

**HARRIS BEACH** PLLC  
ATTORNEYS AT LAW

February 1, 2023

99 GARNSEY ROAD  
PITTSFORD, NY 14534  
(585) 419-8800

RACHEL C. BARANELLO

DIRECT: (585) 419-8769  
FAX: (585) 419-8816  
RBARANELLO@HARRISBEACH.COM

**CERTIFIED MAIL RECEIPT#:**  
**9489 0090 0027 6390 0212 18**

Mr. Michael Zazzara, Assessor  
City Hall, Room 101A  
30 Church Street  
Rochester, New York 14614

Re: County of Monroe Industrial Development Agency  
Assignment and Assumption of 25-65 Phil Banks Way in the  
City of Rochester, NY  
Tax Map No. 090.62-1-8

Dear Mike:

Enclosed herewith please find a copy of the as-recorded Assignment and Assumption of Agreements (the "Assignment and Assumption"), from FCP Driving Park LLC (the "Assignor") to 1001 Driving Park, LLC (the "Assignee") in connection with the Project located at 25-65 Phil Banks Way in the City of Rochester, New York.

This Agreement assigns to the Assignee all of the benefits previously afforded the Assignor under the Lease Agreement, Leaseback Agreement and Payment-In-Lieu-Of-Tax Agreement (collectively, the "Documents" and more particularly described in the Assignment and Assumption), each by and between Assignor and the County of Monroe Industrial Development Agency.

This is to inform you that the PILOT Agreement for this property is to remain in effect and Assignee should receive the partial real property abatement for the remainder of the PILOT term. A copy of the PILOT Agreement is attached for your reference.

Please contact me if you have any questions. Thank you.

Very truly yours,



Rachel C. Baranello

RCB/lap

Enclosures

cc: COMIDA  
Attached Distribution List  
Thomas Golab  
William Brennan, Esq.

DISTRIBUTION LIST

Hon. Adam J. Bello, County Executive  
County Office Building, Suite 110  
39 West Main St.  
Rochester, New York 14614  
CERTIFIED MAIL RECEIPT #:  
9489 0090 0027 6390 0212 25

Hon. Malik Evans, Mayor  
City of Rochester  
City Hall, 30 Church Street  
Rochester, New York 14614  
CERTIFIED MAIL RECEIPT #:  
9489 0090 0027 6390 0212 49

Dr. Carmine Peluso, Superintendent  
Rochester City School District  
131 West Broad Street  
Rochester, New York 14614  
CERTIFIED MAIL RECEIPT #:  
9489 0090 0027 6390 0212 63

Ms. Susan Buck  
Collector of Fees and Taxes  
B-3 County Office Building  
39 West Main Street  
Rochester, New York 14614  
CERTIFIED MAIL RECEIPT #:  
9489 0090 0027 6390 0212 32

Mr. Randy Webb  
Bureau of Accounting  
30 Church Street, Room 106-A  
Rochester, New York 14614  
CERTIFIED MAIL RECEIPT #:  
9489 0090 0027 6390 0212 56

Ms. Cynthia Elliott, Board President  
Rochester City School District  
131 West Broad Street  
Rochester, New York 14614  
CERTIFIED MAIL RECEIPT #:  
9489 0090 0027 6390 0212 70

Tracking Number:

Remove X

## 9489009000276390021218

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[Add to Informed Delivery \(https://informedelivery.usps.com/\)](https://informedelivery.usps.com/)

### Latest Update

Your item has been delivered to an agent for final delivery in ROCHESTER, NY 14603 on February 3, 2023 at 9:20 am.

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**USPS Tracking Plus<sup>®</sup>**

### Delivered to Agent

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ROCHESTER, NY 14603

February 3, 2023, 9:20 am

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**Product Information**



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## 9489009000276390021225

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Your item was delivered to the front desk, reception area, or mail room at 12:37 pm on February 3, 2023 in ROCHESTER, NY 14614.

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### Delivered

Delivered, Front Desk/Reception/Mail Room

ROCHESTER, NY 14614

February 3, 2023, 12:37 pm

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## 9489009000276390021232

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Your item was delivered to the front desk, reception area, or mail room at 12:36 pm on February 3, 2023 in ROCHESTER, NY 14614.

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### Delivered

Delivered, Front Desk/Reception/Mail Room

ROCHESTER, NY 14614

February 3, 2023, 12:36 pm

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## 9489009000276390021249

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Your item has been delivered to an agent for final delivery in ROCHESTER, NY 14603 on February 3, 2023 at 9:20 am.

