Harris Beach PLLC
(Transaction 99 Garnsey Road
Counsel): Pittsford, New York 14534
Attn: Russell E. Gaenzle, Esq.

To the Company: Iron Horse Depot, LLC
111 Loder Street
Hornell, New York 14843
Attn: Peter D. Wall

With a copy to: Scolaro Shulman Cohen Fetter & Burstein PC
507 Plum Street
Syracuse, New York 13204
Attn: John Appler, 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. This Agent Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State 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 or having jurisdiction over the City of Hornell, New York.

9. The parties are contemplating that, after any applicable public hearings, the Agency will negotiate and enter into a lease agreement ("Lease Agreement") and payment-in-lieu-of-tax agreement ("PILOT Agreement") with the Company. The Company agrees not to take title to any real property as agent for the Agency until the Lease Agreement and PILOT Agreement have been executed and delivered. At any time prior to the execution of the Lease Agreement and PILOT Agreement, the Agency can transfer title to the Company to all assets acquired by the Company as agent for the Agency. Additionally, at any time prior to execution of the Lease Agreement and PILOT Agreement, the Company can demand that the Agency transfer title to the Company with respect to all assets acquired by the Company as agent for the Agency, provided all amounts owed the Agency have been paid current.

10. By executing this Agent Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Agency for (i) legal services, including but not limited to those provided by the Agency's transaction counsel and (ii) other consultants retained by the Agency in connection with the Project; with all such charges to be paid by the Company at the closing or, if the closing does not occur, within ten (10) business days of receipt of the Agency's invoices therefore. The Company is entitled to receive a written estimate of fees and costs of the Agency's transaction counsel.

11. The Company further covenants and agrees that the Company is liable for payment to the Agency of all charges referred to above, as well as all other actual costs and expenses incurred by the Agency in undertaking the Project notwithstanding the occurrence of any of (i) the applicant's withdrawal, abandonment, cancellation or failure to pursue the Project; (ii) the inability of the Agency or the Company to procure the services of one or more financial institutions to provide financing for the Project; or (iii) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.

12. The Company agrees that the aggregate sales and use tax exemption incurred by the Company as agent of the Agency under this Agent Agreement shall be limited to \$100,000 until such time as a public hearing has been held and a subsequent resolution is adopted by the Agency.

[Signature Page Follows]

[Remainder of Page Intentionally Left Blank]

[Signature Page to Agent Agreement]

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

**CITY OF HORNELL INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
James W. Griffin, Executive Director

IRON HORSE DEPOT, LLC

By: _____
Peter D. Wall, Member