

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY
AND**

ORCHARD HEIGHTS, INC.

(collectively, the Mortgagor)

TO

**ERIE COUNTY, NEW YORK; TOWN OF ORCHARD PARK, NEW YORK; AND
ORCHARD PARK CENTRAL SCHOOL DISTRICT**

(collectively, the Mortgagee)

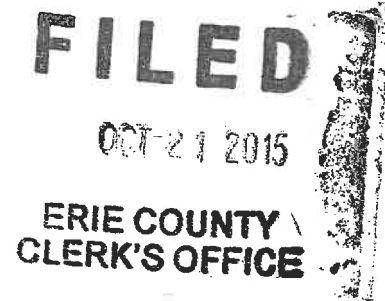
PILOT MORTGAGE AGREEMENT

This Mortgage shall at all times be subject and subordinate in right of lien to the following mortgages: any mortgage or mortgages, deeds of trust or other liens related to financing the construction and improvement of the Facility and permanent mortgages, dated the date hereof and all supplements, consolidations, modifications, assessments, confirmations, splitters amendments and restatements thereof given by the Mortgagors in favor of any lender or any successor lender and other lending institutions which become parties to any such mortgage, or the refinancing of any such mortgage, however, said subordination of the lien of this Mortgage is expressly conditioned upon the payment obligations hereunder having a priority right of payment over amounts payable under the above described mortgages.

Dated as of: October 1, 2015

SBL No.: New SBL Courtesy Split Number to be
determined per Town of Orchard Park
Assessor

RECORD AND RETURN TO (Box 16):
Debra A. Mantelli, Paralegal
Harris Beach PLLC
726 Exchange Street, Suite 1000
Buffalo, New York 14210



PILOT MORTGAGE AGREEMENT

THIS PILOT MORTGAGE AGREEMENT (this "PILOT Mortgage"), dated as of October 1, 2015, is from the **ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices located at 95 Perry Street, Suite 403, Buffalo, New York 14203 (the "Agency"), and **ORCHARD HEIGHTS, INC.**, a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, with offices at 10 Lafayette Square, Suite 1900, Buffalo, New York 14203 (the "Company" and, together with the Agency, sometimes collectively referred to herein as, the "Mortgagor"), to the **COUNTY OF ERIE, NEW YORK** (the "County"), the **TOWN OF ORCHARD PARK, NEW YORK**, (the "Town"), and the **ORCHARD PARK CENTRAL SCHOOL DISTRICT** (the "School District" and, collectively with the County and the Town, the "Affected Tax Jurisdictions"), as Mortgagee, which shall ultimately receive the payments to be made under Section 3.3 of the Leaseback Agreement dated on or about the date hereof between the Agency and the Company (the "Leaseback Agreement"), and that certain Payment in Lieu of Tax Agreement, dated the date hereof between the Agency and the Company (the "PILOT Agreement").

WITNESSETH, that to secure the obligation of the Company for \$1.00 or more, to make all payments and perform all other obligations of the Company for the benefit of the Agency and the Mortgagee under Section 3.3 of the Leaseback Agreement and to make to make all payments and perform all other obligations of the Company for the benefit of the Agency and the Mortgagee under that certain PILOT Agreement dated on or about the date hereof between the Agency and the Company (as such payments are described in the PILOT Agreement, a form of which is attached hereto as **Exhibit B**), the Mortgagor hereby mortgages to the Mortgagee the property described in **Exhibit A** attached hereto (the "Mortgaged Property"), including any insurance or condemnation proceeds related thereto in an amount equal to the aggregate of all Total PILOT Payments (as defined in the PILOT Agreement); and

TOGETHER with all equipment, right, title and interest of the Mortgagor in and to the land lying in the streets and road in front of and adjoining said premises in an amount equal to the aggregate of all unpaid and defaulted Total PILOT Payments (as defined in the PILOT Agreement); and

TOGETHER with all fixtures, furnishings, fittings, appliances, machinery, chattels and articles of personal property now or hereafter attached to or used in connection with said premises, together with any and all replacements thereof and additions thereto in an amount equal to the aggregate of all unpaid and defaulted Total PILOT Payments (as defined in the PILOT Agreement).

BEING THE SAME PREMISES and interest therein leased by the Company to the Agency pursuant to the terms of a certain Lease Agreement, by and between the Company and the Agency and dated as of the date hereof (the "Lease Agreement"), and which premises and interests therein are being leased by the Agency back to the Company pursuant to the terms of that certain Leaseback Agreement, which Lease Agreement or a memorandum thereof and Leaseback Agreement or a memorandum thereof are intended to be recorded in the office of the

Erie County Clerk prior to or contemporaneously with the recording of this PILOT Mortgage; and

This PILOT Mortgage, when recorded, shall constitute a first priority lien against the Mortgaged Property in an amount equal to any and all unpaid and defaulted Total PILOT Payments however this Mortgage shall at all times be subject and subordinate in right of lien to the following mortgages: any mortgage or mortgages, deeds of trust or other liens related to the financing of the construction and improvement of the Facility dated the date hereof and all amendments and restatements thereof given by the Company and the Agency in favor of the lender or any successor lender and other lending institutions which become parties to the mortgage, or the refinancing of any such mortgage provided, however, said subordination of the lien of this PILOT Mortgage Agreement is expressly conditioned upon the payment obligations hereunder having a priority right of payment over amounts payable under the above described mortgages; and

