

THIRD AMENDED AND RESTATED  
PAYMENT IN LIEU OF TAX AGREEMENT

*THIS THIRD AMENDED AND RESTATED PAYMENT IN LIEU OF TAX AGREEMENT* (this "PILOT Agreement"), made as of the 26<sup>th</sup> day of August, 2020, 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 548 Broadway, Monticello, New York 12701 ("Agency") and MHC 83 (HW PORTFOLIO) LLC, a Delaware limited liability company, having a mailing address of c/o Merit Hill Capital, LP, 41 Flatbush Avenue, Suite 3C, Brooklyn, New York 11217 ("MHC 83") amends and restates that certain Payment in Lieu of Tax Agreement, dated June 1, 2003 by and between the Agency and Liberty Storage, L.L.C. ("Liberty Storage"), which was further amended and restated by that certain Amended and Restated Payment in Lieu of Tax Agreement, dated September 1, 2004 by and between the Agency and Liberty Storage, and further amended and restated by that certain Second Amended and Restated Payment in Lieu of Tax Agreement, made as of November 3, 2014 by and between the Agency and Canopy Liberty LLC.

**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 or about June 16, 2003, Liberty Storage and the Agency closed on a straight lease transaction relating to the multi-phase development of self-storage units (the "Project" or "Facility") on premises located at 1695 Route 52 in the Town of Liberty, County of Sullivan, State of New York consisting of approximately 9.36± acres of land and identified on the

Town of Liberty tax map as Section 30, Block 1, Lot 90.7 (“Land”) and in furtherance thereof entered into various agreements including but not limited to a Lease Agreement and a Payment in Lieu of Tax Agreement (“LS 2003 Transaction Documents”); and

*WHEREAS*, on or about June 16, 2003 Liberty Storage and the Agency entered into an Agent Agreement pursuant to which the Agency appointed Liberty Storage as its Agent to construct the first phase of the project (“LS 2003 Agent Agreement”); and

*WHEREAS*, on or about September 1, 2004 Liberty Storage applied to the Agency and the Agency approved the construction of additional improvements on the Land and in furtherance thereof entered into various agreements including but not limited to an Amended and Restated Agent Agreement, an Amended and Restated Lease Agreement and an Amended and Restated Payment in Lieu of Tax Agreement (“LS 2004 Transaction Documents” and together with the LS 2003 Transaction Documents and the LS 2003 Agent Agreement, the “LS Project Documents”); and

*WHEREAS*, on or about November 3, 2014, Liberty Storage transferred, assigned and conveyed to Canopy Liberty LLC (“Canopy”) the Project and any and all right, title and interest in and to the LS Project Documents, and Canopy, subject to the terms and conditions of the LS Project Documents, accepted and purchased all of Liberty Storage’s right, title and interest in and to the Project and the LS Project Documents; and

*WHEREAS*, to memorialize the transfer of the Project and the LS Project Documents, Liberty Storage and Canopy entered into an Assignment and Assumption of Amended and Restated Lease Agreement and Related Documents, dated as of November 3, 2014 (“LS/Canopy Assignment”); and

*WHEREAS*, contemporaneously with execution of the LS/Canopy Assignment, Canopy and the Agency entered into, among other documents, a Second Amended and Restated Lease Agreement and Second Amended and Restated PILOT Agreement, all such documents assumed by Canopy under the LS/Canopy Assignment and all such documents between Canopy and the Agency, each dated November 3, 2014 (collectively, the “Canopy Agency Documents”); and

*WHEREAS*, Canopy desires to transfer, assign and convey to MHC 83 any right, title and interest in and to the Canopy Agency Documents, and MHC 83, subject to the terms and conditions of the Canopy Agency Documents, desires to accept and purchase all of Canopy’s right, title and interest in and to the Canopy Agency Documents; and

*WHEREAS*, to memorialize the transfer of the Canopy Agency Documents, Canopy and MHC 83 desire to enter into an Assignment and Assumption of Second Amended and Restated Lease Agreement and Related Documents, dated as of the date hereof (“Canopy/MHC 83 Assignment”); and

*WHEREAS*, contemporaneously with execution of the Canopy/MHC 83 Assignment, the Agency and MHC 83 will enter into, among other documents, a Third Amended and Restated

