

**HARRIS BEACH** PLLC  
ATTORNEYS AT LAW

April 19, 2023

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PITTSFORD, NY 14534  
(585) 419-8800

RACHEL C. BARANELLO

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TO ALL ON THE ATTACHED DISTRIBUTION LIST:

Re: County of Monroe Industrial Development Agency  
USRE Manitou, LLC - Amazon.com Services LLC Project  
2600 Manitou Road in the Town of Gates, NY

Ladies and Gentlemen:

On April 21, 2021, we filed the Form RP-412a with that certain Payment-In-Lieu-of-Tax Agreement, dated as of April 1, 2021 (the "Original PILOT Agreement"), by and between COMIDA and USR Manitou, LLC. We subsequently learned that the Form RP-412a was not properly processed in advance of the March 1, 2022 taxable status date.

Due to the delayed processing of the Form RP-412a, the Company, at the request of the Affected Taxing Jurisdictions has agreed to amend the Original PILOT Agreement to delay the commencement and termination dates thereof.

To that end, enclosed please find the First Amendment to PILOT Agreement, dated as of April 1, 2023.

Very truly yours,



Rachel C. Baranello

RCB/lap

Enclosures

cc: COMIDA  
Susan Saslow, Esq.

DISTRIBUTION LIST

Hon. Adam J. Bello  
Monroe County Executive  
39 West Main Street, Suite 110  
County Office Building  
Rochester, New York 14614  
CERTIFIED MAIL RECEIPT#:  
9489 0090 0027 6389 9827 73

Ms. Susan Buck  
Monroe County Treasury  
B-3 County Office Building  
39 West Main Street  
Rochester, New York 14614  
CERTIFIED MAIL RECEIPT#:  
9489 0090 0027 6389 9827 80

Mr. Cosmo A. Giunta, Supervisor  
Gates Town Hall  
1605 Buffalo Road  
Rochester, New York 14624  
CERTIFIED MAIL RECEIPT #:  
9489 0090 0027 6389 9827 97

Ms. Kristin Swann, Superintendent  
Spencerport Central School District  
71 Lyell Avenue  
Spencerport, New York 14559  
CERTIFIED MAIL RECEIPT #:  
9489 0090 0027 6389 9828 03

Mr. Agostino Mineo, Assessor  
Gates Town Hall  
1605 Buffalo Road  
Rochester, New York 14624  
CERTIFIED MAIL RECEIPT #:  
9489 0090 0027 6389 9828 10

Mr. Gary Bracken, President of BOE  
Spencerport Central School District  
71 Lyell Avenue  
Spencerport, New York 14559  
CERTIFIED MAIL RECEIPT #:  
9489 0090 0027 6389 9828 27

Marcy Clapper, District Clerk  
Spencerport Central School District  
71 Lyell Avenue  
Spencerport, New York 14559  
CERTIFIED MAIL RECEIPT #:  
9489 0090 0027 6389 9828 34

**FIRST AMENDMENT TO  
PAYMENT-IN-LIEU-OF-TAX AGREEMENT**

THIS FIRST AMENDMENT TO PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of the 1<sup>st</sup> day of April, 2023 (the "Amendment"), 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 **USRE MANITOU, LLC**, a Delaware limited liability company with offices at 9830 Colonnade Blvd., Suite 600, San Antonio, Texas 78230-2239 (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 Agency agreed to assist the Company with a certain project (the "Project") consisting of: (A) the acquisition of a leasehold interest in an approximately 100-acre parcel of land located at 2600 Manitou Road in the Town of Gates, New York 14624 (the "Land"); (B) the construction on the Land of an approximately 2,600,000 square-foot (including mezzanines) warehouse/distribution facility, related infrastructure (site work, utilities, roadway improvements and landscaping) and associated exterior improvements (parking and loading areas, sidewalks, lighting and signage) (collectively, the "Improvements"); and (C) the acquisition and installation therein, thereon or thereabout by the Company and Amazon.com Services LLC (as a potential tenant of the Facility, the "Tenant") of certain material handling equipment, machinery, equipment and related personal property (the "Equipment" and, together with the Land and the Improvements, the "Facility"); all for the future potential sublease to the Tenant for use as a fulfillment center; and