NOW THEREFORE, Mortgagor covenants and agrees with Mortgagee as follows:

1. That the Company will timely perform all of its obligations under the PILOT Agreement and will timely pay all amounts due thereunder. In addition, the Company will maintain or cause to be maintained in good condition and repair the buildings and improvements renovated and equipped or to be renovated and equipped on the Mortgaged Property, and shall not commit or permit waste or permit any nuisance to exist thereon.
2. That if any action or proceeding be commenced (except an action to foreclose this PILOT Mortgage or to collect the debt secured thereby), to which action or proceeding the Mortgagee is made a party, or in which it becomes necessary to defend or uphold the lien of this PILOT Mortgage, all sums paid by the Mortgagee for the expense of any litigation to prosecute or defend the rights and lien created by this PILOT Mortgage (including reasonable counsel fees and all costs and disbursements incurred in connection with such litigation) shall be paid by the Company, together with interest thereon at the applicable rate prescribed by Title I of Article 18-A of the New York State General Municipal Law, and any such sum and the interest thereon shall be a lien on said Mortgaged Property, prior to any right, title to, interest in or claim upon said Mortgaged Property attaching or accruing subsequent to the lien of this PILOT Mortgage, and shall be deemed to be secured by this PILOT Mortgage. In any action or proceeding to foreclose this PILOT Mortgage, the provisions of law respecting the recovery of costs, disbursements and allowance shall prevail unaffected by this covenant.
3. The Mortgagee's enforcement of its rights under this PILOT Mortgage shall be expressly subject (in the case of a failure of the Company to make any payments required to be paid pursuant to the PILOT Agreement) to the limitation that no such rights may be exercised until the Company shall be continuing to be in default in the making of any payment for the benefit of the Mortgagee in accordance with the terms of the PILOT Agreement.
4. The obligations and agreements of the Agency contained herein and in any other instrument or document executed in connection herewith, and any other instrument or document supplemental hereto, shall be deemed the obligations and agreements of the Agency, and not of

any member, officer, agent (other than the Company) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or be subject to any personal liability or accountability based upon or in respect hereto or of any transaction contemplated hereby. The obligations and agreements of the Agency contained herein shall not constitute or give rise to any obligations of the State of New York or Erie County, New York, and further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease of the Facility (as defined in the PILOT Agreement).

Notwithstanding any provision of this PILOT Mortgage to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (A) the Agency shall have been requested to do so in writing by the Company or the Mortgagee, and (B) compliance with such request is not reasonably expected to result in the incurrence by the Agency (or any member, officer or employee of the Agency) of any liabilities, fees, expenses or other costs, unless the Agency shall have received from the Company or the Mortgagee, as the case may be, security or indemnity satisfactory to the Agency for protection against all such liabilities, however remote, and for the reimbursement of all such fees, expenses and other costs. This PILOT Mortgage shall in no way impair or adversely affect the Agency's Unassigned Rights (as defined in the Leaseback Agreement).

5. An "Event of Default" as used herein shall have the meaning as set forth in the PILOT Agreement.

6. (a) Subject to the provisions of the PILOT Agreement and the provisions of Section 3 herein, upon the occurrence and during the continuation of an Event of Default hereunder, the Mortgagee may, in addition to any other rights or remedies available to it hereunder, at law or in equity, take such action, as may be permitted by applicable law, as is necessary to protect and enforce its rights against the Mortgagor in and to the Mortgaged Property including, but not limited to, the following actions:

(i) enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys, and dispossess the Mortgagor and its agents, employees and servants therefrom and thereupon the Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct the business thereat, (B) complete any construction on the Mortgaged Property in such manner and form as the Mortgagee deems advisable, (C) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property, and (D) exercise all rights and powers of the Mortgagor with respect to the Mortgaged Property, whether in the name of the Mortgagor or otherwise; Mortgagor consents that in such instance Mortgagee shall be its attorney-in-fact.

(ii) institute proceedings for the foreclosure of this PILOT Mortgage;

(iii) to the extent permitted by applicable law, sell or otherwise dispose of the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of the Mortgagor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, in whole or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this PILOT Mortgage shall continue to the full extent permitted by applicable law as a lien on the remaining portion of the Mortgaged Property; or

(iv) pursue such other remedies as the Mortgagee may have hereunder, under applicable law or in equity.