Lease Agreement, dated as of August 26, 2020 (“3<sup>rd</sup> A&R Lease”) and this PILOT Agreement; and

*WHEREAS*, from and after the effective date of the date of transfer of the Project to MHC 83, the Agency proposes to lease the Facility to MHC 83, and MHC 83 desires to rent the Facility from the Agency, upon the terms and conditions hereinafter set forth in that certain 3<sup>rd</sup> A&R Lease; and

*WHEREAS*, the Agency and MHC 83 deem it necessary and proper to execute and deliver to the Agency this PILOT Agreement to make provision for payments in lieu of taxes by MHC 83 for the benefit of 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 MHC 83 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. As long as the Facility is owned by the Agency, MHC 83 agrees to pay annually to the Agency at 548 Broadway, Monticello, New York 12701, 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 ¶2 on account of the following premises located in the Town of Liberty (“Town”):

Section, Block & Lot
30 - 1 - 90.7

(a)(i) Intentionally omitted.

(ii) The Total value subject to PILOT shall be the following amounts in the following years:

Payment Date	Present Value	Exemption Percentage	Exemption Amount	Total Value Subject to PILOT
February 1, 2021	\$2,478,000	10.00%	\$247,800	\$2,230,200
February 1, 2022	\$2,478,000	7.50%	\$185,850	\$2,292,150
February 1, 2023	\$2,478,000	5.00%	\$123,900	\$2,354,100
February 1, 2024	\$2,478,000	2.50%	\$ 61,950	\$2,416,050

(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 ¶2c 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 ¶2d 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 tax 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 remaining years of the overall twenty (20) 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 <sup>1</sup>	Payment Date	School Fiscal Year Beginning	County & Town
17	February 1, 2021	July 1, 2020	January 1, 2021
18	February 1, 2022	July 1, 2021	January 1, 2022
19	February 1, 2023	July 1, 2022	January 1, 2023
20	February 1, 2024	July 1, 2023	January 1, 2024

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 1, 2021 which

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<sup>1</sup> Years 1 – 16 were governed by prior PILOT Agreements.

follows the sixteenth (16<sup>th</sup>) year of an approximately twenty (20) year period in which the Project is to receive tax benefits. In no event shall MHC 83 be entitled to receive tax benefits relative to the Facility for more than the period provided in this PILOT Agreement. MHC 83 agrees that it will not seek any tax exemption for the Facility 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 §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 it were signatories hereto.

4. Determination of Total Value Subject to PILOT. The Agency and MHC 83 have agreed upon the Total Value Subject to PILOT of the Facility. Such valuation was made without regard to the actual cost of construction of improvements to be made at the Facility. Such valuation shall not be increased or decreased if the Facility or any related work on or improvements are completed in substantial conformity with the plans and specifications. If there is a substantial change relating to the Facility or any related work or improvements during the construction phase, the Agency may redetermine the improvement value of the Facility. An increase in building size shall not be deemed to be a substantial change unless such increase or decrease is more than three thousand (3,000) square feet.
5. Valuation of Additions to the Facility. If there shall be an addition constructed to the Building, or if there shall be any additional buildings or other structures constructed on the Land, MHC 83 shall promptly notify the Agency of such addition ("Addition"). The notice to the Agency shall contain a copy of the application for a building permit, plans, specifications, and any other relevant information that the Agency may request. Upon the earlier of substantial completion, or the issuance of a Certificate of Occupancy, there shall be an increase in the PILOT Payment. The Agency shall notify MHC 83 of any proposed increase in the Total Value Subject to PILOT caused by such Addition. Absent an agreement to the contrary, the Total Value Subject to PILOT of any Addition shall be subject to calculation of PILOT Payments in the manner established by ¶s 2 and 3 hereof. If MHC 83 shall disagree with the Agency's determination of Total Value Subject to PILOT for any Addition, then and in that event the Total Value Subject to PILOT shall be the assessed value of the Addition as determined by the Town Assessor.
6. 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 employed at the Facility.
      - (2) "Full-Time Equivalent Employee" or "FT" shall mean an employee

who works thirty-five (35) hours in any seven (7) day period at the Facility.

