

AGREEMENT FOR PAYMENTS IN LIEU OF TAXES

AGREEMENT FOR PAYMENTS IN LIEU OF TAXES (the "PILOT Agreement"), dated as of March 17, 2017, by and between the COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having its principal place of business at 5 Warren Street, Glens Falls, New York 12801 (the "Agency") and 18 HOSPITALITY, LLC (the "Company"), a New York limited liability company having an office for the transaction of business at 22 Century Hill Drive, Suite 201, Latham, New York 12110 (the "Company").

RECITALS

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "State"), as amended, and Section 890-c of the General Municipal Law of the State (collectively, the "Act"), the Agency was created and granted the authority to enter into agreements for the purpose of acquiring, constructing and equipping certain commercial facilities; and

WHEREAS, to advance the public purposes for which it was created, the Agency, upon application of the Company, has agreed to undertake a retail and tourism destination project (the "Project") consisting of : (i) the acquisition of an interest in a portion of the certain commercial parcel or parcels of land located Corinth Road, Town of Queensbury, County of Warren, State of New York and formerly referred on the 2016 assessment roll as a part of Tax Map Parcel Number 309.13-1-73 (the "Land"); (ii) the construction and equipping of a 53,200+/- square foot 90 room hotel (the "Facility"); (iii) the acquisition and installation therein of certain furnishings and fixtures (the "Equipment" together with the Land and the Facility, collectively the "Project Facility") to be used in connection with the contemplated uses; and (iv) the lease of the Project Facility to the Company, all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 862 of the Laws of 1971 of the State of New York (collectively, the "Act"), as amended; and

WHEREAS, the Agency has agreed to lease and the Company has agreed to rent the Project Facility pursuant to a lease agreement dated as of March 17, 2017 (the "Lease Agreement"); and

WHEREAS, the Agency will hold a leasehold interest to the Land and all improvements thereon until such time as it may convey its leasehold interest to the Project Facility pursuant to the Lease Agreement; and

WHEREAS, under Section 412-a of the Real Property Tax Law of the State and Section 874 of the General Municipal Law of the State, the Agency is exempt from the payment of taxes and assessments on any real property acquired by it or taken under its jurisdiction, supervision or control; and

WHEREAS, the Agency shall file, on or prior to March 1, 2018, a NYS Real Property Form 412-a with the assessor of the taxing jurisdiction, together with a copy of this PILOT Agreement; and

WHEREAS, Section 6.3 of the Lease Agreement provides that the Company will make certain payments in lieu of town, county, school district and other governmental taxes and charges; and

WHEREAS, in accordance with Section 874(4)(a) of the General Municipal Law of the State, the Agency has established a uniform tax exemption policy (the "Uniform Tax Exemption Policy").

NOW, THEREFORE, in partial consideration of the Agency undertaking the Project, the Company and Agency agree as follows:

AGREEMENT

SECTION 1. Definitions. Unless the context or use unambiguously indicates otherwise, all capitalized terms used herein shall have the meanings given to them in the Lease Agreement.

SECTION 2. Description of Property. This PILOT Agreement shall apply to the Land and Facility, as more particularly described within Schedule A hereto.

SECTION 3. Company Obligations.

(A) Throughout the period, a leasehold interest to the Land and the Facility is conveyed to the Agency, the Company shall pay to the Agency, in accordance with the terms of this agreement, certain taxes, assessments, rents and other governmental charges levied upon or against the Land and the improvements thereon (the "PILOT Payments"). In determining the amount of any PILOT Payment, such payment shall be calculated (1) as if title and interest to the Land is in the Company and not the Agency, (2) as if the improvements contemplated by the Plans and Specifications are completed on or before the Completion Date and (3) in accordance with the PILOT Payment Schedule as set forth in Schedule B hereto. Payments hereunder shall be made at such times and in such amounts as would be due were title to the Land and the improvements in the Company and not the Agency.

(B) In addition to the payments set forth in paragraph (A) of this Section 3, the Company shall be responsible for the payment to the Agency of all assessments, water/sewer rents and other governmental charges not included in Schedule B that would be levied upon or against the Land and the improvements thereon were title to them in the Company and not the Agency.

(C) If the lease of the Facility to the Agency remains in effect beyond the term allowed herein, the Company shall pay to the Agency all taxes that would have been levied on or against the Facility were title to it in the Company and not the Agency. Payments hereunder shall be made at such times and in such amounts as would be due were title to the Facility in the Company and not the Agency.