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### Delivered to Agent

Delivered to Agent for Final Delivery

ROCHESTER, NY 14603

February 3, 2023, 9:20 am

[See All Tracking History](#)

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Product Information



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## 9489009000276390021256

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### Latest Update

Your item has been delivered to an agent for final delivery in ROCHESTER, NY 14603 on February 3, 2023 at 9:20 am.

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### Delivered to Agent

Delivered to Agent for Final Delivery

ROCHESTER, NY 14603

February 3, 2023, 9:20 am

[See All Tracking History](#)

Feedback

Text & Email Updates



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Product Information



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Tracking Number:

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## 9489009000276390021263

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### Latest Update

Your item was delivered to an individual at the address at 8:42 am on February 3, 2023 in ROCHESTER, NY 14614.

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USPS Tracking Plus<sup>®</sup>

### Delivered

Delivered, Left with Individual

ROCHESTER, NY 14614

February 3, 2023, 8:42 am

[See All Tracking History](#)

Feedback

Text & Email Updates



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USPS Tracking Plus<sup>®</sup>



Product Information



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Tracking Number:

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## 9489009000276390021270

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### Latest Update

Your item was delivered to an individual at the address at 8:42 am on February 3, 2023 in ROCHESTER, NY 14614.

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**USPS Tracking Plus®**

### Delivered

**Delivered, Left with Individual**

ROCHESTER, NY 14614

February 3, 2023, 8:42 am

[See All Tracking History](#)

Feedback

**Text & Email Updates**



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**Product Information**



**See Less** ^

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Receipt # 3319263

Book Page D 12773 0493

No. Pages: 9

Instrument: ASSIGNMENT & AMENDMENT TO LEASE

Control #: 202301250860

Ref #: TT0000011078

Date: 01/25/2023

Time: 2:11:45 PM

Return To:  
CHICAGO TITLE ROCHESTER- 44 EXCHANGE BLVD 1ST  
FLR NY 14614  
44 EXCHANGE BLVD, 1ST FLOOR  
ROCHESTER, NY 14614

FCP DRIVING PARK LLC,

1001 DRIVING PARK, LLC,

Recording Fee	\$26.00
Pages Fee	\$40.00
State Fee Cultural Education	\$14.25
State Fee Records	\$4.75
Management	
TP-584 Form Fee	\$5.00
<b>Total Fees Paid:</b>	<b>\$90.00</b>

Employee: ED

State of New York

MONROE COUNTY CLERK'S OFFICE  
WARNING - THIS SHEET CONSTITUTES THE CLERKS  
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &  
SECTION 319 OF THE REAL PROPERTY LAW OF THE  
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

Consideration: \$1.00

JAMIE ROMEO

MONROE COUNTY CLERK



## ASSIGNMENT AND ASSUMPTION OF AGREEMENTS

THIS ASSIGNMENT AND ASSUMPTION OF AGREEMENTS (the "Assignment and Assumption"), dated as of the 23<sup>rd</sup> day of January, 2023 (the "Effective Date"), is made by and between **FCP DRIVING PARK LLC**, a New York limited liability company with offices at 90 Goodway Drive, Rochester, New York 14623 (the "Assignor") and **1001 DRIVING PARK, LLC**, an Illinois limited liability company with offices at 2200 Cabot Drive, Suite 110, Lisle, Illinois 60532 (the "Assignee").

All capitalized terms used but not defined herein shall have the meanings ascribed to them in that certain Leaseback Agreement, dated as of February 1, 2021, by and between the County of Monroe Industrial Development Agency, a public benefit corporation of the State of New York (the "Agency") and Assignor (the "Leaseback Agreement"). The Agency is executing this document in its capacity as leasehold title holder only for the purpose of consenting to this Assignment and Assumption as contemplated herein.

### WITNESSETH:

WHEREAS, Assignor is the owner of that certain parcel of land and all improvements thereon located at 25-65 Phil Banks Way, Rochester, New York 14613 (the "Land"); and

WHEREAS, Assignor has entered into a Lease Agreement with the Agency, dated as of February 1, 2021 ("Lease Agreement") whereby Assignor leases the Facility (as defined below) to the Agency pursuant to the terms thereof; and

WHEREAS, by Resolution adopted by the Agency on January 19, 2021, the Agency authorized the execution of certain documents with respect to the Project (as defined below), including the Lease Agreement, a memorandum of which (the "Memorandum of Lease") was recorded in the Monroe County Clerk's Office on February 16, 2021 in Liber 12463 of Deeds, at Page 411; the Leaseback Agreement, a memorandum of which (the "Memorandum of Leaseback") was recorded in the Office of the Monroe County Clerk on February 16, 2021 in Liber 12463 of Deeds, at Page 415; and a certain Payment In Lieu of Tax Agreement, dated as of February 1, 2021, by and between the Agency and Assignor (the "PILOT Agreement" and, together with the Lease Agreement, the Memorandum of Lease, the Leaseback Agreement, the Memorandum of Leaseback and any related documents (collectively, the "Documents")); and