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

**WHEREAS**, the Agency and the Company entered into a certain Lease Agreement, dated as of April 1, 2021 (the "Lease Agreement"), a certain Leaseback Agreement, dated as of April 1, 2021 (the "Leaseback Agreement") and, because the Agency is exempt from the payment of taxes and assessments imposed upon real property and improvements owned or controlled by it pursuant to Section 874(1) of the Act, a certain Payment-In-Lieu-of-Tax Agreement, dated as of April 1, 2021 (the "Original PILOT Agreement") in connection with the Facility under which the Company agreed to make provisions for payments-in-lieu-of-taxes by the Company to the County of Monroe, the Town of Gates and the Spencerport Central School District (collectively, the "Affected Tax Jurisdictions"); and

**WHEREAS**, on April 21, 2021, the Agency filed the Form RP-412a and Original PILOT Agreement with the Affected Tax Jurisdictions; and

**WHEREAS**, subsequently, the Company and the Agency were informed that the Form RP-412a was not properly processed in advance of the March 1, 2022 taxable status date; and

**WHEREAS**, due to the delayed processing of the Form RP-412a, the Company, at the request of the Affected Tax Jurisdictions, has agreed to amend the Original PILOT Agreement to delay commencement and termination dates thereof; and

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree to amend the Original PILOT Agreement as follows:

1. Section 1.1 A. is hereby deleted in its entirety and replaced with the following:

"Section 1.1 A. On April 21, 2021, the Agency has completed and filed the New York State Form RP-412-a "Application For Real Property Tax Exemption" (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law (the "RPTL") by the taxable status date (**March 1, 2023**). As such, the Facility shall be exempt from Real Estate Taxes commencing with the **2024** Town and County tax year and the **2023-2024** School District tax year. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the Town, County and School District. 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 Leaseback 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 overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. 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."

2. Section 1.1 B. is hereby deleted in its entirety and replaced with the following:

" 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 **2023-2024** School District tax year and the invoice for the **2024** Town and 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 make all payments due hereunder without further notice or invoicing from the Agency, any Affected Tax Jurisdiction or any other party."

3. Section 1.5 is hereby deleted in its entirety and replaced with the following:

"1.5 Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the **2023-2024** School District tax year through the **2037-2038** School District tax year, and (ii) the **2024** County and Town tax year through the **2038** County and Town tax year. This PILOT Agreement shall expire on **December 31, 2038**; *provided, however*, the Company shall pay the **2038-2039** School District tax bill and the **2039** County and Town tax bills on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. In no event shall the Company be entitled to receive tax benefits relative to the 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, while this PILOT Agreement is in effect, which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b of the New York 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."

4. Schedule A attached to the Original PILOT Agreement is hereby deleted in its entirety and replaced with Schedule A attached hereto.

5. Except as modified in paragraphs 1-4 above, all of the terms, provisions and covenants of the Original PILOT Agreement are in all other respects hereby ratified and confirmed by the Company and the Agency and shall remain in full force and effect.

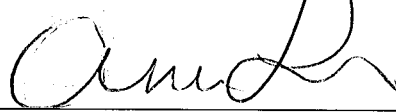
6. Upon the effectiveness of this Amendment, on and after the date hereof each reference in the Original PILOT Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of like import, and each reference in the Lease Agreement, the Leaseback Agreement and any related documents to the Original PILOT Agreement, shall mean and be a reference to the Original PILOT Agreement as amended hereby.

