

CITY OF HORNELL INDUSTRIAL DEVELOPMENT AGENCY

AND

SPECIALTY RETAILERS, INC.

PAYMENT IN LIEU OF TAX AGREEMENT

Tax Map Number:
15.71-03-050.000

Dated as of April 1, 2013

Affected Tax Jurisdictions:
Steuben County
City of Hornell
Hornell City School District

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT (the "Agreement"), dated as of April 1, 2013, is by and between the **CITY OF HORNELL INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 40 Main Street, Hornell, New York 14843 (the "Agency") and **SPECIALTY RETAILERS, INC.**, a corporation duly organized and validly existing under the laws of the State of Texas and duly authorized to conduct business under the laws of the State of New York, with offices at 10201 S. Main Street, Houston, Texas 77025 (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 (for itself, an affiliate or an entity to be formed) has submitted an application (the "Application") to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of (i) the acquisition of a leasehold or other interest in a certain parcel of land located at 33 Broadway Mall, Hornell, New York (the "Land") and the existing approximately 25,748 square-foot retail building located thereon (the "Existing Improvements"); (ii) the renovation, reconstruction, and upgrading of the Existing Improvements to accommodate retail space for the current tenant Peebles Department Store (the "Improvements"); and (iii) 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, in order to induce the Company to acquire, renovate, reconstruct and equip the Facility, the Agency is willing to take title to or a leasehold interest in the Land, the Existing Improvements, the Improvements, and the Equipment constituting the Facility and sub-lease said Land, the Existing Improvements, the Improvements, and Equipment constituting the Facility back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement dated the date hereof (the "Leaseback 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 by it or under its jurisdiction, control or supervision, 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 Steuben County (the "County"), the City of Hornell (the "City"), and the Hornell

City School District (the "School District" and, collectively with the County and the City, 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 1 - Payment in Lieu of Ad Valorem Taxes:

Section 1.1 A. Subject to the completion and filing by the taxable status date (**January 1, 2014**) (the "Taxable Status Date") of New York State Form RP-412-a "Application For Real Property Tax Exemption" (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law and Section 874 of the Act and the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review, the Facility shall be exempt from Real Estate Taxes commencing with the **2015** County tax year and the **2014-2015** City and School tax years. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the City, County and School. The Company shall provide to the Agency with the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Leaseback Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes except to the extent that such denial results solely from the failure of the Agency to file the Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

B. Payee. For the term of this Agreement, the Company agrees to pay on January 1 of each year to the Agency at 40 Main Street, Hornell, New York 14843, or at such other address as shall be designated from time to time by the Agency, on behalf of the Affected Tax Jurisdictions and as a payment in lieu of taxes, commencing on or before January 1, 2014, an amount equal to the Total PILOT Payment. The Total PILOT Payment shall be calculated as described on Schedule A attached hereto and made part hereof. The Company shall make all such payments regardless of whether the Agency, the Affected Tax Jurisdictions or any other party invoices therefor.

The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are not on the tax rolls.

1.2 Allocation. The Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder (if any) 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, City 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"). 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 2014-2015 City and School District tax years through the 2033-2034 City and School District tax years, and (ii) the 2015 County tax year through the 2034 County tax year. This PILOT Agreement shall expire on December 31, 2033; *provided, however*, the Company shall pay the 2034-2035 City and School District tax bills, and the 2035 County tax bill 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 2 - Special District Charges, Special Assessments and other Charges. 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 3 - Transfer of Facility. 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 1 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 4 - 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.

4.3 The Company shall (i) cause the appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply tax rates to the respective assessments as if the Facility were owned by the Company, (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

Section 5 - Changes in Law. 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 6 - 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 1 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 Leaseback 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. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the General Municipal Law and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

6.2 If payments pursuant to Section 1 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 1 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, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. 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 7 - Assignment. 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 8 - 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: 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: Specialty Retailers, Inc.
10201 S. Main Street
Houston, Texas 77025
Attn: Mel Ward

With a copy to: Locke Lord LLP
600 Travis Street, Suite 2800
Houston, Texas 77002
Attn: Douglas A. Yeager

And To: The Parrinello Law Firm
36 West Main Street
Rochester, New York 14614
Attn: J. Matthew Parrinello

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 Steuben 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

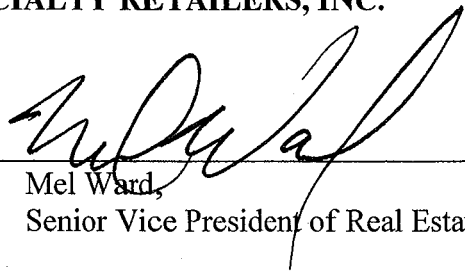
through the Agency or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Agreement.

[SIGNATURE PAGE FOLLOWS]

[Signature Page to PILOT Agreement]

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

SPECIALTY RETAILERS, INC.

By: 
Mel Ward,
Senior Vice President of Real Estate

**CITY OF HORNELL INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
James W. Griffin, Executive Director

[Signature Page to PILOT Agreement]

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SPECIALTY RETAILERS, INC.

By: _____
Mel Ward,
Senior Vice President of Real Estate

**CITY OF HORNELL INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
James W. Griffin, Executive Director

SCHEDULE A

**TO PILOT AGREEMENT DATED AS OF APRIL 1, 2013, BY AND BETWEEN
THE CITY OF HORNEILL INDUSTRIAL DEVELOPMENT AGENCY AND
SPECIALTY RETAILERS, INC.**

<u>Year No.</u>	<u>City/School Tax Years</u>	<u>County</u>	<u>PILOT Payment</u>	<u>Payment Date</u>
1	2014/2015	2015	\$13,375.00	December 31, 2014
2	2015/2016	2016	13,642.50	December 31, 2015
3	2016/2017	2017	13,915.35	December 31, 2016
4	2017/2018	2018	14,193.66	December 31, 2017
5	2018/2019	2019	14,477.53	December 31, 2018
6	2019/2020	2020	14,767.08	December 31, 2019
7	2020/2021	2021	15,062.42	December 31, 2020
8	2021/2022	2022	15,363.67	December 31, 2021
9	2022/2023	2023	15,670.94	December 31, 2022
10	2023/2024	2024	15,984.36	December 31, 2023
11	2024/2025	2025	16,304.05	December 31, 2024
12	2025/2026	2026	16,630.13	December 31, 2025
13	2026/2027	2027	16,962.73	December 31, 2026
14	2027/2028	2028	17,301.99	December 31, 2027
15	2028/2029	2029	17,648.03	December 31, 2028
16	2029/2030	2030	18,000.99	December 31, 2029
17	2030/2031	2031	18,361.01	December 31, 2030
18	2031/2032	2032	18,728.23	December 31, 2031
19	2032/2032	2033	19,102.79	December 31, 2032
20	2033/2034	2034	19,484.85	December 31, 2033

[END OF SCHEDULE A]