

 **AGENT AGREEMENT**

THIS AGREEMENT, made as of March 25, 2013, by and between the ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, with offices at 143 Genesee Street, Buffalo, New York 14203 (the "Agency"), and CONVENTUS PARTNERS, LP, a limited partnership duly organized, validly existing and in good standing under the laws of the State of New York, with offices at c/o Ciminelli Real Estate, 350 Essjay Road, Williamsville, New York 14221 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 293 of the Laws of 1970 of the State of New York pursuant to Title 1 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) a .29+/- acre parcel of land located at 1001 Main Street, City of Buffalo, Erie County, New York (the "Land"); (ii) the construction of a 287,000+/- SF six-story, medical office building, together with the construction of two (2) levels of below grade parking that will provide 332 parking spaces (the "Improvements"), and (iii) the acquisition and installation by the Company of certain items of machinery, equipment and other tangible personal property (except furniture, fixtures, and equipment for the benefit of Medical Tenants, as identified below) (the "Equipment", and collectively with the Land and the Improvements, the "Facility"). The building will be comprised of retail space on the first floor (ground level) to support the Buffalo Niagara Medical Campus, with the remaining floors devoted to clinical, practical and research office space and support services for the John R. Oishei Children's Hospital and the University of Buffalo Medical School (collectively, the "Medical Tenants"); and

WHEREAS, by Resolution dated March 25, 2013 (the "Resolution"), the Agency authorized the Company to act as its Agent for the purposes of acquiring, constructing and/or equipping the Facility 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 and equipping of the Facility. The right of the Company to act as Agent of the Agency shall expire on **March 31, 2015**, 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 Company's application to the Agency in this matter.

All contracts entered into as Agent for the Agency shall include the following language:

“Except to the extent of bond proceeds (to the extent bonds are issued by Agency with respect to the Project), the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder.”

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 Facility:

(a) The Company is a limited partnership duly organized, validly existing and in good standing under the laws of the State of New York, 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 Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this 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 Agreement.

(e) The Company covenants that the Facility 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 the Facility except in compliance with all material applicable laws, (ii) that the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that no underground storage tanks will be located on the Facility, 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, 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 the Facility, 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.

(f) Any personal property acquire by the Company in the name of the Agency shall be located in the City of Buffalo, except for temporary periods during ordinary use.

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, members, officers, 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 Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or breach by the Company of this Agreement or (ii) liability arising from or expense incurred by the Agency's financing, rehabilitating, 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 executive director, directors, members, officers, agents 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. During the term of an Agent Agreement and/or Lease Agreement entered into with the ECIDA, Certificate(s) of Insurance shall be provided **by the Company and/or Project owner** evidencing that the following insurance is currently maintained and in force with an insurance carrier approved to do business in the State of New York and maintaining an A.M. Best Rating of A- or better showing the Erie County Industrial Development Agency as Certificate Holder.

Acceptable Certificates of Insurance shall indicate the following minimal coverage, limits of insurance, policy numbers and policy effective and expiration dates.

**(a) Commercial General Liability:**

i) **Accepted Form: ACORD 25 (2009/09 or later revisions)**

ii) The Company shall provide evidence of insurance for the named insured's premises and operations, products-completed operations, blanket contractual liability on an occurrence basis and when applicable to multiple locations, have attached Designated Location(s) General Aggregate Limit CG 25 04 endorsement. **Limits expressed shall be no less than:**

<b>General Aggregate</b>	<b>\$2,000,000</b>
<b>Products-Completed Operations Aggregate</b>	<b>\$2,000,000</b>
<b>Per Occurrence</b>	<b>\$1,000,000</b>
<b>Personal &amp; Advertising Injury</b>	<b>\$1,000,000</b>
<b>Fire Damage Liability</b>	<b>\$ 100,000</b>
<b>Medical Payments (per person)</b>	<b>\$ 5,000</b>

ECIDA shall be named as Additional Insured per ISO Form CG 20 26-Additional Insured Designated Person or Organization or such Additional Insured endorsement specifically designed for the Named Insured's operations. Such coverage should apply on a Primary & Non Contributory Basis. All insurance required of the Company shall waive any right of subrogation of the insurers against any person insured under such policy, and waive any right of the insurers to any off-set or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any person insured under such policy.

**(b) Umbrella/Excess Liability:**

i) **Accepted Form: ACORD 25 (2009/09 or later revisions)**

ii) The Company shall provide evidence of Commercial Umbrella or Excess Liability insurance for a limit of at least \$5,000,000 per occurrence with a \$5,000,000 Aggregate. ECIDA shall be named as an Additional Insured either by the attachment of an Additional Insured endorsement or carrier specific endorsement allowing for following form Additional Insured status.

**(c) Property Insurance/Builders' Risk Insurance:**

i) **Accepted Forms: ACORD 27 (2009/12 or later revisions) or ACORD 28 (2009/12 or later revisions)**

ii) The Company and/or the Project owner shall provide evidence of insurance against all direct physical loss, including mechanical breakdown.