7. This Amendment may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

*[Remainder of Page Intentionally Left Blank]*

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

**COUNTY OF MONROE INDUSTRIAL  
DEVELOPMENT AGENCY**

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

**USRE MANITOU, LLC,**  
a Delaware limited liability company

By: New Economy Assets – Phase 1 Issuer, LLC,  
a Delaware limited liability company,  
its sole member

By:   
Name: **LANCE ALLEN**  
Title: **Executive Managing Director**

**SCHEDULE A**  
**TO**  
**PILOT AGREEMENT DATED AS OF APRIL 1, 2021, AS AMENDED BY THAT**  
**CERTAIN FIRST AMENDMENT TO PAYMENT-IN-LIEU-OF-TAX AGREEMENT,**  
**DATED AS OF APRIL 1, 2023, BY AND BETWEEN THE**  
**COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY**  
**AND USRE MANITOU, LLC**

"Total PILOT Payment" shall be calculated as follows:

| <u>Tax Year</u> | <u>County and Town Tax Year</u> | <u>School District Tax Year</u> | <u>Total Taxable Valuation</u>           |
|-----------------|---------------------------------|---------------------------------|--|
| Year 1          | 2023                            | 2022/2023                       | Full Taxes                               |
| Year 2          | 2024                            | 2023/2024                       | Base Valuation, plus (Added Value x .10) |
| Year 3          | 2025                            | 2024/2025                       | Base Valuation, plus (Added Value x .10) |
| Year 4          | 2026                            | 2025/2026                       | Base Valuation, plus (Added Value x .10) |
| Year 5          | 2027                            | 2026/2027                       | Base Valuation, plus (Added Value x .10) |
| Year 6          | 2028                            | 2027/2028                       | Base Valuation, plus (Added Value x .10) |
| Year 7          | 2029                            | 2028/2029                       | Base Valuation, plus (Added Value x .10) |
| Year 8          | 2030                            | 2029/2030                       | Base Valuation, plus (Added Value x .10) |
| Year 9          | 2031                            | 2030/2031                       | Base Valuation, plus (Added Value x .20) |
| Year 10         | 2032                            | 2031/2032                       | Base Valuation, plus (Added Value x .30) |
| Year 11         | 2033                            | 2032/2033                       | Base Valuation, plus (Added Value x .40) |
| Year 12         | 2034                            | 2033/2034                       | Base Valuation, plus (Added Value x .50) |
| Year 13         | 2035                            | 2034/2035                       | Base Valuation, plus (Added Value x .60) |
| Year 14         | 2036                            | 2035/2036                       | Base Valuation, plus (Added Value x .70) |
| Year 15         | 2037                            | 2036/2037                       | Base Valuation, plus (Added Value x .80) |
| Year 16         | 2038                            | 2037/2038                       | Base Valuation, plus (Added Value x .90) |

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 Improvements (the "Base Valuation"). During the term of this PILOT Agreement, the Base Valuation shall be revised from time to time by the change in the assessed valuation in all taxable real property in the Town of Gates, 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 Facility will be subject to full taxes in Year 1. The abatement schedule shall allow for a 90% exemption from taxation for the Added Value in Year 2 through and including Year 8, with such exemption being eliminated in 10% increments in PILOT Years 9-16.

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 Tax Jurisdiction (after application of any applicable equalization rate). After Year 16, the Facility shall be subject to full taxation by the Affected Tax Jurisdictions.

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

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

**COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**USRE MANITOU, LLC**

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

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| <b><u>Street Address</u></b> | <b><u>Tax Map Number</u></b> |
|------------------------------|------------------------------|
| 2600 Manitou Road, Gates, NY | 118.05-1-15                  |

**Affected Tax Jurisdictions:**

County of Monroe  
Town of Gates  
Spencerport Central School District

**Dated as of April 1, 2021**



## PAYMENT IN LIEU OF TAX AGREEMENT

**THIS PAYMENT IN LIEU OF TAX AGREEMENT** (the "PILOT Agreement") made as of April 1, 2021, but effective as of April 7, 2021 (the "Effective Date"), 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, Suite 1150, Rochester, New York 14614 (the "Agency"), and **USRE MANITOU, LLC**, a Delaware limited liability company with offices at 9830 Colonnade Blvd., Suite 600, San Antonio, Texas 78230-2239 (the "Company").