(b) The avails of any sale or other disposition made under or by virtue of this Section 6, together with any other sums which then may be held by the Mortgagee under this PILOT Mortgage, whether under the provisions of this paragraph or otherwise, shall be applied as follows:

First: To payment of the reasonable costs and expenses, including, but not limited to, necessary repairs, improvements, or environmental remediations, of any such sale or other disposition including reasonable out-of-pocket costs of the Mortgagee, its agents and counsel, and of any judicial proceedings wherein the same may be made, and all expenses, liabilities and advances reasonably made or incurred by the Mortgagee under this PILOT Mortgage on all advances made by the Mortgagee, and all taxes required to be paid in connection with such sale or other disposition of the Mortgaged Property, except any taxes or other charges subject to which the Mortgaged Property shall have been sold;

Second: To the payment of the Company's liabilities and obligations pursuant to the PILOT Agreement; and

Third: The surplus, if any to the Mortgagor, or to whomsoever may be lawfully entitled to receive the same if not the Mortgagor upon ten (10) days' prior notice to the Mortgagor.

(c) The Mortgagee may adjourn from time to time any sale by it under or by virtue of this PILOT Mortgage by announcement at the time and place appointed for such sale or for adjourned sale or sales and, except as otherwise provided by any applicable provision of law, the Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) To the extent permitted by applicable law, no recovery of any judgment by the Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of the Mortgagor shall affect in any manner or to any extent the lien of this PILOT Mortgage upon the Mortgaged Property or any part thereof or any liens, rights, powers or remedies of the Mortgagee hereunder, but such liens, rights, powers and remedies of the Mortgagee shall continue unimpaired.

(e) Upon the occurrence and during the continuation of the Event of Default hereunder, the Mortgagor, if it is an occupant of the Mortgaged Property or any part thereof, shall upon the Mortgagee's demand immediately surrender possession of the Mortgaged Property (or the portion thereof so occupied) to Mortgagee.

7. To the extent permitted by applicable law, no remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of the Mortgagee in exercising any right or power accruing during an Event of Default shall impair any such right or power, or shall be construed to be a waiver of such Event of Default, or any acquiescence therein; and every power and remedy given by that Mortgage to the Mortgagee may be exercised from time to time as often as may be deemed expedient by the Mortgagee. Without limiting the generality of the foregoing, any payment made by the Mortgagee for insurance premiums, taxes, assessments, water rates, sewer rentals, levies, fees or any other charges affecting the Mortgaged Property shall not constitute a waiver of the Mortgagor's obligations in making such payments and shall not obligate the Mortgagee to make any further payments. Nothing in this PILOT Mortgage or in the PILOT Agreement shall affect the obligation of the Company to perform under the PILOT Agreement in the manner and at the time and place therein expressed.

8. No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Mortgage should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Agency and the Company or any delay or omission on the part of the Agency in exercising any rights hereunder or under any other document shall operate as a waiver.

9. Anything contained herein to the contrary notwithstanding (i) the Mortgagee hereby agrees that there shall be no recourse against the Company for any liability to the Mortgagee arising in connection with any breach or default under this PILOT Mortgage, or the PILOT Agreement, by the Company except to the extent the same is enforced against the rights, title and interest of the Company in the Mortgaged Property, and the Mortgagee shall look solely to the rights, title and interest of the Company relating to the Mortgaged Property in enforcing its rights against the Company under and in connection with this PILOT Mortgage or the PILOT Agreement; provided that (a) the foregoing provisions of this Section shall not constitute a waiver, release or discharge of any of the obligations arising under, or of any of the terms, covenants, conditions, or provisions of, this PILOT Mortgage or the PILOT Agreement, but the same shall continue until fully paid, discharged, observed, or performed, and (b) the foregoing provisions of this Section shall not limit or restrict the right of the Mortgagee to name the Company or any other Person as a defendant in any action or suit for a judicial foreclosure or for the exercise of any remedy under or with respect to this PILOT Mortgage or the PILOT Agreement, or for injunction or specific performance. In addition, nothing contained in this Section shall limit in any way the ability of the Mortgagee to enforce its rights or the rights of the

Company against any Person other than the Company under this PILOT Mortgage or the PILOT Agreement.

10. The Company, as agent of the Agency, shall bear any and all costs and expenses pertaining to this PILOT Mortgage and the perfection thereof, including but not limited to any applicable recording fees and mortgage taxes, the New York State mortgage tax (1%) and additional mortgage tax to the extent applicable. To the extent the Agency is not exempt from the payment of any of the foregoing costs and expenses, the Company shall pay same.

11. All notices, certificates and other communication hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (A) three business days after being sent to the applicable address stated below by registered or certified mail, return receipt requested, by nationally recognized overnight delivery service, or upon transmission by telecopy or other electronic means of communication, followed by prompt written confirmation thereof, or by such other means as shall provide the sender with documentary evidence of such delivery, or (B) delivery is refused by the addressee, as evidenced by the affidavit of the person who attempted to effect such delivery. The addresses to which notices, certificates and other communication hereunder shall be delivered are as follows:

To the Agency: Erie County Industrial Development Agency
95 Perry Street, Suite 403
Buffalo, New York 14203
Attn: Chief Executive Officer

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

To the Company: Orchard Heights, Inc.
c/o The Hamister Group, Inc.
10 Lafayette Square, Suite 1900
Buffalo, New York 14203
Attn: Mark E. Hamister, Chairman & CEO

With a copy to: Lippes Mathias Wexler Friedman LLP
665 Main Street, Suite 300
Buffalo, NY 14203
Attn: Blaine S. Schwartz, Esq.

