

SECOND AMENDMENT TO
PAYMENT IN LIEU OF TAXATION AGREEMENT

THIS SECOND AMENDMENT TO PAYMENT IN LIEU OF TAXATION AGREEMENT, is effective as of February 14, 2022 (“Second Amendment”) which amends that certain Payment in Lieu of Taxation Agreement, dated February 1, 2019 (“2019 PILOT Agreement”) by and among 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”), FORESTBURGH PROPERTY LLC, a New York limited liability company having its principal offices at 182 DeGraw Street, Unit 3, Brooklyn, New York 11231 (“Forestburgh Property”) and FORESTBURGH HOSPITALITY LLC, a New York limited liability company having its principal offices at 182 DeGraw Street, Unit 3, Brooklyn, New York 11231 (“Forestburgh Hospitality” and together with Forestburgh Property collectively, the “Company”), which was amended by that certain First Amendment to Payment in Lieu of Taxation Agreement, effective November 9, 2020 (“First Amendment”) by and between the Agency and the Company.

Unless otherwise defined herein, all capitalized terms shall have the meaning given them in the 2019 PILOT Agreement.

RECITALS

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York (“State”), as amended, and Chapter 560 of the Laws of 1970 of the State, as amended and codified as Section 960 of the General Municipal Law (collectively, the “Act”), the Agency was created with the authority and power to own, lease and sell property as authorized by the Act; and

WHEREAS, on or about December 6, 2018, the Company submitted an Application For Financial Assistance to the Agency consisting of the (i) acquisition, construction, installation and equipping of (a) an approximately 100 fully-assembled, canvas bell tents for overnight camping (“Tents”); (b) an approximately 650 square foot general store (“General Store”); (c) an approximately 1750 square foot bath house with showers, toilets and sinks (“Bath House”); and (d) an approximately 3800 square foot lodge for entertainment (“Building” together with the Tents, General Store, Bath House collectively, the “Campground”) situate on seven (7) parcels of real estate consisting of approximately 320 acres located at 80 Tannery Road, Town of Forestburgh (“Town”), County of Sullivan (“County”), State of New York and identified on the Town tax map as Section 24, Block 1, Lots 3; 26.3; 26.4; 26.5; 26.6; 26.7; and 26.8 (“Land”); (ii) construction and equipping of the Campground; (iii) the construction, reconstruction, renovation and/or repair of water and sewer infrastructure located on the Land; (iv) the construction, reconstruction, renovation and/or repair of roadway and drainage infrastructure located on the Land; (v) the construction, reconstruction, renovation and/or repair of lighting, electricity and connectivity infrastructures on the Land and the development of infrastructure (collectively, (iii), (iv) and (v) are referred to as the “Infrastructure Improvements”); (vi) acquisition, construction and installation thereon and therein of certain furniture, fixtures, machinery, equipment and tools (“Equipment”); (vii) construction of improvements to the Campground, the Land, the Infrastructure Improvements and the Equipment (collectively, the Campground, the Land, the Infrastructure Improvements and

the Equipment are referred to as the “Facility” or the “Project”); and (viii) lease of the Project from the Agency to the Company; and

WHEREAS, on December 17, 2018 by resolution #54-18 the Agency approved the Project; and

WHEREAS, on or about February 1, 2019, the Company and the Agency entered into the 2019 PILOT Agreement; and

WHEREAS, on or about November 9, 2020, the Agency and Company entered into a First Amendment to Payment in Lieu of Tax Agreement to, among other things, suspend employment goals during the then applicable period of delay in the construction of the Project (“First Amendment” and together with the 2019 PILOT Agreement, the “PILOT Agreement”); and

WHEREAS, construction of the Project has been delayed in part as a result of the untimely death of Andrew Unterberg, the majority owner of the Company; and

WHEREAS, the Total Value subject to PILOT established in the 2019 PILOT Agreement is slightly less than the aggregate equalized assessed value of the Land as determined by the Forestburgh Assessor; and

