

May 10, 2023

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TO ALL ON THE ATTACHED DISTRIBUTION LIST:

Re: County of Monroe Industrial Development Agency ("COMIDA")
20 Fairwood Road Associates, LLC Project; Fairwood Drive (formerly known as
4000 East River Road) in the Town of Henrietta, New York
Tax Map No.: 174.010-0002-058.100

Ladies and Gentlemen:

Enclosed herewith please find a copy of the Amended and Restated Payment In Lieu of Tax Agreement with respect to the above-captioned matter.

Very truly yours,

Rachel C Baranello

Rachel C. Baranello

RCB/lap
Enclosures

cc: COMIDA
Shaofan Zhang
Erich Eisenegger, Esq.
Rebecca Wiesner
Linda Salpini

DISTRIBUTION LIST

Hon. Adam J. Bello, County Executive
County Office Building
39 West Main Street, Room 110
Rochester, New York 14614
CERTIFIED MAIL RECEIPT #:
9489 0090 0027 6390 0184 16

Mr. Stephen L. Schultz, Supervisor
Town of Henrietta
475 Calkins Road
Rochester, New York 14623
CERTIFIED MAIL RECEIPT#:
9489 0090 0027 6390 0184 30

Dr. Barbara A. Mullen, Superintendent
Rush-Henrietta Central School District
2034 Lehigh Station Road
Henrietta, New York 14467
CERTIFIED MAIL RECEIPT #:
9489 0090 0027 6390 0184 54

Ms. Diane E. McBride, Board President
Rush-Henrietta Central School District
2034 Lehigh Station Road
Henrietta, New York 14467
CERTIFIED MAIL RECEIPT #:
9489 0090 0027 6390 0184 78

Ms. Susan Buck
Monroe County Treasury
B-3 County Office Building
39 West Main Street
Rochester, New York 14614
CERTIFIED MAIL RECEIPT #:
9489 0090 0027 6390 0184 23

Ms. Michelle Nicodemus, Assessor
Henrietta Town Hall
475 Calkins Road
Rochester, New York 14623
CERTIFIED MAIL RECEIPT#:
9489 0090 0027 6390 0184 47

Ms. Karen Flanigan, District Clerk
Rush-Henrietta Central School District
2034 Lehigh Station Road
Henrietta, New York 14467
CERTIFIED MAIL RECEIPT #:
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COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY

AND

20 FAIRWOOD ROAD ASSOCIATES, LLC

**AMENDED AND RESTATED
PAYMENT IN LIEU OF TAX AGREEMENT**

Tax Account No.

174.010-0002-058.100

Dated as of June 1, 2023

Affected Tax Jurisdictions:

Monroe County
Town of Henrietta
Rush-Henrietta Central School District

**AMENDED AND RESTATED
PAYMENT IN LIEU OF TAX AGREEMENT**

THIS AMENDED & RESTATED PAYMENT IN LIEU OF TAX AGREEMENT (as amended and restated, the "PILOT Agreement"), dated as of the 1st day of June, 2023 is by and between the **COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, having its offices at 50 West Main Street, Rochester, New York 14614 (the "Agency") and **20 FAIRWOOD ROAD ASSOCIATES, LLC**, a New York limited liability company with offices at 333 South Wabash Avenue, Suite 2700, Chicago, Illinois 60604 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 55 of the Laws of 1972 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has requested the Agency to assist in a certain project (the "Project") consisting of: (A) the acquisition of a leasehold interest in an approximately 12.42-acre parcel of land located on Fairwood Drive (previously known as 4000 East River Road) in the Town of Henrietta, New York [Tax Map No.: 174.01-2-58.1] (the "Land") together with the existing 102-unit student housing apartment complex thereon known as Racquet Club Apartments (the "Existing Improvements"); (B)(i) the renovation and modernization of the Existing Improvements including, but not limited to, new kitchens/baths and full furnishings and (ii) the construction of an additional 3-story approximately 125,000 square-foot building with 81-units of additional student housing (the "Improvements"); and (C) the acquisition and installation therein, thereon or thereabout of certain machinery, equipment and related personal property (the "Equipment" and, together with the Land and the Improvements, the "Facility"); to serve the students of Rochester Institute of Technology; all pursuant the Act; and

WHEREAS, the Agency has agreed to lease the Facility to the Company; and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision other than special ad valorem levies, special assessments and service charges against real property, which are or may be imposed for special improvements or special district improvements; and

WHEREAS, in order to calculate the payment due under this PILOT Agreement, the Company has requested that the Town of Henrietta (the "Town") accept unaudited financial statements; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes by the Company to the Agency for

the benefit of Monroe County (the "County"), the Town, and the Rush-Henrietta School District (the "School" and, together with the County and the Town, the "Affected Tax Jurisdictions").