- (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 FT is employed primarily at the Facility.

- (ii) FT Employment Goals: MHC 83 agrees that an FT-employment goal of three (3) jobs shall be maintained for the calendar year 2020 and thereafter throughout the term of this PILOT Agreement.

MHC 83 shall file with the Agency not later than February 1, 2021 and on February 1st of each year thereafter a statement certified under oath setting forth the actual FT's employed at the Facility for the preceding calendar year. Such statement shall contain such additional information as the Agency may reasonably request. MHC 83 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 MHC 83. "Actual average FT - 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 the PILOT Payment if FT Goals Not Attained: In the event the FT 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 ¶s 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 ¶s 2 and 3, times the percentage:

- (1) the numerator of which is equal to three (3) minus the actual average FT employment for the prior calendar year, and
- (2) the denominator of which is three (3).

By way of example, if in calendar year 2020 (i) the actual average FT employment is two (2); (ii) the Town equalization rate used by the County to allocate 2020 taxes is ninety (90 %) percent; (iii) the Town combined school, county and town rate relating to the 9/1/2019 school tax and 1/1/2020 county and town tax bills is \$48.00 per \$1,000.00 of assessed value (iv) the assessed value of the Facility in the Town is \$3,500,000 full value; (v) \$300,000 of improvement value would have been eligible for the §485-b exemption at a rate of twenty (20%) percent, 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

$$\$100,359 = \$2,478,000 \times 90\% \times 45/1000$$

Tax under §485-b

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

$$\$154,800 = \$3,500,000 - \$60,000 \times 45/1000$$

Adjusted PILOT Payment

Adjusted PILOT Payment = PILOT Payment + [(tax under §485b - PILOT Payment amount) x Percentage of Underemployment]

$$\$118,506 = \$100,359 + [\$154,800 - \$100,359] \times .3333$$

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. MHC 83 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 the County and the State Department of Labor Community Services Division. Except as otherwise provided by collective bargaining contracts or agreements, MHC 83 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 the County or by the State Department of Labor Community Services Division.

MHC 83 acknowledges that it is not now bound by the provisions of collective bargaining contracts or agreements which limit or restrict MHC 83 from listing such employment opportunities or from giving first consideration to persons eligible to participate in job training partnership act programs. MHC 83 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 MHC 83 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. MHC 83 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. MHC 83 shall provide the Agency with copies of collective bargaining contracts or agreements hereinafter executed.

MHC 83 shall submit to the Agency a statement of the manner in which MHC 83 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, MHC 83 shall be in compliance with the 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 MHC 83 shall fail to file a certification of FT'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 MHC 83 thereafter files such a statement and the filing results in a determination that MHC 83 has made an overpayment, the Agency shall refund to MHC 83 an amount equal to ninety (90%) percent 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 MHC 83 fails to provide information reasonably requested by the Agency necessary to determine the eligibility of one or more persons to be considered as a FTE, the Agency may, upon fifteen (15) days' notice to MHC 83, 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 MHC 83 shall fail to comply with the Job Posting and Hiring Act requirements set forth in ¶6b or the Equal Opportunity requirements set forth in ¶6c, the Agency, upon



fifteen (15) days' notice to MHC 83, 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 ¶6b, or the Equal Opportunity requirements set forth in ¶6c, 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 MHC 83 shall fail for a period of two (2) consecutive years to employ at least two (2) 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 MHC 83 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 MHC 83 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 MHC 83 prior to the institution of such action or proceeding.

7. Additional Payments. In addition to the PILOT Payments to be made by MHC 83 to the Agency pursuant to this PILOT Agreement, MHC 83 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 MHC 83. Such charges shall be paid without adjustment, exemption or other deduction provided; in each case, however, to MHC 83's right to obtain exemption and credits, if any, which would be afforded a private owner of the Facility. MHC 83 hereby authorizes the Agency to request that any Taxing Jurisdiction bill MHC 83 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 MHC 83 is directly billed for such charges, MHC 83 shall pay such charges within the time in which such statement or bill may be paid without interest or penalty.