WHEREAS, pursuant to the Documents, the Agency provided financial assistance to the Assignor in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Facility, (b) a partial mortgage recording tax exemption for financing related to the Project and (c) a partial real property tax abatement structured through the PILOT Agreement; and

WHEREAS, the term of the Leasehold estates created by the Lease Agreement and the Leaseback Agreement commenced as of February 1, 2021 and shall terminate at 11:59 P.M. on December 31, 2032, or on such earlier date as may be permitted under the Documents; and

WHEREAS, the Project consisted of: (A) the acquisition of a leasehold interest in a portion of an approximately 12.48-acre parcel of land located at 25-65 Phil Banks Way in the City of

Rochester, New York 14613 (the "Land"); (B) the construction on the Land of an approximately 40,000 square-foot manufacturing building (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"); all for use by Farmer Jon's Popcorn LLC (the "Tenant") in the production of bagged and packaged popcorn; and

WHEREAS, Assignor has informed the Agency that Assignor and Assignee have entered into a purchase agreement ("Purchase Agreement") whereby Assignee will acquire the Facility, and as a result thereof indirectly acquire all of the Assignor's right, title and interest and obligations under the Documents, as the same may be amended from time to time, which arise from and after the Effective Date; and

WHEREAS, Agency approved the assignment and assumption by its resolution dated January 17, 2023; and

WHEREAS, Assignor desires to assign to Assignee all of Assignor's rights, title, interest, duties, obligations and liabilities under the Documents which arise from and after the Effective Date, and the Assignee desires to accept such assignment and to assume all of such rights, title, interest, duties and obligations and liabilities of Assignor thereunder.

NOW THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment by Assignor.

(a) Assignor hereby sells, assigns, transfers, conveys and sets over unto Assignee all of Assignor's rights, title, interest, duties, obligations and liability in, to and under the Documents first arising from and after the Effective Date.

(b) Assignee hereby accepts such assignment, and Assignee hereby covenants to operate and maintain the Project, during the term of the Documents, such that it constitutes a "project" under Title I of Article 18-A of the General Municipal Law of the State of New York.

(c) Assignor hereby agrees and consents that this Assignment and Assumption shall in no way be construed as a waiver or release of any claims or rights that the Agency may have at any time against the Assignor relating to any matters asserted or first arising under the Documents prior to the Effective Date, and the Agency expressly reserves any such claims or rights and the right to pursue the same at law or in equity.

2. Assumption by Assignee. Assignee hereby assumes the performance of all of the obligations, terms, covenants and conditions of the Documents on Assignor's part first to be performed thereunder first arising from and after the Effective Date and will perform all of the obligations, terms, covenants and conditions of the Documents on Assignee's part to be performed

and which arise from and after the Effective Date, all with the same force and effect as though the Assignee had signed the Documents as a party named therein.

3. Indemnity of Assignee. Assignee does hereby agree, for Assignee and for Assignee's legal representatives, successors and assigns, to indemnify, defend and save Assignor and Assignor's successors and assigns harmless from and against any and all claims, losses, suits and expenses (including, but not limited to, reasonable attorneys' fees and litigation expenses) asserted or first arising in connection with the performance by Assignee under the Documents with respect to obligations which arise from and after the Effective Date.

4. Indemnity of Assignor. Assignor does hereby agree, for Assignor and for Assignor's successors and assigns, to indemnify, defend and save Assignee and Assignee's legal representatives, successors and assigns harmless from and against any and all claims, losses, suits and expenses (including, but not limited to, reasonable attorneys' fees and litigation expenses) asserted or first arising in connection with the performance by Assignor under the Documents with respect to obligations which arose prior to the Effective Date.

5. Consent of Agency; Indemnity of Assignee and Assignor to Agency. Pursuant to the terms and provisions of the Documents, the Agency hereby consents to this Assignment and Assumption, and acknowledges its consent below by and through its duly authorized officer. It being expressly understood and agreed that each of Assignor and Assignee, jointly and severally, agree and covenant that each of Assignor and Assignee hereby releases the Agency and its members, officers, agents and employees from, agrees that the Agency and its members, officers, agents and employees shall not be liable for, and agrees to indemnify, defend and hold the Agency and its members, officers, agents and employees harmless from and against, any and all costs or liabilities that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to this Assignment and Assumption, including without limitation, all causes of action and reasonable attorneys' fees and litigation expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing.

