

PAYMENT IN LIEU OF TAX AGREEMENT

THIS IS A PAYMENT IN LIEU OF TAXATION AGREEMENT (“PILOT Agreement”), dated as of this 1st day of July, 2016 by and between COUNTY OF SULLIVAN INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation organized and existing under the laws of the State of New York, with its principal office located at One Cablevision Center, Ferndale, New York 12734 (“Agency”) and METALLIZED CARBON CORPORATION, a New York corporation, having its principal offices at 19 South Water Street, Ossining, New York 10562 (“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 their 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 providing, financing and leasing of the facility described below; and

WHEREAS, on January 7, 2016, the Company presented an application (“Application”) to the Agency, a copy of which is on file with the Agency, requesting the Agency’s assistance with respect to a certain project consisting of the: (i) acquisition, construction, installation and equipping of an approximately 15,000± square foot building intended to be used to manufacture carbon-graphite materials (“Building”) situate on one (1) parcel of real estate consisting of approximately 61.2± acres located on Glen Wild Road, Town of Fallsburg (“Town”), Woodridge, County of Sullivan (“County”), State and identified on the Town of Fallsburg tax map as Section 65, Block 1, Lot 9 being more particularly described as Proposed Lot # 2 consisting of approximately 7.49 +/- acres located in the Glen Wild Industrial Subdivision, Town of Fallsburg, Woodbridge, County of Sullivan, State of New York. Said Subdivision was filed in the office of

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the Clerk of Sullivan County on June 15, 2016 in Cabinet 14 at Line 391 (“Land”); (ii) acquisition, construction and equipping of the Building; (iii) acquisition, construction and installation thereon and therein of certain furniture, fixtures, machinery, equipment and tools (“Equipment”); (iv) construction of improvements to the Building, the Land and the Equipment (collectively, the Building, the Land and the Equipment are referred to as the “Facility” or the “Project”); and (v) lease of the Project from the Agency to the Company; and

WHEREAS, in order to induce the Company to develop the Project, the Agency is willing to take a leasehold interest in the Project pursuant to that certain Lease to Agency of even date herewith (“Lease Agreement”) and sublease the Project back to the Company pursuant to the terms and conditions of that certain Leaseback Agreement 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 a PILOT Agreement making provision for payments in lieu of taxes by the Company for the benefit of the County, and certain municipalities and taxing authorities 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; and

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. As long as the Project is owned by the Agency, the Company agrees to 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”) on or before the dates indicated below computed in accordance with this PILOT Agreement.
2. Computation of PILOT Payments. PILOT Payments shall be made in the amounts and in the manner contemplated by this Agreement on account of the premises located in the Town as more particularly described on Schedule A.
 - (a) Total Value Subject to PILOT. The total value subject to PILOT (“Total Value Subject to PILOT”) shall be the following amounts for the following years:

Year	Payment Due Date	Total Value Subject to PILOT
1	February 15, 2018	\$212,500

2	February 15, 2019	\$212,500
3	February 15, 2020	\$212,500
4	February 15, 2021	\$212,500
5	February 15, 2022	\$212,500

Year	Date	PILOT Base	New Construction	Exemption Percentage	Exemption Amount	Taxable New Construction	Total Value Subject To PILOT
6	February 15, 2023	\$212,500	\$955,320	90%	\$859,788	\$95,532	\$308,032
7	February 15, 2024	\$212,500	\$955,320	80%	\$764,256	\$191,064	\$403,564
8	February 15, 2025	\$212,500	\$955,320	70%	\$668,724	\$286,596	\$499,096
9	February 15, 2026	\$212,500	\$955,320	60%	\$573,192	\$382,128	\$594,628
10	February 15, 2027	\$212,500	\$955,320	50%	\$477,660	\$477,660	\$690,160
11	February 15, 2028	\$212,500	\$955,320	40%	\$382,128	\$573,192	\$785,692
12	February 15, 2029	\$212,500	\$955,320	30%	\$286,596	\$668,724	\$881,224
13	February 15, 2030	\$212,500	\$955,320	20%	\$191,064	\$764,256	\$976,756
14	February 15, 2031	\$212,500	\$955,320	10%	\$95,532	\$859,788	\$1,072,288
15	February 15, 2032	\$212,500	\$955,320	0.00%	\$0.00	\$955,320	\$1,167,820