8. Company Representations and Warranties.

- (a) MHC 83 is duly authorized under all applicable provisions of law to enter into and

perform this PILOT Agreement. MHC 83'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 or instrument to which MHC 83 is a party and will not result in the creation of any lien, charge or encumbrance upon any of the assets of MHC 83 under any such agreement or instrument.

- (b) MHC 83 is not a party to any agreement or subject to any restriction (including without limitation any agreement among or between its members) that materially and adversely effects its business assets or financial condition.
  - (c) When executed, this PILOT Agreement will be a valid and binding obligation of MHC 83.
9. MHC 83's Right to Challenge. Except as otherwise provided in this PILOT Agreement, MHC 83 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 MHC 83 is obligated to make a payment pursuant to this PILOT Agreement, as if and to the same extent as if MHC 83 were the owner of the Facility.
- Except as otherwise provided in this PILOT Agreement, MHC 83 shall have all of the rights and remedies of a taxpayer as if and to the same extent as if MHC 83 were the owner of 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.
10. Transfer of Facility to MHC 83. In the event that the Facility is transferred from the Agency to MHC 83, and MHC 83 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, MHC 83 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 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 exemptions provided for herein.
11. Involuntary Termination of Agreement. 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, MHC 83's obligations hereunder shall, to such extent, be amended.
12. 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 MHC 83 as a bankrupt and the failure to vacate, set aside or terminate such adjudications within ninety (90) days thereafter;
  - (c) The failure of MHC 83 to pay the amounts required to be paid pursuant to Section 2.6 or 3.3 or 3.7 of the Lease Agreement and such failure shall have continued for a period of ten (10) days after the Agency gives written notice of such failure to MHC 83;
  - (d) The appointment by any court of a receiver or trustee to take possession of all, or substantially all, of the assets of MHC 83 which said appointment shall not have been discharged within a period of ninety (90) days after the filing of same;
  - (e) The making by MHC 83 of an assignment for the benefit of creditors;
  - (f) The abandonment of the Facility by MHC 83 for a period of thirty (30) consecutive 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 MHC 83 contributing thereto; provided, however, that in the event of fire or other catastrophe, MHC 83 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 MHC 83, 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 MHC 83 to perform, keep or observe any of the terms, covenants and agreements herein contained on the part of MHC 83 to be performed, kept or observed.
13. Remedies on Default in Payment; Termination. Upon the happening of any event of default as defined in ¶12 (a) and (b) hereof, the Agency may immediately terminate this PILOT Agreement without notice to MHC 83 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 conveying title to the Land by quitclaim deed as well as title to the Facility and Equipment, all as determined by the Agency, from the Agency to MHC 83 and the recording of said deed in the County Clerk's Office shall be deemed to be delivery thereof. MHC 83 hereby appoints the Chief Executive Officer, Executive Director or Chairman of the Agency as its attorney-in-fact for the limited purpose of signing any forms which must necessarily accompany the deed in order for the deed to be recorded. MHC 83 acknowledges that the foregoing appointment is coupled with an interest and is irrevocable.

14. Remedies On Other Defaults; Termination. Upon the happening of any event of default as defined in ¶12 (c - g) hereof, after thirty (30) days written notice to MHC 83 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.
- (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 conveying title to the Land by quitclaim deed from the Agency to MHC 83 and the recording of said deed in the County Clerk's Office shall be deemed to be delivery thereof. MHC 83 hereby appoints the Chairman, Vice-Chairman or Chief Executive Officer of the Agency as its attorney-in-fact for the limited purpose of signing any forms which must necessarily accompany the deed in order for the deed to be recorded.

15. Notice to Lender. For so long as that certain Consolidated, Amended and Restated Fee and Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing from MHC 83 and the Agency to Citibank, N.A., as administrative agent for certain lenders ("Lender") shall remain of record, the Agency shall provide a copy of any notice to MHC 83 delivered under 13 and 14 to the Lender at the following address:

Citibank, N.A.  
388-390 Greenwich Street, Tower Floor 8  
New York, New York 10013  
Attention: Ana Rosu Marmann  
Facsimile No.: (646) 328-2938

A notice to Lender shall be provided by the methods set forth in 21(a) hereof.

16. 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, MHC 83 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.