6. Representations and Warranties of Assignor. Assignor hereby represents and warrants to the Assignee that (a) there have been no prior assignments of the Documents made by Assignor to any other party, (b) that the Documents are being assigned to the Assignee free and clear of all liens and encumbrances, and (c) Assignor has complied with all provisions of the Documents regarding assignment, including but not limited to Section 6.3 of the Leaseback Agreement. The representations and warranties of Assignor set forth herein shall survive the closing of the transactions contemplated by the Purchase Agreement and the delivery of this Assignment and Assumption. The Agency hereby acknowledges Assignor's compliance with the provisions of the Lease Agreement and the Leaseback Agreement regarding assignment.

7. Counterparts. This Assignment and Assumption may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which together shall constitute one and the same instrument.

8. Binding Effect. Each reference herein to a party hereto shall be deemed to include its successors and assigns, all of whom shall be bound by this Assignment and Assumption and in whose favor the provisions of this Assignment and Assumption shall inure.

9. Entire Agreement. This Assignment and Assumption represents the entire agreement between the parties hereto with respect to the subject hereof and supersedes all prior negotiations, either written or oral.

10. Further Assurances. Assignor and Assignee agree to deliver to each other such further instruments and/or documents as reasonably requested and for the purpose of carrying out or consummating the transactions contemplated by this Assignment and Assumption.


*[Remainder of Page Intentionally Left Blank – Signature Pages Follow]*

**[Assignor's Signature Page to Assignment and Assumption of Agreements]**

IN WITNESS WHEREOF, the Assignor has executed and delivered this Assignment and Assumption of Agreements as of the date first above written.

**ASSIGNOR:**

**FCP DRIVING PARK LLC**

By:   
Name: Frank S. Imburgia, Jr.  
Title: Manager

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

On the 20 day of January, 2023 before me, the undersigned, a Notary Public in and for said State, personally appeared **Frank S. Imburgia, Jr.**, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

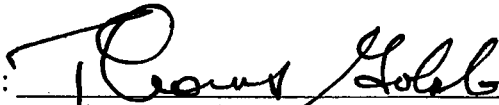
**JULIA SMALLING**  
Notary Public, State of New York  
Qualified in Monroe County  
Reg. No. 01SM6166500  
Commission Expires 6/11/20 23

**[Assignee's Signature Page to Assignment and Assumption of Agreements]**

IN WITNESS WHEREOF, the Assignee has executed and delivered this Assignment and Assumption of Agreements as of the date first above written.

**ASSIGNEE:**

**1001 DRIVING PARK, LLC**

By:   
Name: Thomas Golab  
Title: Vice President

STATE OF ILLINOIS            )  
COUNTY OF DUPAGE        ) ss.:

On the 20 day of January, 2023 before me, the undersigned, a Notary Public in and for said State, personally appeared **THOMAS GOLAB**, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public





**ACKNOWLEDGMENT OF ASSIGNMENT AND ASSUMPTION  
OF AGREEMENTS AND SUBORDINATION OF MORTGAGE**

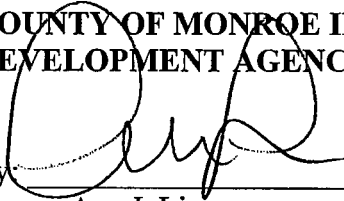
The undersigned hereby acknowledges receipt of notice of the Assignment and Assumption of Agreements, by and between **FCP DRIVING PARK LLC** (the "Assignor") and **1001 DRIVING PARK, LLC** (the "Assignee"), dated as of January 23, 2023 (the "Assignment and Assumption"), pursuant to which Assignor assigns all of Assignor's rights, title, interest, duties, obligations and liabilities under the Documents (as defined in the Assignment and Assumption) first arising from and after the Effective Date thereof and Assignee accepts such assignment and assumes all of Assignor's rights, title, interest, duties, obligations and liability into and under the Documents first arising from and after the Effective Date thereof. The foregoing shall not be construed, however, as a waiver or release of any claims or rights that the undersigned may have at any time against the Assignor except as set forth in Section 1(c) of the Assignment and Assumption, and the undersigned expressly reserves any such claims or rights and the right to pursue the same at law or in equity. Moreover, the undersigned hereby acknowledges Assignor's compliance with the provisions of the Documents regarding assignment.

