

## AGREEMENT FOR PAYMENTS IN LIEU OF TAXES

**AGREEMENT FOR PAYMENTS IN LIEU OF TAXES** (the "PILOT Agreement"), dated as of August 15, 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 AVIATION HOSPITALITY, LLC (the "Company"), a New York limited liability company having an office for the transaction of business at 906 State Route 9, Queensbury, New York 12804 (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 project (the "Project") consisting of : (i) the acquisition of an interest in a certain commercial parcel or parcels of land located at 524 Aviation Road, Town of Queensbury, County of Warren, State of New York (the "Land"); (ii) the construction and equipping of a 15,665+/- square foot 92 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 August 15, 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.

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 Default shall have occurred 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 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, Default hereunder shall constitute an event of default under Article X of the Lease Agreement. Upon occurrence 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. 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 Land and the Facility. 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. 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

AVIATION HOSPITALITY, LLC

BY:   
Bhavik Jariwala, Managing Member

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

On the 4<sup>th</sup> day of August 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.

  
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Notary Public

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

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

On the 15<sup>th</sup> day of August in the year 2017, before me, the undersigned, personally appeared **Bhavik Jariwala**, 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.

  
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Notary Public

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

SCHEDULE A  
(PROPERTY DESCRIPTION & SOURCE OF TITLE)



## SCHEDULE A

All that piece or parcel of land situate in the Town of Queensbury, County of Warren and the State of New York, bounded and described as follows:

Commencing at a point located along the southerly line of Aviation Road as appropriated in 1996, said point being the intersection formed by said southerly line of Aviation Road with the division line between the lands now or formerly of Queensbury Diner, LLC (Book 4368, Page 183) on the west and the lands now or formerly of PCGF Newco, LLC (Book 4143, Page 236) on the east; thence from said point of commencement and along said division line, the following five courses: 1) South 06°22'00" West, 125.64 feet to a point; 2) North 83°38'00" West, 12.00 feet to a point, 3) South 06°22'00" West, 27.12 feet to a point; 4) North 82°20'00" West, 57.24 feet and 5) South 06°03'00" West, 244.68 feet to the point of beginning; thence from said point of beginning and through the aforesaid lands of PCFG Newco, LLC, the following two courses: 1) South 83°57'00" East, 35.95 feet to a point and 2) South 10°25'40" East, 394.42 feet to a point; thence in a westerly direction and along the lands of Aviation Mall Newco, LLC (Book 4143, Page 246), South 51°30'20" West, 268.85 feet to a point; thence in a northerly direction and along Interstate 87, Adirondack Northway, North 07°46'20" West, 583.71 feet to a point; thence along the aforesaid first mentioned division line, South 83°57'00" East, 183.24 feet to the point or place of beginning.

Together with the easements and subject to the covenants, conditions and restrictions set forth in that certain Easement and Site Development Agreement With Covenants, Conditions and Restrictions dated July 28, 2017 by and between PCGF Newco, LLC and Aviation Hospitality, LLC, recorded in the Warren County Clerk's Office on August 1, 2017 in Book 5599 at page 275, which easement areas are bounded and described as follows:

### Route 254 Connector

All that piece or parcel of land situate in the Town of Queensbury, County of Warren and the State of New York, bounded and described as follows:

Beginning at a point located along the southerly line of Aviation Road as appropriated in 1996, said point being the intersection formed by said southerly line of Aviation Road with the division line between the lands now or formerly of Queensbury Diner, LLC (Book 4368, Page 183) on the west and the lands now or formerly of PCGF Newco, LLC (Book 4143, Page 236) on the east; thence along said southerly line of Aviation Road, the following three courses: 1) South 83°41'49" East, 23.15 feet to a point; 2) North 05°57'18" East, 19.46 feet to a point; 3) South 83°08'35" East, 12.96 feet to a point; thence through the aforesaid lands of PCGF Newco, LLC, the following five courses: 1) South 12°56'01" West, 49.15 feet to a point; 2) South 07°26'21" West, 129.58 feet to a point; 3) along a curve to the right having a radius of 315.00 feet, an arc length of 135.07 feet and bearing a chord of South 19°43'24" West, 134.04 feet to a point; 4) along a curve to the left having a radius of 285.00 feet, an arc length of 112.23 feet, and bearing a chord of South 20°43'35" West, 111.51 feet to a point and 5) along a curve to the right having a radius of 47.00 feet, an arc length of 2.05 feet and bearing a chord of S 10°41'40" West, 2.05 feet to a point; thence along the division line between Lot No. 1 and Lot No. 2 as shown on the Filed