17. 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, MHC 83 shall pay penalties and interest as provided herein. With respect to PILOT Payments, if said payment is not received by the Payment Due Date, MHC 83 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 received when due or by the last day of any applicable cure period, MHC 83 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.
18. Termination of Use, Modification. If the substantial use of the Facility shall be discontinued by MHC 83, the Total Value Subject to PILOT may be modified. It is understood that the benefits of this PILOT Agreement have been extended to MHC 83 on the grounds set forth in various related agreements between the parties; that jobs at the Facility will be an economic asset to the County economy; that maintaining jobs in 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 Facility by MHC 83 would alter the purpose for which this PILOT Agreement was made. In such event, the Agency may give notice to MHC 83 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.
19. Indemnification. MHC 83 shall indemnify, defend and hold the Agency (and its chief executive officer, executive director, directors, officers, members, agents, 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 expenses incurred by the Agency (and its chief executive officer, executive director, directors, officers, members, agents, employees, servants and their successors, representative and assigns) in defending any claim, suit or action which may result as a result of the foregoing.
20. 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 chief executive officer, executive director, director, officer, member, agent, employee or representative of the Agency in his or her individual capacity, and the chief executive officer, executive director, directors, officers, members, agents,

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 Facility.

21. 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, Inc.  
548 Broadway  
Monticello, New York 12701  
Attn: Chief Executive Officer

with a copy to:

GARIGLIANO LAW OFFICES, LLP  
449 Broadway, P.O. Drawer 1069  
Monticello, New York 12701-1069  
Attn: Walter F. Garigliano, Esq.

If to MHC 83:

MHC 83 (HW Portfolio) LLC  
c/o Merit Hill Capital, LP  
41 Flatbush Avenue, Suite 3C  
Brooklyn, New York 11217  
Attn: Liz Raun Schlesinger

with a copy to:

Reed Smith LLP  
599 Lexington Avenue  
New York, New York 10022-7650  
Attn: Joseph M. Marger, Esq.

- (b) Assignment. This PILOT Agreement may not be assigned by MHC 83, nor shall

any person other than MHC 83 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, MHC 83 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 of New York. The parties hereby designate a court of proper jurisdiction located in Sullivan County 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 MHC 83 to make PILOT Payments and all of MHC 83'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.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this PILOT Agreement effective the ~~25<sup>th</sup>~~<sup>26<sup>th</sup></sup> day of August, 2020.

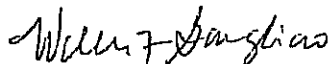
COUNTY OF SULLIVAN INDUSTRIAL  
DEVELOPMENT AGENCY



By: Edward T. Sykes, Chief Executive Officer

STATE OF NEW YORK    )  
  )ss:  
COUNTY OF SULLIVAN    )

On the 18<sup>th</sup> day of August in the year 2020 before me, the undersigned, a Notary Public in and for said State, personally appeared EDWARD T. SYKES, 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.



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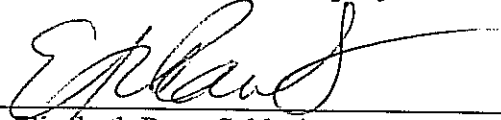
WALTER F. GARIGLIANO  
Notary Public, State of New York  
Sullivan County Clerk's #4  
Commission Expires June 30, 2022



IN WITNESS WHEREOF, the parties hereto have executed this PILOT Agreement effective the 26<sup>th</sup> day of August, 2020.

**MHC 83:**

**MHC 83 (HW PORTFOLIO) LLC,**  
a Delaware limited liability company

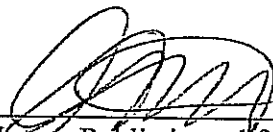
By:   
Name: Elizabeth Raun Schlesinger  
Title: Authorized Signatory

STATE OF NEW YORK    )  
  ) SS  
COUNTY OF KINGS    )

I, Gisselle Medina, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Elizabeth Raun Schlesinger, personally known to me to be the Authorized Signatory of MHC 83 (HW PORTFOLIO) LLC, a Delaware limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that, as such Authorized Signatory, she signed and delivered such instrument as her free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 21<sup>st</sup> day of August, 2020.

My Commission Expires:

  
Notary Public in and for said County and State  
Print Name: Gisselle Medina

