

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**500 SENECA STREET LLC**

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

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**Property Address**

500 Seneca Street, Buffalo, New York

332 Myrtle Avenue, Buffalo, New York

**Tax Map No.**

111.81-7-1

111.81-2-16.2

**Affected Tax Jurisdictions:**

Erie County  
City of Buffalo

**Dated as of November 1, 2015**

## PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT (the "PILOT Agreement"), dated as of November 1, 2015 (the "Effective Date"), is by and between the ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its offices at 95 Perry Street, Suite 403, Buffalo, New York 14203 (the "Agency"), and 500 Seneca Street 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 500 Seneca Street, Suite 508, Buffalo, New York 14204 (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 as amended (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, 500 SENECA STREET, LLC, AND/OR INDIVIDUAL(S) OR AFFILIATES, SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (the "Company") submitted an application to the Agency (the "Original Application") requesting the Agency's assistance with a certain project (the "Original Project") consisting of: (i) a 1.87+/- acre parcel of land located at 500 Seneca Street and 332 Myrtle Avenue in the City of Buffalo, Erie County, New York (the "Land" as described within Exhibit A) together with an existing 324,000+/- SF building thereon known as the historic F. N. Burt Company Factory (the "Existing Improvements"), (ii) the construction and/or renovation, expansion, upgrading and equipping of the Existing Improvements thereon into a mixed-use project consisting of 195,000+/- SF of Class A office space, 20,000+/- SF of manufacturing, processing or distribution space, 10,000+/- SF of commercial space, and 110,000+/- SF of dedicated below market space for community and/or cultural organizations, together with secured on-site parking (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"); and

WHEREAS, by resolution adopted on February 26, 2014 (the "Initial Resolution") the Agency authorized financial assistance to the Company with respect to the Original Application in the form of an abatement from sales and use tax on materials and equipment incorporated into the Project for (a) building site, shell and core and (b) materials and equipment incorporated for tenant finishes for non-retail tenants only, and an abatement from mortgage recording tax (collectively, the "Financial Assistance"); and

WHEREAS, based upon representations and warranties made by the Company in the Original Application, the Agency, within the terms of the Initial Resolution, authorized and approved the Company, as its agent, to make purchases of goods and services relating to the Project that would otherwise be subject to New York State and local sales and use tax in an amount up to \$11,782,869.00 which results in New York State and local sales and use tax exemption benefits not to exceed \$1,031,002.00, and required the Company to evidence that total investment actually made with respect to the Project, at the time of Project completion, equals or exceeds \$26,976,980.00 (which represented the product of 85% multiplied by \$31,737,624.00 (being the total project cost as stated in the Original Application for financial assistance at that point in time)); and

WHEREAS, on April 10, 2015, the Agency received an amended application (the "Amended Application") from the Company requesting a revision to the scope of the Project to include 110+/- market-rate apartments, a revision to the square footage of the other improvements and informed the Agency that the Project costs have increased by approximately \$3,937,776.00 (the "Amended Project"); and

WHEREAS, the Agency, on May 20, 2015, amended the Initial Resolution and approved a certain Amendatory Resolution with respect to the Amended Project in order to revise the scope of the Project, and the Financial Assistance so provided, along with the execution and delivery of certain documents in connection with same; and

WHEREAS, on October 21, 2015, the Agency received a second amended application (the "Second Amended Application") from the Company, and a related request from the City of Buffalo (the "City"), requesting a revision to the scope of the Project to include a Payment-in-Lieu-of-Taxes Increment Financing ("PIF"), for a period commensurate with the real property tax credit benefit period under the New York State Brownfield Cleanup Program (as described below) and the proceeds of the PIF to be used for, among other things, the undertaking of Project related infrastructure improvements, including, but not limited to, the construction and/or reconstruction of certain roadways, curbing, sidewalks, lighting, site work and landscaping and other related infrastructure within the Seneca Street Corridor District (the "District"), to facilitate job creation and investment within this sensitive area of the City; and

WHEREAS, the Company has represented that it has secured confirmation and certification from the New York State Department of Environmental Conservation that its environmental remediation contamination activities have been undertaken in a manner that satisfies Article 27, Title 14, of the New York State Environmental Conservation Law (the "Brownfield Cleanup Program") and qualifies for certain real property tax credits thereunder (the "BCP Real Property Tax Credit"); and

WHEREAS, the Company's Second Amended Application specifically requests that the Agency provide financial assistance to the Company as so outlined in the Second Amendment Application with respect to the Project in the form of a PIF structure whereby pursuant to a certain Payment-in-Lieu-of-Taxes Agreement by and between the Agency and the Company (the "PILOT Agreement"), a portion of the payments by the Company thereunder, with the consent of the Affected Tax Jurisdictions (as defined below), would be made available to fund certain

