

**COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**CT ROCHESTER, LLC**

---

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

---

*Property located at 1351 Mount Hope Avenue in the City of Rochester,  
Monroe County, New York*

**Tax Map ID Nos.**

136.53-1-1.002 UNT 1  
136.53-1-2.001  
136.53-1-3.002  
136.53-1-3.003  
136.53-1-4.002  
136.53-1-5.002  
136.53-1-6.002  
136.53-1-6.003  
136.53-1-8.003

**Dated as of September 1, 2013**

**Affected Tax Jurisdictions:**

Monroe County  
City of Rochester

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

**THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT**, dated as of September 1, 2013 (the "PILOT Agreement"), 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 8100 CityPlace, 50 West Main Street, Rochester, New York 14614 (the "Agency") and **CT ROCHESTER, LLC**, a limited liability company formed and existing under the laws of the State of Delaware, with offices at 7 Jackson Walkway, Providence, Rhode Island 02903 (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 University of Rochester ("U of R") holds a fee interest in the below-described Land; the Company has entered into two (2) Ground Leases with the U of R with respect to the majority of the Land, each dated as of August 1, 2013, Memoranda of each were recorded with the Monroe County Clerk on August 21, 2013, in Liber 11292 of Deeds, at page 460 and Liber 11292 of Deeds at page 467, respectively (collectively, the "Ground Leases"); and

**WHEREAS**, the Company is the fee owner of a leasehold condominium unit established under that certain Declaration of Condominium Establishing College Town Rochester Parking Condominium, dated as of August 30, 2013, recorded with the Monroe County Clerk on September 5, 2013, in Liber 11299 of Deeds, at page 398 (the "Condominium"), which Condominium is located on the Land; and

**WHEREAS**, the Company has submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project (the "Project") consisting of the acquisition by the Agency of a subleasehold or other interest in certain real property located in the southwest quadrant of the intersection of Mount Hope Avenue and Elmwood Avenue in the City of Rochester, Monroe County, New York, as more particularly described in **Exhibit A** annexed hereto (the "Land") and the construction thereon of a mixed-use development comprised of a parking garage, office and retail space, restaurants, a book store and grocery store together with residential rental space and a hotel with conference center (the "Improvements") including, but not limited to, the planning, redesigning, construction, renovation, rehabilitation, improving and equipping of the buildings to be owned and operated by the Company (collectively, the Land and the Improvements are hereinafter referred to as, the "Facility"); and

**WHEREAS**, the Project is located in a particularly economically distressed community and the Agency desires to target such communities with the payment in lieu of taxes program; and

**WHEREAS**, as contemplated by the Application, effective September 1, 2013, the Agency and the Company entered into a sublease agreement whereby the Company subleased

the Facility to the Agency (the "Sublease Agreement") and a related sub-leaseback agreement whereby the Agency sub-subleased the Facility back to the Company (the "Sub-Leaseback Agreement"); all in contemplation of entering into this PILOT Agreement which is targeted to assist the particularly economically distressed community with the Project; and

**WHEREAS**, the City of Rochester (the "City") has confirmed its support for the Project and the PILOT as evidenced by the support letter annexed hereto as **Exhibit B**; and

**WHEREAS**, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes and assessments imposed upon real property and improvements owned (by lease, sub-lease, license or otherwise) by it, other than special ad valorem levies, special assessments and service charges against real property which are now 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 (collectively, the "Affected Tax Jurisdictions").

**NOW, THEREFORE**, in consideration of the Agency providing the Facility and in consideration of the covenants herein contained, it is mutually agreed as follows:

**Section 1. (a) Tax Abatement Policy.** As long as the Facility is subleased by the Agency and sub-subleased back to the Company, the Company shall pay (i) to the Affected Tax Jurisdictions the Base Amounts described in **Schedule 1** attached hereto in lieu of ad valorem real property taxes; and (ii) the PILOT Increment Portions described in **Schedule 1** attached hereto to the City to enable the City to make the required payments under its federal HUD 108 loan granted to the City in the aggregate principal amount of \$20,000,000, which amounts shall be paid by the Company to the City. In the event the federal 108 loan is repaid in its entirety before the end of term of this PILOT Agreement, the Total PILOT Payments outlined in **Schedule 1** attached hereto shall remain unchanged but shall be paid in their entirety to the Affected Tax Jurisdictions.

(b) The Company shall report its compliance with the payment provisions in subparagraph (a) above as requested by the Agency.

(c) Subject to the terms of Section 1(d) hereof, if the Development Milestones set forth in Section 6 hereof are not completed by the end of the 36<sup>th</sup> month from which the Company acquires title to the Project, the difference between the level of development achieved and the Development Milestones shall be used to determine the pro-rated amount of the benefits of this PILOT Agreement of the real estate taxes, sales tax, and mortgage tax to be repaid for the period in which in the Milestone was to be achieved. The pro-rated real estate taxes to be repaid shall be based on the difference between the taxes that would have been paid based on the full assessed value of the Facility at the time of default (for the period starting at Year 2013 and ending at the end of the tax year in which the Milestone default occurred) and the actual Total PILOT Payments paid during that period. For instance, if the Company has achieved an aggregate Investment of \$25,200,000 out of the required \$50,400,000 as of the 36<sup>th</sup> month from the date on which the Company acquires title to the Project without any subsequent remedy of

such default, then this percentage of 50% shall be applied to the following recapture calculations: (1) 50% of the value of the sales tax and mortgage tax exemptions granted to the Company shall be repaid to the Agency; and (2) if the full assessed value of the Facility in effect at the time of default as determined by the City Assessor is \$40,000,000 and **Schedule 1** is based on an assessed value of \$32,500,000, then  $\$40,000,000 - \$32,500,000 = \$7,250,000$  times  $\$54.95/\$1,000$  (the tax rate in effect at the time of default shall be used but for purposes of illustration, a figure of  $\$54.95/\$1,000$  is used) =  $\$412,125$  times 3 [years] =  $\$1,236,375$  times 50% =  $\$618,187.50$  to be repaid to the Affected Tax Jurisdictions.