To the County:

Hon. Mark C. Poloncarz
Erie County Executive
Rath Building, 16th Floor, Room 1600
95 Franklin Street
Buffalo, New York 14202

Joseph L. Maciejewski, CCD
Director of Real Property Tax Services
Erie County Division of Real Property
Rath Building, 1st Floor, Room 100
95 Franklin Street
Buffalo, New York 14202

To the Town:

Hon. Patrick J. Keem, D.D.S., Supervisor
Town of Orchard Park
4295 South Buffalo Street
Orchard Park, New York 14127

Milton S. Bradshaw, Appointed Assessor
Town of Orchard Park
4295 South Buffalo Street
Orchard Park, New York 14127

To the School District:

Mr. Matthew P. McGarrity, Superintendent
Orchard Park Central School District
2240 Southwestern Boulevard
West Seneca, New York 14224

Ms. Natalie Schaffer, School Board President
Orchard Park Central School District
2240 Southwestern Boulevard
West Seneca, New York 14224

The parties by notice given hereunder to each of the others, may designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

12. Terms with capitalized first initials used in this PILOT Mortgage shall have the meanings ascribed to such terms in the PILOT Agreement unless the context otherwise requires. The word the "Mortgagor" shall be construed as if it read "Mortgagors" whenever the sense of this PILOT Mortgage so requires. The word "Mortgagee" shall be construed as if it read "Mortgagees" whenever the sense of this PILOT Mortgage so requires.

13. If an Event of Default shall have occurred and be continuing, the Mortgagee (subject to the provisions of Section 3 hereof), as a matter of right and without regard to the adequacy of the Mortgaged Property as collateral security, but after notice to the Mortgagor, shall have the right to appoint a receiver or receivers, and the Mortgagor hereby irrevocably consents to such appointment.

14. The Mortgagor agrees that it will not, at any time, insist upon or plead in any way the advantage of any appraisal, valuation, stay, marshaling of assets, extensions, redemption or moratorium law now or hereafter in force and effect so as to prevent, hinder or delay the enforcement of the provisions of this PILOT Mortgage or any rights or remedies, including foreclosure proceedings, the Mortgagee may have hereunder or by law or equity.

15. The Company represents and warrants that the Agency has a good and insurable leasehold interest in the Mortgaged Property pursuant to the Lease Agreement and that the

Company has a good and insurable leasehold interest herein pursuant to the Leaseback Agreement.

16. In the case of a foreclosure sale, the Mortgaged Property may be sold in one parcel.

17. This PILOT Mortgage may not be effectively waived, discharged, amended, changed, modified, altered or terminated, unless such amendment, change, modification, alteration or termination is in a writing intended for such purpose and executed and delivered by the Mortgagee and the Mortgagor.

18. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this PILOT Mortgage shall for any reason be finally held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal, or unenforceable shall be deemed separate, distinct and independent, and the remainder of this PILOT Mortgage shall be and remain in full force and effect and shall not be invalidated or rendered illegal or enforceable or otherwise affected by any such holding or adjudication.

19. This PILOT Mortgage shall be governed by and construed in accordance with the laws of the State of New York, exclusive of New York's conflict of laws, rules and public policies. This PILOT Mortgage constitutes the final expression of the agreement between the Mortgagor and the Mortgagee with respect to its subject matter, and all prior and contemporaneous discussions, negotiations, drafts and agreements are hereby merged into and superseded by this PILOT Mortgage. Notwithstanding the foregoing, it is expressly agreed that the PILOT Agreement and each of the Company's obligations thereunder shall survive the execution, delivery and recording of this PILOT Mortgage.

20. If any action or proceeding be commenced by or on behalf of the Mortgagee to foreclose this PILOT Mortgage, the Company agrees to pay to the Mortgagee its reasonable attorneys' fees and other expenses incurred in connection with such action or proceeding, and such amounts shall be a lien on the Mortgaged Property prior to any right or title to, or interest in, or claim upon the Mortgaged Property attaching or accruing subsequent to the lien of this PILOT Mortgage.

21. The rights of the Mortgagee under this PILOT Mortgage are independent of and cumulative to its rights, with respect to the collection of special assessments and special ad valorem levies, if any, lawfully assessed against the Mortgaged Property or any part thereof.

22. This PILOT Mortgage constitutes a security agreement under the New York Uniform Commercial Code with respect to any portion of the Mortgaged Property which is personal property and the Mortgagee shall have all of the rights and remedies of a secured party thereby in addition to the rights and remedies granted by other applicable law or by this PILOT Mortgage.

23. So long as any portion of the obligations of the Company under the PILOT Agreement shall remain outstanding, the title to the Mortgaged Property and the lien of this PILOT Mortgage shall not merge, but shall always be kept separate and distinct.

24. The covenants contained in this PILOT Mortgage shall run with the land and bind the Mortgagor, the heirs, personal representatives, successors and assigns of the Mortgagor and all subsequent owners, encumbrances, tenants and subtenants of the premises, and shall inure to the benefit of the Mortgagee, the personal representatives, successors and assigns of the Mortgagee and all subsequent holders of this PILOT Mortgage.

