

## INDUCEMENT AGREEMENT

THIS INDUCEMENT AGREEMENT RELATING TO **UNIVERSAL PHOTONICS, INC. FACILITY** (the "AGREEMENT") is among the Oneida County Industrial Development Agency (the "Agency"), Universal Photonics, Inc. ("Universal") and JH Rhodes Company, Inc., a wholly-owned subsidiary of Universal ("Rhodes"), on behalf of itself and/or the principals of Universal and Rhodes and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company").

Article 1. Preliminary Statement. Among the matters of mutual inducement which have resulted in the execution of this AGREEMENT are the following:

1.01. The Agency is authorized and empowered by the provisions of Article 18-A of the General Municipal Law of the State of New York as amended, and Chapter 372 of the Laws of 1970 of the State of New York, as may be amended from time to time (collectively, the "Act") to undertake "Projects" (as defined in the Act) and to lease or sell the same upon such terms and conditions as the Agency may deem advisable.

1.02. The purposes of the Act are (i) to promote industry and develop trade by inducing manufacturing, industrial, warehousing, research, civic, recreation and commercial enterprises to locate or remain in the State and (ii) to encourage and assist in the providing of industrial pollution control facilities and (iii) to promote the economic welfare and prosperity of the inhabitants of the State. The Act vests the Agency with all powers necessary to enable it to accomplish such purposes.

1.03. The Company has requested that the Agency assist in the (a) acquisition and renovation of an existing 77,250 square foot manufacturing and warehouse facility (the "Improvements") located at 10 Ward Street, Town of Vernon, Oneida County, New York (the "Land") and (b) acquisition and installation of all necessary equipment (the "Equipment"), all to be used in connection with the manufacture and distribution of polyurethane substrates used in the surface finishing industry (the Improvements, the Land and the Equipment referred to collectively as the "Facility") (the "Project"). The Company will lease the Facility to the Agency pursuant to a Lease Agreement (the "Lease Agreement") and the Agency will lease the Facility back to the Company pursuant to a Leaseback Agreement (the "Leaseback Agreement").

1.04. The Company hereby represents to the Agency that the Project (a) will not result in the removal of an industrial or manufacturing plant from one area of the State to another area of the State or an abandonment of one or more plants of the Company located in the State; (b) is reasonably necessary to discourage the Company from removing such other plant or facility to a location outside the State, or (c) is reasonably necessary to preserve the competitive position of the Company in its industry. The renovation and equipping of the Facility has not/did not commence(d) as of February 10, 2012.

1.05. The Agency has determined that the acquisition, construction, renovation and equipping of the Facility, as described in the Company's application to the Agency dated February 3, 2012, which Application may be amended from time to time prior to closing of the sale-leaseback or lease-leaseback transaction (the "Application") will promote and further the purposes of the Act.

1.06. On February 10, 2012, the Agency adopted a resolution (the "Resolution" or the "Inducement Resolution") agreeing to undertake the Project in order to assist the Company and to effectuate the purposes of the Act and, subject to the happening of all acts, conditions and things required precedent to such undertaking and the satisfactory completion of such additional acts and reviews as the Agency may deem appropriate, to undertake a sale-leaseback or lease-leaseback transaction in connection with the Project.

1.07. In the Resolution, the Agency appointed the Company and its agents and other designees, as its agent for the purposes of acquiring, constructing, renovating and equipping the Facility, and such appointment includes the following activities as they relate to the acquisition, construction, renovation and equipping of the Facility, whether or not the materials, services or supplies described below are incorporated into or become an integral part of the Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with acquiring, constructing, renovating and equipping the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with acquiring, constructing, renovating and equipping the Facility, and (iii) all purchases, leases, rentals and uses of equipment, machinery, and other tangible personal property (including installation costs with respect thereto), installed or placed in, upon or under the Facility, including all repairs and replacements of such property. Such agency appointment includes the power to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for completing the Facility, all with the same powers and with the same validity as the Agency could do if acting on its own behalf.