Any such Development Milestone recapture is at the sole and exclusive discretion of the Agency. The Agency shall notify the Company in writing within ninety (90) days of such Milestone Default of its intent to terminate this PILOT Agreement and/or to recapture the PILOT benefits (or any portion thereof); provided, however, that such period shall not commence to run until the Agency has been properly notified or ascertains any such Milestone Default. Notwithstanding the foregoing or anything to the contrary contained herein, the Company shall not be deemed to be in default under this PILOT Agreement, and a Milestone Default shall not be deemed to have occurred in accordance with this Section unless: (i) a Milestone Default continues for a period of one hundred and eighty (180) days after the Company's receipt of written notice of such Milestone Default from the Agency (or in the event such Milestone Default cannot reasonably be cured within 180 days, if the Company fails to commence and diligently pursue a cure within such 180-day period); or (ii) if the Company fails to achieve any of the Milestones due to causes beyond the Company's control, including, without limitation, acts of God; strikes, labor disputes, area-wide labor shortages or material shortages; weather conditions; delays associated with the existence, removal or remediation of any hazardous materials; delay in obtaining any necessary or required planning/zoning approvals and/or building permits, licenses and approvals; or unforeseen economic circumstances or fiscal hardship. The Agency shall, upon serving the Company with any notice of a Milestone Default, simultaneously serve a copy of such notice upon the holder of any mortgage interest in this PILOT Agreement, or any portion of the Facility, for which the Company has provided the Agency with written notice specifying the name and address for notices (the "Lender(s)"). Notwithstanding anything to the contrary contained in this PILOT Agreement, the Lender(s) shall thereupon have the same period, after service of such notice upon it, plus an additional sixty (60) days, to remedy or cause to be remedied the Milestone Default complained of, and the Agency shall accept such performance by or at the instigation of such Lender(s) as if the same had been done by the Company.

(d) Notwithstanding anything to the contrary contained herein, if the Company has made a good faith effort to achieve both the Development Milestones set forth in Section 6 hereof and the Job Creation Milestones set forth in Section 7 hereof, 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 make a determination as it deems appropriate, in its sole but reasonable discretion, regarding the requested relief within ninety (90) days of its receipt of such application. If the Agency fails to respond to an application for relief within such 90-day period, the Agency shall be deemed to

have approved such application for relief. The Company shall provide the City with copies of all applications for relief submitted to the Agency.

(e) The tax benefits provided for herein shall be deemed to commence as of the next taxable status date immediately following substantial completion of the Facility (the "Commencement Date") and shall continue as long as the Facility is subleased by the Agency and sub-subleased back to the Company. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than twenty (20) consecutive years. The Company agrees that it will not seek any tax exemption for the Facility which would provide benefits for more than twenty (20) consecutive years.

Section 2. Special district charges, special assessments, and special ad valorem levies (specifically including but not limited to fire district charges), pure water charges and sewer charges are to be paid in full in accordance with normal City or County billing practices, as the case may be.

Section 3. The Company hereby reserves the right to challenge the assessed value of the Facility during the term hereof.

Section 4. 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 to make the payments set forth in Section 1(a) hereunder shall, to such extent, be null and void.

Section 5. In the event that the Sublease Agreement and/or Sub-Leaseback Agreement between the Agency and the Company for the Facility is/are terminated, and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption is less than that described in Section 1(a) herein, 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. Notwithstanding anything contained herein to the contrary, in the event the Sublease Agreement and/or Sub-Leaseback Agreement between the Agency and the Company is/are terminated such that the Facility, or portion thereof, is subject to immediate assessment and taxation and is taxed pro rata for the unexpired portion of any fiscal year during which said transfer of title to the Company occurred pursuant to the provisions of Section 520 of the New York Real Property Tax Law, any amounts payable or made, as the case may be, pursuant to this PILOT Agreement by the Company to the respective Affected Tax Jurisdictions shall be reduced or refunded, as the case may be, in accordance with 10 Op. Off. Real Property Services 87 (1999), by the amount of taxes required to be paid pursuant to such Section 520 with respect to the fiscal year during which said transfer of title to the Company occurred. The provisions of the immediately preceding sentence shall survive the termination or expiration of the Sublease Agreement and/or Sub-Leaseback Agreement.

Section 6. Milestones Provisions. The Company covenants to achieve the following levels of development with respect to the Project (the "Development Milestones"), which levels

of development shall be measured by totaling those sums paid or incurred in furtherance of the Project, including without limitation, cost of land acquisition, marketing fees, legal costs, hard costs and "soft costs", from one or more sources (hereinafter collectively referred to as "Investments") and wherein indicated below, constructed in connection with the Project:

(a) On or before the 24<sup>th</sup> month after the month in which the Company acquires title to the Project (such date, the "First Milestone Date"), the Company will furnish the Agency with evidence which is reasonably acceptable to the Agency that there has been an aggregate of Investment of at least Thirty Million Four Hundred Thousand and 00/100 Dollars (\$30,400,000.00) in the Project (the "First Milestone"); and

(b) On or before the end of the 36<sup>th</sup> month after the month in which the Company acquires title to the Project (such date, the "Second Milestone Date"), the Company will furnish the Agency with evidence which is reasonably acceptable to the Agency that there has been an aggregate of Investment of at least Fifty Million Four Hundred Thousand and 00/100 Dollars (\$50,400,000.00) in the Project (including the Investment amount set forth in Section 6(a) above) (the "Second Milestone").

Section 7. Job Creation; Local Labor.

(a) The Company hereby agrees to, through its tenants located in the Project and not through direct hiring by the Company, achieve and maintain the following levels of jobs creation (the "Job Creation Milestones") (the Development Milestones and Job Creation Milestones are hereinafter collectively referred to as the "Milestones"):

(i) As of the third (3<sup>rd</sup>) anniversary of the Commencement Date: 70 full-time equivalent ("FTE") jobs;

(ii) As of the fourth (4<sup>th</sup>) anniversary of the Commencement Date: 150 FTE jobs; and

(iii) As of the fifth (5<sup>th</sup>) anniversary of the Commencement Date: 180 FTE jobs.

(b) If the Company fails to meet the Job Creation Milestones, the difference between the amount of jobs created and the Job Creation Milestones shall be used to determine the pro-rated amount of the benefits of this PILOT Agreement of the real estate taxes, sales tax, and mortgage tax to be repaid for the period in which in the Milestone was to be achieved. The pro-rated real estate taxes to be repaid shall be based on the difference between the taxes that would have been paid based on the full assessed value of the Facility at the time of default (for the period starting at Year 2015 and ending at the end of the tax year in which the Milestone default occurred) and the actual Total PILOT Payments paid during that period. For instance, if the Company has created ninety (90) FTE jobs out of the required 180 FTE jobs as of the fifth (5<sup>th</sup>) anniversary of the Commencement Date without any subsequent remedy of such default, then this percentage of 50% shall be applied to the following recapture calculations: (1) 50% of the value of the sales tax and mortgage tax exemptions granted to the Company shall be repaid to the Agency; and (2) if the full assessed value of the Facility in effect at the time of default as

determined by the City Assessor is \$40,000,000 and Schedule 1 is based on an assessed value of \$32,500,000, then  $\$40,000,000 - \$32,500,000 = \$7,250,000$  times  $\$54.95/\$1,000$  (the tax rate in effect at the time of default shall be used but for purposes of illustration, a figure of  $\$54.95/\$1,000$  is used) =  $\$412,125$  times 3 [years] =  $\$1,236,375$  times 50% =  $\$618,187.50$  to be repaid to the Affected Tax Jurisdictions.