The undersigned hereby acknowledges that Assignee has obtained a mortgage loan (as amended, modified and restated from time to time, the "Loan") from JPMorgan Chase Bank, N.A. ("Lender") in connection with Assignee's acquisition of the Facility (as defined in the Assignment and Assumption). The undersigned hereby subordinates the Documents to the Loan and all renewals, increases, decreases, extensions and modifications thereof. In the event Lender forecloses on the Facility or any other collateral for the Loan (or accepts a deed in lieu of foreclosure), Lender or the purchaser at foreclosure may elect to (i) terminate the Documents without any liability to the undersigned or (ii) subject to the undersigned's prior approval, assume Assignee's obligations under the Documents from and after the date of such foreclosure (or deed in lieu thereof), in which event the undersigned will recognize such purchaser as the successor to Assignee's obligations under the Documents. The foregoing subordination does not affect the undersigned's rights and remedies as against Assignee with respect to the Unassigned Rights (as defined in the Documents).

*[Remainder of Page Intentionally Left Blank – Signature Page Follows]*


IN WITNESS WHEREOF, the undersigned has caused this Acknowledgment to be duly executed as of the 23<sup>rd</sup> day of January, 2023.

**COUNTY OF MONROE INDUSTRIAL  
DEVELOPMENT AGENCY**

By   
Name: Ana J. Liss  
Title: Executive Director

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

On the 23<sup>rd</sup> day of January, 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared **Ana J. Liss**, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

LORI A. PALMER  
Notary Public, State of New York  
No. 01PA4848797  
Qualified in Monroe County  
Commission Expires May 31, 2023

**COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**FCP DRIVING PARK LLC**

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**PAYMENT-IN-LIEU-OF-TAX AGREEMENT**

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**Tax Map No.**

Part of 090.63-1-1.001

**Affected Tax Jurisdictions:**

County of Monroe  
City of Rochester

**Dated as of February 1, 2021**

## PAYMENT IN LIEU OF TAX AGREEMENT

**THIS PAYMENT IN LIEU OF TAX AGREEMENT** (the "PILOT Agreement") made as of February 1, 2021, 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 **FCP DRIVING PARK LLC**, a limited liability company formed and existing under the laws of the State of New York with offices at 90 Goodway Drive, Rochester, New York 14623 (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 a portion of an approximately 12.48-acre parcel of land located at 1000 Driving Park Avenue in the City of Rochester, New York 14613 (the "Land"); (B) the construction on the Land of an approximately 40,000 square-foot manufacturing building (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"); all for use by Farmer Jon's Popcorn LLC (the "Tenant") in the production of bagged popcorn; and

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

**WHEREAS**, in order to induce the Company to acquire, renovate and equip the Facility, the Agency is willing to take a leasehold interest in the Land and the Improvements pursuant to a certain Lease Agreement, dated as of February 1, 2021 (the "Lease Agreement"), and thereafter lease said Facility back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement, dated as of February 1, 2021 (the "Leaseback Agreement"); 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**, 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 County of Monroe (the "County") and the City of Rochester (the "City" and, collectively with the County, 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. Subject to the completion and filing by the taxable status date (**February 1, 2022**) (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 (the "RPTL") and Section 874 of the Act and the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review, the Facility shall be exempt from Real Estate Taxes commencing with the **2023** County tax year and the **2022-2023** City tax year. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the County and City. 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 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 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. 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. As long as the Facility is leased to the Agency or under its jurisdiction, control or supervision, the Company agrees to pay annually 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 **2022-2023** City tax year and the invoice for the **2023** County tax year, an amount equal to the Total PILOT Payment, as set forth on **Schedule A** attached hereto and made a part hereof. The Company shall remit payment to the applicable Affected Tax Jurisdiction in accordance with instructions provided on the applicable invoice. The Company shall make all payments due hereunder without further notice or invoicing from the Agency, any Affected Tax Jurisdiction or any other party.

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. If the Agency shall receive any amounts hereunder, the Agency shall remit such monies to the Affected Tax Jurisdictions 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 Affected Tax Jurisdictions shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County 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 Total PILOT Payment due date. For City purposes, the tax rates used to determine the PILOT payment shall be the rate relating to the year which includes the Total 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 **2022-2023** City tax year through the **2032-2033** City tax year, and (ii) the **2023** County tax year through the **2032** County tax year. This PILOT Agreement shall expire on **December 31, 2032**; *provided, however*, the Company shall pay the **2032-2033** City tax bill and the **2033** County tax bill 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. For the avoidance of doubt, for the **2021-2022** City tax year and the **2022** County tax year, the Project will be under construction, with an anticipated completion on or about December 31, 2021, therefore, an amount equal to full taxes will be due for the **2021-2022** City tax year and the **2022** County tax year. In no event shall the Company be entitled to receive tax benefits relative to the Facility 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 Facility 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 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 Facility.** In the event that the Facility 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 Facility if the Facility 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 Facility 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 Facility 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 Facility 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 If payments are not made as provided for herein, the Agency and/or Taxing Jurisdictions, individually or collectively, shall be entitled to pursue any and all remedies afforded them at law or in equity.