Article 2. Undertakings on the Part of the Agency. Based upon the statements, representations and undertakings of the Company regarding the Facility and subject to the conditions set forth herein, the Agency hereby confirms and acknowledges:

2.01. Upon satisfactory completion of the conditions precedent set forth herein and in the Resolution and the satisfactory completion of such additional acts and reviews as the Agency may deem appropriate, the Agency will (A) adopt, or cause to be adopted, such proceedings and authorize the execution of such documents as may be necessary or advisable for (i) a sale-leaseback or lease-leaseback transaction, (ii) the acquisition, construction, renovation and equipping of the Facility, and (iii) the leasing of the Facility to the Company pursuant to the Lease (or Leaseback) Agreement, all as shall be authorized by law and be mutually satisfactory to the Agency and the Company

and (B) shall enter into a sale-leaseback or lease-leaseback transaction pursuant to the terms of the Act, as then in force, for the purpose of financing certain costs of the Facility.

2.02. The Lease (or Leaseback) Agreement shall be for a \_\_\_\_\_ (\_\_\_) year term and shall obligate the Company to make aggregate basic payments in the amount of \$500.00 as and when the same shall become due and payable. The Company shall be entitled to acquire from the Agency title to the Facility for an aggregate amount of \$500.00, plus such additional amounts as shall be prescribed in the Lease (or Leaseback) Agreement. Specifically, the Lease (or Leaseback) Agreement shall contain a provision that will allow the Company to terminate the Lease (or Leaseback) Agreement at any time upon written notice to the Agency and upon payment by the Company of all applicable fees, penalties and reimbursement of benefits. The Lease (or Leaseback) Agreement shall contain all provisions required by law and such other provisions as shall be mutually acceptable to the Agency and the Company.

2.03. That all services, costs and expenses of whatever nature incurred in connection with the renovation, equipping, installation, replacement, rebuilding, restoration, repair, maintenance and operation of the Facility have been and will continue to be undertaken by the Company as agent for the Agency, regardless of whether such services, costs and expenses were undertaken and/or paid in its own name or in the name of the Agency, and the Agency shall furnish to the Company an appropriate letter on Agency letterhead evidencing the authority of the Company to act as agent of the Agency.

2.04. That, in connection with any lease by the Agency to the Company that is, in turn, subleased or leased by the Company, it is the intent of all parties to the transactions that any sublease or lease is undertaken by the Company as agent for the Agency.

2.05. That, at the request of the Company, and subject to the agreement between the Agency and the Company, any future transfers of any portion of real property upon which the Facility is located and not owned by the Agency, are hereby authorized, such transfers to be from the Company to the Agency, and there shall be no need for any further official action on behalf of the Agency other than the execution of the appropriate documents evidencing such transfer.

2.06. The Agency will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof.

Article 3. Undertakings on the Part of the Company. Based upon the statements, representations and undertakings of the Agency herein and in the Resolution and subject to the conditions set forth herein and in the Resolution, the Company agrees as follows:

3.01. The Company hereby accepts the appointment made by the Agency in the Resolution to be the true and lawful agent of the Agency to (i) renovate, equip, repair and maintain the Facility and (ii) make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent of the Agency, and in general to do all things which may be requisite or proper for completing the Facility, all with the same powers and the same validity as the Agency could do if acting on its own behalf, including the authority to delegate such Agency appointment, as described in the Resolution.

3.02. In the Application, the Company projected that it will retain no less than 55 jobs and create no less than 20 jobs by the commencement of year three of the Lease Term and maintain them for the duration of the Lease Term as a result of undertaking the Facility (the "Employment Obligation"). The Company acknowledges that the financial assistance granted by the Agency in connection with the Facility is conditioned upon achieving the Employment Obligation.

3.03. The Company will, to the extent deemed by it to be necessary or desirable, enter into a contract or contracts for the acquisition, construction, renovation and equipping of the Facility (including any necessary contracts for the acquisition of real property necessary or useful in said Facility).

3.04. Contemporaneously with the closing of the sale-leaseback or lease-leaseback transaction the Company will enter into the Lease (or Leaseback) Agreement with the Agency containing, among other things, the terms and conditions described in Section 2.02 hereof.