(D) If any payments under paragraph (A) and (B) of this Section 3 are untimely, such payments shall be subject to late charges, costs, expenses and penalties in accordance with Section 874(5) and Section 874(6) of the General Municipal Law of the State, as amended.

SECTION 4. Sales Tax Exemption.

(A) The initial construction and equipping of the Facility shall be exempt from sales tax. The initial sales tax exemption period for the Facility shall expire at the end of the Construction Period, subject to extension by approval of the Agency. No sales tax exemption shall be granted to the Company for the operations of the Facility.

(B) The Agency and the Company agree that the sales tax exemption shall be provided in accordance with Section 875 of the General Municipal Law, as amended. The Agency shall keep records of the amount of State and local sales and use tax exemption benefits provided to this Project and Company and its subagents, shall make such records available to the Commissioner of Tax & Finance upon request.

SECTION 5. Mortgage Tax Exemption. All mortgages placed against the Facility shall be exempt from the payment of mortgage recording tax, as would otherwise be charged pursuant to the Tax Law of the State, as amended.

SECTION 6. Recapture of Benefits. All benefits derived hereunder, including mortgage tax exemptions, real property tax exemptions and sales tax exemptions, shall be subject to the Recapture of Benefits Policy of the Agency as acknowledged as of the date hereof and as set forth on Schedule C hereto. . Notwithstanding the foregoing there will be no recapture of financial assistance for any applicable taxing jurisdiction that has not opted out of the Real Property Tax Law Section 485-b exemption.

SECTION 7. Distribution of Payments. The Agency shall distribute each payment hereunder among the tax districts within which the Facility is located in accordance with Section 858(15) of the General Municipal Law of the State, as amended.

SECTION 8. Event of Default. Failure of the Company to make any payment required hereunder shall constitute an Event of Default under the Lease Agreement.

SECTION 9. Remedies on Default.

(A) General. Whenever an Event of Default shall have occurred and be continuing with respect to this Payment in Lieu of Tax Agreement, the Agency (or if such Event of Default concerns a payment required to be made hereunder to any Taxing Entity, then with respect to such Event of Default such Taxing Entity) may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreement and covenants of the Company under this Payment in Lieu Agreement.

(B) Cross-Default. In addition, an Event of Default hereunder shall constitute an event of default under Article X of the Lease Agreement. Upon occurrence and continuance of an Event of Default hereunder resulting from a failure of the company to make any payment required hereunder, the Agency shall have, as a remedy therefor under the Lease Agreement, among other remedies, the right to terminate the Lease Agreement, thus subjecting the Project Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State.

SECTION 10. Term of Agreement. The term of the PILOT Agreement shall be from the date leasehold interest to the Land is leased to the Agency by the Company by the Underlying Lease to the date the leasehold interest to the Land is conveyed by assignment to the Company (or any other Person) by the Agency pursuant to the provisions of the Lease Agreement, or until February 1, 2028, whichever is earlier. Until the leasehold interest in the Land and improvements is transferred into the Agency on the next ensuing taxable status date, the Company shall be liable for all real property taxes levied on, or which could be levied on, the Land and improvements based on the assessment roll in effect on the date of the Underlying Lease from the Company to the Agency. The Company shall be liable for all real property taxes levied on, or which could be levied on, the Land and improvements from the date of conveyance from the Agency to the Company pursuant to the provisions of Section 520 of the Tax Law of the State.

SECTION 11. Grievance Procedure.

(A) The Agency hereby assigns to the Company all of the Agency's rights under the Real Property Tax Law of the State to contest any assessment on or real property tax levied against the tax parcel containing the Land and the Facility for any year during the term of this Agreement. Should the Company commence any real property assessment review proceeding under this Section 11, the Company shall have the right to prosecute such action or administrative adjudication in the name of the Agency or in its own name as the holder of the leasehold interest. If the Company shall prevail in such proceeding, the Agency shall pass through to the Company any refunds of payments in lieu of taxes the Agency receives from the taxing jurisdictions based upon the final order or judgment of the court or Governmental Authority reviewing the assessment or tax.

(B) The rights assigned in paragraph (A) of this Section 11 are subject to those rights and obligations created by the Lease Agreement.

