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ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

A&A UNION ROAD, LLC

FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT

Regarding the leasehold interest in land, the demolition of two structures and the construction and equipping of an approximately 6,160+/- SF two-story professional office building located at 1471 Union Road, Town of West Seneca, Erie County, New York

First Amendment Dated as of: **December 1, 2022**

Termination Date: **December 31, 2031**

SBL No.: **134.59-4-28.1**

Affected Tax Jurisdictions: **Erie County
Town of West Seneca
West Seneca Central School District**

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

FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT

THIS FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT (the "First Amendment to PILOT"), dated as of the 1st day of December, 2022, by and between **ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 95 Perry Street, Suite 403, Buffalo, New York 14203 (the "Agency") and **A&A UNION ROAD, 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 3638 Seneca Street, West Seneca, New York 14224 (the "Company").

W I T N E S S E T H:

WHEREAS, the Agency was created by Chapter 293 of the Laws of 1970 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Agency and the Company previously entered into that certain Payment In Lieu Of Tax Agreement (the "PILOT Agreement"), dated as of October 1, 2022, with respect to the Company's property located at 1471 Union Road, Town of West Seneca, Erie County, New York (the "Facility"); and

WHEREAS, at the written request of the Company and pursuant to Section 1 of the PILOT Agreement, the Agency and the Company have agreed to delay the implementation of the real property tax abatement as so associated with the PILOT Agreement by one year, amend the expiration date of the PILOT Agreement, and to revise Schedule A of the PILOT Agreement in accordance with this First Amendment to PILOT; and

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

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

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

Section 1. Agency Tax Exemption. Subject to the completion and filing of a Form RP-412-a, Application for Real Property Tax Exemption (the "RP-412-a"), by the Taxable Status Date of **March 1, 2023** (the "Taxable Status Date"), and the approval of the RP-412-a by the Assessor (as same may be revised/amended from time to time) the Project shall be exempt from real estate taxes commencing with the:

- (a) 2025 tax fiscal year of the County,
- (b) 2025 tax fiscal year of the Town; and
- (c) 2024-2025 tax fiscal year of the School District.

This PILOT Agreement shall expire on December 31, 2031; *provided, however*, the Company shall pay the 2032 County, the 2032 Town and the 2031-2032 School District tax bills, on the dates and in the amounts as if the Agency were not in leasehold 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. In the event the exemption from real estate taxes is denied for any reason, the Company agrees to pay all real estate taxes levied upon the Project as they become due. To the extent permitted by law, the Company shall have the right to protest such denial subject, however, to the conditions set forth in Section 8.1 of the Leaseback Agreement. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company arising from the denial of an exemption from real estate taxes except to the extent that such denial results solely from the failure of the Agency to file the RP-412-a with the Assessor by the Taxable Status Date.

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

(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).

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

(b) The variable component (“Variable Component”) shall be equal to the product of:

(i) The then current tax rate for the then current tax fiscal year,

x

(ii) The then current assessed valuation that is to be determined by the Assessor of the Town of all buildings and improvements comprising the Project,

x

(iii) A payment factor applicable to such tax fiscal year as shown on **Schedule A** attached hereto.

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

(a) County PILOT Payments. Payments in lieu of general levy real estate taxes to the County for each of the tax fiscal years 2025 through 2031, or until termination of the Leaseback Agreement, whichever date occurs first, shall be in an amount equal to the sum of the County Land Component Payment and the County Existing Improvements Component Payment and the County Variable Component Payment (as such terms are depicted above and defined below) for each such tax fiscal year. The County Land Component Payment for each tax fiscal year shall be in an amount equal to the County Tax rate then in effect for such tax fiscal year, applied against the then current assessed valuation that is to be determined by the Assessor of the Town of the non-depreciable portion of all tax parcels constituting the Project (assessed as land). The County Variable Component Payment for each tax fiscal year shall be an amount equal to the County tax rate then in effect for such tax fiscal year, applied to the product of (i) the then current assessed valuation that is to be determined by the Assessor of the Town of the depreciable portion of all tax parcels constituting 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 Erie County Real Property Tax Services, Edward A. Rath County Office Building, 95 Franklin Street, Room 100, Buffalo, New York 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 (unless otherwise required by the County), 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 2025 through 2031, or until termination of the Leaseback Agreement, whichever date occurs first, shall be in an amount equal to the sum of the Town Land Component Payment plus the Town Variable Component Payment (as such terms are depicted above and defined below) for each such tax fiscal year. The Town Land Component Payment for each tax fiscal year shall be in an amount equal to the Town Tax rate then in effect for such tax fiscal year, applied against the then current assessed valuation that is to be determined by the Assessor of the Town of the non-depreciable portion of all tax parcels constituting the Project (assessed as land). The Town Variable Component 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 to the product of (i) the then current assessed valuation that is to be determined by the Assessor of the Town of the depreciable portion of all tax parcels constituting 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 the Town, Attn: Receiver of Taxes, or such other place as may be designated from time to time by the Town. Payments for each Town tax fiscal year must be made by February 15 of that year (unless otherwise required by the Town), or such payment shall be considered delinquent.