3.05. (a) The Company shall not permit to stand, and will, at its own expense, take all steps reasonably necessary to remove (or bond the same if acceptable to the Agency and its counsel), any mechanics' or other liens against the Facility for labor or materials furnished in connection with the acquisition, construction, renovation and equipping of the Facility. The Company shall forever defend, indemnify and hold the Agency, its members, officers, employees, and agents, and anyone for whose acts or omissions the Agency or any of them may be liable, harmless from and against all costs, losses, expenses, claims, damages and liabilities of whatever kind or nature arising, directly or indirectly, out of or based on labor, services, materials and supplies, including equipment, ordered or used in connection with the acquisition, construction, renovation and equipping of the Facility or arising out of any contract or other arrangement therefor (and including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether such claims or liabilities arise as a result of the Company acting as agent for the Agency pursuant to this AGREEMENT or otherwise.

(b) The Company shall forever defend, indemnify and hold harmless the Agency, its members, officers, employees and agents, and anyone for whose acts or

omissions the Agency or any of them may be liable, from and against all claims, causes of action, liabilities and expenses (including without limitation attorneys' fees) howsoever arising for loss or damage to property or any injury to or death of any person (including, without limitation, death of or injury to any employee of the Company or any sublessee) that may occur subsequent to the date hereof by any cause whatsoever in relation to the Facility including the failure to comply with the provisions of Article 3.05 hereof, or arising, directly or indirectly, out of the ownership, renovation, equipping, acquisition, operation, maintenance, repair or financing of the Facility, and including, without limitation, any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

(c) The defense and indemnities provided for in this Article 3 shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by law. Without limiting the generality of the foregoing, the foregoing indemnifications shall apply to and encompass any action (or alleged failure to act) of the Agency pursuant to the SEQR Act.

(d) The Company shall provide and carry workers' compensation and disability insurance as required by law and comprehensive liability insurance with such coverages (including, without limitation, owner's protective for the benefit of the Agency and contractual coverage covering the indemnities herein provided for), with such limits and with such companies as may be approved by the Agency. Upon the request of the Agency, the Company shall provide certificates of insurance in form satisfactory to the Agency evidencing such insurance.

3.06. With the exception of the authorizations required to be adopted by the Agency for the Agency to enter into the sale-leaseback or lease-leaseback transaction, the Company agrees that, as agent for the Agency or otherwise, it will comply with all the requirements of all federal, state and local laws, rules and regulations of whatever kind and howsoever denominated applicable to the Agency and/or the Company with respect to the Facility, the acquisition, construction, renovation and equipping thereof, the operation and maintenance of the Facility and the financing thereof. Every provision required by law to be inserted herein shall be deemed to be set forth herein as if set forth in full; and upon the request of either party, this AGREEMENT shall be amended to specifically set forth any such provision or provisions.

3.07. The Company will take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

3.08. If it should be determined that any State or local sales or compensatory use taxes or similar taxes however denominated are payable with respect to the acquisition, purchase or rental of machinery or equipment, materials or supplies in connection with the Project, or are in any manner otherwise payable directly or indirectly in connection with the Project, the Company shall pay the same and defend and indemnify the Agency from and against any liability, expenses and penalties arising out of, directly or indirectly, the imposition of any such taxes.

3.09. The Company shall file with the New York State Department of Taxation and Finance an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility, in compliance with Section 874(8) of the New York State General Municipal Law. The Company shall provide the Agency with a copy of such annual statement at the time of filing with the State Department of Taxation and Finance.

3.10. If the Facility is leased to another party by the Agency and subleased to the Company, then in such event, the Company guarantees all of the covenants, undertakings and indemnities of such other party as set forth in this Article 3.

#### Article 4. General Provisions.

4.01. This AGREEMENT shall take effect on the date of execution hereof by the Agency and the Company and shall remain in effect until the Lease (or Leaseback) Agreement becomes effective. It is the intent of the Agency and the Company that this AGREEMENT be superseded in its entirety by the Lease (or Leaseback) Agreement, except for the indemnities and guarantee of indemnities contained herein, which shall survive.