Notwithstanding anything contained herein to the contrary, upon the occurrence of (i) the sale or closure of the Facility; (ii) a significant unapproved change in use of the Facility; (iii) a significant reduction in employment at the Facility (as defined below); (iv) the Company

abandons or otherwise vacates the County of Monroe; (v) the failure by the Company to make any payments required under this PILOT Agreement; or (vi) the breach of covenants or event of default (singularly or collectively an "Event of Default") under the Leaseback Agreement, dated as of the date hereof, by and between the Agency and the Company (the "Leaseback Agreement"), the Agency shall have the right to recapture real property tax abatements provided hereunder pursuant to the following schedule:

Year of Recapture	Percent of Recapture, Applicable to Current Year and All Prior Years
1	100%
2	100%
3	50%
4	50%
5	25%
6	25%
After year 6	At Agency's Discretion, 25% or Less

Any such recapture is at the sole and exclusive discretion of the Agency. The Agency shall provide thirty (30) days' notice to the Company in writing of such Event of Default and of its intent to recapture the PILOT benefits (or any portion thereof), and provide a commercially reasonable right to cure, which shall be not less than one (1) year. For purposes of this Section only, a "significant reduction in employment" shall mean more than twenty percent (20%) of the employment as stated in the Company's Application, to wit, 38. Any and all recaptured payments received pursuant to this provision shall be remitted to the Taxing Jurisdictions on a pro rata basis within sixty (60) days of receipt of payment.

6.2 If payments pursuant to Section 6.1 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 6.1 herein, if said payment is not received by the due date defined in Section 6.1 herein, 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 hereunder, or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

**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 but 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, Suite 1150  
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: FCP Driving Park LLC  
90 Goodway Drive  
Rochester, New York 14623  
Attention: Frank S. Imburgia, Jr., Manager

With a Copy to: Woods Oviatt Gilman LLP  
1900 Bausch & Lomb Place  
Rochester, New York 14604  
Attention: Betsy D. Brugg, Esq.

To the Bank: The Bank of Castile  
133 North Center Street  
Perry, New York 14530  
Attention: Loan Servicing Department

With a Copy to: Phillips Lytle LLP  
28 East Main Street, Suite 1400  
Rochester, New York 14614  
Attention: Raymond L. Ruff, 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 Facility 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.

#### **Section 9 - JobsPlus Tax Abatement Policy.**

9.1 Jobs Requirement. The Company and/or Tenant shall create four (4) new full-time/full-time equivalent job(s) in three (3) years and maintain that/those full-time/full-time equivalent job(s) for the balance of the ten (10) year benefit period.

9.2 Compliance Report. The Company shall report its compliance with these provisions as requested by the Agency, or its project compliance monitor.

9.3 Job Failure. If the four (4) new full-time/full-time equivalent job(s) 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 RPTL 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 RPTL. Under extenuating circumstances, the Agency Board may waive the above penalties after reviewing a written request from the Company for waiver of the penalties, which request shall not be unreasonably denied.

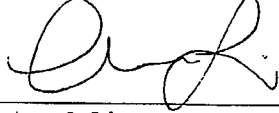
9.4 Waiver Process. The payments required hereunder for any non-compliance shall be paid by the Company to any and all Affected Tax Jurisdictions whether or not billed. However, if the Company has made a good faith effort to achieve the job creation requirement, it may apply in writing for relief from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

9.5 Benefit Period. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than ten (10) consecutive years. The Company agrees that it will not seek any tax exemption for the Facility which would provide benefits for more than ten (10) 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 the expiration of the exemption schedule set forth herein.

