

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT (the "Agreement"), dated as of March 1, 2013, by and between **ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices located at 143 Genesee Street, Buffalo, New York 14203 (the "Agency"), and **HARBORCENTER DEVELOPMENT, LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, with offices at First Niagara Center, One Seymour H. Knox, III Plaza, Buffalo, New York 14203 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 293 of the Laws of 1970 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's assistance with a certain project located at 75 Main Street, Buffalo, New York (the "Project") consisting of: (i) a 1.77+/- acre parcel of land (the "Land"), (ii) the construction and/or renovation, upgrading and equipping of a 649,500+/- SF mixed-use facility to include 8,000+/- SF of retail space, 12,000+/- SF of restaurant space, a 144,000+/- SF full service hotel with 200+/- beds, a 115,000+/- SF hockey facility with two (2) ice rinks, and a 370,500+/- SF five-level parking garage (the "Improvements"), and (iii) the acquisition and installation by the Company of certain items of machinery, equipment and other tangible personal property (the "Equipment," and collectively with the Land and the Improvements, the "Facility"); and

WHEREAS, the Company is the owner of, or is acquiring title to or other interest in, certain real property located at 75 Main Street, Buffalo, New York, known as SBL No. 111.17-3-2; and

WHEREAS, in order to induce the Company to acquire, renovate, construct and equip the Facility, the Agency is willing to take a leasehold interest in the land, improvements and personal property constituting the Facility and lease said land, improvements and personal property back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement to be dated on or about the date hereof (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 Agency for

the benefit of Erie County (the "County") and the City of Buffalo (hereinafter the "City" and, together with the County, the "Affected Tax Jurisdictions").

NOW, THEREFORE, this PILOT Agreement is for making by the Company of certain payments in lieu of real estate taxes, as required by the Leaseback Agreement, by which the Agency has leased certain premises to the Company. The Agency and the Company each accept and agree to the following statements or terms:

Section 1. Agency Tax Exemption. Subject to the completion and filing of a Form RP-412-a, Application for Real Property Tax Exemption (the "RP-412-a"), by the Taxable Status Date of December 1, 2013 (the "Taxable Status Date"), and the approval of the RP-412-a by the Assessor, the Project shall be exempt from real estate taxes commencing with the:

- (a) 2017 tax fiscal year of the County, and
- (b) 2016-2017 tax fiscal year of the City

Prior to the 2017 County and 2016-2017 City tax fiscal years, the Company shall make payments in lieu of taxes as if the Company owned the Facility and the Agency had no interest in the Facility. This PILOT Agreement shall expire on December 31, 2026; *provided, however*, the Company shall pay the 2026 County and the 2026-2027 City tax bills on the dates and in the amounts as if the Agency did not have an interest in the Project on the tax status date with respect to said tax years. The Company shall provide the Agency with all information required to complete the RP-412-a and shall provide such additional information and take such actions as are required by the Assessor in order to process and approve the RP-412-a Application. In the event the exemption from real estate taxes is denied for any reason, the Company agrees to pay all real estate taxes levied upon the Project as they become due. To the extent permitted by law, the Company shall have the right to protest such denial subject, however, to the conditions set forth in Section 8.1 of the Leaseback Agreement. 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 RP-412-a with the Assessor by the Taxable Status Date.

Section 2. Obligation of the Company to Make Payments in Lieu of Taxes. Subject to the approval of the RP-412-a, the Agency shall require, and the Company agrees to make, payments in lieu of real estate taxes to the appropriate taxing authorities pursuant to the terms of this PILOT Agreement.

Section 3. Taxing Authorities and Amounts.

(1) Until the commencement of the tax fiscal years set forth in subparagraph (2) below, the Company shall continue to pay all appropriate taxing authorities all taxes due as if the Agency did not have an interest in the Project. As set forth below, the total payments in lieu of taxes required under this PILOT Agreement are allocated among the affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the Project not been tax exempt due to the status of the

Agency. Thereafter, the Company shall make payments in lieu of taxes to all appropriate taxing authorities on the land and buildings constituting the Project, in accordance with this section. For each taxing authority, such payments in lieu of taxes shall have a component and a variable component. The land component shall be based upon the then current tax rate for the then current tax fiscal year applied against the then current assessed valuation of the non-depreciable portion of all tax parcels comprising the Project (assessed as land). The variable component shall be based upon the then current tax rate applied against a variable portion of then current assessed valuation of the depreciable portion of all tax parcels comprising the Project (assessed as buildings or other improvements).