4.02. It is understood and agreed by the Agency and the Company that entering into the sale-leaseback or lease-leaseback transaction and the execution of the Lease (or Leaseback) Agreement and related documents are subject to (i) obtaining all necessary governmental approvals, (ii) approval of the Board of Directors of the Company, (iii) approval of the members of the Agency, (iv) satisfactory completion of the environmental review of the Facility by the Agency in compliance with the State Environmental Quality Review Act, (v) agreement by the Agency and the Company upon mutually acceptable terms and conditions for the Lease (or Leaseback) Agreement and other documentation usual and customary to transactions of this nature, (vi) the condition that there are no changes in New York State Law which prohibit or limit the Agency from fulfilling its obligation and commitment as herein set forth to enter into the sale-leaseback or lease-leaseback transaction and (vii) payment by the Company of the Agency's transaction fee and the fees and disbursements of bond counsel or transaction counsel. The Agency's transaction fee is calculated based upon the size of the project; based upon the projections in the Company's Application,

the transaction fee for this project is estimated at \$20,625, which will be payable in full at closing.

4.03. The Company agrees that it will reimburse the Agency for all reasonable and necessary direct out-of-pocket expenses that the Agency may incur as a consequence of executing this AGREEMENT or performing its obligations hereunder. Examples of such expenses include, but are not limited to, photocopies, phone and fax charges, postage and other shipping charges incurred in connection with closing the lease-leaseback transaction or complying with any requests after closing relating to the lease-leaseback transaction, including but not limited to requests under the Freedom of Information Act, requests relating to the Project.

4.04. If for any reason the sale-leaseback or lease-leaseback transaction does not close on or before twelve (12) months from the execution hereof, the provisions of this AGREEMENT (other than the provisions of Articles 3.05, 3.06, 3.07 and 3.08 above, which shall survive) shall, unless extended by agreement of the Agency and the Company (whether before or after such original expiration date), terminate and be of no further force or effect, and following such termination neither party shall have any rights against the other party except:

(a) The Company shall pay the Agency for all expenses which were authorized by the Company and incurred by the Agency in connection with the acquisition, construction, renovation and equipping of the Facility;

(b) The Company shall assume and be responsible for any contracts for renovation or purchase of equipment entered into by the Agency at the request of or as agent for the Company in connection with the Project; and

(c) The Company will pay the out-of-pocket expenses of members of the Agency, counsel for the Agency and Transaction Counsel incurred in connection with the Project and will pay the reasonable fees of counsel for the Agency and Transaction Counsel for legal services relating to the Project or the proposed financing thereof.


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IN WITNESS WHEREOF, the parties hereto have entered into this AGREEMENT as of the 10<sup>th</sup> day of February, 2012.


ONEIDA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Natalie L. Brown  
Vice Chairman

UNIVERSAL PHOTONICS, INC.

By:   
Name: Alan C. Ritter  
Title: Chairman

JH RHODES COMPANY, INC.

By:   
Name: Alan C. Ritter  
Title: Chairman



**Final Authorizing Resolution  
AMENDED  
Facilities Realty Management  
Vernon, LLC Facility**

**Transcript Document No. 9**

**Date: September 20, 2013**

At a meeting of the Oneida County Industrial Development Agency (the "Agency") held at 584 Phoenix Drive, Rome, New York 13441 on the 20<sup>th</sup> day of September 2013, the following members of the Agency were:

**Members Present:** Ferris Betrus  
David Grow  
Mary Faith Messenger  
Eugene Quadraro  
Stephen Zogby

**Staff Present:** Maureen Carney  
Steven DiMeo  
Shawna Papale  
Jennifer Waters

**Others Present:** Mark Levitt, Esq.  
Linda E. Romano, Esq.  
Laura Ruberto  
Ed Waitr

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to proposed financial assistance to Facilities Realty Management Vernon, LLC.

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Voting Aye

Ferris Betrus  
David Grow  
Mary Faith Messenger  
Eugene Quadraro  
Stephen Zogby

Voting Nay

RESOLUTION APPROVING AMENDED FINANCIAL ASSISTANCE AND AUTHORIZING THE AGENCY TO EXECUTE A SECOND AMENDED PAYMENT-IN-LIEU-OF-TAX AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE FACILITIES REALTY MANAGEMENT VERNON, LLC FACILITY LOCATED IN THE TOWN OF VERNON, ONEIDA COUNTY.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 372 of the Laws of 1970 of the State of New York (collectively, the "Act"), the Agency was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, Facilities Realty Management Vernon, LLC (the "Company") requested the Agency provide its financial assistance relating to the acquisition and renovation of an existing 77,250± square foot manufacturing and warehouse facility (the "Improvements") located at 10 Ward Street, Town of Vernon, Oneida County, New York (the "Land"); and acquisition and installation of necessary equipment (the "Equipment"), all to be used in connection with the manufacture and distribution of polyurethane substrates used in the surface finishing industry (the Improvements, the Land and the Equipment referred to collectively as the "Facility"); and

