

## PAYMENT IN LIEU OF TAXATION AGREEMENT

*THIS PAYMENT IN LIEU OF TAXATION AGREEMENT* ("PILOT Agreement") is made as of the 30<sup>th</sup> day of May, 2017, by and between the COUNTY OF SULLIVAN INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having its principal offices at One Cablevision Center, Ferndale, New York 12734 ("Agency") and THE CENTER FOR DISCOVERY, INC., a New York not-for-profit corporation, having a mailing address of P.O. Box 840, Harris, New York 12742 ("Company").

### RECITALS

*WHEREAS*, Title 1 of Article 18-A of the General Municipal Law of the State of New York ("Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York ("State"); and

*WHEREAS*, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve its standard of living; and

*WHEREAS*, the Enabling Act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable; and

*WHEREAS*, pursuant to and in connection with the provisions of the Enabling Act, Chapter 560 of the Laws of 1970 of the State (collectively referred to as the "Act") created the Agency which is empowered under the Act to undertake the leasing of the facility described below; and

*WHEREAS*, the Company has presented an application to the Agency, a copy of which is on file at the office of the Agency, requesting that the Agency consider (i) acquiring a leasehold interest in the Company's Performing Arts Center ("Facility") situate on one (1) parcel of real estate consisting of approximately 1.8 acres located at 219 Main Street, Town of Fallsburg ("Town"), in the Hamlet of Hurleyville, County of Sullivan ("County"), New York State and identified on the Town tax map as Section 34, Block 4, Lot 15 ("Project"); and (ii) leaseback of the Project from the Agency to the Company; and

*WHEREAS*, the Agency is willing to take a leasehold interest in the Facility pursuant to that certain Lease to Agency of even date herewith ("Lease Agreement") and lease the Facility back to the Company pursuant to the terms and conditions of that certain Leaseback to Company of even date herewith ("Leaseback Agreement"); and

WHEREAS, the Agency and the Company deem it necessary and proper to execute and deliver to the Agency this PILOT Agreement, to memorialize the Company's commitment to make payments in lieu of taxes despite its tax exempt status as a not-for-profit entity, which payments shall benefit the County and certain municipalities and taxing jurisdictions located therein (collectively referred to as the "Taxing Jurisdictions"); and

WHEREAS, all agreements of the Agency and the Company relating to payments in lieu of taxes shall be governed by this PILOT Agreement.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual terms, conditions, limitations and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed as follows:

1. Agreement to Make Payments in Lieu of Taxes. For so long as the Agency holds a leasehold interest in the Facility, the Company shall pay annually to the Agency at One Cablevision Center, Ferndale, New York 12734, or at such other address as shall be designated from time to time by the Agency, annual payments in lieu of taxes ("PILOT Payments") computed in accordance with Section 2 of this PILOT Agreement.

2. Computation of PILOT Payments.

(a) 2016/2017 School and 2017 County/Town. The Company is exempt from paying real property taxes on the following parcel located in the Town and the Town Assessor has previously granted an exemption to the Company for the Facility:

Section - Block - Lot
34 - 4 - 15

Due to the current tax exemption, ad valorem taxes were not generated for the 2016/2017 school tax roll or the 2017 County/Town tax roll. Notwithstanding the tax exempt status of the Facility, the Company shall pay to the Agency the sum of FOURTEEN THOUSAND FIVE HUNDRED EIGHTY-THREE AND 00/100 (\$14,583.00) DOLLARS covering the school tax period 9/1/2016 through 8/31/2017 and the County and Town 2017 calendar year tax period.

(b) Subsequent Tax Years. The Company shall pay to the Agency on February 1, 2018 and each February 1<sup>st</sup> thereafter until February 28, 2027, unless earlier terminated in accordance with Sections 2.5(b), 7.2, 8.1 and 8.2 of the Leaseback Agreement the sum of TWENTY-FIVE THOUSAND AND 00/100 (\$25,000.00) DOLLARS.