- (b) Calculation of Annual Payment in Lieu of Tax. The calculation of the annual PILOT Payments shall be made as follows:
- (i) The Total Value Subject to PILOT shall be multiplied by the equalization rate as defined in 2(c) hereof; and
 - (ii) The annual PILOT Payment shall be determined by multiplying the amount derived in 2b(i) hereof by the tax rates identified in 2(d) hereof.
- (c) Equalization Rate. The equalization rate to be used in making the computation contemplated by 2b(i) hereof shall mean the equalization rate for the Town used by the County to allocate and levy County taxes in connection with the January 1st tax roll immediately preceding the due date of the PILOT Payments. In the event that the equalization rate shall exceed one hundred (100%) percent, the equalization rate used in making the computation contemplated by 2b(i) shall be one hundred (100%) percent.
- (d) Tax Rates. For the purposes of determining the amount of the PILOT Payments as contemplated by 2b(ii) hereof, the tax rates for each Taxing Jurisdiction shall mean the last tax rate used for levy of taxes by each such jurisdiction. For County and Town purposes, the tax rates used to determine the PILOT Payment shall be the tax rates relating to the calendar year which includes the PILOT Payment due date. For school district purposes, the tax rates used to determine the PILOT Payment shall be the rate relating to the school tax year which began in the calendar year immediately preceding the year in which the PILOT Payment is due. The chart which follows sets forth the years of the overall fourteen (14) year period

governed by this PILOT Agreement; the date that a PILOT Payment is due; and the appropriate tax periods utilized in determining the tax rates for computing the PILOT Payment:

Year	Payment Date	School Fiscal Year Beginning	County & Town
1	February 15, 2018	July 1, 2017	January 1, 2018
2	February 15, 2019	July 1, 2018	January 1, 2019
3	February 15, 2020	July 1, 2019	January 1, 2020
4	February 15, 2021	July 1, 2020	January 1, 2021
5	February 15, 2022	July 1, 2021	January 1, 2022
6	February 15, 2023	July 1, 2022	January 1, 2023
7	February 15, 2024	July 1, 2023	January 1, 2024
8	February 15, 2025	July 1, 2024	January 1, 2025
9	February 15, 2026	July 1, 2025	January 1, 2026
10	February 15, 2027	July 1, 2026	January 1, 2027
11	February 15, 2028	July 1, 2027	January 1, 2028
12	February 15, 2029	July 1, 2028	January 1, 2029
13	February 15, 2030	July 1, 2029	January 1, 2030
14	February 15, 2031	July 1, 2030	January 1, 2031
15	February 15, 2032	July 1, 2031	January 1, 2032

3. Other Agreements Relating to PILOT Payments. The Agency shall remit to the Taxing Jurisdictions amounts received hereunder within thirty (30) days of receipt and shall allocate the PILOT Payments among the Taxing Jurisdictions in the same proportion as normal taxes would have been allocated but for the Agency's involvement.

The PILOT Payments provided for herein shall commence as of February 15, 2018 which follows the first (1st) year of an approximately fourteen (14) year period in which the Company is to receive tax benefits relative to the Project. Except as otherwise agreed to by written and approved consent, in no event shall the Company be entitled to receive tax benefits relative to the Project for more than the period provided in this PILOT Agreement. The Company agrees that it will not seek any tax exemption for the Project which could

provide benefits for more than the periods provided for in this PILOT Agreement and specifically agrees that the exemptions provided for in this PILOT Agreement, to the extent actually received (based upon the number of years elapsed), supersede and are in substitution of the exemptions provided by section 485(b) of the Real Property Tax Law ("RPTL"). It is hereby agreed and understood that the Taxing Jurisdictions can rely upon and enforce this waiver to the same extent as if they were signatories hereto.

4. Determination of Total Value Subject to PILOT. The Agency and the Company have agreed upon the Total Value Subject to PILOT of the Facility. Such valuation was made without regard to the cost of construction of improvements to be made at the Project.