WHEREAS, the Agency acquired a leasehold interest in the Facility pursuant to a Lease Agreement from the Company to the Agency (the "Lease Agreement") and leases the Facility back to the Company pursuant to a Leaseback Agreement from the Agency to the Company (the "Leaseback Agreement"); and

WHEREAS, the Company subleases the Facility to Universal Photonics, Inc. (the "Sublessee") pursuant to a Triple Net Lease between the Company and the Sublessee, as the same may be amended from time to time (the "Sublease Agreement"); and

WHEREAS, the Agency by resolution duly adopted on February 10, 2012 (the "Inducement Resolution") decided to proceed under the provisions of the Act to lease the Facility and directed that a public hearing be held and enter into the Lease Agreement and Leaseback Agreement; and

WHEREAS, because the Financial Assistance represented a deviation from the Agency's Uniform Tax Exemption Policy (the "Policy"), a notice was mailed to the chief elected official of each taxing jurisdiction in which the Facility is located, stating the reasons that the Agency was deviating from its Policy and providing each the opportunity to comment on the proposed Financial Assistance before it was approved; and

WHEREAS, the Agency by resolution duly adopted on May 18, 2013 (the "Authorizing Resolution") approved financial assistance for the Facility in the form of exemptions from sales tax exemptions, mortgage recording tax exemptions and real property tax abatement for a period of fifteen years, during which time the Company will pay 1/3 of taxes years 1 – 5; ½ of taxes years 6 – 10 and 2/3 of taxes years 11 – 15 (the "Financial Assistance"); and

WHEREAS, it was the intention of the Agency that the Financial Assistance include the provision that all PILOT Payments would be calculated using the then-current Facility assessment, but the Authorizing Resolution did not recite that resolution; and

WHEREAS, the Agency and the Company entered into a First Amended and Restated PILOT Agreement dated as of February 1, 2013 (the "PILOT Agreement") which outlines the terms and the conditions of the PILOT Payments to be made by the Company; and

WHEREAS, the Agency now wishes to amend the Financial Assistance and the Agency and the Company wish to amend the PILOT Agreement accordingly; and

WHEREAS, because the amended Financial Assistance represents a deviation from the Agency's Uniform Tax Exemption Policy (the "Policy"), a notice was mailed to the chief elected official of each taxing jurisdiction in which the Facility is located, providing each the opportunity to comment on the proposed amended Financial Assistance before it is approved.

NOW, THEREFORE, BE IT RESOLVED by the Oneida County Industrial Development Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Financial Assistance is hereby amended to mean sales tax exemptions, mortgage recording tax exemptions and real property tax abatement for a period of fifteen years, during which time the Company will pay 1/3 of taxes years 1 – 5; 1/2 of taxes years 6 – 10 and 2/3 of taxes years 11 – 15, with all PILOT Payments calculated based upon a Facility assessment of \$1,210,000.

Section 2. The Chairman, Vice Chairman, Secretary or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Second Amended PILOT Agreement, in substantially the form thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Secretary or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the "Closing Documents"). The execution thereof by the Chairman, Vice Chairman, or any member of the Agency shall constitute conclusive evidence of such approval. The Chairman, Vice Chairman, Secretary or member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Leaseback Agreement).

Section 3. This resolution shall take effect immediately.

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF ONEIDA     )

I, the undersigned Secretary of the Oneida County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY:


That I have compared the annexed extract of the minutes of the meeting of the Agency, including the resolutions contained therein, held on the 20<sup>th</sup> day of September 2013 with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Second Amended PILOT Agreement contained in this transcript of proceedings is in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, (ii) pursuant to Sections 103a and 104 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public and public notice of the time and place of said meeting was duly given in accordance with such Sections, (iii) the meeting in all respects was duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand as of this 20th day of September 2013.

ONEIDA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Shawna M. Papale, Secretary