25. Upon the termination of the PILOT Agreement and the payment in full of all sums payable thereunder, the Mortgagee by acceptance of this PILOT Mortgage agrees to execute and deliver any and all instruments necessary and/or appropriate to discharge the lien of record of this PILOT Mortgage.

26. Severability. If this PILOT Mortgage contains any unlawful provision not an essential part of this PILOT Mortgage and which shall not appear to have been a controlling or material inducement to the making hereof, the same shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from this PILOT Mortgage without affecting the binding force of the remaining portions of this PILOT Mortgage.

27. Section Headings. Section headings of this PILOT Mortgage are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this PILOT Mortgage and in no way affect this PILOT Mortgage.

28. Execution of Counterparts. This PILOT Mortgage may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN ANY DOCUMENT TO THE CONTRARY, IT IS THE EXPRESS INTENT OF THE AGENCY TO PROVIDE FINANCIAL ASSISTANCE UNDER THE PILOT AGREEMENT TO THE COMPANY ONLY, AND TO NO OTHER PARTY. SUCH FINANCIAL ASSISTANCE SHALL APPLY ONLY TO THE FACILITY AND TO NO OTHER PROPERTY OR IMPROVEMENTS, AND TO THE EXTENT THAT ANY PORTION OF THE COMPANY'S INTEREST IN THE FACILITY IS REMOVED, TRANSFERRED OR TAKEN BACK BY THE FEE OWNER THEREOF, OR ANY PORTION OF THE FACILITY IS USED, OCCUPIED OR CONTROLLED BY ANY PARTY OTHER THAN THE COMPANY, SUCH PROPERTY OR USER/OWNER SHALL IN NO WAY RECEIVE FINANCIAL ASSISTANCE UNDER THE PILOT AGREEMENT OR OTHERWISE AND SUCH PROPERTY SHALL, WITHOUT FURTHER ACTION, NOTICE OR APPROVAL, BE DEEMED REMOVED FROM THE TERMS OF THE LEASE AGREEMENT, LEASEBACK AGREEMENT, PILOT AGREEMENT AND ANY DOCUMENT RELATED THERETO; *PROVIDED, HOWEVER, THAT, THIS PILOT MORTGAGE SHALL REMAIN IN FULL FORCE AND EFFECT.*

(Remainder of page intentionally left blank)

[Signature page to the PILOT Mortgage]

IN WITNESS WHEREOF, the parties hereto have executed this PILOT Mortgage 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

ORCHARD HEIGHTS, INC.

By: _____
Name: Mark E. Hamister
Title: Chairman & CEO

[Signature page to the PILOT Mortgage]

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

**ERIE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

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

ORCHARD HEIGHTS, INC.

By:  _____
Name: Mark E. Hamister
Title: Chairman & CEO

[Acknowledgment Page to the PILOT Mortgage]

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

On the 6 day of October, 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 October, 2015, before me, the undersigned, personally appeared **MARK E. HAMISTER**, 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 Mortgage]

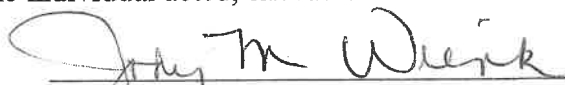
STATE OF NEW YORK)
COUNTY OF ERIE) SS.:

On the _____ day of October, 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 8th day of October, 2015, before me, the undersigned, personally appeared **MARK E. HAMISTER**, 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

JODY M WIENKE
Notary Public State of New York
Qualified in Erie County
Lic. #01WI6158644
My Commission Expires 01/02/2019

Exhibit A

Legal Description

**Building "B" Addition
5200 Chestnut Ridge Road**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Orchard Park, County of Erie and State of New York, being part of Lot 13, Township 9, and Range 7 of the Holland Land Company's Survey, bounded and described as follows;

COMMENCING at a point on the west line of Chestnut Ridge Road as currently laid out, distant 260.6 feet south of its intersection with the south line of lands now or formerly conveyed to John Struble as recorded in the Erie County Clerk's Office under Liber 451 of deeds at page 40; thence westerly along a line perpendicular to the west line of Chestnut Ridge Road a distance of 563.7 feet to a point on an existing building corner, being the Point of Beginning; thence southwesterly along the existing southeast building face and its southwesterly extension a distance of 62.45 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 6.00 feet; thence southwesterly along a line perpendicular to the aforementioned line a distance of 113.33 feet; thence westerly along a line at an interior angle of $123^{\circ}23'27''$ a distance of 147.36 feet; thence northerly along a line perpendicular to the aforementioned line a distance of 204.00 feet; thence easterly along a line perpendicular to the aforementioned line a distance of 157.27 feet; thence southeasterly along a line at an interior angle of $146^{\circ}36'33''$ a distance of 98.00 feet to the Point of Beginning, containing 39,838 square feet more or less.