5. Employment Obligations.

(a) Employment Goals.

(i) Employment Goal Definitions: For the purposes of this PILOT Agreement, the following terms shall have the meaning set forth in each definition:

(1) "Employee" shall mean a person first employed by the Company at the Project on or after June 1, 2016.

(2) "Full-Time Equivalent Employee" or "FTE" shall mean an employee who works forty (40) hours in any seven (7) day period at the Project.

(3) "Base Compensation" shall be determined in accordance with the provisions of the Fair Labor Standards Act.

(4) "At the Facility" shall mean that an FTE is employed primarily at the Facility.

(ii) FTE Employment Goals: Provided that the Project is completed and operational by October 1, 2016, the Company agrees that an FTE-employment goal of seven (7) jobs shall be maintained for the period October 1, 2016 to September 30, 2017 and thereafter for such annual period throughout the term of this PILOT Agreement.

The Company shall file with the Agency no later than November 1, 2017 and on November 1 of each year thereafter a statement certified under oath setting forth the actual FTE's employed by the Company at the Project for the preceding calendar year. Such statement shall contain such additional information as the Agency may reasonably request. The Company shall make available to the Agency such information as it may request to verify the information provided to the Agency including but not limited to State and Federal employment tax forms and payroll records of the Company. "Actual average FTE - employment" shall be determined by adding the actual FTEs employed in each month of the applicable calendar year and dividing such sum by twelve (12).

(iii) Computation of PILOT Payment if FTE Goals Not Attained: In the event the FTE goal is not attained with respect to the calendar year preceding any payment due date, the amount due ("Adjusted PILOT Payment") shall be the amount calculated in paragraphs 2 and 3 above, plus an amount equal to the tax calculated as if an exemption under RPTL 485(b) were in effect, less the amount calculated in paragraphs 2 and 3, times the percentage:

(1) the numerator of which is equal to seven (7) minus the actual average FTE employment for the prior calendar year, and

(2) the denominator of which is seven (7).

By way of example, if in calendar year 2020 (i) the actual average FTE employment is five (5) jobs; (ii) the Town equalization rate used by the County to allocate 2020 taxes is 65%; (iii) the Town combined school, county and town rate relating to the 9/1/2019 and 1/1/2020 tax bills is \$60.00 per \$1,000 of assessed value (iv) the assessed value of the Facility in the Town is \$200,000 land and \$1,500,000 full value; (v) \$1,300,000 of improvement value would have been eligible for the 485(b) exemption at a rate of 40% then the Adjusted PILOT Payment due the Taxing Jurisdictions would be computed as follows:

PILOT Payment

PILOT Payment = Total Value Subject to PILOT x Equalization Rate x tax rates

$$\$8,287.50 = \$212,500 \times 65\% \times \$60.00$$

Tax under 485(b)

Tax under §485(b) = Assessed Value - 485(b) exemption x tax rates

$$\$58,800 = \$1,500,000 - \$520,000 \times \$60.00$$

Adjusted PILOT Payment

Adjusted PILOT Payment = PILOT Payment + [(tax under 485(b) - PILOT Payment amount) x underemployment percentage]

$$\$22,719.64 = \$8,287.50 + [(\$58,800 - \$8,287.50) \times 2/7]$$

In no event shall the Adjusted PILOT Payment exceed the amount payable if the Facility were subject to taxation and a 485(b) exemption had been granted to eligible portions of the Facility.

- (b) Job Posting and Hiring Requirements. The Company agrees that it shall comply with the provisions of General Municipal Law §858(b) which requires that unless otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of projects of the Agency shall be listed with the administrative entities of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) serving Sullivan County and the New York State Department of Labor Community Services Division. The Company agrees that except as otherwise provided by collective bargaining contracts or agreements, the Company will first consider for new employment opportunities persons eligible to participate in the Federal Job Training Partnership (P.L. No. 97-300) program who shall be referred by administrative entities of the service delivery area servicing Sullivan County or by the New York State Department of Labor Community Services Division.