3. Other Agreements Relating to PILOT Payments. The Agency shall remit to the Taxing Jurisdictions amounts received hereunder within thirty (30) days of receipt. The Agency shall allocate the PILOT Payments among the Taxing Jurisdictions in the same



proportion as ad valorem real estate taxes would have been billed, but for the Agency's involvement.

4. Additional Payments. In addition to the PILOT Payments to be made by the Company to the Agency pursuant to this PILOT Agreement, the Company shall pay to the Agency all special assessments, special ad valorem levies, and any other similar charges for which the Agency shall be liable but only to the extent and for which it or the Company is not wholly exempt from taxation or the charge. Such payments shall be made within ten (10) days after the date upon which a bill shall be rendered by the Agency to the Company. Such charges shall be paid without adjustment, exemption or other deduction provided; in each case, however, subject to the Company's right to exemption or credits, if any, which would be afforded a private owner of the Facility, or the Company as a not-for-profit owner of the Facility, as if the Agency had no interest in the Facility. The Company shall pay such charges within the time in which such statement or bill may be paid without interest or penalty.
5. Representations and Warranties.
  - (a) The Company is duly authorized under all applicable provisions of law to enter into and perform this PILOT Agreement. The Company's entry into and performance of this PILOT Agreement will not violate any applicable provisions of law in any material respect and will not result in a breach of or a default under any agreement or instrument to which the Company is a party and will not result in the creation of any lien, charge or encumbrance upon any of the assets of the Company under any such agreement or instrument.
  - (b) The Company is not a party to any agreement or subject to any restriction that materially and adversely affects its business assets or financial condition.
  - (c) When executed, this PILOT Agreement will be a valid and binding obligation of the Company.
6. The Company's Right to Challenge. 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 (notwithstanding this PILOT Agreement), as if and to the same extent as if the Agency had no interest in the Facility.

The Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Agency had no interest in the Facility, with respect to the assessed value of the Facility by any of the Taxing Jurisdictions and 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 to oppose or assert exemption from the same under law or in equity.

7. Transfer of Facility to the Company. In the event that the Lease Agreement and the Leaseback Agreement are terminated and the Company is ineligible for a continued tax exemption under law or under some other tax incentive program (including, the tax exempt status of the Facility), or any available exemptions result in a payment to the Taxing Jurisdictions in excess of the payment computed pursuant to this PILOT Agreement, the Company shall thereafter pay, no later than the next tax lien date (plus any applicable grace period), to each of the Taxing Jurisdictions, such amount due thereon if any, as is required by law taking into consideration and subject to its status as a not-for-profit entity and subject to the Company's right to seek and obtain tax exemption as a not-for-profit entity for or relating to the Facility, which would have been levied on the Facility if the Facility had been classified as fully taxable as of and after the date of transfer or loss of eligibility of all or a portion of the exemptions provided for herein less any such amounts actually billed to the Company as prorated or omitted taxes on such lien date.
8. Involuntary Termination of Agreement. To the extent the Facility is declared to be subject to taxation or assessment, the Company's obligations hereunder shall, to such extent, be amended taking into consideration and subject to its status as a not-for-profit entity and subject to the Company's right to seek and obtain tax exemption as a not-for-profit entity for or relating to the Facility.
9. Event of Default. During the term of this PILOT Agreement which term shall be coterminous with the Leaseback Agreement, the following shall be an event of default:
  - (a) The failure to make PILOT Payments within the time allowed for payment, time being of the essence;
  - (b) The failure of the Company to pay the amounts required to be paid pursuant to Sections 2.6, 3.3 or 3.7 of the Leaseback Agreement and such failure shall have continued for a period of ten (10) days after the Agency gives written notice of such failure to the Company;
  - (c) The adjudication of the Company as a bankrupt and the failure to vacate, set aside or terminate such adjudications within ninety (90) days thereafter;
  - (d) The appointment by any court of a receiver or trustee to take possession of all, or substantially all, of the assets of the Company which said appointment shall not have been discharged within a period of ninety (90) days after the filing of same;
  - (e) The making by the Company of a general assignment for the benefit of creditors;
  - (f) The abandonment of the Facility by the Company for a period of thirty (30) consecutive days or more, unless such abandonment is caused by fire or other catastrophe, war, terror, act of God or governmental order or decree without fault of the Company contributing thereto; provided, however, that in the event of fire



or other catastrophe, the Company elects within ninety (90) days from the happening of such event to reconstruct the Facility;