Any such Job Creation Milestone recapture is at the sole and exclusive discretion of the Agency. The Agency shall notify the Company in writing within ninety (90) days of such Milestone Default of its intent to terminate this PILOT Agreement and/or to recapture the PILOT benefits (or any portion thereof); provided, however, that such period shall not commence to run until the Agency has been properly notified or ascertains any such Milestone Default. Notwithstanding the foregoing or anything to the contrary contained herein, the Company shall not be deemed to be in default under this PILOT Agreement, and a Milestone Default shall not be deemed to have occurred in accordance with this Section unless: (i) a Milestone Default continues for a period of one hundred and eighty (180) days after the Company's receipt of written notice of such Milestone Default from the Agency (or in the event such Milestone Default cannot reasonably be cured within 180 days, if the Company fails to commence and diligently pursue a cure within such 180-day period); or (ii) if the Company fails to achieve any of the Milestones due to causes beyond the Company's control, including, without limitation, acts of God; strikes, labor disputes, area-wide labor shortages or material shortages; weather conditions; delays associated with the existence, removal or remediation of any hazardous materials; delay in obtaining any necessary or required planning/zoning approvals and/or building permits, licenses and approvals; or unforeseen economic circumstances or fiscal hardship. The Agency shall, upon serving the Company with any notice of a Milestone Default, simultaneously serve a copy of such notice upon the holder of any mortgage interest in this PILOT Agreement, or any portion of the Facility, for which the Company has provided the Agency with written notice specifying the name and address for notices (the "Lender(s)"). Notwithstanding anything to the contrary contained in this PILOT Agreement, the Lender(s) shall thereupon have the same period, after service of such notice upon it, plus an additional sixty (60) days, to remedy or cause to be remedied the Milestone Default complained of, and the Agency shall accept such performance by or at the instigation of such Lender(s) as if the same had been done by the Company.

(c) The Company covenants and agrees that, at all times while this PILOT Agreement remains in effect, it will comply with the Agency's provisions with respect to the utilization of "local labor" (as such term is defined in the Agency's Application for Assistance, including, without limitation, the appendices thereto) in connection with the construction, expansion and/or renovation of the Project or any portion thereof. Notwithstanding anything contained herein to the contrary, the compliance obligations under this provision do not apply to any portions of work related to the Project engaged by the Company before this PILOT Agreement has taken effect.

#### Section 8. Evidence of Milestone Satisfaction.

Upon the Company providing the Agency with evidence of the satisfaction of one or more of the Milestones, in such form and containing such detail and back-up documentation and

information as the Agency shall reasonably require, in each instance the Agency agrees to provide prompt written notification to the Affected Tax Jurisdictions and the Company of the satisfaction of the Milestone(s). In the event such notification is not provided within thirty (30) business days (which, for purposes of this PILOT Agreement, is defined as being all days other than Saturdays, Sundays and public holidays in the State of New York) of the delivery of such evidence (unless the Company and the Affected Tax Jurisdictions are provided with written notice within such time period that any such evidence is not reasonably acceptable to the Agency) any evidence so provided shall be deemed acceptable. If the Agency gives timely notice that such evidence is not reasonably acceptable, the Company shall, within thirty (30) business days following the date such notice is given, furnish to the Agency such additional evidence as the Agency may reasonably require, whereupon the Agency agrees to provide prompt written notification to the Company and the Affected Tax Jurisdictions of the satisfaction of the Milestone(s). If such notification is not provided within thirty (30) business days of the delivery of such evidence (unless the Company and the Affected Tax Jurisdictions are provided with written notice within such time period that such evidence is again not reasonably acceptable to the Agency) the evidence so provided shall be deemed acceptable.

Section 9. Except as provided herein to the contrary, 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.

Section 10. If the Company enters into any written agreement with any Affected Tax Jurisdiction providing for payments in lieu of taxes by the Company to any or all of them, so much of this PILOT Agreement as relates to the Affected Tax Jurisdiction with which the Company has entered into said written agreement shall be automatically modified to reflect the terms of any such written agreement, and any such written agreement shall be deemed to be incorporated herein by reference and made a part hereof as an amendment or modification hereof. Should the Company receive any exemption from any of the Affected Tax Jurisdictions, this PILOT Agreement shall automatically be modified to reflect the extent of such exemption.

Section 11. If payments are not made as provided for herein, the Affected Tax Jurisdictions, individually or collectively, shall be entitled to pursue any and all remedies afforded them at law or in equity.

Section 12. Notwithstanding anything contained herein to the contrary, upon the occurrence of: (i) a termination of the Ground Leases, (ii) the sale or closure of the entire Facility which is not approved by the Agency or the City, or (iii) the occurrence of a significant Event of Default hereunder (but not including a default under Sections 6 and 7 hereof, which shall be governed by the terms of Section 1(c) and 7(b) hereof), under the Sublease Agreement or under the Sub-Leaseback Agreement, the Agency shall have the right to terminate this PILOT Agreement. Any such termination is at the sole and exclusive discretion of the Agency. The Agency shall have the right to recapture real property tax abatements provided hereunder pursuant to the following schedule:



<u>Year of Recapture</u>	<u>Percent of Recapture, Applicable to Current and All Prior Years*</u>
1	100%
2	100%
3	50%
4	50%
5	25%
6	25%
7	25%
8	25%
9	25%
10	25%
After year 10	At Agency's Discretion, 25% or Less

\* The Recapture Percentage shall be based on the difference between the taxes that would have been paid based on the full assessed value of the Facility at the time of default (for the period starting at Year 2015 and ending at the end of the tax year in which the Event of Default occurred) and the actual Total PILOT Payments paid during that period. For instance, if an Event of Default occurs in year 3 then the Recapture Percentage of 50% shall be applied to the following calculation: if the full assessed value of the Facility in effect at the time of default as determined by the City Assessor is \$40,000,000 and **Schedule 1** is based on an assessed value of \$32,500,000 with a tax rate of \$54.95/\$1,000 of assessed value, then  $\$40,000,000 - \$32,500,000 = \$7,250,000$  times  $\$54.95/\$1,000$  (the tax rate in effect at the time of default shall be used but for purposes of illustration, a figure of  $\$54.95/\$1,000$  is used) =  $\$412,125$  times 3 [years] =  $\$1,236,375$  times 25% (per the schedule herein) =  $\$309,094$  to be repaid to the Affected Tax Jurisdictions.