The Company acknowledges that it is not now bound by the provisions of collective bargaining contracts or agreements which limit or restrict the Company from listing such employment opportunities or from giving first consideration to persons eligible to participate in job training partnership act programs. The Company agrees not to enter into any collective bargaining contracts or agreements which create such restriction or limitation unless the union or employee organization with which the Company shall negotiate a collective bargaining contract or agreement has a bona fide program for apprenticeship in such union or has a comparable program for providing employment opportunities to persons eligible to participate in such Job Training Partnership Act Programs under apprenticeship programs conducted by such union or employee organization. The Company agrees that any agreement which creates or imposes or changes any such restriction or limitation shall be first submitted to the Agency for review prior to ratification of such PILOT

Agreement. The Company shall provide the Agency with copies of collective bargaining contracts or agreements hereinafter executed. The Company shall submit to the Agency a statement of the manner in which the Company has complied with the provisions of this section of this PILOT Agreement. Such statement (together with documentation of each such referral and plan of hiring) shall be made under oath and shall be submitted no later than December 1st (or such other date as the parties shall agree) of each year of this PILOT Agreement. After an audit by the Agency and a determination that there has been a failure for a period of two (2) years to list such job opportunities as herein provided or to hire and retain persons eligible for Job Training Partnership Act Programs without a reason for the failure to do so shall give rise to a presumption of intentional noncompliance with the provision of this section.

- (c) Equal Opportunity Requirements. During the term of this PILOT Agreement, the Company shall be in compliance with the Sullivan County "Equal Opportunity Policy Statement", providing equal employment opportunity without regard to age, race, religion, creed, color, and other non-merit factors in compliance with State and Federal laws.
- (d) Defaults and Remedies Relating to Employment Obligations. The following remedies shall apply to Employment Obligation defaults:
 - (i) Employment Goal Filing: If the Company shall fail to file a certification of FTE's employed prior to the time such statement is required to be filed with the Agency, the Agency may make the calculation of the PILOT Payment based on no FTEs for the affected year and the amount so calculated shall be paid. If the Company thereafter files such a statement and the filing results in a determination that the Company has made an overpayment, the Agency shall refund to the Company an amount equal to ninety (90%) of the overpayment, less the actual costs incurred by the Agency to enforce this provision of this PILOT Agreement. In the Agency's sole discretion, such refund may be applied as a credit against the next succeeding PILOT Payment(s).
 - (ii) Employment Eligibility Requirements: If the Company fails to provide information reasonably requested by the Agency necessary to determine the eligibility of one or more persons to be considered as an Employee, the Agency may, upon fifteen (15) days' notice to the Company, compute the PILOT Payment as if the person(s) were not eligible employees. No calculation so made shall be subject to recomputation.
 - (iii) Compliance with Other Hiring Requirements: If the Company shall fail to comply with the Job Posting and Hiring Act requirements set forth in 5(b) or the Equal Opportunity requirements set forth in 5(c), the Agency, upon fifteen (15) days' notice to the Company, may disallow in the calculation of the PILOT Payment any employee(s) hired in violation of the foregoing

requirements.

- (iv) Intentional Non-Compliance: In the event of a finding by the Agency of intentional non-compliance with the Job Posting and Hiring requirements set forth on 5(b), or the Equal Opportunity requirements set forth in 5(c), the Agency may compute the PILOT Payment by adjusting the exemption amount to the level of exemption the Project would have received if eligible for exemption under RPTL §485(b).
- (v) Continuous Underemployment: If the Company shall fail for a period of two (2) consecutive years to employ at least five (5) FTEs for each year, the Agency may compute the PILOT Payment by adjusting the exemption amount to the level of exemption the Project would have received if eligible for exemption under RPTL 485(b). Such an adjustment shall relate to the exemption level only, and not the Total Value Subject to PILOT.
- (vi) Payment Required: Timely payment of all amounts due shall be made by the Company notwithstanding any dispute related to the calculation of the PILOT Payment.
- (vii) Condition Precedent to Suit: It shall be a condition precedent to the institution of any action or proceeding by the Company against the Agency with respect to the calculation of any amount claimed to be due the Agency that all amounts claimed to be due shall have been paid to the Agency by the Company prior to the institution of such action or proceeding.