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:

Section 1 - Payment in Lieu of Ad Valorem Taxes.

Section 1.1 A. On October 14, 2020, the Agency completed and filed the 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. As such, the Facility is exempt from Real Estate Taxes as of the **2020** County and Town tax years and the **2019-2020** School tax year. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Leased Premises by the Affected Tax Jurisdictions. 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) all Real Estate Taxes levied upon the Leased Premises 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 Leased Premises is not impaired and the Leased Premises continues to qualify as a "project" under the Act; (ii) neither the Leased Premises 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. 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. Payee/PILOT Payments. (i) As long as the Leased Premises is leased to the Agency or under its jurisdiction, control or supervision, the Company agrees to pay annually to the Agency for the benefit of the Affected Tax Jurisdictions (or directly to the Affected Tax Jurisdictions), as a payment in lieu of taxes, within thirty (30) days of receipt of the invoice for payment of taxes (the "Payment Date"), commencing with the invoice for the **2019-2020** School tax year and the invoice for the **2020** County and Town tax years, an amount equal to the Total PILOT Payment. The Company shall make all payments due hereunder without further notice or invoicing from the Agency, any Affected Tax Jurisdiction or any other party.

(ii) (a) For purposes of this PILOT Agreement, each PILOT Payment shall be an amount equal to Shelter Rent multiplied by five percent (5%) for the first five (5) years of the PILOT term and ten percent (10%) for the balance of the PILOT term. The term "Shelter Rent" shall mean the total rents received from the occupants of the

Facility minus the cost of providing electricity, gas, heat and other utilities but shall not include (a) the cost of any insurance in connection with the Facility or (b) any utility or related costs incurred by any tenants or other occupants residing at the Facility.

(b) The Shelter Rent PILOT Payment shall be calculated on a calendar year.

(c) The PILOT Payments required hereunder shall be made in arrears to the Town Assessor each May 15 during the term hereof. In order to calculate the PILOT Payments, the Company agrees to provide unaudited financial statements to the Town by March 15 of each year of the PILOT term together with a certificate executed by the Company's chief financial or other similar officer showing the Company's calculation of the PILOT Payment. The Town shall be permitted to request an audit of the Company's books by an auditing firm of the Company's choice, with approval from the Town (such approval shall not be unreasonably withheld, conditioned or delayed), and at the Company's expense.

(iii) *Public Purpose.* 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.

1.2 Allocation. The Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder (if any) within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation.

1.3 Tax Rates. For purposes of determining the allocation of the Total PILOT Payment among the Affected Tax Jurisdictions, the Agency shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County, Town and special district purposes, the tax rates used to determine the allocation of the Total PILOT Payment shall be the tax rates relating to the calendar year which includes the PILOT payment due date.

1.4 Valuation of Future Additions to the Facility. In the event that any structural addition shall be made to the building or buildings included in the Facility, or any additional building or improvement shall be constructed on the Land (such structural additions, buildings and improvements being referred to hereinafter as "Future Addition"), the Company agrees to make additional payments in lieu of taxes to the Affected Tax Jurisdictions in amounts equal to the then current ad valorem tax rates which would be levied upon or with respect to the Future Addition by the Affected Tax Jurisdictions if the Future Addition were owned by the Company exclusive of the Agency's leasehold interest multiplied by the assessment or assessments established for that tax year by the appropriate Taxing Jurisdiction.

1.5 Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the 2019-2020 School tax year through the 2048-2049 School tax year, and (ii) the 2020 County and Town tax years through the 2049 County and Town tax years. This PILOT

Agreement shall expire on **December 31, 2049**; *provided, however*, the Company shall pay the **2049-2050** School tax bill and the **2050** County and Town tax bills on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. In no event shall the Company be entitled to receive tax benefits relative to the Leased Premises for more than the periods provided for herein, unless the period is extended by amendment to this PILOT Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Leased Premises which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b of the New York Real Property Tax Law ("RPTL"). It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

Section 2 - Special District Charges, Special Assessments and other Charges. Special district charges, special assessments, and special ad valorem levies (specifically including but not limited to fire district charges), and pure water charges and sewer charges are to be paid in full in accordance with normal billing practices.

Section 3 - Transfer of Leased Premises. In the event that the Leased Premises is transferred from the Agency to the Company (the lease/leaseback agreements are terminated), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section 1 herein, or this PILOT Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Leased Premises if the Leased Premises had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

Section 4 - Assessment Challenges.

4.1 The Company shall have all of the rights and remedies of a taxpayer with respect to any proposed assessment or change in assessment of the Leased Premises by any of the Affected Tax Jurisdictions. The Company shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this PILOT Agreement.