Any such recapture is at the sole and exclusive discretion of the Agency. The Agency shall notify the Company in writing within ninety (90) days of such significant Event of Default of its intent to terminate this PILOT Agreement and/or to recapture the PILOT benefits (or any portion thereof); provided, however, that such period shall not commence to run until the Agency has been properly notified or ascertains any such Event of Default. Notwithstanding the foregoing or anything to the contrary contained herein, the Company shall not be deemed to be in default under this PILOT Agreement, and a significant Event of Default shall not be deemed to have occurred in accordance with this Section 12 unless: (i) an Event of Default continues for a period of one hundred and eighty (180) days after the Company's receipt of written notice of such Event of Default from the Agency (or in the event such Event of Default cannot reasonably be cured within 180 days, if the Company fails to commence and diligently pursue a cure within such 180-day period); or (ii) if the Company fails to achieve any of the Milestones due to causes beyond the Company's control, including, without limitation, acts of God; strikes, labor disputes, area-wide labor shortages or material shortages; weather conditions; delays associated with the existence, removal or remediation of any hazardous materials; delay in obtaining any necessary or required planning/zoning approvals and/or building permits, licenses and approvals; or unforeseen economic circumstances or fiscal hardship. The Agency shall, upon serving the

Company with any notice of an Event of Default, simultaneously serve a copy of such notice upon the holder of any mortgage interest in this PILOT Agreement, or any portion of the Facility, for which the Company has provided the Agency with written notice specifying the name and address for notices (the "Lender(s)"). Notwithstanding anything to the contrary contained in this PILOT Agreement, the Lender(s) shall thereupon have the same period, after service of such notice upon it, plus an additional sixty (60) days, to remedy or cause to be remedied the Event of Default complained of, and the Agency shall accept such performance by or at the instigation of such Lender(s) as if the same had been done by the Company.

Section 13. 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. Notwithstanding the foregoing, it is agreed and understood that the City will pledge and assign the PILOT Increment Portion of the PILOT Payments to secure a federal 108 loan in the aggregate principal amount of Twenty Million and 00/100 Dollars (\$20,000,000.00). Further, the Company shall be permitted to assign this PILOT Agreement to an Affiliate or Accepted Assignee, as each are defined in the Sub-Leaseback Agreement, without the consent of the Agency.

Section 14. The Agency acknowledges and agrees that the land described in Exhibit A-1 attached hereto (the "Hess Parcel") may be incorporated into one of the Ground Leases in accordance with its terms. In the event one of the Ground Leases is amended to include the Hess Parcel, the parties shall, within ten (10) days of such amendment, execute an amendment to this PILOT Agreement, the Sublease and the Sub-Leaseback to include the Hess Parcel in the definition of the "Land," as such term is used hereunder. Such amendment shall not increase or otherwise change or affect the payment amounts or payment schedule set forth in Schedule 1 attached hereto.

Section 15. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, or by nationally recognized overnight courier, addressed as follows:

To the Agency: County of Monroe Industrial Development Agency  
8100 CityPlace  
50 West Main Street  
Rochester, New York 14614  
Attention: Executive Director

To the Company: CT Rochester, LLC  
c/o Gilbane Development Company  
7 Jackson Walkway  
Providence, Rhode Island 02903  
Attention: Edward T. Broderick

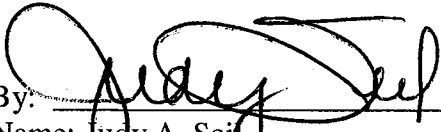
With a Copy to: R. Carlos Carballada, Commissioner  
Dept. of Neighborhood & Business Development  
City of Rochester  
30 Church Street, Rm. 223-B  
Rochester, New York 14614

With a Copy to: Molly Stolmeier, Esq.  
General Counsel  
Gilbane Development Company  
5670 Liberton Ct.  
Dublin, Ohio 43017

*[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: Judy A. Seif  
Title: Executive Director

**CT ROCHESTER, LLC**

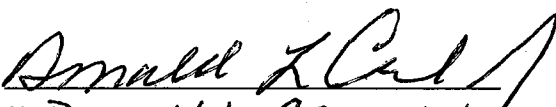
By: GD Rochester, LLC, its Manager

By: Gilbane Development Company, its  
Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

**THE CITY OF ROCHESTER, NEW YORK**

By:   
Name: Donald L. Crumbaker  
Title: Municipal Attorney III

**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: Judy A. Seil  
Title: Executive Director

**CT ROCHESTER, LLC**

By: GD Rochester, LLC, its Manager

By: Gilbane Development Company, its  
Manager

By:   
Name: Matthew Lawrence  
Title: Senior Vice President

**APPROVED AS TO FORM:**

**THE CITY OF ROCHESTER, NEW YORK**

By: \_\_\_\_\_  
Name:  
Title:

## Schedule 1

Year	Assumed Interest Rate (1)	HUD 108 Interest (2)	HUD 108 Principal	108 Interest to City	City & County Taxes	Total PILOT Payment
2013	*	*	\$ -	*	\$ -	\$ -
2014	*	*	\$ -	*	\$ 223,153	\$ 223,153
2015	0.67%	\$ 515,541	\$ 1,465,274	\$ 50,000	\$ 446,306	\$ 2,477,121
2016	0.93%	\$ 505,723	\$ 805,632	\$ 50,000	\$ 446,306	\$ 1,807,661
2017	1.22%	\$ 498,231	\$ 813,124	\$ 50,000	\$ 446,306	\$ 1,807,661
2018	1.54%	\$ 488,311	\$ 833,086	\$ 50,000	\$ 449,654	\$ 1,821,050
2019	1.77%	\$ 475,481	\$ 845,916	\$ 50,000	\$ 449,654	\$ 1,821,051
2020	2.05%	\$ 460,508	\$ 860,889	\$ 50,000	\$ 449,654	\$ 1,821,051
2021	2.45%	\$ 442,860	\$ 888,654	\$ 50,000	\$ 453,026	\$ 1,834,540
2022	2.56%	\$ 421,088	\$ 910,426	\$ 50,000	\$ 453,026	\$ 1,834,540
2023	2.70%	\$ 397,781	\$ 933,733	\$ 50,000	\$ 453,026	\$ 1,834,540
2024	2.91%	\$ 372,571	\$ 969,137	\$ 50,000	\$ 456,424	\$ 1,848,131
2025	2.96%	\$ 344,369	\$ 997,338	\$ 50,000	\$ 456,424	\$ 1,848,130
2026	3.01%	\$ 314,847	\$ 1,026,860	\$ 50,000	\$ 456,424	\$ 1,848,131
2027	3.09%	\$ 283,939	\$ 1,068,037	\$ 50,000	\$ 459,847	\$ 1,861,823
2028	3.10%	\$ 250,937	\$ 1,101,039	\$ 50,000	\$ 459,847	\$ 1,861,822
2029	3.21%	\$ 216,804	\$ 1,135,172	\$ 50,000	\$ 459,847	\$ 1,861,823
2030	3.26%	\$ 180,365	\$ 1,515,291	\$ 50,000	\$ 463,296	\$ 2,208,952
2031	3.36%	\$ 130,967	\$ 1,564,689	\$ 50,000	\$ 463,296	\$ 2,208,952
2032	3.46%	\$ 78,393	\$ 2,265,703	\$ 50,000	\$ 463,296	\$ 2,857,392
<b>Total</b>		<b>\$ 6,378,717</b>	<b>\$ 20,000,000</b>	<b>\$ 900,000</b>	<b>\$ 8,408,810</b>	<b>\$ 35,687,526</b>