### WITNESSETH:

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

**WHEREAS**, the Company has requested the Agency to assist in a certain project (the "Project") consisting of: (A) the acquisition of a leasehold interest in an approximately 100-acre parcel of land located at 2600 Manitou Road in the Town of Gates, New York 14624 (the "Land"); (B) the construction on the Land of an approximately 2,600,000 square-foot (including mezzanines) warehouse/distribution facility, related infrastructure (site work, utilities, roadway improvements and landscaping) and associated exterior improvements (parking and loading areas, sidewalks, lighting and signage) (collectively, the "Improvements"); and (C) the acquisition and installation therein, thereon or thereabout by the Company and Amazon.com Services LLC (as a potential tenant of the Facility, the "Tenant") of certain material handling equipment, machinery, equipment and related personal property (the "Equipment" and, together with the Land and the Improvements, the "Facility"); all for the future potential sublease to the Tenant for use as a fulfillment center; and

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

**WHEREAS**, the Town of Gates has confirmed its support for the Project and the PILOT Agreement, as evidenced by a letter signed by the Town Supervisor; and

**WHEREAS**, in order to induce the Company to acquire, construct and equip the Facility, the Agency is willing to take a leasehold interest in the Facility pursuant to a certain Lease Agreement, dated as of April 1, 2021, but effective as of the Effective Date (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 April 1, 2021 but effective as of the Effective Date (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"), the Town of Gates (the "Town") and the Spencerport Central School District (the "School District" and, collectively with the County and the Town, the "Affected Tax Jurisdictions").

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

**Section 1 - Payment in Lieu of Ad Valorem Taxes.**

Section 1.1 A. Subject to the completion and filing by the taxable status date (**March 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** Town and County tax year and the **2022-2023** School District tax year. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the Town, County and School District. 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 Leaseback 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 overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. 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** School District tax year and the invoice for the **2023** Town and 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 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. The Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder, *if any*, within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation.

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

1.5 Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the **2022-2023** School District tax year through the **2036-2037** School District tax year, and (ii) the **2023** County and Town tax year through the **2037** County and Town tax year. This PILOT Agreement shall expire on **December 31, 2037**; *provided, however*, the Company shall pay the **2037-2038** School District tax bill and the **2038** County and Town tax bills on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. In no event shall the Company be entitled to receive tax benefits relative to the 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, while this PILOT Agreement is in effect, which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b of the New York 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.

1.6 Term of PILOT Agreement. Unless terminated earlier pursuant to its terms, this PILOT Agreement shall be effective as of the Effective Date and shall remain in effect until December 31, 2036, after which this PILOT Agreement and the obligations of all parties hereto shall terminate except as provided in Section 1.5 above. The Company has the right to terminate this PILOT Agreement for any reason or no reason by delivering notice to the Agency at least thirty (30) business days prior to the desired termination date

**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 Agreement and Leaseback Agreement 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 the Affected Tax Jurisdictions, individually or collectively, shall be entitled to pursue any and all remedies afforded them at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder, and to enforce the obligations, agreements or covenants of the Company under this PILOT Agreement.

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) the Company abandons or otherwise vacates the County of Monroe; (iv) the failure by the Company to make any payments required under this PILOT Agreement which continues after any applicable notice and cure/grace periods; or (v) an "Event of Default" (singularly or collectively an "Event of Default") under the Leaseback Agreement, the Agency shall have the right to recapture real property tax abatements provided hereunder pursuant to the following schedule:

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

Any such recapture is at the sole and exclusive discretion of the Agency. The Agency shall notify the Company in writing of such Event of Default and of its intent to recapture the PILOT benefits (or any portion thereof). Any and all recaptured payments received pursuant to this provision shall be remitted to the Affected Tax 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.

6.3 Notwithstanding anything to the contrary in this PILOT Agreement, the Company shall not be liable for: (a) any indirect, reliance, exemplary, incidental, speculative, punitive, special, consequential or similar damages that may arise in connection with this PILOT Agreement, (b) any lost or foregone tax revenues, or (c) any damages, liabilities, fees, costs, expenses, penalties, diminishment in value, losses or payments (including any lost or foregone tax revenues) that exceed, in the aggregate, the lesser of (i) an amount equal to all ad valorem taxes, including without limitation all ad valorem taxes levied by that would, but for the Leaseback Agreement and this PILOT Agreement, be leviable and payable upon the Project, and (ii) \$104,800,000.