Project related expenditures within the District as described in the Second Amended Application; and

WHEREAS, the requested PIF structure, as described herein, provides for: (i) the Company to agree to forego making application for the New York Real Property Tax Law Section 485-a or Section 485-b real property tax exemption; (ii) a non-standard PILOT Agreement with a term potentially less than the standard 10 year benefit period, as described below; (iii) an allocation of payments in lieu of taxes among the affected tax jurisdictions in an amount that is not 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 involved in the Project; (iv) the Company to make payments to Erie County (the "County") with respect to the County PILOT payment during the term of the PILOT Agreement equal to the amount that would otherwise be payable as real estate taxes if the Company owned the Project with no abatement provided by the Agency; and (v) the Company to make payments to the Agency with respect to the City PILOT payments during the term of the PILOT Agreement equal to the amount that would otherwise be payable as real estate taxes if the Company owned the Project with no abatement provided by the Agency (the "City Full PILOT Payment") where after the Agency shall apply a portion of said City Full PILOT Payments to the Seneca Street Corridor District Fund (the "Fund"), in an amount equal to the increment between the City Full PILOT Payment and the Agency's standard ten-year PILOT payment schedule, with the remainder of the City Full PILOT Payment to be submitted by the Agency to the City; and

WHEREAS, on October 19, 2015, the Common Council of the City consented to the use of the PIF structure and certain payments made thereunder and as described herein with respect to the Project and to fund the Fund for purposes of making such payments for the costs of public infrastructure improvements contemplated within the District and as described within the Second Amended Application; and

WHEREAS, by resolution adopted on November 18, 2015, the Agency resolved to provide Financial Assistance (the "Second Amendatory Resolution") as described in the Company's Second Amended Application, to the Company as so outlined in the Second Amendment Application with respect to the Project through, among other things, providing an assignment of a portion of the City PILOT Payments to be applied to the Fund to pay for public infrastructure improvements within the District as provided for, described in and required by the Infrastructure Fund Agreement, dated as of November 30, 2015, between the Company, the City, and the Agency (the "Infrastructure Fund Agreement"); and

WHEREAS, in order to induce the Company to undertake the Project, as amended, 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 and assessments imposed upon real property located in Erie County owned by or under its jurisdiction, control or supervision, other than special ad valorem levies, special

assessments and service charges against real property located in Erie County 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, 2015 (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 continue to timely pay all Real Estate Taxes due as if the Agency were not in leasehold title and had no ownership or control of the Facility such that no exemption from Real Estate Taxes was available to the Facility due to the status of the Agency. This PILOT Agreement shall expire on December 31, 2025; *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. The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue sources that affected tax jurisdictions would otherwise lose because the subject parcels will not be on the tax rolls.

### 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 Facility. The total PILOT payments required upon commencement of this PILOT Agreement are not allocated among the affected tax jurisdictions in proportion to the amount of Real Estate Taxes and other taxes which would have been received by each affected tax jurisdiction had the Facility not been tax exempt due to the status of the Agency and the Agency's leasehold interest in the Facility, however, the City (which will receive less than its proportionate share) has consented to this PILOT Agreement in accordance with Section 858(15) of the New York General Municipal Law.

(2) As used in this PILOT Agreement, the term "Full Taxes", for each governmental agency or taxing unit shall mean all Real Estate Taxes that would be payable to such governmental agency or taxing unit with respect to the Facility if the Agency were not in leasehold title and had no ownership or control thereof, so that no exemption from Real Estate Taxes was available for the Facility due to the status of the Agency. For the periods of time indicated below, the Company shall make the indicated payments in lieu of taxes as follows:

(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 2025, or until termination of the Leaseback Agreement, whichever date occurs first, shall be made by the Company in an amount equivalent to Full Taxes that would have been paid to the County for such tax fiscal year. 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 2024-2025, or until termination of the Leaseback Agreement, whichever date occurs first, shall be made by the Company in an amount equivalent to Full Taxes that would have been paid to the City for such tax fiscal year. Fifty percent (50%) of each payment for each City tax fiscal year must be made by July 31 of that year and the balance must be paid by December 31 of such year, or such payments shall be considered delinquent. Each City PILOT Payment made pursuant to this paragraph Section 3(2)(b) shall be made to the Erie County Industrial Development Agency, 95 Perry Street, Buffalo, New York, 14203, or to such other address as may be designated in writing to the Company from time to time by the Agency. The City, the Agency and the Company have entered into an Infrastructure Fund Agreement pursuant to which the City has irrevocably divested itself of the right to receive certain PILOT Payments under this paragraph Section 3(2)(b), and has acknowledged that receipt of such payments by the Agency shall be deemed to be receipt by the City. Such Infrastructure Fund Agreement provides that the Agency will remit a portion of the amount received for tax fiscal years 2016-2017 through and including 2024-2025 to the City, with the balance to be remitted by the Agency to the Fund in accordance with the Infrastructure Fund Agreement.