**Building "C" Addition
5200 Chestnut Ridge Road**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Orchard Park, County of Erie and State of New York, being part of Lot 13, Township 9, and Range 7 of the Holland Land Company's Survey, bounded and described as follows;

COMMENCING at a point on the west line of Chestnut Ridge Road as currently laid out, distant 433.9 feet south of its intersection with the south line of lands now or formerly conveyed to John Struble as recorded in the Erie County Clerk's Office under Liber 451 of deeds at page 40; thence westerly along a line perpendicular to the west line of Chestnut Ridge Road a distance of 410.1 feet to a point on an existing building corner, being the Point of Beginning; thence southeasterly along the

southeasterly extension of the southwest building face a distance of 80.17 feet; thence southwesterly along a line at an exterior angle of $67^{\circ}05'20''$ a distance of 29.66 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence southwesterly along a line perpendicular to the aforementioned line a distance of 24.00 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence southwesterly along a line perpendicular to the aforementioned line a distance of 29.66 feet; thence southerly along a line at an interior angle of $112^{\circ}54'42''$ a distance of 8.68 feet; thence southwesterly along a line perpendicular to the aforementioned line a distance of 22.67 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 14.17 feet; thence southwesterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 18.00 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 26.00 feet; thence southwesterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 18.00 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 79.50 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 4.83 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 9.00 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 28.83 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 9.00 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 22.33 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 79.50 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 18.00 feet; thence southwesterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 26.00 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 18.00 feet; thence southwesterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 13.83 feet; thence northeasterly along a line at an exterior angle of $112^{\circ}54'40''$ a distance of 38.14 feet; thence southeasterly along a line at an exterior angle of $112^{\circ}54'40''$ a distance of 13.83 feet; thence southwesterly along a line perpendicular to the aforementioned line a

distance of 10.00 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 18.00 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 26.00 feet; thence southwesterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 18.00 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 79.50 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 22.33 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 9.00 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 23.83 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 9.00 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 4.83 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 79.50 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 18.00 feet; thence southwesterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 26.00 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 18.00 feet; thence southwesterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 13.60 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 20.37 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 89.65 feet to an existing southeast building face; thence southwesterly along the existing southeast building face a distance of 43.58 feet to the Point of Beginning, containing 23.003 square feet more or less.

**Building "D" Addition
5200 Chestnut Ridge Road**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Orchard Park, County of Erie and State of New York, being part of Lot 13, Township 9, and Range 7 of the Holland Land Company's Survey, bounded and described as follows;

COMMENCING at a point on the west line of Chestnut Ridge Road as currently laid out, distant 711.41 feet south of its intersection with the south line of lands now or formerly conveyed to John Struble as recorded in the Erie County Clerk's Office under Liber 451 of deeds at page 40; thence westerly along a line perpendicular to the west line of Chestnut Ridge Road a distance of 723.7 feet to the Point of Beginning; thence northwesterly along a line forming an angle of 121°38'38 in the northeast quadrant a distance of 60.0; thence southwestery along a line perpendicular to the aforementioned line a distance of 25.0 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 60.0 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 25.0 feet to the Point of Beginning, containing 1,500 square feet more or less.

**Building "E" Addition
5200 Chestnut Ridge Road**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Orchard Park, County of Erie and State of New York, being part of Lot 13, Township 9, and Range 7 of the Holland Land Company's Survey, bounded and described as follows;

COMMENCING at a point on the west line of Chestnut Ridge Road as currently laid out, distant 240.00 feet south of its intersection with the south line of lands now or formerly conveyed to John Struble as recorded in the Erie County Clerk's Office under Liber 451 of deeds at page 40; thence westerly along a line perpendicular to the west line of Chestnut Ridge Road a distance of 407.6 feet to a point on an existing building corner, being the Point of Beginning; thence southwestery along the existing northwest building face a distance of 58.9 feet to an existing building corner; thence northwesterly along a line perpendicular to the aforementioned line a distance of 20.93 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 58.9 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 20.93 feet to the Point of Beginning, containing 1216 square feet more or less.

Exhibit B

PILOT Agreement

(Please see attached)

ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

ORCHARD HEIGHTS, INC.

PAYMENT IN LIEU OF TAX AGREEMENT

Regarding the leasehold interest in a 17+/- acre parcel of land located at 5200 Chestnut Ridge Road, Town of Orchard Park, Erie County, New York, together with the existing improvements thereon and the expansion, renovation, upgrading and equipping of the existing improvements to include a new wing of 41 assisted living units and additions to the facility common area and dining areas and the construction and equipping of one (1) 32-unit independent living apartment building.