(2) For the periods of time indicated below, the Company shall make the indicated payments in lieu of taxes to the indicated taxing authorities:

(a) County PILOT Payments. Payments in lieu of general levy real estate taxes to the County for each of the tax fiscal years **2017 through 2026**, or until termination of the Leaseback Agreement, whichever date occurs first, shall be in an amount equal to the County Land PILOT Payment plus the County Variable PILOT Payment (as such terms are defined below) for each such tax fiscal year. The County Land PILOT Payment for each tax fiscal year shall be an amount equal to the County tax rate then in effect for such tax fiscal year, applied against the then current assessed valuation of the non-depreciable portion of all tax parcels constituting the Project (assessed as land). The County Variable PILOT Payment for each tax fiscal year shall be an amount equal to the County tax rate in effect for such tax fiscal year, applied to the product of (i) the then current assessed valuation of the depreciable portion of all tax parcels comprising the Project (assessed as buildings or other improvements), and (ii) the abatement factor applicable to such tax fiscal year as shown on Schedule A attached hereto and made a part hereof. Each such payment shall be delivered to County of Erie, Room 100, 95 Franklin Street, Buffalo, NY 14202, or such other place as may be designated from time to time by the County. Payments for each tax fiscal year must be made by February 15 of that year, or such payment shall be considered delinquent.

(b) City PILOT Payments. Payments in lieu of general levy real estate taxes for the City for each of the tax fiscal years **2016-2017 through 2025-2026**, or until termination of the Leaseback Agreement, whichever date occurs first, shall be in an amount equal to the City Land PILOT Payment plus the City Variable PILOT Payment (as such terms are defined below) for each such tax fiscal year. The City Land PILOT Payment for each tax fiscal year shall be an amount equal to the City tax rate then in effect for such tax fiscal year, applied against the then current assessed valuation of the non-depreciable portion of all tax parcels constituting the Project (assessed as land). The City Variable PILOT Payment for each tax fiscal year shall be an amount equal to the City tax rate in effect for such tax fiscal year applied to the product of (i) the then current assessed valuation of the depreciable portion of all tax parcels comprising the Project (assessed as buildings or other improvements), and (ii) the abatement factor applicable to such tax fiscal year as shown on Schedule A attached hereto and made a part hereof. Each such payment shall be delivered to the City of Buffalo, Attn: City Assessor, or such other place as may be designated from time to time by the City. Fifty-percent (50%) of each required annual payment for each City tax fiscal year must be made by July 31 of that year, with the balance to

be made by December 31 of such year (unless otherwise required by the City), or such payment shall be considered delinquent.

(c) In addition to the foregoing, the Company shall pay all special district charges, special assessments and special ad valorem levies (specifically including but not limited to any fire district charges or "curb charges"), and pure water charges and sewer charges that are levied against the Project are to be paid in full in accordance with normal billing practices as if the Agency did not have an interest in the Project.

(3) Valuation of Future Additions to the Facility. If there shall be a future addition to the Facility constructed or added in any manner after the date of this PILOT Agreement, the Company shall notify the Agency of such future addition ("Future Addition"). The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the Agency may thereafter request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the total payments in lieu of taxes payable under this PILOT Agreement ("Total PILOT Payment"). The Agency shall notify the Company of any proposed increase in the Total PILOT Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Additions made by the Agency, then and in that event that valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the increased PILOT payment until a different Total PILOT Payment shall be established. If a lesser Total Annual Payment is determined in any proceeding or by subsequent agreement of the parties, the Total PILOT Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the next succeeding PILOT payment(s).

(4) The payments required under Paragraph (2) of this section shall in no event be more than would be otherwise payable as taxes if the Agency did not have an interest in the Project.

(5) Each of the foregoing payments required under Paragraph (2) of this section shall in no event be more than would be otherwise payable as taxes if the Agency did not have an interest in the Project.

(6) Upon the termination of the periods shown in Paragraph (2) of this section, for the respective taxing authorities, the Company shall make full payment in lieu of all taxes on the Project as if the Agency did not have an interest in the Project.