4.3 The Company shall (i) cause the appropriate real estate tax assessment office and tax levy officers to assess the Leased Premises and apply tax rates to the respective assessments,

and (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

Section 5 - Changes in Law. To the extent the Leased Premises is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

Section 6 - Events of Default.

6.1 The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section 1 hereof within thirty (30) days of the Payment Date (the "Delinquency Date"); (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; or (iii) cure the occurrence and continuance of any events of default under the Leaseback Agreement after the expiration of any applicable cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the General Municipal Law and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

6.2 If payments pursuant to Section 1 herein are not made by the due dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows: with respect to payments to be made pursuant to Section 1 herein, if said payment is not received by the Delinquency Date as defined in Section 6.1 above, the Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus a late payment penalty in an amount equal to one percent (1%) of the amount due per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, the Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

6.3 Upon the occurrence of an Event of Default hereunder, the liability of the Company hereunder shall be all amounts due to the Agency pursuant to Section 1 hereof through but not including the date on which the Facility is no longer exempt from Real Estate Taxes together with all other amounts due to the Agency pursuant to Section 6.2 hereof.

Section 7 - Assignment. No portion of any interest in this PILOT Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency, which shall not be unreasonably withheld or delayed.

Section 8 - Miscellaneous.

8.1 This PILOT Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which together shall constitute a single instrument.

8.2 All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Agency: County of Monroe Industrial Development Agency
50 West Main Street
Rochester, New York 14614
Attn: Executive Director

With a Copy to: Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attn: Rachel C. Baranello, Esq.

To the Company: 20 Fairwood Road Associates, LLC
333 South Wabash Avenue, Suite 2700
Chicago, Illinois 60604
Attn: Shaofan Zhang, Authorized Representative

With a Copy to: Eisenegger & Carroll LLP
19 Plover Lane
Lloyd Harbor, New York 11743
Attention: Erich Eisenegger, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

8.3 This PILOT Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Monroe County, New York.

8.4 Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Leased Premises and paid to the Agency by the Company.

Neither member of the Agency nor any person executing this PILOT Agreement on its behalf shall be liable personally under this PILOT Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this PILOT Agreement.

8.5 Benefit Period. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than thirty (30) consecutive years. The Company agrees that it will not seek any tax exemption for the Facility which would provide benefits for more than thirty (30) consecutive years. Notwithstanding the foregoing, nothing contained in this PILOT Agreement shall render the Company ineligible for a continued tax exemption under Real Property Tax Law Section 485-b or any other applicable statute if this PILOT Agreement is terminated prior to its expiration.

8.6 Job Requirement.

(A) The Company must create one (1) new full-time/full-time equivalent job in three (3) years and maintain that one (1) new full-time job for the balance of the thirty (30) year term hereof. The benefits provided for herein and the three-year job creation period commence when the Facility is substantially complete such that it is reassessed by the Town of Henrietta Assessor at full value for the Facility.

(B) Compliance Report. The Company shall report its compliance with these provisions as requested by the Agency.

(C) Job Failure. If the one (1) new full-time/full-time equivalent job is not created by the end of the three (3) year period or not continuously maintained during the balance of the term hereof, the exemption schedule will revert back to Section 485-b of the New York Real Property Tax Law and the Company agrees to pay in any year for which the job creation requirements are not met (a "Disqualifying Year"), as an additional payment in lieu of taxes, an amount equal to the difference between the tax benefits received in years one through the Disqualifying Year under this PILOT Agreement and the tax benefits which would have been received in years one through the Disqualifying Year under Section 485-b of the New York Real Property Tax Law. Under extenuating circumstances, the Agency Board may waive the above penalties after reviewing a written request from the Company for waiver of the penalties.

(D) Waiver Process. The payments required hereunder for any non-compliance shall be paid by the Company to any and all Affected Taxing Jurisdictions whether or not billed. However, if the Company has made a good faith effort to achieve the job creation requirement, it may apply in writing for relief from the obligation for repayment of taxes abated, based on a showing of unforeseen economic circumstances, fiscal hardship, or other good cause. Application for relief from the repayment obligation shall be made to the Agency, which shall

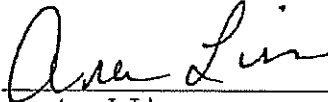
examine the application and grant relief, in whole or in part, from the repayment obligation or grant an alternate schedule for attaining the job creation requirement.

[Remainder of Page Intentionally Left Blank]

[Signature Page to PILOT Agreement]

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

**COUNTY OF MONROE INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: Ana J. Liss
Title: Executive Director

20 FAIRWOOD ROAD ASSOCIATES, LLC

By: 
Name: Shaofan Chang
Title: Authorized Signatory