

PROJECT AGREEMENT

THIS PROJECT AGREEMENT (hereinafter, the "Agreement"), effective as of January 6, 2021 by and between the COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL DEVELOPMENT AGENCY (the "Agency"), a public benefit corporation of the State of New York having an address of 5 Warren Street, Glens Falls, New York 12801 and FOWLER SQUARE, LLC., a limited liability company organized pursuant to the laws of the State of New York, with an address of 427 New Karner Road, Albany, New York 12205 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 862 of the Laws of 1971 of the State of New York pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and; and

WHEREAS, (i) the acquisition by the Agency of a leasehold interest in certain real property located at 719 Bay Road in the Town of Queensbury, County of Warren, New York (the "Land"); (ii) the planning, design, expansion, construction, operation and maintenance by the Company of 142 residential apartments, approximately 5,000 +/- square feet of professional office and service space, approximately 7,800 +/- square feet of property management and clubhouse space and approximately 25,700 +/- square feet of indoor parking space for use by the Company (collectively, the "Improvements"); (iii) the acquisition of and installation in and around the Land and Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the "Equipment" and, collectively with, the Land and the Improvements, the "Facility"); and (iv) entering into a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain a leasehold interest in the Facility for a period of time and sublease such interest in the Facility back to the Company (the "Straight Lease Transaction"), 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, on January 6, 2021, the Agency conducted a public hearing pursuant to the Act prior to taking official action relating to the Project; and

WHEREAS, on January 6, 2021, the Agency adopted a resolution approving the undertaking of the Project, appointing Fowler Square, LLC., agent of the Agency for the purpose of constructing and equipping the Project Facility and authorized the execution and delivery of closing documents by and between the parties (collectively referred to as the "Approval and Closing Resolution"); and

WHEREAS, by the Approval and Closing Resolution, the Agency has conferred on the Company in connection with the Project certain benefits, exemptions and other financial assistance consisting of: (a) an exemption benefit from all New York State and local sales and use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction or equipping of the Facility; (b) an exemption from mortgage recording tax on eligible mortgages

and (c) a partial abatement from real property taxes benefit through a ten (10) year "payment in lieu of tax agreement" with the Company for the benefit of each municipality and school district having taxing jurisdiction over the Project, (collectively, the sales and use tax exemption benefit, the mortgage recording tax exemption and the partial abatement from real property taxes benefit, are hereinafter collectively referred to as the "Financial Assistance"); and

WHEREAS, it has been estimated and confirmed by the Company as included within its Application for Financial Assistance that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$23,926,584.00 and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$1,614,861.00, unless otherwise approved by the Agency; and

WHEREAS, the Company proposes to lease the Facility to the Agency, and the Agency desires to rent the Facility from the Company pursuant to the terms of a certain Company Underlying Lease Agreement (the "Underlying Lease Agreement"), by and between the Company and the Agency; and

WHEREAS, the Agency proposes to sublease the Facility to the Company, and the Company desires to rent the Facility from the Agency, upon the terms and conditions set forth in a certain Lease Agreement (the "Lease Agreement"), by and between the Company and the Agency; and

WHEREAS, in order to define the obligations of the Company regarding payments-in-lieu-of taxes for the Facility, the Agency and the Company will enter into a Payment-in-Lieu-of-Tax Agreement (the "PILOT Agreement"), by and between the Agency and the Company; and

WHEREAS, in order to define the obligations of the Company regarding its ability to utilize the Agency's sales and use tax exemption benefit as agent of the Agency to acquire, construct, renovate and equip the Facility and to undertake the Project, the Agency and the Company entered into an Agent Agreement, dated as of January 6, 2021 (the "Agent Agreement"), by and between the Agency and the Company; and

WHEREAS, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the Approval and Closing Resolutions and the Agent Agreement, that the Company provide assurances with respect to the terms and conditions herein set forth; and

WHEREAS, this Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company.

WHEREAS, no Financial Assistance shall be provided to the Company prior to the effective date of this Agreement.

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Purpose of Project. It is understood and agreed by the parties hereto that the purpose of the Agency's provision of Financial Assistance with respect to the Project is to, and that the Agency is entering into the Underlying Lease Agreement, Lease Agreement, PILOT Agreement and Agent Agreement in order to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project Facility to advance job opportunities, health, general prosperity and economic welfare of the people of the Counties of Warren and Washington and to otherwise accomplish the public purpose of the Act.

2. PILOT Agreement. The parties hereto understand and agree that Exhibit A to this Agreement contains a copy of the PILOT Agreement, to be entered into, or entered into, by and between the Company and the Agency.