WHEREAS, the Agency advised the Company that as a result of the delay in construction, that the Agency would terminate the Project unless the Company enters into this Second Amendment so that during any future period of delay of construction of the Project, the PILOT Payment will be equal to what real estate taxes would be if the Agency was not involved with the Project; and

WHEREAS, the Company has agreed to amend the PILOT Agreement so long as the (a) Second Amendment suspends employment goals until the year following the Project commencing operations and (b) the time for completion of construction of the Project is extended to February 15, 2025; and

WHEREAS, by Resolution No. 06-22, the Agency authorized a further amendment of the 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. Section 3 of the PILOT Agreement is hereby deleted in its entirety and the following inserted in its place and stead:

“3.1. Computation of PILOT Payments Prior to Completion of the Project. For all periods prior to the year following completion of the Project, the Company shall make a PILOT Payment equal to what taxes on the Land would have been if the Agency was not involved with the Project.

3.2 Computation of PILOT Payments Following Project Completion. Commencing with the February 1st of the year following completion of the Project, which is “Year 1” on the chart set forth in subsection (a) hereof, PILOT Payments shall be made in the amounts and in the manner contemplated by this ¶3.2.

(a) Total Value Subject to PILOT. The total value subject to PILOT (“TVSP”) shall be the following amounts for the following years:

Year	Present Value	Improvement Value	Exemption Percentage	Exemption Amount	Improvement Value Net of Exemption	Total Value Subject to PILOT
1	\$ 1,200,000	N/A	N/A	N/A	N/A	\$ 1,200,000
2	\$ 1,200,000	\$ 750,000	100.00%	\$ 750,000	\$ 0.00	\$ 1,200,000
3	\$ 1,200,000	\$ 750,000	100.00%	\$ 750,000	\$ 0.00	\$ 1,200,000
4	\$ 1,200,000	\$ 750,000	100.00%	\$ 750,000	\$ 0.00	\$ 1,200,000
5	\$ 1,200,000	\$ 750,000	100.00%	\$ 750,000	\$ 0.00	\$ 1,200,000
6	\$ 1,200,000	\$ 750,000	100.00%	\$ 750,000	\$ 0.00	\$ 1,200,000
7	\$ 1,200,000	\$ 750,000	90.00%	\$ 675,000	\$ 75,000	\$ 1,275,000
8	\$ 1,200,000	\$ 750,000	80.00%	\$ 600,000	\$ 150,000	\$ 1,350,000
9	\$ 1,200,000	\$ 750,000	70.00%	\$ 525,000	\$ 225,000	\$ 1,425,000
10	\$ 1,200,000	\$ 750,000	60.00%	\$ 450,000	\$ 300,000	\$ 1,500,000
11	\$ 1,200,000	\$ 750,000	50.00%	\$ 375,000	\$ 375,000	\$ 1,575,000
12	\$ 1,200,000	\$ 750,000	40.00%	\$ 300,000	\$ 450,000	\$ 1,650,000
13	\$ 1,200,000	\$ 750,000	30.00%	\$ 225,000	\$ 525,000	\$ 1,725,000
14	\$ 1,200,000	\$ 750,000	20.00%	\$ 150,000	\$ 600,000	\$ 1,800,000
15	\$ 1,200,000	\$ 750,000	10.00%	\$ 75,000	\$ 675,000	\$ 1,875,000
16	\$ 1,200,000	\$ 750,000	0.00%	\$ 0.00	\$ 750,000	\$ 1,950,000

(b) Calculation of Annual PILOT Payment. The calculation of the annual PILOT Payments shall be made as follows:

- (i) The TVSP shall be multiplied by the equalization rate as defined in ¶3.2(c) hereof; and
- (ii) The annual PILOT Payment shall be determined by multiplying the amount derived in ¶3.2(b)(i) hereof by the tax rates identified in ¶3.2(d) hereof.

(c) Equalization Rate. The equalization rate to be used in making the computation contemplated by ¶3.2(b)(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 Payment. In the event that the equalization rate shall exceed one hundred (100%) percent, the equalization rate used in making the computation contemplated by ¶3.2(b)(i) shall be one hundred (100%) percent.