- (g) The attachment, execution or other seizure of all or substantially all of the assets of the Company, which such attachment, execution or other seizure is not discharged within a period of sixty (60) days after the date of levy; or
- (h) The failure, refusal or neglect of the Company to perform, keep or observe any of the terms, covenants and agreements herein contained on the part of the Company to be performed, kept or observed.

10. Intentionally Omitted.

11. Remedies On Other Defaults; Termination. Upon the happening of an event of default as defined in Section 9 hereof, if after thirty (30) days written notice to the Company specifying the event of default, the default shall not have been remedied within such thirty (30) day period, (or if, with reasonable diligence the default cannot be remedied within such thirty (30) day period, then within such extended period as may be reasonably required therefor) the Agency, at its option, may take any action hereinafter set forth and all such remedies shall be cumulative and not exclusive:

- (i) Recover damages for the breach of any covenant or condition hereof;
- (ii) Seek an injunction to bar any actual or threatened violation or breach of this PILOT Agreement;
- (iii) Seek any other remedy authorized by law or in equity; or
- (iv) Terminate this PILOT Agreement, without prejudice or limitation as to all other rights or remedies herein and/or under law or in equity. Such termination may be accomplished by terminating the Lease Agreement, the Leaseback Agreement and this PILOT Agreement. The Company hereby appoints the Agency's Chairman, Vice-Chairman, Executive Director and Chief Executive Officer, each acting individually as its attorneys-in-fact for the limited purpose of signing any forms necessary to accomplish the termination and conveyance.

12. Legal Fees on Default. If the Agency shall be required to take any action to enforce this PILOT Agreement or to collect any amount due hereunder, the Company shall be liable to pay, in addition to any other costs and expenses incurred by the Agency, its reasonable legal fees and the reasonable fees of any experts, accountants, or other professionals retained by it, without regard to whether the Agency shall have instituted any lawsuit or action at law or in equity in any court or before anybody, provided such expenses were actually and necessarily incurred.

13. Late charges. If any PILOT Payment is not made by the Payment Due Date, or if any other payment required to be made hereunder is not made when due by the last day of any applicable cure period, the Company shall pay penalties and interest as provided herein. With respect to PILOT Payments, if said payment is not received by the Payment Due Date, the Company shall pay, in addition to the PILOT Payment, a late charge equal to one percent (1%) per month or fraction thereof until the PILOT Payment and penalty is paid in full. With respect to all other payments due hereunder, if said payment is not received when due or by the last day of any applicable cure period, the Company shall pay, in addition to said payment, the greater of (a) a late charge equal to one (1%) percent per month or fraction thereof until said payment and penalty is paid in full; or (b) penalties and interest which would have been incurred had payments made hereunder been made to the Taxing Jurisdictions.
14. Indemnification. The Company shall indemnify, defend and hold the Agency (and its chief executive officer, executive director, directors, officers, members, agents (except the Company), employees, servants and their successors, representative and assigns) harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever in relation to the Project, including reasonable expenses incurred by the Agency (and its chief executive officer, executive director, directors, officers, members, agents (except the Company), employees, servants and their successors, representative and assigns) in defending any claim, suit or action which may result as a result of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or its respective chief executive officer, executive director, directors, officers, employees, members, agents (except the Company), and their representatives, successors and assigns and personal representatives and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified.
15. No Recourse, Special Obligation. Notwithstanding anything to the contrary contained herein, the obligations and agreements of the Agency contained herein and in any other agreement executed by the Agency and in any other instrument or document supplemental thereto executed in connection therewith shall be deemed the obligation and agreements of the Agency, and not of any director, officer, member, agent (except the Company), employee or representative of the Agency in his or her individual capacity, and the chief executive officer, executive director, directors, officers, members, agents (except the Company), employees and representatives of the Agency shall not be liable personally thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State, the County, or any of the Taxing Jurisdictions, and neither the State, County, or any other Taxing Jurisdictions shall be liable thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute a limited obligation



of the Agency payable solely from revenues derived from the sale of the Agency's interest in the Facility.

