

ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

RICHARDSON CENTER DEVELOPMENT QALICB LLC

FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT

Regarding the (i) a leasehold interest in a parcel of land located at 400 Forest Avenue (the historic Richardson Olmsted Complex) in the City of Buffalo, Erie County, New York (the "Land") improved thereon with an existing Administration Building and two adjacent buildings and their connectors (the "Existing Improvements"), (ii) the construction, reconstruction and/or renovation, upgrading and equipping of the Existing Improvements on the Land to accommodate an upscale hotel containing 90+/- rooms (with a potential expansion in the future of an additional 30 additional rooms), a conference center and event space, an architecture center for Buffalo, and a restaurant and catering service (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, the Existing Improvements and the Improvements, the "Facility").

Dated as of: September 1, 2014

First Amendment Dated as of: February 1, 2017

Termination Date: December 31, 2028

SBL No.: Part of 89.13-1-1

Affected Tax Jurisdictions: Erie County
City of Buffalo

Prepared by:
Harris Beach PLLC
726 Exchange Street, Suite 1000
Buffalo, New York 14210
(716) 200-5050

FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT

THIS FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT (the "First Amendment to PILOT"), dated as of the 1st day of February, 2017, 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 at 95 Perry Street, Suite 403, Buffalo, New York 14203 (the "Agency") and **RICHARDSON CENTER DEVELOPMENT QALICB LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 726 Exchange Street, Suite 1006, Buffalo, New York 14210 (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 Agency and the Company previously entered into that certain Payment In Lieu Of Tax Agreement (the "PILOT Agreement"), dated as of September 1, 2014, with respect the Company's property located at 400 Forest Avenue, City of Buffalo, Erie County, New York (the "Facility"); and

WHEREAS, at the written request of the Company received prior to March 1, 2017 and pursuant to Section 1 of the PILOT Agreement, the Agency and the Company have agreed to delay the implementation of the PILOT Agreement by one year, amend the expiration date in the PILOT Agreement by one year, and to revise Schedule A of the PILOT Agreement in accordance with this First Amendment to PILOT; and

WHEREAS, the Agency and the Company desire to amend the PILOT Agreement in accordance with the terms of this First Amendment to PILOT Agreement.

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

1. Section 1, entitled Agency Tax Exemption of the PILOT Agreement is amended and restated as follows:

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, 2017 (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) 2019 tax fiscal year of the County, and
- (b) 2018-2019 tax fiscal year of the City

Prior to the 2019 County and 2018-2019 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, 2028; *provided, however*, the Company shall pay the 2029 County and the 2028-2029 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.

2. Section 3, entitled Taxing Authorities and Amounts, of the PILOT Agreement is hereby amended and restated as follows:

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 in accordance with this section. For each taxing authority, such payments in lieu of taxes shall have a land component, an existing improvements component, and a variable component.

- (a) The land component ("Land Component") shall be equal to the product of:
 - (i) The then current tax rate for the then current tax fiscal year
 - x
 - (ii) Then current assessed valuation that is to be determined by the Assessor of the City of Buffalo of the non-depreciable portion of all tax parcels comprising the Project (assessed as land).

- (b) The existing improvements component ("Existing Improvements Component") shall be equal to the product of:

- (i) The then current tax rate for the then current tax fiscal year
- x
- (ii) The assessed valuation that is to be determined by the Assessor of the City of Buffalo (the "Pre-Project Assessment") which was calculated as the total assessment of Part of SBL 89.13-1-1 (assessed as buildings or other improvements)

(c) The variable component ("Variable Component") shall be equal to the product of:

- (i) The then current tax rate for the then current tax fiscal year
- x
- (ii) The difference between (1) the then current assessed valuation that is to be determined by the Assessor of the City of Buffalo of all buildings and improvements comprising the Project and (2) the Pre-Project Assessment amount (to be determined by the Assessor of the City of Buffalo)
- x
- (iii) The Payment Factor applicable to such tax fiscal year as shown on Schedule A attached hereto.