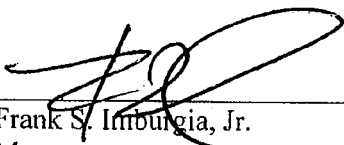
*[Remainder of Page Intentionally Left Blank]*

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

**FCP DRIVING PARK LLC**

By:   
Name: Frank S. Imburgia, Jr.  
Title: Manager

**SCHEDULE A**  
**TO**  
**PILOT AGREEMENT DATED AS OF FEBRUARY 1, 2021**  
**BY AND BETWEEN THE**  
**COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY**  
**AND FCP DRIVING PARK LLC**

"Total PILOT Payment" shall be calculated as follows:

<u>Tax Year</u>	<u>County Tax Year</u>	<u>City Tax Year</u>	<u>Total Taxable Valuation</u>
Year 1	2022	2021/2022	Full Taxes (construction year)
Year 2	2023	2022/2023	Base Valuation, plus (Added Value x .10)
Year 3	2024	2023/2024	Base Valuation, plus (Added Value x .20)
Year 4	2025	2024/2025	Base Valuation, plus (Added Value x .30)
Year 5	2026	2025/2026	Base Valuation, plus (Added Value x .40)
Year 6	2027	2026/2027	Base Valuation, plus (Added Value x .50)
Year 7	2028	2027/2028	Base Valuation, plus (Added Value x .60)
Year 8	2029	2028/2029	Base Valuation, plus (Added Value x .70)
Year 9	2030	2029/2030	Base Valuation, plus (Added Value x .80)
Year 10	2031	2030/2031	Base Valuation, plus (Added Value x .90)
Year 11	2032	2031/2032	Full Taxes

For the term of this PILOT Agreement, the Company shall continue to pay full taxes based on the assessed value of the Land and any existing improvements before the completion of any Project improvements (the "Base Valuation"). During the term of this PILOT Agreement, the Base Valuation shall be increased from time to time by the percentage increase in the assessed valuation in all taxable real property in the City of Rochester, Monroe County, New York, as of the respective tax status date for the tax year for which the recalculation is being made. The Total Taxable Valuation for each Total PILOT Payment shall be calculated such that a graduated abatement factor (the "Abatement Factor") shall be applied to the increased assessed valuation attributable to the Improvements made to the Facility by the Company, as an agent of the Agency, for the Project (the "Added Value"). The abatement schedule shall allow for a 90% exemption from taxation for the Added Value in Year 2, with such exemption being eliminated in 10% increments in PILOT Years 2-10.

Once the Total Taxable Valuation is established using the Abatement Factor, the Total PILOT Payment shall be determined by multiplying the Total Taxable Valuation by the respective tax rate for each Affected Taxing Jurisdiction (after application of any applicable equalization rate). After Year 10, the Facility shall be subject to full taxation by the Affected Tax Jurisdictions.


$$\text{Total Taxable Valuation} = \text{Base Valuation} + (\text{Added Value} \times \text{Abatement Factor})$$

$$\text{Total PILOT Payment} = \text{Total Taxable Valuation (after equalization)} \times \text{Tax Rate}$$

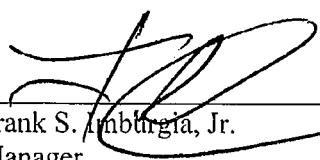
**PILOT ADDENDUM  
(FARMER JON'S POPCORN LLC)**

Each of the County of Monroe Industrial Development Agency (the "Agency"), FCP Driving Park LLC (the "Applicant") and Farmer Jon's Popcorn LLC (the "Tenant") acknowledges and agrees that the Tenant is responsible for creating and maintaining the four (4) full-time/full-time equivalent jobs required under this PILOT Agreement in accordance with Section 9.1 thereof. However, in the event the Tenant does not create the required jobs, the Applicant, as the direct beneficiary of the PILOT Agreement, is responsible for any and all penalties due as a result of Tenant's failure. The Applicant may attempt to find a substitute tenant and create the four (4) full-time/full-time equivalent jobs with such new tenant, or may create the jobs itself, provided the Agency is informed and consents to the new tenant occupying the Facility.

**COUNTY OF MONROE INDUSTRIAL  
DEVELOPMENT AGENCY**

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

**FCP DRIVING PARK LLC**

By:   
Name: Frank S. Ambler, Jr.  
Title: Manager

**FARMER JON'S POPCORN LLC**

By: \_\_\_\_\_  
Name: Peter Causyn  
Title: Owner

Exhibit "D"  
PILOT Addendum

**PILOT ADDENDUM  
(FARMER JON'S POPCORN LLC)**

Each of the County of Monroe Industrial Development Agency (the "Agency"), FCP Driving Park LLC (the "Applicant") and Farmer Jon's Popcorn LLC (the "Tenant") acknowledges and agrees that the Tenant is responsible for creating and maintaining the four (4) full-time/full-time equivalent jobs required under this PILOT Agreement in accordance with Section 9.1 thereof. However, in the event the Tenant does not create the required jobs, the Applicant, as the direct beneficiary of the PILOT Agreement, is responsible for any and all penalties due as a result of Tenant's failure. The Applicant may attempt to find a substitute tenant and create the four (4) full-time/full-time equivalent jobs with such new tenant, or may create the jobs itself, provided the Agency is informed and consents to the new tenant occupying the Facility.