6. 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 charges for which the Agency shall be liable and for which it is not wholly exempt from taxation. 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, to the Company's right to obtain exemption and credits, if any, which would be afforded a private owner of the Facility, including any available exemptions under RPTL 485(b) with respect to the Facility. The Company hereby authorizes the Agency to request that any Taxing Jurisdiction bill the Company directly for all special assessments, special ad valorem levies and any other charges for which the Agency shall be liable and for which it is not wholly exempt from taxation. In the event the Company is directly billed for such charges, the Company shall pay such charges within the time in which such statement or bill may be paid without interest or penalty.

7. Representations and Warranties.

- (a) The Company is a corporation duly organized, existing and in good standing under the laws of the State of New York.

- (b) 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 and will not result in a breach of or a default under any agreement of 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.
 - (c) The Company is not a party to any agreement or subject to any restriction (including without limitation any agreement among or between its shareholders) that materially and adversely affects its business assets or financial condition.
 - (d) When executed, this PILOT Agreement will be a valid and binding obligation of the Company.
8. The Company's Right to Challenge. Except as otherwise provided in this PILOT Agreement, 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.

Except as otherwise provided in this PILOT Agreement, the Company shall 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 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.

9. Transfer of Project to the Company. In the event that the Project is transferred from the Agency to the Company, and the Company is ineligible for a continued tax exemption under some other tax incentive program, 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 pay, no later than the next tax lien date (plus any applicable grace period), to each of the Taxing Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Project if the Project had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemptions provided for herein.
10. Involuntary Termination of PILOT Agreement. To the extent the Project 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 Company's obligations hereunder shall, to such extent, be amended.

11. Event of Default. During the term of this PILOT 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 adjudication of the Company as a bankrupt and the failure to vacate, set aside or terminate such adjudication within ninety (90) days thereafter;
- (c) 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;
- (d) The making by the Company of an assignment for the benefit of creditors;
- (e) The abandonment of the Project by the Company for a period of thirty (30) days or more, unless such abandonment is caused by fire or other catastrophe, war, 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 Project;
- (f) 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; and
- (g) 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.

12. Remedies on Default in Payment or Failure to Post Security; Termination. Upon the happening of any event of default as defined in 11(a) or (b) hereof, the Agency may immediately terminate this PILOT Agreement without notice to the Company and 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 Agency's leasehold interest in the Facility under the Leaseback Agreement, as determined by the Agency and the recording of Memorandums of Termination of Leaseback Agreement and Lease Agreement ("Termination Memorandums") in the County Clerk's Office shall be deemed to be delivery thereof. The Company hereby appoints the Chairman, Executive Director and Chief Executive Officer, each acting individually, as its attorneys-in-fact for the limited purpose of signing any forms that must necessarily accompany the Termination Memorandums in order for the Termination Memorandums to be recorded. The Company acknowledges that the foregoing appointment is coupled with an interest and is irrevocable. Notwithsatnding anything in this paragraph to the contrary, the Company shall be entitled to written notice from the Agency of its intention to Terminate under the terms and conditions of 11 (a) and the Company shall have seven days to cure such default.

13. Remedies on Other Defaults; Termination.

- (a) Remedies. Upon the happening of any event of default as defined in 11(c - h) hereof, after thirty (30) days written notice to the Company specifying the event of default, if the default shall not be 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.
- (b) Termination. Following the thirty (30) day notice period contemplated by 13(a) hereof, and upon thirty (30) days additional written notice of intention to terminate this PILOT Agreement, and upon the expiration of such additional thirty (30) day period, unless the default specified in the original thirty (30) day period has been remedied during such additional thirty (30) day period, (or if, with reasonable diligence the default cannot be remedied within such additional thirty (30) day period, then within such extended period as may be reasonably required therefor) the Agency may 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 Agency's leasehold interest in the Facility under the Leaseback Agreement, as determined by the Agency and the recording of Termination Memorandums in the County Clerk's Office shall be deemed to be delivery thereof. The Company hereby appoints the Chairman, Executive Director and Chief Executive Officer, each acting individually, as its attorneys-in-fact for the limited purpose of signing any forms that must necessarily accompany the Termination Memorandums in order for the Termination Memorandums to be recorded. The Company acknowledges that the foregoing appointment is coupled with an interest and is irrevocable

14. 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 law suit or action at law or in equity in any court or before anybody, provided such expenses were actually and necessarily incurred.