Dated as of: **October 1, 2015**

Termination Date: **December 31, 2023**

SBL No.: **SBL Courtesy split to be determined per the
Town of Orchard Park Assessor**

Affected Tax Jurisdictions: Erie County
Town of Orchard Park
Orchard Park Central School District

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

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT (the "Agreement"), dated as of October 1, 2015, 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 95 Perry Street, Suite 403, Buffalo, New York 14203 (the "Agency"), and **ORCHARD HEIGHTS, INC.**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, with offices at c/o The Hamister Group, Inc., 10 Lafayette Square, Suite 1900, 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 (the "Project") consisting of: (i) the leasehold interest in a 17+/- acre parcel of land located at 5200 Chestnut Ridge Road, Town of Orchard Park, Erie County, New York (the "Land") together with the existing improvements thereon (the "Existing Improvements"), (ii) the expansion, renovation, upgrading and equipping of the Existing Improvements to include a new wing of 41 assisted living units and additions to the facility common area and dining areas and the construction and equipping of one (1) 32-unit independent living apartment building (the "Improvements"), and (iii) the acquisition and installation in and around the Existing Improvements and Improvements 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, the Company is the owner of certain real property located at 5200 Chestnut Ridge Road, Town of Orchard Park, known as SBL No. 184.08-1-1.1. The Town of Orchard Park has approved a courtesy split (to be determined per the Town of Orchard Park Assessor) for said Improvements (Exhibit A) which will be utilizing the benefit of this Agreement.

WHEREAS, in order to induce the Company to construct, expand, renovate, update 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”), the Town of Orchard Park (the “Town”), and the Orchard Park Central School District (the “School District” and collectively with the County and the Town, 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 March 1, 2016 (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,
- (b) 2017 tax fiscal year of the Town, and
- (c) 2016-17 tax fiscal year of the School District

This PILOT Agreement shall expire on December 31, 2023; *provided, however*, the Company shall pay the 2024 County and Town and the 2023-2024 School District 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 land 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 2023**, 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 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) Town PILOT Payments. Payments in lieu of general levy real estate taxes to the Town for each of the tax fiscal years **2017 through 2023**, or until termination of the Leaseback Agreement, whichever date occurs first, shall be in an amount equal to the Town Land PILOT Payment plus the Town Variable PILOT Payment (as such terms are defined below) for each such tax fiscal year. The Town Land PILOT Payment for each tax fiscal year shall be an amount equal to the Town 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 Town Variable PILOT Payment for each tax fiscal year shall be an amount equal to the Town 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 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 such place as may be designated

from time to time by the Town. Payments for each tax fiscal year must be made by February 15 of that year, or such payment shall be considered delinquent.

(c) School District PILOT Payments. Payments in lieu of general levy real estate taxes for the City for each of the tax fiscal years **2016-2017 through 2022-2023**, or until termination of the Leaseback Agreement, whichever date occurs first, shall be in an amount equal to the School District Land PILOT Payment plus the School District Variable PILOT Payment (as such terms are defined below) for each such tax fiscal year. The School District Land PILOT Payment for each tax fiscal year shall be an amount equal to the School District 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 School District Variable PILOT Payment for each tax fiscal year shall be an amount equal to the School District 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 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 such place as may be designated from time to time by the School District. Payments for each School District tax fiscal year must be made by October 15 of that year, unless otherwise required by the School District, or such payment shall be considered delinquent.

(d) 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 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
95 Perry Street, Suite 403
Buffalo, NY 14203
Attn: Chief Executive Officer

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

To the Company: Orchard Heights, Inc.
c/o The Hamister Group, Inc.
10 Lafayette Square, Suite 1900
Buffalo, NY 14203
Attn: Mark E. Hamister, Chairman & CEO

With a copy to: Lippes Mathias Wexler Friedman LLP
665 Main Street, Suite 300
Buffalo, NY 14203
Attn: Blaine S. Schwartz, 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.

(Remainder of page intentionally left blank)

[Signature page to the 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

ORCHARD HEIGHTS, INC.

By: _____

Name: Mark E. Hamister

Title: Chairman & CEO

[Acknowledgment Page to the PILOT Agreement]

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

On the _____ day of October, 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 _____ day of October, 2015, before me, the undersigned, personally appeared **MARK E. HAMISTER**, 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

PILOT Agreement dated as of October 1, 2015,
 by and between Erie County Industrial Development Agency
 and Orchard Heights, Inc.

SBL No.: Courtesy Split to be determined per the Town of Orchard Park Assessor

Expiration of Lease: December 31, 2023

SCHEDULE A

Project/ PILOT Tax Year	TAX FISCAL YEAR			PAYMENT FACTOR
	County	Town	School District	
Project Year 1	2016	2016	2015-2016	N/A-As if owned
PILOT Year 1	2017	2017	2016-2017	10%
PILOT Year 1	2018	2018	2017-2018	10%
PILOT Year 2	2019	2019	2018-2019	20%
PILOT Year 3	2020	2020	2019-2020	20%
PILOT Year 4	2021	2021	2020-2021	30%
PILOT Year 5	2022	2022	2021-2022	30%
PILOT Year 6	2023	2023	2022-2023	30%

Exhibit A

**Building "B" Addition
5200 Chestnut Ridge Road**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Orchard Park, County of Erie and State of New York, being part of Lot 13, Township 9, and Range 7 of the Holland Land Company's Survey, bounded and described as follows;

COMMENCING at a point on the west line of Chestnut Ridge Road as currently laid out, distant 260.6 feet south of its intersection with the south line of lands now or formerly conveyed to John Struble as recorded in the Erie County Clerk's Office under Liber 451 of deeds at page 40; thence westerly along a line perpendicular to the west line of Chestnut Ridge Road a distance of 563.7 feet to a point on an existing building corner, being the Point of Beginning; thence southwesterly along the existing southeast building face and its southwesterly extension a distance of 62.45 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 6.00 feet; thence southwesterly along a line perpendicular to the aforementioned line a distance of 113.33 feet; thence westerly along a line at an interior angle of $123^{\circ}23'27''$ a distance of 147.36 feet; thence northerly along a line perpendicular to the aforementioned line a distance of 204.00 feet; thence easterly along a line perpendicular to the aforementioned line a distance of 157.27 feet; thence southeasterly along a line at an interior angle of $146^{\circ}36'33''$ a distance of 98.00 feet to the Point of Beginning, containing 39,838 square feet more or less.