- (d) Tax Rates. For the purposes of determining the amount of the PILOT Payments as contemplated by ¶3.2(b)(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.”

2. Section 7(a) of the PILOT Agreement is hereby deleted in its entirety and the following inserted in its place and stead:

“(a) Employment Goals.

- (i) Employment Goal Definitions: For the purposes of this 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 Facility on or after October 1, 2021.

(2) "Full-Time Equivalent Employee" or "FTE" shall mean an employee who works forty (40) 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 FTE is employed primarily at the Facility.

- (ii) FTE Employment Goals: The Company agrees that an FTE-employment goal of twelve (12) jobs shall be maintained for the October 1st to September 30th period following completion of the Project and thereafter for such annual period throughout the term of this Agreement.

The Company has filed with the Agency on or before November 1, 2019, November 1, 2020 and November 1, 2021 and shall file on November 1st of each year hereafter a statement certified under oath setting forth the actual FTE's employed at the Facility for the preceding October 1st to September 30th period (each an "Employment 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 Employment 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 October 1st to September 30th period preceding any PILOT Payment due date, the amount due ("Adjusted PILOT Payment") shall be the amount calculated in ¶3.2(b) 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 ¶3.2(b), times the percentage:

- (1) the numerator of which is equal to twelve (12) minus the actual average FTE employment for the prior Employment Year, and
- (2) the denominator of which is twelve (12).

By way of example, if in fiscal year 10/1/2022 to 9/30/2023 (i) the actual average FTE employment is nine (9); (ii) the Town equalization rate used by the County to allocate 2024 taxes is ninety (90 %) percent; (iii) the Town combined school, county and town rate relating to the 9/1/2023 school tax and 1/1/2024 county and town tax bills is \$36.00 per \$1,000.00 of assessed value (iv) the assessed value of the Facility on the 2022 Final Assessment Roll is \$1,800,000 full value; (v) \$600,000 of improvement value would have been eligible for the §485-b exemption at a rate of forty (40%) percent, then the Adjusted PILOT Payment due the Taxing Jurisdictions would be computed as follows:

PILOT Payment

PILOT Payment = TVSP x Equalization Rate x tax rates

$$\$38,880 = \$1,200,000 \times 90\% \times \$36.00$$

Tax under §485b

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

$$\$56,160 = [\$1,800,000 - [\$600,000 \times 40\%]] \times \$36.00$$

Adjusted PILOT Payment

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

$$\$43,200 = \$38,880 + [(\$56,160 - \$38,880) \times 25\%]$$

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.”

3. Section 7 of the PILOT Agreement is hereby amended to add a new subparagraph (e) to read as follows:
 - “(e) Notwithstanding any other provision of this PILOT Agreement, or any other document controlling the Agency’s involvement in the Project, in the event construction of the Project has not commenced by February 15, 2025, the Agency may terminate the Project.”

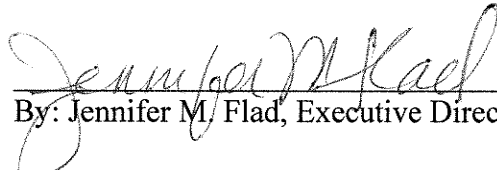
4. Except as herein amended, all other terms and conditions of the PILOT Agreement shall remain in full force and effect. If there shall be any conflict or inconsistency between the terms of this Second Amendment and the PILOT Agreement, the terms of this Second Amendment shall control.

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

COUNTY OF SULLIVAN INDUSTRIAL
DEVELOPMENT AGENCY


By: Jennifer M. Flad, Executive Director

FORESTBURGH PROPERTY LLC
By: Tent Days Forestburgh LLC its Sole Member


By: Alana Unterberg, Manager

FORESTBURGH HOSPITALITY LLC
By: Tent Days Forestburgh LLC its Sole Member


By: Alana Unterberg, Manager