(d) **Workers Compensation/Disability Insurance:**

i) The Company and/or Project Owner shall provide evidence of insurance and maintain Workers Compensation/Disability insurance as required by statute.

ii) **Accepted Forms:**

<b>Workers Compensation Forms</b>		<b>DBL (Disability Benefits Law) Forms</b>	
<b>CE-200</b>	<b>Exemption</b>	<b>CE-200</b>	<b>Exemption</b>
<b>C-105.2</b>	<b>Commercial Insurer</b>	<b>DB-120.1</b>	<b>Insurers</b>
<b>SI-12</b>	<b>Self Insurer</b>	<b>DB-155</b>	<b>Self Insured</b>
<b>GSI-105.2</b>	<b>Group Self Insured</b>		
<b>U-26.3</b>	<b>New York State Insurance Fund</b>		

If the Company and/or Project owner have **no** employees, the Company and/or Project owner shall provide a completed and signed Form CE-200 or later revisions, which is found on the New York State Workers Compensation Board website: [www.wcb.ny.gov/](http://www.wcb.ny.gov/) This form is to be completed on-line, printed, and signed.

**ECIDA Address:**

All evidence of insurance shall be sent to:

Erie County Industrial Development Agency  
143 Genesee Street  
Buffalo, NY 14203

5. **Additional Provisions Respecting Insurance.** (a) 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 payment of the losses of the Company and the Agency as their respective interests may appear.

(b) All such certificates of insurance of the insurers indicating that such insurance is in force and effect, and all policies (if applicable), shall be deposited with the Agency on the date hereof. At least thirty (30) days prior to expiration of the policy evidenced by said certificates, the Company shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agreement.

6. 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.

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, or by a nationally-recognized overnight courier, addressed as follows:

To the Agency: Erie County Industrial Development Agency  
143 Genesee Street  
Buffalo, NY 14203  
Attn: Al Culliton, CFO

With a copy to: Harris Beach PLLC  
726 Exchange Street, Suite 1000  
Buffalo, NY 14210  
Attn: Robert G. Murray, Esq.

To the Company: Conventus Partners, LP  
c/o Ciminelli Real Estate  
350 Essjay Road  
Williamsville, NY 14221  
Attn: James Gottstine, Senior Vice President

With a copy to: Lippes Mathias Wexler Friedman LLP  
665 Main Street, Suite 300  
Buffalo, NY 14203  
Attn: Blaine Schwartz, 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 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 Erie County, 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 leaseback agreement (the "Leaseback Agreement") with the Company. The Company agrees not to take title to any real property as agent for the Agency. Upon completion of the acquisition and installation of the Equipment acquired by the Company as agent for the Agency, the Agency shall transfer title to the Equipment to the Company by a bill of sale (the "Bill of Sale") in the form attached hereto as Exhibit A. In addition, at any time prior to completion of the acquisition and installation of the Equipment, the Company can demand that the Agency transfer title to the Company with respect to the Equipment, 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 (1) legal services, including but not limited to those provided by the Agency's general counsel or bond/transaction counsel, and (2) other consultants retained by the Agency, if any, in connection with the Project; in accordance with the terms of the Administrative Fee Agreement between the Company and the Agency. The Agency counsel fees are based upon the Company's representations made in its application for Agency assistance and as established in accordance with the Agency counsel fee schedule. The Company further covenants and agrees to make a non-refundable payment upon execution of this Agreement in accordance with the terms of the Agency Counsel Fee Agreement. 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 (1) the applicant's withdrawal, abandonment, cancellation or failure to pursue the Project; (2) 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 (3) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.

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

**ERIE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

Dated: 5-9-13

By: Karen M. Fiala  
Name: Karen M. Fiala  
Its: Assistant Treasurer

**CONVENTUS PARTNERS, LP**

By: Conventus Manager, LLC  
Its: Manager

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

By: Frank L. Ciminelli  
Name: Frank L. Ciminelli, Operating Agent  
Title: Manager

**Exhibit A**

**FORM OF BILL OF SALE**

ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York with offices at 143 Genesee Street, Buffalo, New York 14203 (the "Grantor"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from CONVENTUS PARTNERS, LP, a limited partnership duly organized, validly existing and in good standing under the laws of the State of New York with offices at c/o Ciminelli Real Estate, 350 Essjay Road, Williamsville, New York 14221 (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee and its successors and assigns, all those materials, machinery, equipment, fixtures or furnishings which were acquired by the Grantee as agent for the Grantor pursuant to the Agent Agreement dated as of March 25, 2013 (the "Equipment"), whether now owned or hereafter acquired, which Equipment is located or intended to be located at the Grantee's Facility located at 1001 Main Street, Buffalo, New York 14202.

TO HAVE AND TO HOLD the same unto the Grantee and its successors and assigns, forever.

THE GRANTOR MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE EQUIPMENT OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE EQUIPMENT OR ANY PART THEREOF FOR THE GRANTEE'S PURPOSES OR NEEDS. THE GRANTEE SHALL ACCEPT TITLE TO THE EQUIPMENT "AS IS," WITHOUT RECOURSE OF ANY NATURE AGAINST THE GRANTOR FOR ANY CONDITION NOW OR HEREAFTER EXISTING. IN THE EVENT OF ANY DEFECT OF DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE GRANTOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by the officer described below on the date indicated beneath the signature of such officer and dated as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**ERIE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

Form Only - Do Not Sign

By: \_\_\_\_\_  
Name: Karen M. Fiala  
Title: Assistant Treasurer