### **Section 7 - Assignment.**

7.1 (a) Except as expressly permitted herein, this PILOT Agreement may not be assigned in whole or in part, and the Facility may not be subleased, in whole or in part, by the Company without the prior written consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the Agency hereby consents to (a) the assignment of this PILOT Agreement to a Related Person of the Company (as that term is defined in subparagraph (C) of paragraph three of subsection (b) of section four hundred sixty-five of the Internal Revenue Code of 1986, as amended, hereinafter "Related Person"), (b) the sublease of the Facility to a Related Person, (c) the sublease of the Facility to Amazon.com Services LLC, and (d) an assignment of this PILOT Agreement to a mortgagee or lender or their respective designee in connection with a foreclosure or deed in lieu of foreclosure of a related mortgage.

The Agency also hereby consents to any assignment if the following conditions are satisfied:

(i) unless approved by the Agency, no assignment shall relieve the Company from primary liability for any of its obligations hereunder unless (a) the Facility has been completed and (b) Amazon.com Services LLC and an affiliate or successor thereto remains a subtenant in the Facility;

(ii) the assignee shall assume the obligations of the Company hereunder;

(iii) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment; and

(iv) the Facility shall continue to constitute a "project" as such quoted term is defined in the Act.

(b) Any other such assignment or sublease is subject to the review and approval by the Agency and its counsel (at no cost to the Agency; any such cost to be paid by the Company, including reasonable attorneys' fees), and shall contain such terms and conditions as reasonably required by the Agency and its counsel.

**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. The signatures of the Company and the Agency to this PILOT Agreement may be in the form of an image of its manually executed signature transmitted by facsimile or other electronic format (including, without limitation, "pdf", "tif" or "jpg") or an electronic signature executed through DocuSign.

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

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

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

To the Company: USRE Manitou, LLC  
9830 Colonnade Blvd., Suite 600  
San Antonio, Texas 78230-2239  
Attention: Lange Allen, Managing Director

With a Copy to: Hunton Andrews Kurth LLP  
600 Travis Street, Suite 4200  
Houston, Texas 77002  
Attention: Conor Shary, Esq.

With a Copy to: Amazon.com Services LLC  
410 Terry Avenue North  
Seattle, Washington 98109  
Attn: Director Economic Development

With Copy to: Amazon.com Services LLC  
2121 7<sup>th</sup> Avenue  
Seattle, Washington 98121  
Attn: Economic Development Compliance (ROC1)

With Copy to: Amazon.com, Inc.  
410 Terry Avenue North  
Seattle, Washington 98109  
Attn: General Counsel (Economic Development)  
Re: ROC1  
Email: contracts-legal@amazon.com

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, officers, 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 - Tax Abatement Policy.**

9.1 Jobs Requirement. The Company or its Tenant shall create five hundred (500) new full-time/full-time equivalent job(s) in three (3) years and maintain those new full-time/full-time equivalent jobs for the balance of the fifteen (15) year term hereof. A "full-time/full-time equivalent job" means a job position, or a combination of job positions, in which the employee of Tenant or an affiliate of Tenant, employee of an employee leasing company, or combination of such employees, works at the Facility at least 35 hours per week.

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

9.3 Job Failure. If the five hundred (500) new full-time/full-time equivalent job(s) are not created by the end of the three (3) year period or not continuously maintained during the balance of the term hereof, the exemption schedule will revert back to Section 485-b of the New York 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 New York 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.

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. 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 fifteen (15) consecutive years. The Company agrees that it will not seek any tax exemption for the Facility which would provide benefits for more than fifteen (15) 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.

9.6 Waiver of Jury Trial. Each party irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal action, proceeding, cause of action or counterclaim arising out of or relating to this PILOT Agreement, including any exhibits, schedules, and appendices attached to this PILOT Agreement, or the transactions contemplated hereby. Each party certifies and acknowledges that (a) no representative of the other party has represented, expressly or otherwise, that the other party would not seek to enforce the foregoing waiver in the event of a legal action, (b) it has considered the implications of this waiver, (c) it makes this waiver knowingly and voluntarily, and (d) it has decided to enter into this PILOT Agreement in consideration of, among other things, the mutual waivers and certifications in this Section 9.6.