Section 4. Proration and Transfer of Facility.

(1) During the last year of the term of the Leaseback Agreement the Company may prorate any of its payments in lieu of taxes on the basis of the actual period during which the Agency has an interest in the Project so that there shall exist no period of time for which the Company is obliged to make payments in lieu of taxes in addition to the actual tax payments to which the Project is subject, under current law, at the time the Agency's interest in the Project is terminated.

(2) In the event that the Facility is transferred from the Agency to the Company (the lease/leaseback agreements are terminated), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section 3 herein, or this 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 5. Obligations and Rights of the Company in Relation to Tax Assessments and Levies.

(1) Subject to the provisions of the Leaseback Agreement, the Company in cooperation with the Agency shall:

(a) cause the appropriate real estate tax assessment office and tax levy officers to assess the Project and apply tax rates to the respective assessments as if the Agency did not have an interest in the Project;

(b) cause the appropriate real estate tax assessment office and tax levy officers to submit to the Company, when the respective types of taxes are levied on privately owned property, statements specifying the respective amounts and due dates of taxes involved in this PILOT Agreement which the appropriate taxing authorities would receive if the Agency did not have an interest in such property; and

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

(2) The payments the Company is required to make under this PILOT Agreement are subject to the Company's rights, hereby granted, (a) to have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Project, with respect to any proposed assessment or change in assessment with respect to the Project by any of the Affected Tax Jurisdictions, (b) to seek to obtain refunds of any such payments made including payments made pursuant to this PILOT Agreement, (c) likewise 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, and (d) 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, as if and to the same extent as if the Company were the owner of the Project. The Agency shall join in any procedure for obtaining relief under this paragraph to the extent that the Agency's consent is required for the Company to undertake such procedure; provided, however, that the Company shall continue to make the payments in lieu of taxes required by this

PILOT Agreement adjusted for any reduction as provided above so long as the Leaseback Agreement shall remain in effect.

Section 6. Effect of Fulfillment of the Requirement and Clawback. Once having paid the amounts required by this PILOT Agreement, the Company shall not be required to pay any real estate taxes for which payments in lieu of taxes have been made. Notwithstanding the foregoing, in the event that the Agency shall determine (i) that the Company has submitted an application, or documentation in support of an application, which contained a false or intentionally misleading statement as to any fact which is material to the Company's application for benefits or which omitted any information which, if included, would have rendered any information in the application or supporting documentation false or misleading in any material respect, and (ii) that such false or misleading statement or omission was made knowingly and intentionally for the purpose of obtaining financial assistance, then the Company shall forfeit any future tax exemptions or abatements and shall be required to pay to the appropriate taxing authority the amount of any real property, mortgage or sales tax abatements or exemptions received. The amount of benefits recaptured shall be: (i) for real property taxes, the difference between the amount of payment in lieu of taxes paid and the amount that would have been paid in real estate taxes if the Agency did not have an interest in the project; (ii) for sales taxes, the value of the sales tax exemption received and (iii) for the mortgage tax, the value of any mortgage recording tax for which an exemption was granted.

Section 7. Events of Default.

(1) The following shall constitute "Event(s) of Default" hereunder:

(a) The failure by the Company to (i) make any such payments in lieu of taxes when due, whether for a full tax fiscal year or years or for a portion of a tax fiscal year pursuant to Sections 2 or 3 hereof within thirty (30) days of the payment due date (the "Delinquency Date"), whereupon the amount or amounts so in default shall continue as an obligation of the Company until fully paid; ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; or (iii) the occurrence and continuance of any events of default under the Leaseback Agreement after the expiration of any applicable cure periods.

(2) Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default.

(3) In addition, if payments pursuant to this PILOT Agreement are not made by the Delinquency 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 set forth herein. With respect to payments to be made pursuant to Section 3 herein, if said payment is not received by the Delinquency Date

defined above, 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 the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to General Municipal Law § 874(6). The Company shall promptly notify the Agency of any action brought, or other measure taken, by taxing authority to recover such amounts. It is understood that the right of any taxing authority herein acknowledged is in addition to, and shall not impair, the Agency's own rights arising from a breach of this PILOT Agreement. Should the Agency or the City or the County commence any action to recover directly from the Company any amounts so in default, such parties shall be entitled to recover from the Company the amount due, the late payment penalty, interest, expenses, costs and disbursements, together with the reasonable attorneys' fees necessary to prosecute such action or proceeding.