3. Termination, Modification and/or Recapture of Agency Financial Assistance. It is understood and agreed by the Parties hereto that the Agency is entering into the Underlying Lease Agreement, the Lease Agreement, the PILOT Agreement and the Agent Agreement in order to provide Financial Assistance to the Company for the Facility and to accomplish the public purposes of the Act. The Company hereby makes the following representations and covenants in order to induce the Agency to proceed with the Project Facility:

(a) In accordance with Section 875(3) of the New York General Municipal Law, the policies of the Agency, and the Approval and Closing Resolution, the Company covenants and agrees that it may be subject to a Recapture event (as hereinafter defined) resulting in the potential recapture of any and all Financial Assistance, as described below and in accordance with the provisions of the Recapture Policy of the Agency, as it may be amended, if the Company receives, or its subagents receives any Financial Assistance from the Agency, and it is determined by the Agency that:

i. 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) or sale of the facility without the prior approval of the Agency; or

ii. Significant change in the use of the facility and/or the business activities of the company; or

iii. Significant employment reductions not reflective of the company's (normal) business cycle and/or local and national economic conditions; or

iv. Failure to comply with any periodic and/or annual reporting requirements of the Agency, State or Federal governmental agency; or

v. 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; or

vi. 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 authorizing resolutions; all as further defined below, being additional purposes to be achieved by the Agency with respect to its determination to provide Financial Assistance to the Project and required by the Agency to be complied with and adhered to, as evidenced by submission, as so required by the Agency, of written confirmation certifying and confirming on an annual basis beginning in the first year in which Financial Assistance confirming:

(1) Investment Commitment - that the total investment actually made with respect to the Project at the Project's construction completion date equals or exceeds \$33,132,748.00 (which represents the product of 80% multiplied by \$41,415,935.00 being the total project cost as stated in the Company's application for Financial Assistance); and

(2) Employment Commitment - that there are at least three (3) full time equivalent ("FTE") employees located at, or to be located at, the Facility as stated in the Company's application for Financial Assistance (the "Baseline FTE"); and

- the number of current FTE employees in the then current year at the Facility; and
- that the Company has maintained and created FTE employment at the Facility equal to a number that represents approximately the product of 80% multiplied by the Baseline FTE as stated in the Company's application for Financial Assistance; and

(b) Project Assessment Reporting Commitment – that the Company shall provide, annually, to the Agency, certain information to confirm that the Project is achieving the investment, job retention, job creation, and other objectives of the Project.

In order to accomplish the foregoing, the Company shall provide annually, to the Agency, a certified statement and documentation: (i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the Project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. Exhibit B contains the form of annual certification as so required as discussed above as well as additional Project assessment information that the Agency requires, on an annual basis, to be submitted to the Agency by the Company.

The findings made by the Agency with respect to Section 3 and/or failure to provide the written confirmation as required by Section 3 with respect to the thresholds and requirements as identified in this Section 3, and/or failure to meet the thresholds and requirements as identified in this Section 3, may potentially be determined by the Agency, in accordance with the Agency's

“Recapture Policy”, to constitute a failure to comply with Section 875(3) of the New York General Municipal Law, and/or a failure to comply with a material term or condition to use property or services or Agency Financial Assistance in the manner approved by the Agency in connection with the Project, and/or a failure to comply with the Agency’s policies and Approval and Closing Resolution (collectively, findings and determinations made as described herein with respect to this Section 3 and/or the failure under this Section 3 to submit the required certification and/or the failure to meet the required thresholds and requirements as specified in this Section 3 are hereby defined as a “Recapture Event”). If the Agency makes a Recapture Event determination, the Company agrees and covenants that it will (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s). The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine the New York State and local sales and use tax due from the Company, together with any relevant penalties and interest due on such amounts.

(b) In accordance with the Approval and Closing Resolution the Company further: (i) covenants that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$23,926,584.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 3 of this Project Agreement, cannot exceed \$1,614,861.00, unless otherwise increased by the approval of the Agency.

(c) The Company acknowledges and understands that a Recapture Event determination made with respect to Section 3 of this Project Agreement will, in addition, immediately result in the loss and forfeiture of the Company’s right and ability to obtain any and all future Financial Assistance with respect to the Project.