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

[Company's Signature Page to PILOT Agreement]

IN WITNESS WHEREOF, the Company has caused this PILOT Agreement to be executed as of the date first above written.

**USRE MANITOU, LLC,**  
a Delaware limited liability company

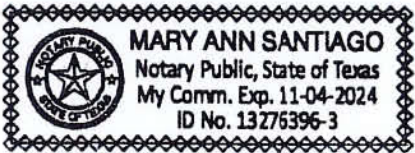
By: New Economy Assets – Phase 1B, LLC,  
a Delaware limited liability company,  
its sole member

By: New Economy Assets – Phase 1 Sponsor, LLC,  
a Delaware limited liability company,  
its sole member

By:   
Name: LANGE ALLEN  
Title: Managing Director

STATE OF Texas )  
COUNTY OF Bexar ) ss.:

On the 29 day of March, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Lange Allen, 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

[Agency's Signature Page to PILOT Agreement]

IN WITNESS WHEREOF, the Agency has caused this PILOT Agreement to be executed as of the date first above written.

**COUNTY OF MONROE INDUSTRIAL  
DEVELOPMENT AGENCY**

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

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

On the 30<sup>th</sup> day of March, 2021, 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

**SCHEDULE A**  
**TO**  
**PILOT AGREEMENT DATED AS OF APRIL 1, 2021, BY AND BETWEEN THE**  
**COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY**  
**AND USRE MANITOU, LLC**

"Total PILOT Payment" shall be calculated as follows:

| <u>Tax Year</u> | <u>County and Town Tax Year</u> | <u>School District Tax Year</u> | <u>Total Taxable Valuation</u>           |
|-----------------|---------------------------------|---------------------------------|--|
| Year 1          | 2023                            | 2022/2023                       | Base Valuation, plus (Added Value x .10) |
| Year 2          | 2024                            | 2023/2024                       | Base Valuation, plus (Added Value x .10) |
| Year 3          | 2025                            | 2024/2025                       | Base Valuation, plus (Added Value x .10) |
| Year 4          | 2026                            | 2025/2026                       | Base Valuation, plus (Added Value x .10) |
| Year 5          | 2027                            | 2026/2027                       | Base Valuation, plus (Added Value x .10) |
| Year 6          | 2028                            | 2027/2028                       | Base Valuation, plus (Added Value x .10) |
| Year 7          | 2029                            | 2028/2029                       | Base Valuation, plus (Added Value x .10) |
| Year 8          | 2030                            | 2029/2030                       | Base Valuation, plus (Added Value x .20) |
| Year 9          | 2031                            | 2030/2031                       | Base Valuation, plus (Added Value x .30) |
| Year 10         | 2032                            | 2031/2032                       | Base Valuation, plus (Added Value x .40) |
| Year 11         | 2033                            | 2032/2033                       | Base Valuation, plus (Added Value x .50) |
| Year 12         | 2034                            | 2033/2034                       | Base Valuation, plus (Added Value x .60) |
| Year 13         | 2035                            | 2034/2035                       | Base Valuation, plus (Added Value x .70) |
| Year 14         | 2036                            | 2035/2036                       | Base Valuation, plus (Added Value x .80) |
| Year 15         | 2037                            | 2036/2037                       | Base Valuation, plus (Added Value x .90) |

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 Improvements (the "Base Valuation"). During the term of this PILOT Agreement, the Base Valuation shall be revised from time to time by the change in the assessed valuation in all taxable real property in the Town of Gates, 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 1 through and including Year 7, with such exemption being eliminated in 10% increments in PILOT Years 8-15.

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 Tax Jurisdiction (after application of any applicable equalization rate). After Year 15, the Facility shall be subject to full taxation by the Affected Tax Jurisdictions.

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

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