\* - Interest payments for Years 1 and 2 will be made from the interest reserve.

(1) Actual Interest Rate to be set through HUD Offering.

(2) Subject to change based on Actual Interest Rate.

**NOTE:** If the aggregate payments of "HUD 108 Interest" are less than \$6,378,717 as outlined in **Schedule 1**, as a result of lower interest rates achieved through the HUD Public Offering, the first \$403,852 will accrue to the benefit of CT Rochester, LLC (to cover the projected increase in interest expense caused by the final principal payment in Year 20 - initially anticipated to require a balloon payment of \$648,440 but now included in the final principal payment in Year 20). Any additional reduction in HUD 108 Interest below \$5,974,865 (\$6,378,717 - \$403,852) will be paid as additional Taxes to the City/County. If the aggregate payments of HUD 108 Interest are greater than \$6,378,717 as a result of higher interest rates in the HUD Public Offering than projected, the increased payments will be an additional obligation of CT Rochester, LLC and there will be no effect on the PILOT distributed for taxes to the City/County.

**EXHIBIT A**

**Legal Description of Premises**

**ALL THAT TRACT OR PARCEL OF LAND** being a part of Town Lot 68, Second Division, Township 13, Range 7, in the City of Rochester, County of Monroe and State of New York, being more particularly described as Lots 1, 2, 3, 5, 6, 7, 8, 9 and Condominium Unit 1 located on Lot 4 of the College Town Subdivision, as shown on a map filed on July 1, 2013, in the Monroe County Clerk's Office in Book 346 of Subdivision Maps Page 24; together with any and all easements beneficial thereto.

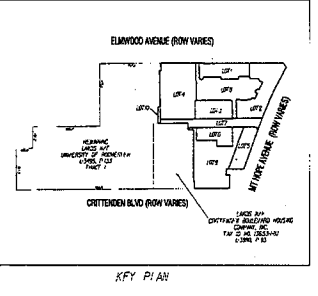
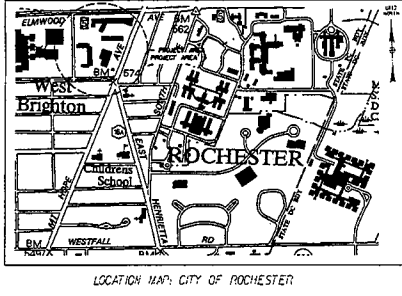
**EXHIBIT A-1**

**Legal Description of Hess Parcel**

**ALL THAT TRACT OR PARCEL OF LAND** owned by Hess Realty Corp. and located at the corner of Crittenden Blvd. and Mt. Hope Avenue, as shown on the attached subdivision plan.

[See Attached]





- SUBJECT TO:**
- 1) LOT 4 IS SUBJECT TO AN EASEMENT FOR PARKING TO BENEFIT LOTS 1, 2, 3, 5, AND 6.
  - 2) LOT 4 IS SUBJECT TO ACCESS AND UTILITY EASEMENTS TO BENEFIT LOTS 1, 2, 3, 5, AND 6.
  - 3) LOT 4 IS SUBJECT TO AN EASEMENT FOR PARKING TO BENEFIT LOTS 1, 2, 3, 5, AND 6.
  - 4) LOT 4 IS SUBJECT TO ACCESS AND UTILITY EASEMENTS TO BENEFIT LOTS 1, 2, 3, 5, AND 6.
  - 5) LOT 4 IS SUBJECT TO ACCESS AND UTILITY EASEMENTS TO BENEFIT LOTS 1, 2, 3, 5, AND 6.
  - 6) LOT 4 IS SUBJECT TO ACCESS AND UTILITY EASEMENTS TO BENEFIT LOTS 1, 2, 3, 5, AND 6.
  - 7) LOT 4 IS SUBJECT TO AN EASEMENT FOR PARKING TO BENEFIT LOTS 1, 2, 3, 5, AND 6.
  - 8) LOT 4 IS SUBJECT TO AN EASEMENT FOR PARKING TO BENEFIT LOTS 1, 2, 3, 5, AND 6.
  - 9) LOT 4 IS SUBJECT TO AN EASEMENT FOR PARKING TO BENEFIT LOTS 1, 2, 3, 5, AND 6.
  - 10) LOT 4 IS SUBJECT TO AN EASEMENT FOR PARKING TO BENEFIT LOTS 1, 2, 3, 5, AND 6.
  - 11) LOT 4 IS SUBJECT TO AN EASEMENT FOR PARKING TO BENEFIT LOTS 1, 2, 3, 5, AND 6.
  - 12) LOT 4 IS SUBJECT TO AN EASEMENT FOR PARKING TO BENEFIT LOTS 1, 2, 3, 5, AND 6.
  - 13) LOT 4 IS SUBJECT TO AN EASEMENT FOR PARKING TO BENEFIT LOTS 1, 2, 3, 5, AND 6.
  - 14) LOT 4 IS SUBJECT TO AN EASEMENT FOR PARKING TO BENEFIT LOTS 1, 2, 3, 5, AND 6.
  - 15) LOT 4 IS SUBJECT TO AN EASEMENT FOR PARKING TO BENEFIT LOTS 1, 2, 3, 5, AND 6.
  - 16) LOT 4 IS SUBJECT TO AN EASEMENT FOR PARKING TO BENEFIT LOTS 1, 2, 3, 5, AND 6.
  - 17) LOT 4 IS SUBJECT TO AN EASEMENT FOR PARKING TO BENEFIT LOTS 1, 2, 3, 5, AND 6.
  - 18) LOT 4 IS SUBJECT TO AN EASEMENT FOR PARKING TO BENEFIT LOTS 1, 2, 3, 5, AND 6.
  - 19) LOT 4 IS SUBJECT TO AN EASEMENT FOR PARKING TO BENEFIT LOTS 1, 2, 3, 5, AND 6.
  - 20) LOT 4 IS SUBJECT TO AN EASEMENT FOR PARKING TO BENEFIT LOTS 1, 2, 3, 5, AND 6.