Map the following two courses: 1) North 10°25'40" West, 3.71 feet to a point and 2) North 83°57'00" West, 35.95 feet to a point; thence along the first mentioned division line, North 06°03'00" East, 32.53 feet to a point; thence through the aforesaid lands of PCGF Newco, LLC, the following four courses: 1) along a curve to the right having a radius of 102.00 feet, an arc length of 9.84 feet and bearing a chord of North 14°00'37" East, 9.84 feet to a point; 2) along a curve to the right having a radius of 326.00 feet, an arc length of 86.87 feet and bearing a chord of North 24°23'29" East, 86.41 feet to a point; 3) along a curve to the left having a radius of 274.00 feet, an arc length of 123.00 feet and bearing a chord of North 19°08'51" East, 121.97 feet to a point and 4) South 82°20'00" East, 1.02 feet to a point; thence along the first mentioned division line the following three courses: 1) North 06°22'00" East, 27.12 feet to a point; 2) South 83°38'00" East, 12.00 feet and 3) North 06°22'00" East, 125.64 feet to the point or place of beginning.

### **Utility Easement No. 1**

All that piece or parcel of land situate in the Town of Queensbury, County of Warren and the State of New York, bounded and described as follows:

Commencing at a point located along the southerly line of Aviation Road as appropriated in 1996, said point being the intersection formed by said southerly line of Aviation Road with the division line between the lands now or formerly of Queensbury Diner, LLC (Book 4368, Page 183) on the west and the lands now or formerly of PCGF Newco, LLC (Book 4143, Page 236) on the east; thence from said point of commencement and along the aforesaid line of Aviation Road, the following three courses: 1) South 83°41'49" East, 23.15 feet to a point; 2) North 05°57'18" East, 19.46 feet to a point and 3) South 83°08'35" East, 27.27 feet to the point of beginning; thence from said point of beginning and continuing along Aviation Road, South 83°08'35" East, 28.25 feet to a point; thence in a southerly direction and through the aforesaid lands of PCGF Newco, LLC, the following seven courses: 1) South 13°28'38" West, 30.58 feet to a point; 2) South 27°38'44" West, 85.21 feet to a point ; 3) South 06°26'42" West, 117.63 feet to a point; 4) South 28°18'42" West, 156.43 feet to a point; 5), along a curve to the left having a radius of 5.00 feet, an arc length of 1.85 feet and bearing a chord of South 17°41'44" West, 1.84 feet to a point; 6) South 07°04'47" West, 74.02 feet to a point and 7) along a curve to the right having a radius of 15.00 feet, an arc length of 9.59 feet and bearing a chord of South 25°28'08" West, 9.43 feet to a point; thence along the division line between Lot No. 1 and Lot No. 2 as shown on the Filed Map North 10°25'40" West, 44.14 feet to a point; thence through the aforesaid lands of PCGF Newco, LLC, the following seven courses: 1) North 05°50'35" East, 39.52 feet to a point; 2) North 27°51'04" East, 161.24 feet to a point; 3) North 05°55'36" East, 117.25 feet to a point; 4) North 21°18'33" East, 38.73 feet to a point; 6) North 21°35'30" East, 55.52 feet to a point and 7) North 05°50'35" East, 17.40 feet to the point or place of beginning.

### **Ring Road Connector**

All that piece or parcel of land situate in the Town of Queensbury, County of Warren and the State of New York, bounded and described as follows:

Commencing at a point located along the southerly line of Aviation Road as appropriated in 1996, said point being the intersection formed by said southerly line of Aviation Road with the division line between the lands now or formerly of Queensbury Diner, LLC (Book 4368, Page 183) on the west and the lands now or formerly of PCGF Newco, LLC (Book 4143, Page 236) on the east; thence along said southerly line of Aviation Road, the following five courses: 1) South 83°41'49" East, 23.15 feet to a point; 2) North 05°57'18" East, 19.46 feet to a point; 3) South 83°08'35" East, 61.77 feet to a point; 4) South 06°55'12" West, 19.50 feet to a point and 5) South 83°15'14" East, 23.08 feet to a point; thence in a southerly direction and along the lands of GRJH Inc. (Book 1420, Page 48), South 06°21'54" West, 154.88 feet to a point; thence in an easterly direction and along the aforesaid lands of GRJH Inc., and continuing along the lands now or formerly of MVK Enterprises, Inc. (Book 5452, Page 263), South 82°23'00" East, 320.00 feet to a point; thence in a southerly direction and along the lands now or formerly of Aviation Mall Newco, LLC (Book 4143, Page 246), South 06°16'16" West, 12.92 feet to the point of beginning; thence from said point of beginning and along said lands of Aviation Mall Newco, LLC South 06°16'16" West, 30.01 feet to a point; thence through the aforesaid lands of PCGF Newco, LLC the following ten courses: 1) along a curve to the right having a radius of 50.00 feet, an arc length of 0.62 feet and bearing a chord of North 82°47'17" West, 0.62 feet to a point; 2) North 83°08'33" West, 271.87 feet to a point; 3) along a curve to the right having a radius of 165.00 feet to a point, an arc length of 81.37 feet and bearing a chord of North 69°00'52" West, 80.55 feet to a point; 4) along a curve to the left having a radius of 37.00 feet, an arc length of 70.11 feet, an bearing a chord of South 70°49'44" West, 60.08 feet to a point; 5) along a curve to the left having a radius of 315.00 feet, an arc length of 49.99 feet and bearing a chord of North 11°59'07" East, 49.94 feet to a point; 6) North 07°26'21" East, 52.89 feet to a point; 7) along a curve to the left having a radius of 27.00 feet, an arc length of 33.13 feet and bearing a chord of South 27°42'35" East, 31.09 feet to a point; 8) along a curve to the right having a radius of 165.00 feet, an arc length of 38.78 feet and bearing a chord of South 56°07'34" East, 38.69 feet to a point; 9) along a curve to the left having a radius of 135.00 feet, an arc length of 79.52 feet to a point and bearing a chord of South 66°16'05" East, 78.37 feet to a point and 10), South 83°08'33" East, 272.18 feet to the point or place of beginning.