4. Force Majeure. Notwithstanding any other provision of this Agreement, if by reason of force majeure, any party hereto shall be unable in whole or in part to carry out its obligations under this Agreement and, if such party shall give notice and full particulars of such force majeure in writing to the other party, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Agreement of the party giving such notice (and only such obligations), so far as they are affected by such force majeure, shall be suspended during continuation of the inability, which shall include a reasonable time for the removal of the effect thereof. The term “force majeure” as used herein shall include, without limitation, acts of God, strikes, lockouts of other industrial disturbances, acts of public enemies, acts, priorities or order of any kind of the government of the United State of America or of the State of New York or any of their departments, agencies, governmental subdivisions or officials or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause

for the same with all reasonable promptness. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

5. Survival. All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Agreement to the Agency regardless of any investigation made by the Agency.

6. Notices. All notices, certificates and other communications under this Agreement shall be in writing and shall be deemed given when delivered personally or when sent by certified mail, postage prepaid, return receipt requested, or by Federal Express, addressed as follows or to such other address as any party may specify in writing to the other:

To the Agency:

Counties of Warren and Washington
Industrial Development Agency
5 Warren Street
Glens Falls, New York 12801
Attention: Chairman

With Copy to:

FitzGerald Morris Baker Firth P.C.
P.O. Box 2017
68 Warren Street
Glens Falls, NY 12801-2017
Attention: Kara I. Lais, Esq.

To the Company:

Fowler Square, LLC
427 New Karner Road
Albany, New York 12205
Attention: Christopher J. Falvey

With Copy to:

SMPR Title Agency, Inc.
50 Chapel Street
Albany, New York 12207
Attention: Eugene M. Sneeringer, Esq.

6. Amendments. No amendment, change, modification, alteration or termination of this Agreement shall be made except in writing upon the written consent of the Company and the Agency.

7. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement or the application thereof shall not affect the validity or enforceability of the remaining portions of this Agreement or any part thereof.

8. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State, without regard or reference to its conflict of laws principles.

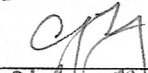
9. Section Headings. The headings of the several Sections in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Agreement.

{Signature Page to Follow}

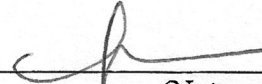
STATE OF NY)
COUNTY OF Albany) ss.:

Christopher Falvey, being first duly sworn, deposes and says:

1. That I am an authorized representative of Fowler Square, LLC and that I am duly authorized on behalf of the Company to bind the Company and to execute this Agreement.
2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

By: 
Title: Member

Subscribed and affirmed to me under penalties of perjury
this 27th day of January, 2021.


(Notary Public)

CRAIG ROBERT LECLAIRE
Notary Public, State of New York
No. 01LE6260202
Qualified in Albany County
Commission Expires 04/23/2024

EXHIBIT A

PILOT Agreement

AGREEMENT FOR PAYMENTS IN LIEU OF TAXES

THIS AGREEMENT FOR PAYMENTS IN LIEU OF TAXES (the “PILOT Agreement”), dated as of February 23, 2021, 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 FOWLER SQUARE, LLC (the “Company”), a limited liability company organized and existing under the laws of the State of New York, with an address at 427 New Karner Road, Albany, New York 12205.

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 by the Agency of a leasehold interest in certain real property located at 719 Bay Road in the Town of Queensbury, County of Warren, New York (the “Land”); (ii) the planning, design, expansion, construction, operation and maintenance by the Company of 142 residential apartments, approximately 5,000 +/- square feet of professional office and service space, approximately 7,800 +/- square feet of property management and clubhouse space and approximately 25,700 +/- square feet of indoor parking space for use by the Company (collectively, the “Improvements”); (iii) the acquisition of and installation in and around the Land and Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the “Equipment” and, collectively with, the Land and the Improvements, the “Facility”); and (iv) entering into a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain a leasehold interest in the Facility for a period of time and sublease such interest in the Facility back to the Company (the “Straight Lease Transaction”), 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 February 23, 2021 (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, 2021, 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) Subject to the completion and filing by the taxable status date of March 1, 2021 (the "Taxable Status Date") of New York State Form RP-412-a Application For Real Property Tax Exemption (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law and Section 874 of the Act, the Land (along with the Improvements once constructed by the Company, as agent of the Agency) shall be exempt from Real Estate Taxes for the periods set forth herein. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the County, Town and the School. The Company shall provide to the Agency with the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Lease Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay and any such payment may be

made under protest reserving all rights at law and under this PILOT Agreement and the Lease Agreement) all Real Estate Taxes levied upon the Facility as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. At no cost or expense to the Agency, the Agency agrees to cooperate with the Company in any such contest. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes except to the extent that such denial results solely from the failure of the Agency to file the Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

(B) 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 in lieu of Real Property Taxes (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.