16. General Provisions.

- (a) Notices. All notices provided for by this PILOT Agreement shall be made in writing, and shall be deemed to have been given on the date of delivery if personally served on the party to whom notice is to be given, or on the next day after mailing if mailed to the party to whom notice is to be given by overnight courier of national reputation providing evidence of receipt and properly addressed, or on the third day after mailing if mailed to the party to whom notice shall be given by First Class, Certified mail, postage prepaid and properly addressed to the following:

If to the Agency:

County of Sullivan Industrial Development Agency  
One Cablevision Center  
Ferndale, New York 12734  
Attn: Chief Executive Officer

with a copy to:

GARIGLIANO LAW OFFICES, LLP  
449 Broadway  
P.O. Drawer 1069  
Monticello, New York 12701-1069  
Attn: Agency Counsel

To the Company:

The Center for Discovery, Inc.  
P.O. Box 840  
Harris, New York 12742

Attn: Claude D'Alessandro, Chief Financial Officer

with a copy to:

Henri Shawn, Esq.  
30 North Street  
Monticello, New York 12701

or at such other addresses or addressees as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section.

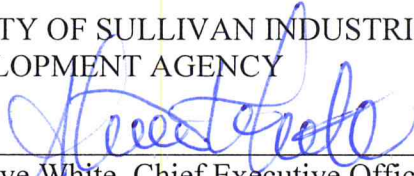
- (b) Assignment. This PILOT Agreement may be assigned by the Company as contemplated by 6.3(b) of the Leaseback.
- (c) Binding Effect. This PILOT Agreement shall inure to the benefit of and shall be binding upon the Agency, the Company and its respective permitted successors and assigns.

- (d) Waiver. No waiver of any of the provisions of this PILOT Agreement shall be deemed to or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.
- (e) Severability. If any provision of this PILOT Agreement shall be determined to be illegal and unenforceable by any court of law or any competent governmental or other authority, the remaining provisions shall be severable and enforceable in accordance with its terms so long as this PILOT Agreement without such terms or provisions does not fail of its essential purpose or purposes. The parties will negotiate in good faith to replace any such illegal or unenforceable provision or provisions with suitable substitute provisions which will maintain the economic purposes and intentions of this PILOT Agreement.
- (f) Governing Law, Venue. This PILOT Agreement shall be governed by and construed in accordance with the laws of the State. The parties hereby designate a court of proper jurisdiction located in Sullivan County, New York as the exclusive venue for resolution of any disputes which may arise under or by reason of this PILOT Agreement.
- (g) Survival of Obligations. The obligations of the Company to make PILOT Payments required by Section 2 hereof calculated to the earlier of the date of expiration or termination and all of the Company's indemnification obligations shall survive any termination or expiration of this PILOT Agreement.
- (h) Section Headings Not Controlling. The headings of the several sections in this PILOT Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this PILOT Agreement.
- (i) Entire Agreement. This PILOT Agreement sets forth the entire agreement and understanding between the parties relating to the subject matter hereof and supersedes all prior discussions and negotiations between them. This PILOT Agreement may not be amended in any respect except by a written amendment expressly referring to this PILOT Agreement and executed by the parties to be bound thereby.



*IN WITNESS WHEREOF*, the parties hereto have executed this PILOT Agreement effective as of the date hereof.

COUNTY OF SULLIVAN INDUSTRIAL  
DEVELOPMENT AGENCY



By: Steve White, Chief Executive Officer

THE CENTER FOR DISCOVERY, INC.



By: Claude D' Alessandro, Chief Financial Officer