15. 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 four percent (4%) of the amount due plus interest on said payment equal to one percent (1%) per month or fraction thereof until the PILOT Payment, penalty and interest is paid in full. With respect to all other payments due hereunder, if said payment is not paid 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 four (4%) percent of the amount due plus interest on said payment equal to one (1%) percent per month or fraction thereof until said payment, penalty and interest is paid in full; or (b) penalties and interest which would have been incurred had payments made hereunder been made to the Taxing Jurisdictions.
16. Termination of Use, Modification. If the substantial use of the Project shall be discontinued by the Company, the Total Value Subject to PILOT may be modified. It is understood that the benefits of this PILOT Agreement have been extended to the Company on the grounds set forth in various related agreements between the parties; that the Company will be an economic asset to the County economy; that the Company's presence in the County is considered beneficial to the well-being of the County as of the date of this PILOT Agreement and for the foreseeable future; and that the discontinuance of the substantial use of the Project by the Company would alter the purpose for which this PILOT Agreement was made. In such event, the Agency may give notice to the Company that modification is required. If the parties cannot agree on the basis of modification the Agency may increase the Total Value Subject to PILOT to an amount not exceeding the assessed value of the premises as determined by the Town Assessor(s)
17. Indemnification. The Company shall indemnify, defend and hold the Agency (and its executive director, directors, officers, members, agents, employees and servants) 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 expenses incurred by the Agency (and its executive director, directors, officers, members, agents, employees and servants) in defending any claim, suit or action which may result as a result of the foregoing.
18. 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 executive director, director, officer, member, agent, or employee of the Agency in his or her individual capacity, and the members, officers, agents, and employees 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 of New York, the County of Sullivan, 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 Facility.

19. General Provisions.

- (a) Notices. All notices required or permitted to be given hereunder shall be in writing and may be delivered by hand, by nationally recognized private courier, or by United States mail. Notices delivered by mail shall be deemed given three business days after being deposited in the United States mail, registered or certified mail. Notices delivered by hand or by nationally recognized private courier shall be deemed given on the first business day following receipt. All notices shall be addressed as follows:

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:

Metallized Carbon Corporation
19 South Water Street
Ossining, New York 10562
Attn: President

With a copy to:

Wilson Elser Moskowitz Edelman & Dicker LLP
677 Broadway
Albany, New York 12207
Attn: Alexander Betke, Esq.

or to 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. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

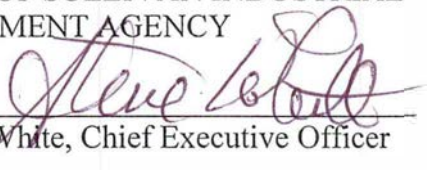
- (b) Assignment. This PILOT Agreement may not be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits hereunder without the prior written consent of the Agency,

which consent may be withheld by the Agency in its sole and absolute discretion.

- (c) Binding Effect. This PILOT Agreement shall inure to the benefit of and shall be binding upon the Agency, the Company and their 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 their 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) Entire Agreement. This PILOT Agreement sets forth the entire PILOT 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.
- (g) Governing Law, Venue. This PILOT Agreement shall be governed by and construed in accordance with the laws of the State of New York. The parties hereby designate Supreme Court, Sullivan County as the exclusive venue for resolution of any disputes which may arise under or by reason of this PILOT Agreement.
- (h) Survival of Obligations. The obligations of the Company to make PILOT Payments and all of the Companys indemnification obligations shall survive any termination or expiration of this PILOT Agreement.
- (i) 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.

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

METALLIZED CARBON CORPORATION


By: Matthew Brennan, President and Chief Executive
Officer