(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 **2019 through 2028**, or until termination of the Leaseback Agreement, whichever date occurs first, shall be in an amount equal to the sum of the County Land Component Payment plus the County Existing Improvements Component Payment plus the County Variable Component Payment (as such terms are depicted above and defined below) for each such tax fiscal year. The County Land Component Payment for each tax fiscal year shall be in an amount equal to the County Tax rate then in effect for such tax fiscal year, applied against the then current assessed valuation that is to be determined by the Assessor of the City of Buffalo of the non-depreciable portion of all tax parcels constituting the Project (assessed as land). The County Existing Improvements Component Payment for each tax fiscal year shall be in an amount equal to the County tax rate in effect for such tax fiscal year, applied against the Pre-Project Assessment amount, to be determined by the Assessor of the City of Buffalo. The County Variable Component 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 to the product of (i) the difference between (1) the then current assessed valuation that is to be determined by the Assessor of the City of Buffalo of the depreciable portion of all tax parcels comprising the Project (assessed as buildings or other improvements), and (2) the Pre-Project Assessment amount, to be determined by the Assessor of the City of Buffalo; and (ii) the Payment 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 **2018-2019 through 2027-2028**, or until termination of the Leaseback Agreement, whichever date occurs first, shall be in an amount equal to the sum of the City Land Component Payment plus the City Existing Improvements Component Payment plus the City Variable Component Payment (as such terms are depicted above and defined below) for each such tax fiscal year. The City Land Component Payment for each tax fiscal year shall be in an amount equal to the City Tax rate then in effect for such tax fiscal year, applied against the then current assessed valuation that is to be determined by the Assessor of the City of Buffalo of the non-depreciable portion of all tax parcels constituting the Project (assessed as land). The City Existing Improvements Component Payment for each tax fiscal year shall be in an amount equal to the City tax rate in effect for such tax fiscal year, applied against the Pre-Project Assessment amount, to be determined by the Assessor of the City of Buffalo. The City Variable Component 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 to the product of (i) the difference between (1) the then current assessed valuation that is to be determined by the Assessor of the City of Buffalo of the depreciable portion of all tax parcels comprising the Project (assessed as buildings or other improvements), and (2) the Pre-Project Assessment amount, to be determined by the Assessor of the City of Buffalo; and (ii) the Payment 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. Schedule A attached to the PILOT Agreement is hereby replaced with Schedule A attached hereto.

4. Unless otherwise amended and modified by this First Amendment to PILOT, the terms of the PILOT Agreement shall remain unchanged and in full force and effect. This First Amendment to PILOT shall in no way be construed as a waiver of any of the rights or remedies of the Agency or a release or waiver by the Agency of any Event of Default under the PILOT Agreement. The Agency hereby reserves all such rights and remedies.

[Remainder of this page left intentionally blank]

[Signature Page to First Amendment to PILOT]

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

ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

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

RICHARDSON CENTER DEVELOPMENT QALICB LLC

BY: Christopher T. Greene
Name: Christopher T. Greene
Title: Secretary

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

On the 15 day of February, 2017, 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 27 day of February, 2017, before me, the undersigned, personally appeared **CHRISTOPHER T. GREENE**, 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.

Joanne M. Wagner
Notary Public

JOANNE M. WAGNER
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 10/31/2017

PILOT Agreement dated as of September 1, 2014,
as amended by the First Amendment to PILOT Agreement dated as of February 1, 2017,
by and between Erie County Industrial Development Agency
and Richardson Center Development QALICB LLC

Address: 400 Forest Avenue, Buffalo, NY

SBL No.: Part of 89.13-1-1

Expiration of Lease: December 31, 2028

SCHEDULE A

Project/PILOT Tax Year	TAX FISCAL YEAR		PAYMENT FACTOR
	County	City	
Project Year 1	2015	2014-2015	N/A-As if Owned
Project Year 2	2016	2015-2016	N/A-As if Owned
Project Year 3	2017	2016-2017	N/A-As if Owned
Project Year 4	2018	2017-2018	N/A-As if Owned
PILOT Year 1	2019	2018-2019	10%
PILOT Year 2	2020	2019-2020	10%
PILOT Year 3	2021	2020-2021	10%
PILOT Year 4	2022	2021-2022	20%
PILOT Year 5	2023	2022-2023	20%
PILOT Year 6	2024	2023-2024	20%
PILOT Year 7	2025	2024-2025	30%
PILOT Year 8	2026	2025-2026	30%
PILOT Year 9	2027	2026-2027	30%
PILOT Year 10	2028	2027-2028	30%