(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) 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. Non-Recourse of Agency. 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 Project and paid to the Agency by the Company. Neither members 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 member, officer, agent, servant and employee 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 11. 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 95 Perry Street, Suite 403 Buffalo, New York 14203 Attention: Chief Executive Officer
With a Copy to:	Harris Beach PLLC 726 Exchange Street, Suite 1000 Buffalo, New York 14210 Attention: Robert G. Murray, Esq.
To the Company:	500 Seneca Street LLC 500 Seneca Street, Suite 508 Buffalo, New York 14204 Attention: David P. Franjoine, Managing Member
With a Copy To:	Timothy J. Greenan, Esq. 3755 Seneca Street West Seneca, NY 14224

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.

(6) Waiver of RPTL Section 485-a and Section 485-b Exemption. In consideration of the Agency entering into the Lease Agreement, this PILOT Agreement, and the Infrastructure Fund Agreement with regard to the Project, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company hereby waives any right that the Company may have now or in the future to apply for an exemption from Real Estate Taxes with regard to the Facility under Section 485-a and Section 485-b of the New York State Real Property Tax Law. This waiver shall survive any termination or expiration of this PILOT Agreement, for whatever reason terminated or expired.

*(Remainder of page intentionally left blank)*

[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**

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

**500 SENECA STREET, LLC,**  
a New York limited liability company

By: 500 Seneca Street MM LLC,  
a New York limited liability company,  
it's managing member

By: Frontier Development Initiatives, LLC  
a New York limited liability company,  
its managing member

By: \_\_\_\_\_  
Name: David P. Franjoine  
Title: Managing Member

[Signature page to PILOT Agreement]

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

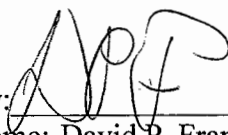
**ERIE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

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

**500 SENECA STREET, LLC,**  
a New York limited liability company

By: 500 Seneca Street MM LLC,  
a New York limited liability company,  
it's managing member

By: Frontier Development Initiatives, LLC  
a New York limited liability company,  
its managing member

By:  \_\_\_\_\_  
Name: David P. Franjoine  
Title: Managing Member

[Acknowledgment Page to the PILOT Agreement]

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

On the 20 day of November, 2015, 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 \_\_\_\_\_ day of November, 2015, before me, the undersigned, personally appeared **DAVID P. FRANJOINE**, 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.

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

[Acknowledgment Page to the PILOT Agreement]

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

On the \_\_\_\_\_ day of November, 2015, 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.

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

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

On the 20 day of November, 2015, before me, the undersigned, personally appeared **DAVID P. FRANJOINE**, 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.

*Audrey J. Miller*  
\_\_\_\_\_  
Notary Public

**AUDREY J. MILLER**  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires: 3/30/2018



**EXHIBIT A**

**LEGAL DESCRIPTION**

Parcel A  
(500 Seneca Street)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of Outer Lot 95, described as follows:

Beginning at the intersection of the northerly line of Seneca Street with the easterly line of Spring Street;

Thence easterly along the northerly line of Seneca Street 453.29 feet to the intersection of the northerly line of Seneca Street with the westerly line of Hamburg Street;

Thence northerly along the westerly line of Hamburg Street 180.0 feet to the intersection of the westerly line of Hamburg Street with the southerly line of Myrtle Avenue;

Thence westerly along the southerly line of Myrtle Avenue 453.58 feet to the intersection of the southerly line of Myrtle Avenue with the easterly line of Spring Street;

Thence southerly along the easterly line of Spring Street 180.0 feet to the point of beginning.

Parcel B  
(Myrtle Avenue Parking Lot)

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie, and State of New York, being part of Outer Lot 95, described as follows:

BEGINNING at the intersection of the north line of Myrtle Avenue with the east line of Spring Street;

Thence northerly along the east line of Spring Street 180.09 feet to its intersection with the south line of Swan Street;

Thence easterly along the south line of Swan Street 453.57 feet to a point in the south line of Swan Street 66.32 feet west of its intersection with the west line of Hamburg Street;

Thence southerly at right angles 100.00 feet;

Thence easterly at right angles 65.92 feet to the west line of Hamburg Street;

Thence southerly along the west line of Hamburg Street 80.66 feet to its intersection with the north line of Myrtle Avenue;

Thence westerly along the north line of Myrtle Avenue 453.44 feet to the east line of Spring Street at the point of beginning.