SECTION 12. Assignment of Company Obligations. The obligations of the Company under the PILOT Agreement may not be assigned in whole or in part to any other Person without the prior written consent of the Agency.

SECTION 13. Merger of Agency.

(A) Nothing contained in the PILOT Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into or assignment by the Agency of its rights and interests hereunder to any other body corporate and politic and public instrumentality of the State or political subdivision thereof which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all the agreements and conditions of the PILOT Agreement and the Lease Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.

(B) As of the date of any such consolidation, merger or assignment, the Agency shall give notice thereof in reasonable detail to the Company. Pursuant to Section 9.2 of the Lease Agreement, the Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger or assignment as the Company reasonably may request.

SECTION 14. Uniform Tax Exemption Policy. This PILOT Agreement and its provisions are in compliance with the Agency's Uniform Tax Exemption Policy.

SECTION 15. Counterparts. This PILOT Agreement may be executed in several counterparts each of which shall be an original and all of which shall constitute but one instrument.

SECTION 16. Applicable Law. This PILOT Agreement shall be governed exclusively by the applicable laws of the State of New York.

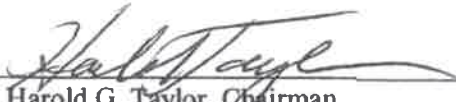
SECTION 17. Section Headings. The section headings of this PILOT Agreement have been prepared for convenience only and shall not affect the meaning of any provision of this PILOT Agreement.

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[SIGNATURE PAGE FOLLOWS]


IN WITNESS WHEREOF, the Agency and the Company have caused this PILOT Agreement to be executed by their Authorized Representatives as of the date first above written.

COUNTIES OF WARREN AND WASHINGTON
INDUSTRIAL DEVELOPMENT AGENCY

BY: 
Harold G. Taylor, Chairman

18 HOSPITALITY, LLC

By: 87 Stays, Inc., Member

BY: 
Gerard P. Nudi, President

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

On the 27th day of February in the year 2017, before me, the undersigned, personally appeared **Harold G. Taylor**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

KARA I. LAISS
Notary Public, State of New York
Saratoga Co. #02LA6105701
Commission Expires Feb. 17, 2020

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

On the 17th day of March in the year 2017, before me, the undersigned, personally appeared **Gerard P. Nudi**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

KARA I. LAISS
Notary Public, State of New York
Saratoga Co. #02LA6105701
Commission Expires Feb. 17, 2020

SCHEDULE A
(PROPERTY DESCRIPTION & SOURCE OF TITLE)

Schedule A – Description

All that certain piece or parcel of land situate, lying and being in the Town of Queensbury, County of Warren and the State of New York, as shown on a map made for Switchco LLC by Van Dusen & Steves dated August 2007, last revised September 19, 2016 and filed in the Warren County Clerk's Office on November 7, 2016 as instrument #2016-3000103, more particularly bounded and described as follows: **BEGINNING** at a point in the northerly bounds of Corinth Road, said point of beginning, being located South 89 degrees, 06 minutes and 41 seconds East, a distance of 114.98 feet from the intersection of the northerly bounds of Corinth Road with the easterly bounds of Rhode Island Avenue; thence running from said point of beginning, North 04 degrees, 02 minutes and 07 seconds East, a distance of 404.70 feet; thence South 87 degrees, 16 minutes and 31 seconds East, a distance of 655.76 feet; thence North 02 degrees, 43 minutes and 29 seconds East, a distance of 452.94 feet to a point marking the southwest corner of New Hampshire Avenue; thence running in an easterly direction along the southerly bounds of New Hampshire Avenue and others, South 85 degrees, 31 minutes and 00 seconds East, a distance of 534.59 feet to a capped iron rod set in the ground for a corner on the westerly bounds of NYS Adirondack Northway Route 87 (Interstate 87); thence running in a southerly direction along the westerly bounds of Interstate 87, the following two courses and distances:

- (1) South 32 degrees, 15 minutes and 34 seconds West, a distance of 516.36 feet;
- (2) South 28 degrees, 23 minutes and 34 seconds West, a distance of 85.72 feet to a point marking the northeasterly corner of the lands as conveyed to McDonalds Real Estate Company by deed book 4727 at page 308; thence running in a westerly direction partially along the northerly bounds of the lands of McDonalds Real Estate Company, North 87 degrees, 16 minutes and 31 seconds West, a distance of 810.46 feet; thence running South 04 degrees, 02 minutes and 07 seconds West, a distance of 313.99 feet to a point in the northerly bounds of Corinth Road; thence running in a westerly direction along the northerly bounds of Corinth Road, the following two courses and distances:
 - (1) North 87 degrees 00 minutes and 41 seconds West, a distance of 60.01 feet;
 - (2) North 89 degrees, 06 minutes and 41 seconds West, a distance of 30.04 feet to the place and point of beginning, containing 6.76 acres of land to be the same more or less.