(4) If the Project is not being used in accordance with the Act or the Leaseback Agreement, or if an Event of Default occurs, the Company shall make payments in lieu of taxes on the Project in such amounts as would be payable as real estate taxes levied on the Project if the Agency did not have an interest in the Project. The applicable tax assessment and tax levy rates shall be those in effect in the records of the appropriate taxing authorities.

(5) The period for the payments required by Paragraph (4) of this section shall commence on the date the Agency determines (a) that the use of the Project under the Act or the Leaseback Agreement is not being complied with, or (b) that an Event of Default has occurred and is continuing.

Section 8. Survival of the Company's Obligations. The obligations of the Company under this PILOT Agreement shall survive the termination or expiration of the Leaseback Agreement, for whatever reason terminated or expired.

Section 9. Assignment.

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

Section 10. Miscellaneous.

(1) This 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.

(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, or by nationally-recognized overnight courier, as follows:

To the Agency: Erie County Industrial Development Agency
143 Genesee Street
Buffalo, NY 14203
Attn: Chief Operating Officer

With a copy to: Harris Beach PLLC
726 Exchange Street, Suite 1000
Buffalo, NY 14210
Attn: Robert G. Murray, Esq.

To the Company: HARBORcenter Development, LLC
First Niagara Center
One Seymour H. Knox, III Plaza
Buffalo, NY 14203
Attn: Clifford G. Benson, President

With a copy to: Hodgson Russ LLP
140 Pearl Street
Buffalo, NY 14202
Attn: Terrence M. Gilbride, Esq.

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

(3) This 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 Erie County, New York.

(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 hereunder shall, to such extent, be null and void.

(5) 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 Agreement on its behalf shall be liable personally under this Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant, or

employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Agreement.

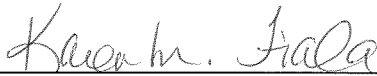
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[Signature page to PILOT Agreement]

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

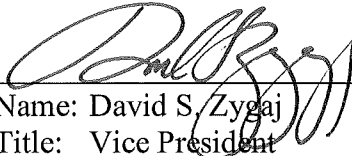
**ERIE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

Dated: 3-21-13

By: 
Name: Karen M. Fiala
Title: Assistant Treasurer

HARBORCENTER DEVELOPMENT, LLC

Dated: _____

By: 
Name: David S. Zygaj
Title: Vice President

[Acknowledgment Page to the PILOT Agreement]

STATE OF NEW YORK)
COUNTY OF ERIE) SS.:

On the 21 day of March, 2013, before me, the undersigned, personally appeared **KAREN M. FIALA**, 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 she executed the same in her capacity, and that by her signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Dawn M. Boudreau
Notary Public

DAWN M. BOUDREAU
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires May 27, 2015

STATE OF NEW YORK)
COUNTY OF ERIE) SS.:

On the 21 day of March, 2013, before me, the undersigned, personally appeared **DAVID S. ZYGAJ**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Pietra G. Lettieri
Notary Public

PIETRA G. LETTIERI
Notary Public, State of New York
Qualified in Erie County
Commission Expires October 17, 2016

PILOT Agreement dated as of March 1, 2013
 by and between Erie County Industrial Development Agency
 and HARBORcenter Development, LLC

SBL No. 111.17-3-2

Expiration of Leaseback: December 31, 2026

SCHEDULE A

Project/PILOT Tax Year	TAX FISCAL YEAR		ABATEMENT FACTOR
	County	City	
Project Year 1	2014	2013-2014	N/A-As if Owned
Project Year 2	2015	2014-2015	N/A-As if Owned
Project Year 3	2016	2015-2016	N/A-As if Owned
PILOT Year 1	2017	2016-2017	10%
PILOT Year 2	2018	2017-2018	10%
PILOT Year 3	2019	2018-2019	10%
PILOT Year 4	2020	2019-2020	20%
PILOT Year 5	2021	2020-2021	20%
PILOT Year 6	2022	2021-2022	20%
PILOT Year 7	2023	2022-2023	30%
PILOT Year 8	2024	2023-2024	30%
PILOT Year 9	2025	2024-2025	30%
PILOT Year 10	2026	2025-2026	30%