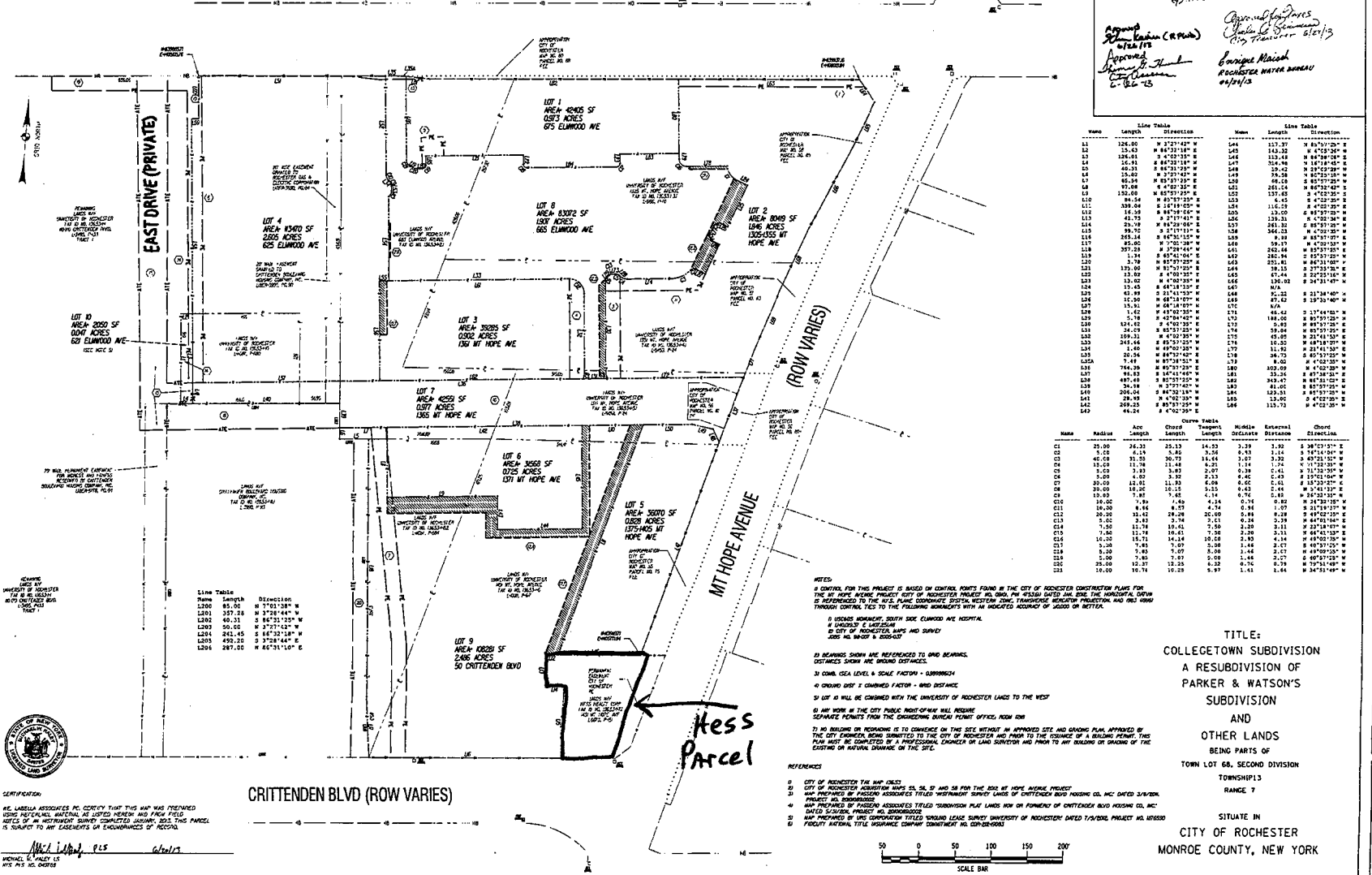
SIGNATURES

NANCY BARRY *[Signature]* 6/27/13  
 Director

MICHAEL J. GARDNER *[Signature]* June 20, 2013  
 Mayor

*[Other signatures and dates]*

ELMWOOD AVENUE (ROW VARIES)