Bearings given in the above description refer to magnetic North.

TOGETHER with and SUBJECT to a 50-foot wide easement for the installation of utilities, including electrical, water, sewer, gas and other utilities for the benefit of the above described premises and all other lands of Switchco LLC, as shown on the aforesaid map (instrument #2016-3000103), the easterly boundary of said easement commencing at the southwest corner of lands now or formerly of McDonald's Real Estate Company (4727/308) thence from said point of beginning North 02 degrees, 43 minutes and 29 seconds East, a distance of 314.96 feet to a point in the southerly boundary of the access drive within the above described premises; then continuing North 02 degrees, 43 minutes and 29 seconds East, a distance of 100 feet more or less to a point north of the northerly boundary of the access drive to

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Schedule A – Description (continued)

the above described premises. RESERVING the right to grant easements over said 50-foot wide strip of land for the installation of utilities to serve all other lands of Switchco LLC, as shown on the aforesaid map (instrument #2016-3000103).

RESERVING to the grantor, for the benefit of all lands of Switchco LLC as shown on the aforesaid map (instrument #2016-3000103), the right to construct a monument sign along the Corinth Road on tax parcel 309.13-1-73 at a location approved by the Town of Queensbury, which said sign may be shared by the owner of the above described premises in common with the owners of other lands of Switchco LLC, as shown on the aforesaid map (instrument #2016-3000103.)

RESERVING to the grantor, for the benefit of all lands of Switchco LLC as shown on the aforesaid map (instrument #2016-3000103), the right to grant easements for the shared use of the private access drive for ingress and egress to Corinth Road, in accordance with the terms of a mutual access agreement to be recorded, and further reserving to the grantor the right to add a third lane for turning from the private drive to exit onto Corinth Road.

RESERVING to the grantor, for the benefit of all lands of Switchco LLC as shown on the aforesaid map (instrument #2016-3000103), the right to grant easements for storm water infrastructure, including infiltration basins, sedimentation basins, drainage swales and/or subsurface storm water pipes, outside the pavement area of the private drive extending from Corinth Road within the above described premises to serve the above described premises and other lands of Switchco LLC, as shown on the aforesaid map (instrument #2016-3000103.)

SCHEDULE B

PILOT PAYMENT SCHEDULE

During the term of this PILOT Agreement, the Company shall make payments equal to the sum of (a) the Base PILOT Payment; and (b) the Improvement PILOT Payment:

(a) Base PILOT Payment. One hundred percent (100%) of the taxes that would be due on the Base Land (as hereinafter defined). For purposes of this Agreement, the Base Land shall be \$609,600.00. For purposes this Agreement, "Base Land" shall mean Property with no improvements on the tax parcel. For the 2017 assessment roll, the Company acknowledges and agrees that the Tax Parcel will be assessed on the taxable portion of such assessment roll and the Company covenants and agrees to make all tax payments levied from the 2017 assessment roll;

(b) Improvement PILOT Payment. The PILOT payments on the Improvements shall be as follows: the product of (i) the applicable tax rates from the current assessment roll; (ii) .001; (iii) the difference between Total Assessed Value for the tax parcel containing the Project Facility and the Base Land; and (iv) the Percentage Abatement set forth in the Abatement Schedule Below for each respective Assessment Year.