**Building "C" Addition
5200 Chestnut Ridge Road**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Orchard Park, County of Erie and State of New York, being part of Lot 13, Township 9, and Range 7 of the Holland Land Company's Survey, bounded and described as follows;

COMMENCING at a point on the west line of Chestnut Ridge Road as currently laid out, distant 433.9 feet south of its intersection with the south line of lands now or formerly conveyed to John Struble as recorded in the Erie County Clerk's Office under Liber 451 of deeds at page 40; thence westerly along a line perpendicular to the west line of Chestnut Ridge Road a distance of 410.1 feet to a point on an existing building corner, being the Point of Beginning; thence southeasterly along the southeasterly extension of the southwest building face a distance

of 80.17 feet; thence southwesterly along a line at an exterior angle of $67^{\circ}05'20''$ a distance of 29.66 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence southwesterly along a line perpendicular to the aforementioned line a distance of 24.00 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence southwesterly along a line perpendicular to the aforementioned line a distance of 29.66 feet; thence southerly along a line at an interior angle of $112^{\circ}54'42''$ a distance of 8.68 feet; thence southwesterly along a line perpendicular to the aforementioned line a distance of 22.67 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 14.17 feet; thence southwesterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 18.00 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 26.00 feet; thence southwesterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 18.00 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 79.50 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 4.83 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 9.00 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 28.83 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 9.00 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 22.33 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 79.50 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 18.00 feet; thence southwesterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 26.00 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 18.00 feet; thence southwesterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 13.83 feet; thence northeasterly along a line at an exterior angle of $112^{\circ}54'40''$ a distance of 38.14 feet; thence southeasterly along a line at an exterior angle of $112^{\circ}54'40''$ a distance of 13.83 feet; thence southwesterly along a line

perpendicular to the aforementioned line a distance of 10.00 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 18.00 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 26.00 feet; thence southwesterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 18.00 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 79.50 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 22.33 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 9.00 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 23.83 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 9.00 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 4.83 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 79.50 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 18.00 feet; thence southwesterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 26.00 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 18.00 feet; thence southwesterly along a line perpendicular to the aforementioned line a distance of 10.00 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 13.60 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 20.37 feet; thence northwesterly along a line perpendicular to the aforementioned line a distance of 89.65 feet to an existing southeast building face; thence southwesterly along the existing southeast building face a distance of 43.58 feet to the Point of Beginning, containing 23.003 square feet more or less.

**Building "D" Addition
5200 Chestnut Ridge Road**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Orchard Park, County of Erie and State of New York, being part of Lot 13, Township 9, and Range 7 of the Holland Land Company's Survey, bounded and described as follows;

COMMENCING at a point on the west line of Chestnut Ridge Road as currently laid out, distant 711.41 feet south of its intersection with the south line of lands now or formerly conveyed to John Struble as recorded in the Erie County Clerk's Office under Liber 451 of deeds at page 40; thence westerly along a line perpendicular to the west line of Chestnut Ridge Road a distance of 723.7 feet to the Point of Beginning; thence northwesterly along a line forming an angle of $121^{\circ}38'38$ in the northeast quadrant a distance of 60.0; thence southwesterly along a line perpendicular to the aforementioned line a distance of 25.0 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 60.0 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 25.0 feet to the Point of Beginning, containing 1,500 square feet more or less.

**Building "E" Addition
5200 Chestnut Ridge Road**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Orchard Park, County of Erie and State of New York, being part of Lot 13, Township 9, and Range 7 of the Holland Land Company's Survey, bounded and described as follows;

COMMENCING at a point on the west line of Chestnut Ridge Road as currently laid out, distant 240.00 feet south of its intersection with the south line of lands now or formerly conveyed to John Struble as recorded in the Erie County Clerk's Office under Liber 451 of deeds at page 40; thence westerly along a line perpendicular to the west line of Chestnut Ridge Road a distance of 407.6 feet to a point on an existing building corner, being the Point of Beginning; thence southwesterly along the existing northwest building face a distance of 58.9 feet to an existing building corner; thence northwesterly along a line perpendicular to the aforementioned line a distance of 20.93 feet; thence northeasterly along a line perpendicular to the aforementioned line a distance of 58.9 feet; thence southeasterly along a line perpendicular to the aforementioned line a distance of 20.93 feet to the Point of Beginning, containing 1216 square feet more or less.