**COUNTY OF MONROE INDUSTRIAL  
DEVELOPMENT AGENCY**

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

**FCP DRIVING PARK LLC**

By: \_\_\_\_\_  
Name: Frank S. Imburgia, Jr.  
Title: Manager

**FARMER JON'S POPCORN LLC**

*Peter Causyn, Member*

By: \_\_\_\_\_  
Name: Peter Causyn  
Title: Owner



NYS BOARD OF REAL PROPERTY SERVICES

RP-412-a (1/95)

INDUSTRIAL DEVELOPMENT AGENCIES
APPLICATION FOR REAL PROPERTY TAX EXEMPTION
(Real Property Tax Law, Section 412-a and General Municipal Law, Section 874)

1. INDUSTRIAL DEVELOPMENT AGENCY (IDA) 2. OCCUPANT (IF OTHER THAN IDA)
(If more than one occupant attach separate listing)

Name County of Monroe Industrial Development Agency
Street 50 West Main Street, Suite 1150
City Rochester, New York 14614
Telephone no. Day (585) 419-8769
Evening ( )
Contact Rachel C. Baranello
Title Agency Counsel

Name FCP Driving Park LLC
Street 90 Goodway Drive
City Rochester, New York 14623
Telephone no. Day (585) 292-1580
Evening ( )
Contact Frank S. Imburgia, Jr.
Title Manager

3. DESCRIPTION OF PARCEL

- a. Assessment roll description (tax map no./roll year) Part of 090.63-1-1.001
b. Street address Part of 1000 Driving Park Avenue
c. City, Town or Village Rochester (City)
d. School District Rochester CSD
e. County Monroe
f. Current assessment \$254,700
g. Deed to IDA (date recorded; liber and page) Lease Agreement, a memorandum of which was recorded on or about February 16, 2021.

4. GENERAL DESCRIPTION OF PROPERTY (if necessary, attach plans or specifications)

- a. Brief description (include property use) construction of an approx. 40,000 sq ft building
b. Type of construction
c. Square footage 40,000 sf
d. Total cost \$8,155,000
e. Date construction commenced Spring 2021
f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA) See Attached PILOT Agreement

5. SUMMARIZE AGREEMENT (IF ANY) AND METHOD TO BE USED FOR PAYMENTS TO BE MADE TO MUNICIPALITY REGARDLESS OF STATUTORY EXEMPTION
(Attach copy of the agreement or extract of the terms relating to the project).

- a. Formula for payment See Attached PILOT Agreement
b. Projected expiration date of agreement See Attached PILOT Agreement



c. Municipal corporations to which payments will be made

	Yes	No
County <u>Monroe</u>	X	
Town/City <u>Rochester</u>	X	
Village _____		
School District _____	X	

d. Person or entity responsible for payment

Name FCP Driving Park LLC  
 Title \_\_\_\_\_  
 Address 90 Goodway Drive  
Rochester, New York 14623

e. Is the IDA the owner of the property? Yes/No (circle one)

If "No" identify owner and explain IDA rights or interest in an attached statement. The IDA has a leasehold interest in the property.

Telephone 585-292-1580

6. Is the property receiving or has the property ever received any other exemption from real property taxation? (check one) Yes  No

If yes, list the statutory exemption reference and assessment roll year on which granted: exemption Section 485-a of the NY assessment roll year \_\_\_\_\_  
Real Property Tax Law

7. A copy of this application, including all attachments, has been mailed or delivered on 2/23/2021 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

**CERTIFICATION**

I, Rachel C. Baranello, Agency Counsel of \_\_\_\_\_  
Name Title  
County of Monroe Industrial Development Agency hereby certify that the information  
Organization

on this application and accompanying papers constitutes a true statement of facts.

2/12/2021  
Date

Rachel C Baranello  
Signature

**FOR USE BY ASSESSOR**

1. Date application filed \_\_\_\_\_
2. Applicable taxable status date \_\_\_\_\_
- 3a. Agreement (or extract) date \_\_\_\_\_
- 3b. Projected exemption expiration (year) \_\_\_\_\_
4. Assessed valuation of parcel in first year of exemption \$ \_\_\_\_\_
5. Special assessments and special as valorem levies for which the parcel is liable:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Assessor's signature