Line	Length	Direction	Area	Line	Length	Direction	Area
L1	13.43	N 88°32'18"E	0.44	L43	143.32	N 4°02'20"W	5.86
L2	42.75	S 77°11'14"W	1.59	L44	143.32	N 4°02'20"W	5.86
L3	15.81	E 86°23'18"W	0.44	L45	324.44	N 14°18'45"W	12.69
L4	22.31	S 87°02'25"W	0.86	L46	228.15	N 14°18'45"W	9.28
L5	15.82	S 3°27'42"E	0.44	L47	24.28	N 82°25'25"W	0.93
L6	80.34	N 82°25'25"W	2.91	L48	24.28	N 82°25'25"W	0.93
L7	97.08	N 4°42'35"E	3.51	L49	201.14	N 82°25'25"W	7.69
L8	132.00	N 82°25'25"W	4.80	L50	132.00	N 82°25'25"W	4.80
L9	84.54	N 82°25'25"W	3.04	L51	115.73	N 4°02'20"W	4.63
L10	338.04	N 14°18'45"W	12.51	L52	115.73	N 4°02'20"W	4.63
L11	14.39	N 84°29'42"E	0.26	L53	12.00	N 82°25'25"W	0.43
L12	42.75	S 77°11'14"W	1.59	L54	39.72	S 82°25'25"W	1.40
L13	23.79	N 84°29'42"E	0.37	L55	343.32	N 4°02'20"W	13.97
L14	39.72	S 82°25'25"W	1.40	L56	364.97	N 4°02'20"W	14.29
L15	205.24	N 87°01'15"W	7.40	L57	364.97	N 4°02'20"W	14.29
L16	85.80	N 87°01'15"W	3.07	L58	364.97	N 4°02'20"W	14.29
L17	85.80	N 87°01'15"W	3.07	L59	364.97	N 4°02'20"W	14.29
L18	225.48	N 4°02'20"W	8.89	L60	262.64	N 82°25'25"W	9.72
L19	5.78	N 82°25'25"W	0.21	L61	262.64	N 82°25'25"W	9.72
L20	123.00	N 82°25'25"W	4.47	L62	262.64	N 82°25'25"W	9.72
L21	123.00	N 82°25'25"W	4.47	L63	262.64	N 82°25'25"W	9.72
L22	12.02	N 82°25'25"W	0.43	L64	324.44	N 14°18'45"W	12.69
L23	12.02	N 82°25'25"W	0.43	L65	324.44	N 14°18'45"W	12.69
L24	63.89	S 21°34'40"W	2.28	L66	324.44	N 14°18'45"W	12.69
L25	11.91	N 87°32'45"E	0.42	L67	324.44	N 14°18'45"W	12.69
L26	11.91	N 87°32'45"E	0.42	L68	324.44	N 14°18'45"W	12.69
L27	15.81	N 86°23'18"W	0.55	L69	324.44	N 14°18'45"W	12.69
L28	42.75	N 84°29'42"E	1.59	L70	184.00	N 82°25'25"W	6.51
L29	5.78	N 82°25'25"W	0.21	L71	184.00	N 82°25'25"W	6.51
L30	324.44	N 4°02'20"W	12.69	L72	184.00	N 82°25'25"W	6.51
L31	24.28	N 82°25'25"W	0.93	L73	59.84	N 82°25'25"W	2.18
L32	24.28	N 82°25'25"W	0.93	L74	59.84	N 82°25'25"W	2.18
L33	24.28	N 82°25'25"W	0.93	L75	59.84	N 82°25'25"W	2.18
L34	24.28	N 82°25'25"W	0.93	L76	59.84	N 82°25'25"W	2.18
L35	24.28	N 82°25'25"W	0.93	L77	59.84	N 82°25'25"W	2.18
L36	24.28	N 82°25'25"W	0.93	L78	59.84	N 82°25'25"W	2.18
L37	24.28	N 82°25'25"W	0.93	L79	59.84	N 82°25'25"W	2.18
L38	24.28	N 82°25'25"W	0.93	L80	59.84	N 82°25'25"W	2.18
L39	24.28	N 82°25'25"W	0.93	L81	59.84	N 82°25'25"W	2.18
L40	24.28	N 82°25'25"W	0.93	L82	59.84	N 82°25'25"W	2.18
L41	24.28	N 82°25'25"W	0.93	L83	59.84	N 82°25'25"W	2.18
L42	24.28	N 82°25'25"W	0.93	L84	59.84	N 82°25'25"W	2.18
L43	24.28	N 82°25'25"W	0.93	L85	59.84	N 82°25'25"W	2.18
L44	24.28	N 82°25'25"W	0.93	L86	59.84	N 82°25'25"W	2.18
L45	24.28	N 82°25'25"W	0.93	L87	59.84	N 82°25'25"W	2.18
L46	24.28	N 82°25'25"W	0.93	L88	59.84	N 82°25'25"W	2.18
L47	24.28	N 82°25'25"W	0.93	L89	59.84	N 82°25'25"W	2.18
L48	24.28	N 82°25'25"W	0.93	L90	59.84	N 82°25'25"W	2.18
L49	24.28	N 82°25'25"W	0.93	L91	59.84	N 82°25'25"W	2.18
L50	24.28	N 82°25'25"W	0.93	L92	59.84	N 82°25'25"W	2.18
L51	24.28	N 82°25'25"W	0.93	L93	59.84	N 82°25'25"W	2.18
L52	24.28	N 82°25'25"W	0.93	L94	59.84	N 82°25'25"W	2.18
L53	24.28	N 82°25'25"W	0.93	L95	59.84	N 82°25'25"W	2.18
L54	24.28	N 82°25'25"W	0.93	L96	59.84	N 82°25'25"W	2.18
L55	24.28	N 82°25'25"W	0.93	L97	59.84	N 82°25'25"W	2.18
L56	24.28	N 82°25'25"W	0.93	L98	59.84	N 82°25'25"W	2.18
L57	24.28	N 82°25'25"W	0.93	L99	59.84	N 82°25'25"W	2.18
L58	24.28	N 82°25'25"W	0.93	L100	59.84	N 82°25'25"W	2.18

**REVISIONS**

1	REVISED LOT 4, 1, 3, 6	DATE	6/27/13
2	REVISIONS AND ADDITIONS	DATE	6/27/13
3	TO EASEMENT LIST	DATE	4/1/13
4	ADDED EASEMENT NOTE 2	DATE	4/1/13
5	REV EAST DRIVE EASEMENT WITH	DATE	4/1/13
6	REV EAST DRIVE EASEMENT WITH	DATE	4/1/13

**LABELLA ASSOCIATES, P.C.**

300 STATE STREET  
 ROCHESTER, NY 14614  
 F: (585) 454-0098  
 www.labella.com

**COLLEGETOWN SUBDIVISION**  
 COLLEGETOWN OF ROCHESTER  
 CITY OF ROCHESTER, NY

**1325-1101 MT HOPE AVENUE**  
 60'-170' CRITTENDEN BLVD  
 60'-170' WOODS AVENUE  
 SUBDIVISION PLAN

DATE: MARCH 15, 2013  
 SHEET: 212462

**212462**

**SUB-1**

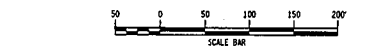
**CERTIFICATION**

WE, LABELLA ASSOCIATES, P.C. CERTIFY THAT THIS MAP WAS PREPARED  
 UNDER PROFESSIONAL SURVEYING LICENSE NO. 012123-2013  
 AND THAT WE ARE NOT PROVIDING PROFESSIONAL SERVICES IN ANY OTHER  
 CAPACITY.