## Utility Easement No. 2

All that piece or parcel of land situate in the Town of Queensbury, County of Warren and the State of New York, bounded and described as follows:

Commencing at a point located along the southerly line of Aviation Road as appropriated in 1996, said point being the intersection formed by said southerly line of Aviation Road with the division line between the lands now or formerly of Queensbury Diner, LLC (Book 4368, Page 183) on the west and the lands now or formerly of PCGF Newco, LLC (Book 4143, Page 236) on the east; thence from said point of commencement and partially along said division line and continuing along the division line between Lot No. 1 and Lot No. 2 as shown on the Filed Map the following seven courses: 1) South 06°22'00" West, 125.64 feet to a point; 2) North 83°38'00" West, 12.00 feet to a point, 3) South 06°22'00" West, 27.12 feet to a point; 4) North 82°20'00" West, 57.24 feet and 5) South 06°03'00" West. 244.68; 6) South 83°57'00" East, 35.95 feet to a point and 7) South 10°25'40" East, 227.45 feet to the point of beginning; thence from said point of beginning and through the aforesaid Lot No. 2, the following three courses: 1) South

83°29'21" East, 53.27 feet to a point; 2) South 06°30'39" West, 10.00 feet to a point and 3) North 83°29'21" West, 50.23 feet to a point; thence along the aforesaid division line between Lot 1 and Lot 2, North 10°25'40" West, 10.45 feet to the point or place of beginning.

### Utility Easement No. 3

All that piece or parcel of land situate in the Town of Queensbury, County of Warren and the State of New York, bounded and described as follows:

Commencing at a point located along the southerly line of Aviation Road as appropriated in 1996, said point being the intersection formed by said southerly line of Aviation Road with the division line between the lands now or formerly of Queensbury Diner, LLC (Book 4368, Page 183) on the west and the lands now or formerly of PCGF Newco, LLC (Book 4143, Page 236) on the east; thence from said point of commencement and partially along said division line and continuing along the division line between Lot No. 1 and Lot No. 2 as shown on the Filed Map the following seven courses: 1) South 06°22'00" West, 125.64 feet to a point; 2) North 83°38'00" West, 12.00 feet to a point, 3) South 06°22'00" West, 27.12 feet to a point; 4) North 82°20'00" West, 57.24 feet and 5) South 06°03'00" West, 244.68; 6) South 83°57'00" East, 35.95 feet to a point and 7) South 10°25'40" East, 312.85 feet to the point of beginning; thence from said point of beginning and through the aforesaid Lot No. 2, North 80°22'08" East, 73.29 feet to a point; thence along the westerly line of the lands now or formerly of Aviation Mall Newco, LLC (Book 4143, Page 246), South 06°03'00" West, 10.39 feet to a point; thence through the aforesaid Lot 2, South 80°22'08" West, 70.34 feet to a point; thence along the aforesaid division line between Lot No. 1 and 2, North 10°25'40" West, 10.00 feet to the point or place of beginning.

The above described premises is shown on that certain survey made and map prepared by Ausfeld & Waldruff Land Surveyors LLP entitled "542 Aviation Road, Lot Line Adjustment Plan of the Lands of PCGF Newco, L.L.C.," dated March 6, 2017, revised to August 1, 2017 and filed in the Warren County Clerk's Office as Instrument No. 2017-3000071 (the "Filed Map").

## SCHEDULE B

### PILOT PAYMENT SCHEDULE

During the term of this PILOT Agreement, the Company shall make payments equal to a percentage of the taxes which would have been due to the relevant taxing entities based on the total assessed value of the Land and the New Facility/Improvements, as follows:

(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 \$450,072.00. 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; and (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:

- |           |  |
|-----------|--|
| 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.