ABATEMENT SCHEDULE

Pilot Year	Assessment Year	Percentage of Abatement on New Facility
Year 1	2018	50% abatement on new construction
Year 2	2019	45% abatement on new construction
Year 3	2020	40% abatement on new construction
Year 4	2021	35% abatement on new construction
Year 5	2022	30% abatement on new construction
Year 6	2023	25% abatement on new construction
Year 7	2024	20% abatement on new construction
Year 8	2025	15% abatement on new construction
Year 9	2026	10% abatement on new construction
Year 10	2027	5% abatement on new construction
Year 11	2028	Return to Taxable Assessment Rolls

SCHEDULE C

RECAPTURE POLICY (Adopted July 18, 2016)

Section 1. Reasons for the recapture of benefits (Financial Assistance) include the following:

- a. Sale or closure of the facility and departure of the company from the Counties of Warren or Washington (Notwithstanding any of the terms set forth herein, this occurrence shall result in the immediate termination of Financial Assistance).
- b. Significant change in the use of the facility and/or the business activities of the company.
- c. Significant employment reductions not reflective of the company's (normal) business cycle and/or local and national economic conditions.
- d. Failure to comply with any periodic and/or annual reporting requirements of the Agency, State or Federal governmental agency.
- e. Failure to meet or comply with the Material Terms, as determined by the Agency at the time of the acceptance of the project for Financial Assistance and as set forth in the Inducement Resolution, Amended and Restated Preliminary Agreement.

These "Material Terms" as defined for the particular project will be utilized by the Agency in setting and monitoring project benchmarks during the term of the incentives for the purposes of administering the Agency's recapture policy.

For certain numerical "Material Terms" such as job creation/retention or investment amount an achievement factor of 80% will constitute compliance. For non-numeric "Material Terms" such as redevelopment of an old structure for a new purpose or location on a Brown Field site, a determination of compliance will be made upon completion of the project.

It is understood that these "Material Terms" may vary depending on project type and project specifics, and may be selected from the criteria set forth in the foregoing Section A, 2 Impact on Local Economy in the Policy Manual of the Agency.

- f. For a project that failed to comply with a significant term or condition to use property or services in the manner required by any and all provisions of the agreements that the company has entered into with the Agency.

Section 2. For companies receiving real property tax abatements the recapture of benefits schedule (applicable to the real property tax abatements) is as follows:

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| Years 1-5 | 100% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction |
| Years 6-7 | 75% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction |
| Years 8-9 | 50% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction |
| Year 10 | 25% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction |
| Years 11+ | 0% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions. |

The time period above is from the effective date of the PILOT Agreement

In the case of real property taxes, any amounts recovered, recaptured, received or otherwise obtained shall be payable to the appropriate taxing jurisdictions, unless otherwise agreed to in writing by the taxing jurisdiction.

Section 3. In addition to the above reasons for recapture, the Agency shall recover, recapture, receive or otherwise obtain from the company, or its subagents, sales tax benefits that were taken or purported to be taken which are:

- a. In excess of the amounts authorized; or
- b. For property or services not authorized; or
- c. For a project that failed to comply with a significant term or condition to use property or services in the manner required by any and all provisions of the agreements that the company has entered into with the Agency.

For purposes of this Recapture Policy, the Company and its subagents shall cooperate with the Agency in its efforts to recover, recapture, receive or otherwise obtain such State sales and use benefit exemptions and shall promptly pay over such amount to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of Taxation and Finance to assess and determine State sales and use taxes due from the Company under Article 28 of the New York State Tax Law, together with any penalties and interest due on such amounts.

In the event that the Agency recovers, recaptures, receives or otherwise obtains any amount of State sales and use tax exemption benefits from the Company or its agents, the Agency shall, within thirty (30) days of coming into possession of such amount, remit it to the Commissioner of Taxation and Finance, together with such other information and report that the Commissioner deems necessary to administer payment over such amount.

Section 4. In the event that the Agency determines that there exists a basis for recapture as set forth in Section 1 herein, the Agency shall notify the company, in writing, that the Agency has determined that a basis for recapture exists. The company shall be given a reasonable timeframe within which to remedy the violation, such timeframe being commensurate to the violation, and the company shall provide additional information and/or an explanation as to why the violation has occurred or the Material Term has not been achieved, as the case may be. If requested by the Agency, the company shall make a presentation to the Agency concerning this default.

Thereafter the Agency may determination pursuant to this Recapture Policy. Imposition of any recapture is at the sole discretion of the Agency and is reviewed/considered on a case by case basis. In lieu of imposing the above recapture penalties and for good cause shown by the company, the Agency, at its sole discretion, may make a determination to discontinue the Financial Assistance in its entirety, per the provisions set forth the in the Lease Agreement; or suspend the Financial Assistance for a specific stated period of time in order for the company to correct or comply with the Material Term being breached; or, in the case of real property taxes exemptions, modify the PILOT Agreement to decrease the exemption and increase the payments due for the remaining term of the PILOT Agreement.