*[Signatures]*

**NOTES**

- 1) THIS PROJECT IS BASED ON CONTROL POINTS FOUND IN THE CITY OF ROCHESTER CONSTRUCTION PLANS FOR THE MT HOPE AVENUE PROJECT OFF OF ROCHESTER PROJECT NO. 0404. ALL ADJACENT LOTS ARE THE PROPERTY OF THE CITY OF ROCHESTER.
- 2) ALL DIMENSIONS ARE IN FEET AND INCHES.
- 3) 1/8" = 1' SCALE FACTOR - 4" = 100'
- 4) 1/4" = 1' SCALE FACTOR - 8" = 100'
- 5) 1" = 1' SCALE FACTOR - 16" = 100'
- 6) ALL WORK IS TO BE DONE BY THE UNIVERSITY OF ROCHESTER LANDS TO THE WEST.
- 7) IF ANY WORK IS TO BE DONE ON THIS SITE WITHOUT AN APPROVED SITE AND GRADING PLAN APPROVED BY THE CITY OF ROCHESTER, THE OWNER IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE CITY OF ROCHESTER.
- 8) ALL DIMENSIONS ARE TO BE TAKEN FROM THE CORNER OF THE BLDG. TO THE CENTER OF THE SIDEWALK OR THE CENTER OF THE DRIVEWAY OR THE CENTER OF THE LOT LINE.



**EXHIBIT B**

**City Letter of Support**

[See Attached]



# City of Rochester

City Hall Room 307A, 30 Church Street  
Rochester, New York 14614-1290  
www.cityofrochester.gov

NEIGHBORHOOD &  
BUSINESS DEVELOPMENT  
INTRODUCTORY NO.

4  
Thomas S. Richards  
Mayor

455, 456, 457

October 25, 2012

TO THE COUNCIL

Ladies and Gentlemen:

ord. No. 2012 - 410  
ord. No. 2012 - 411  
ord. No. 2012 - 412

Re: College Town Development Project

Transmitted herewith for your approval is legislation relating to the College Town Development project. This legislation will:

1. Authorize a loan agreement not to exceed \$20,000,000 with College Town Rochester, LLC, or an entity to be formed by Gilbane Development Co. and Fairmount Properties LLC. The loan will be financed from the HUD Section 108 Loan Guarantee Program funds appropriated herein. The Section 108 loan will be provided as both construction and permanent financing. The terms of the loan are described below.
2. Appropriate the sum of \$20,000,000, or so much thereof as may be necessary, from the U.S. Department of Housing and Urban Development (HUD) Section 108 Loan Guarantee Program funds to fund the loan.
3. Establish \$450,000 as maximum compensation for an agreement with College Town Rochester, LLC, or an entity to be formed by Gilbane Development Co. and Fairmount Properties LLC, for design and construction of public improvements. The cost of the agreement will be funded from the bonds appropriated herein.
4. Authorize the issuance of bonds in the amount of \$450,000 and the appropriation of the proceeds thereof to finance the agreement for design and construction of public improvements.
5. Authorize the granting and acceptance of any easements for utilities and public access necessary for the project.
6. Authorize the Mayor to execute such agreements and other documents as may be necessary to effectuate the agreements authorized herein.
7. Authorize the Mayor to adjust the interest rate and other terms and conditions of the Section 108 loan as needed.

College Town Rochester LLC, a joint business venture between Fairmount Properties LLC and Gilbane Development Company, has proposed the construction of mixed-use development on a 14 acre site owned by the University of Rochester (U of R) fronting on the Mt. Hope Avenue commercial corridor between Crittenden Blvd. to the south and Elmwood Ave. to the north. This transformative project will include the construction of 50,000 square feet of commercial space, more than 110,000 square feet of retail space, approximately 140 apartments (including at least 10 affordable housing units), open space, surface parking, and a parking garage that will accommodate approximately 1,600 vehicles. The project includes a new street to service the development. This project will also include a 150 room hotel and conference center to be constructed on the site by a third-party developer. It is not part of this financing arrangement

The City submitted an application to HUD for a \$20 million Section 108 Loan for the project on August 6, 2012 (Ord. No. 2012-141) HUD approved the Section 108 Loan in October 2012. The



loan will be payable with interest only for the first two years during construction, and fully amortized over the remaining 18 years with an interest rate equal to the federal borrowing rate plus a spread of up to one percent (1%). In the event of default, under the terms of the PILOT Agreement, the PILOT Agreement could be terminated and the City's ability to assess real property taxes would commence.

The developer will enter into a 20-year Payment In Lieu Of Taxes (PILOT) Agreement pending approval from the County of Monroe Industrial Development Agency (COMIDA) at their November 20, 2012 meeting. The PILOT will authorize an annual fixed payment of at least \$1,785,325 after completion of the project. No more than \$1,300,000 of the annual PILOT proceeds will be applied to the Section 108 Loan debt service. The remaining PILOT proceeds, approximately \$485,225 annually, will be paid to the City and Monroe County. The annual fixed PILOT payments are based on a projected initial property assessment estimated to be no less than \$32.5 million.

The new street to service the site will be constructed by the developer, rather than the City. This decision is based on the nature of the project, which requires concurrent work on two adjacent construction sites, including: excavation and grading of the whole site; coordinating utilities, paving and other work; and the need to integrate the street construction with the rest of the project. The developer also plans on creating a bike lane along Elmwood Avenue adjacent to the project.

The cost of these improvements will be \$3.45 million. The City's 2012-2017 Capital Improvement Program includes \$450,000 in 2012-13 and \$3 million in 2013-2014 for the construction of street improvements for the project.

The sources and uses of funding for the College Town Project are as follows:

<u>Sources</u>		<u>Uses</u>	
Primary Lender	\$31,152,847	Soft Costs	\$10,143,328
Section 108 Loan	20,000,000	Construction	47,673,793
Univ. of Rochester-parking	16,021,200	Parking	25,490,000
NYS Grant (proposed)	4,000,000	Demolition and Abatement	2,700,000
City Infrastructure (CIP)	3,450,000	Section 108 Loan Reserve	900,000
Brownfield	250,000	TOTAL	\$86,907,121
RG&E (proposed)	\$650,000		
COMIDA Benefits (proposed)	3,853,482		
Equity & Other	7,729,612		
TOTAL	\$86,907,121		

The developer will begin construction in late fall 2012, with completion projected for December 2014. The project will create 900 construction jobs and 330 permanent jobs. The project will also accommodate 250 existing U of R employees being relocated to the new commercial space. Over the 20 year term of the Section 108 Loan Agreement, the City estimates that it will receive at least \$9.2 million in additional revenue, including approximately \$6.8 million from the PILOT Agreement and \$2.4 million in interest income.

Pursuant to the requirements of Article 8 of the NYS Environmental Conservation Law and Chapter 48 of the City Code, the Director of Planning and Zoning, Lead Agency for the environmental review, has determined that the proposed action will not result in any significant environmental effects. A negative declaration is anticipated and will be provided prior to the November meeting of City Council.

Respectfully submitted,

  
Thomas S. Richards  
Mayor

ATTACHMENT NO. AL-183