(c) School District Payments. Payments in lieu of general levy real estate taxes for the School District for each of the tax fiscal years 2024-2025 through 2030-2031, or until termination of the Leaseback Agreement, whichever date occurs first, shall be in an amount equal to the sum of the School District Land Component Payment plus the School District Variable Component Payment (as such terms are depicted above and defined below) for each such tax fiscal year. The School District Land Component Payment for each tax fiscal year shall be in an amount equal to the School District Tax rate then in effect for such tax fiscal year, applied against the then current assessed valuation that is to be determined by the Assessor of the Town of the non-depreciable portion of all tax parcels constituting the Project (assessed as land). The School District Variable Component 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 to the product of (i) the then current assessed valuation that is to be determined by the Assessor of the Town of the depreciable portion of all tax parcels constituting 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 the School District or such other place as may be designated from time to time by the School District. Payments for each 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) 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.

3. Schedule A attached to the PILOT Agreement is hereby replaced with Schedule A attached hereto.

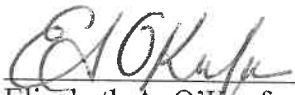
4. Unless otherwise amended and modified by this First Amendment to PILOT, the terms of the PILOT Agreement shall remain unchanged and in full force and effect. This First Amendment to PILOT shall in no way be construed as a waiver of any of the rights or remedies of the Agency or a release or waiver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

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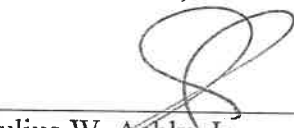
[Signature Page to First Amendment to PILOT]

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

ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

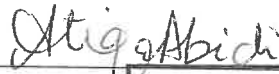
BY: 
Name: Elizabeth A. O'Keefe
Title: Vice President of Operations

A&A UNION ROAD, LLC

By: 
Name: Julius W. Aebly, Jr.
Title: Sole Member/President

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

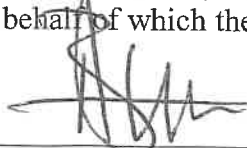
On the 19th day of January, 2023, before me, the undersigned, personally appeared **ELIZABETH A. O'KEEFE**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

ATIQA Z ABIDI Notary Public - State of New York No. 01AB6432058 Qualified in Erie County My Commission Expires 04/25/20 <u>26</u>
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STATE OF NEW YORK)
COUNTY OF ERIE) SS.:

On the 14th day of January, 2023, before me, the undersigned, personally appeared **JULIUS W. AEBLY, JR.**, 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

BRIAN F. ATTEA
Notary Public, State of New York
Qualified in Erie County
My Commission Expires September 28, 2026

PILOT Agreement dated as of October 1, 2022, as amended by the First Amendment to PILOT Agreement dated as of December 1, 2022, by and between Erie County Industrial Development Agency and A&A Union Road, LLC

SBL No. 134.59-4-28.1

Expiration of Leaseback: December 31, 2031

SCHEDULE A

Project/PILOT Tax Year	TAX FISCAL YEAR			ABATEMENT FACTOR
	County	Town	School	
Project Year 1	2023	2023	2022-2023	Not Applicable
Project Year 2	2024	2024	2023-2024	Not Applicable
PILOT Year 1	2025	2025	2024-2025	5%
PILOT Year 2	2026	2026	2025-2026	10%
PILOT Year 3	2027	2027	2026-2027	15%
PILOT Year 4	2028	2028	2027-2028	20%
PILOT Year 5	2029	2029	2028-2029	25%
PILOT Year 6	2030	2030	2029-2030	30%
PILOT Year 7	2031	2031	2030-2031	35%