(C) As long as the Facility is owned by the Agency or leased by the Company to the Agency, or under the Agency's jurisdiction, control or supervision, the Company agrees to pay annually to the Agency as a payment in lieu of taxes, on or before January 31 and September 30 of each year beginning September 2021 (for School Taxes), and thereafter on January 31 and September 30 of each year during the term hereof (collectively, the "Payment Date") for County and Town Taxes and School Taxes, respectively, an amount equal to the Total PILOT payment, which is the product of the following:

The then current tax rate for such Affected Tax Jurisdiction (after application of any applicable equalization rate) multiplied by the Total Taxable Valuation (as defined in Schedule B)

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

(C) 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.

(D) 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.

(E) 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.

(F) Period of Benefits.

(i) It is anticipated that this PILOT Agreement will cover multiple phases of the total construction project. The proposed construction phases are described as follows:

(a) Phase 1: One (1) three (3) story multi-purpose building with the second and third floors consisting of multi-family residential units and the first floor consisting of indoor parking, a clubhouse/office facility and 5,000 +/- square feet of space for professional offices on 5.0 +/- acres.

(b) Phase 2: Four (4) two (2) story multi-family residential buildings with eight (8) units in each building on 6.0 +/- acres.

(c) Phase 3: Five (5) two (2) story multi-family residential buildings with eight (8) units in each building on 7.0 +/- acres.

It is the intention of this PILOT Agreement to apply the PILOT Payment Schedule as set forth in Schedule B to each of the above referenced construction phases and shall apply after a certificate of occupancy is issued for the Facility(ies) on each Phase. The Company and the Agency agree to amend this PILOT Agreement as may be necessary from time to time to confirm the periods of the benefits, the PILOT Payment Schedule and to amend the expiration date of this PILOT Agreement.

(ii) The Company shall pay the 2021-2022 School tax bill and the 2022 County and Town tax bill on the dates and in the amounts as if the Agency were not in title on the tax lien date with respect to said tax years based on the Base Valuation as defined in Schedule B herein plus any partial assessment for work in progress for the construction of the Facility.

(iii) Phase I. The tax benefits provided for herein for Phase I, as described in this Section, shall be deemed to include (i) the 2023 County and Town tax year through and including the 2033 County and Town Tax year and (ii) the 2022/2023 School tax year through and including the 2032/2033 School tax year. The PILOT period for Phase I shall expire on December 31, 2033; *provided, however*, the Company shall pay the 2034 County and Town tax

bill and the 2033/2034 School tax bill on the dates and in the amounts as if the Agency were not in title on the tax lien date with respect to said tax years.

(iv) Contemplating Phases II and II, this PILOT Agreement shall expire on December 31, 2036; *provided, however*, the Company shall pay the 2037 County and Town tax bill and the 2036/2037 School tax bill on the dates and in the amounts as if the Agency were not in title on the tax lien date with respect to said tax years.

(v) In no event shall the Company be entitled to receive tax benefits relative to the Facility for all Phases for more than the periods provided for herein, unless the period is extended by amendment to this Agreement executed by both parties after any applicable public hearings.

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 and in accordance with the terms of the Agent Agreement dated January 6, 2021 entered into by and between the Company and the Agency. 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 after notice thereof and opportunity to cure as provided thereunder.

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. Except as otherwise stated in Section 3, the term of the PILOT Agreement shall commence as of the date hereof and run through and include December 31, 2036, unless terminated earlier in accordance with the provisions hereof. 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, provide however the Company shall not be obligated to pay any such real property taxes for any period for which it has made the PILOT Payments.

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.

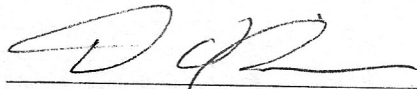
SECTION 16. Applicable Law. This PILOT Agreement shall be governed exclusively by the applicable laws of the State of New York.

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.

[SIGNATURE PAGE FOLLOWS]

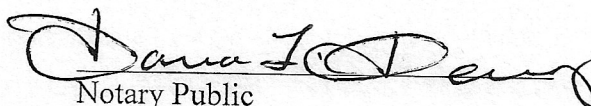
IN WITNESS WHEREOF, the Agency and the Company have caused this PILOT Agreement to be executed by their Authorized Representatives as of the date first above written.

COUNTIES OF WARREN AND WASHINGTON
INDUSTRIAL DEVELOPMENT AGENCY

BY: 
David O'Brien, Chairman

STATE OF NEW YORK)
 SS
COUNTY OF WARREN)

On the 19th day of February in the year 2021, before me, the undersigned, a notary public in and for said state, personally appeared David O'Brien 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

DONNA L. DERWAY
Notary Public, State of New York
Warren County #01DE4647371
Commission Expires Aug. 31, 2021

