

PAYMENT IN LIEU OF TAXATION AGREEMENT

THIS PAYMENT IN LIEU OF TAXATION AGREEMENT ("PILOT Agreement"), made as of the 1st day of December, 2022, 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 located at 548 Broadway, Monticello, New York 12701 ("Agency") and MONTICELLO INDUSTRIAL PARK LLC, a New York limited liability company, with its offices located at 171 East Industry Court, Deer Park, New York 11729 ("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, renovate, rehabilitate, install, equip, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve its standard of living; and

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

WHEREAS, the Agency was created 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") and is empowered under the Act to undertake the providing, financing and leasing of the facility described below; and

WHEREAS, on or about August 25, 2022, the Company presented an application to the Agency ("Application"), a copy of which is on file at the office of the Agency, requesting that the Agency consider undertaking a project consisting of the: (i) acquisition of one (1) parcel of land containing approximately 84 acres located along Rose Valley Road within the Village of Monticello ("Village"), Town of Thompson ("Town"), Sullivan County, New York and identified on the Village tax map as Section 130, Block 1, Lot 19.2 (the "Land"), (ii) construction, installation and equipping of water, sewer, roadway, and drainage infrastructure located on the Land (the "Infrastructure Improvements") for future development as a commercial/industrial park; (iii) installation of utilities, electricity, lighting and connectivity infrastructure; (iv) acquisition in and around the Land and the Infrastructure Improvements of certain items of equipment and other tangible personal property (the "Equipment" and collectively with the Land and the Infrastructure Improvements, the "Project"); and (v) lease of the Project from the Agency to the Company; and

WHEREAS, by Resolution, dated September 29, 2022 (the "September Resolution"), as amended by resolution dated November 14, 2022 ("Amended Resolution" and together with the September Resolution, the "Resolution"), the Agency authorized the Company to act as its agent for the purposes of constructing and equipping the Project subject to, among other conditions, the Company entering into this PILOT Agreement (Destination Resort Program UTEP); and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to construct, install and equip the Project in accordance with the plans and specifications presented to the Agency; and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, other than special ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Agency and the Company deem it necessary and proper to execute and deliver this PILOT Agreement making provision for payments in lieu of taxes by the Company for the benefit of the County, Town, Village and the Monticello Central School District ("School") (collectively, the County, the Town, the Village and the School are referred to as the "Taxing Jurisdictions"); and

WHEREAS, all agreements of the Agency and the Company relating to payments in lieu of taxes for the Land 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:

ARTICLE I
PAYMENT IN LIEU OF AD VALOREM TAXES

1.1 Exemption From General Ad Valorem Property Taxes. The Land, which was owned by Sullivan County Funding Corporation, a New York not-for-profit corporation, is currently exempt from real estate taxes with such exemptions continuing to include real estate taxes for the July 1, 2022 School year, August 1, 2022 Village year and the January 1, 2023 County and Town tax year. Subject to the completion and filing by March 1, 2023 ("Taxable Status Date") of the New York State Form RP-412-a Application For Real Property Tax Exemption ("Exemption Application") under Section 412-a of the New York State Real Property Tax Law and Section 874 of the Act, the Land shall be exempt from real estate taxes commencing with the July 1, 2023 School year, August 1, 2023 Village year, and the January 1, 2024 County and Town tax year. For the purposes of the foregoing, "Real Estate Taxes" shall mean all general ad valorem real property taxes levied against the Project by the Taxing Jurisdictions (as hereinafter defined). The Company shall provide the Agency the information necessary for the completion and filing of the

Exemption Application, and the Agency shall file the Exemption Application within thirty (30) days of the execution and delivery of this PILOT Agreement. Notwithstanding anything contained herein or in the Lease Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay, subject to the Company's right to challenge the underlying assessments on the Project pursuant to ¶5 hereof) all Real Estate Taxes levied upon the Project as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the Project continues to qualify as a "project" under the Act; (ii) neither the Project nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes, except to the extent that such denial results solely from the failure of the Agency to timely file the Exemption Application with the appropriate assessors or Boards of Assessment Review by the Taxable Status Date.

- 1.2 Agreement to make payments in lieu of taxes. As long as the Agency holds a leasehold interest in the Project, the Company agrees to pay 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 (each, a "PILOT Payment") computed in accordance with this PILOT Agreement.

Subject Premises. PILOT Payments shall be made on account of the following premises located in the Town:

Section, Block and Lot
130-1-19.2

- 1.3. Computation of PILOT Payments.

(a) Total Value Subject to PILOT. For the ten (10) year exemption period, commencing with the 2023/24 Village Tax; 2023/24 School Tax and 2024 County and Town tax, the Total Value Subject to PILOT ("TVSP") shall be \$625,000.00.

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

- (i) The TVSP from ¶1.3(a) shall be multiplied by the equalization rate as defined in ¶1.3(c) hereof; and
- (ii) The annual PILOT Payment shall be determined by multiplying the amount derived in ¶1.3(b)(i) hereof by the tax rates identified in ¶1.3(d).

(c) Equalization Rate. The equalization rate to be used in making the computation contemplated by ¶1.3(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 ¶1.3(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 1.3(b)(ii) hereof, the tax rates for each Taxing Jurisdiction shall mean the last tax rate used before the Taxable Status Date 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 village and school tax purposes, the tax rates used to determine the PILOT Payment shall be the rate relating to the village tax year and 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 set forth the anticipated period for PILOT Payments under the Agency’s Commercial/Industrial Park Uniform Tax Exemption Program; 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	PILOT Payment Due Date	School Fiscal Year Beginning	Village Fiscal Year Beginning	County and Town
1	February 1, 2024	July 1, 2023	August 1, 2023	January 1, 2024
2	February 1, 2025	July 1, 2024	August 1, 2024	January 1, 2025
3	February 1, 2026	July 1, 2025	August 1, 2025	January 1, 2026
4	February 1, 2027	July 1, 2026	August 1, 2026	January 1, 2027
5	February 1, 2028	July 1, 2027	August 1, 2027	January 1, 2028
6	February 1, 2029	July 1, 2028	August 1, 2028	January 1, 2029
7	February 1, 2030	July 1, 2029	August 1, 2029	January 1, 2030
8	February 1, 2031	July 1, 2030	August 1, 2030	January 1, 2031
9	February 1, 2032	July 1, 2031	August 1, 2031	January 1, 2032
10	February 1, 2033	July 1, 2032	August 1, 2032	January 1, 2033

- 1.4 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, 2024. 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 §485b 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.

- 1.5. Determination of TVSP. The Agency and the Company have agreed upon the TVSP of the Project. Such valuation was made without regard to the actual fair market value of the Project.
- 1.6. Integration with MDAA. Contemporaneously herewith, the Company and the Agency have entered into a Master Development and Agent Agreement, of even date herewith ("MDAA") under the terms and conditions of which the Company has been appointed as Agent of the Agency to install infrastructure. In the event the Agency shall rescind the rights granted to the Company pursuant to §1(a) of the MDAA, this PILOT Agreement (along with the Lease Agreement) shall terminate effective as of the date of rescission of the Company's rights under the MDAA.

ARTICLE II SPECIAL DISTRICT TAXES – NO ABATEMENTS

2. 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, subject to the Company's right to obtain exemption and credits, if any, which would be afforded a private owner of the Project as if the Agency had no involvement with the Project. 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.

ARTICLE III EMPLOYEE PROVISIONS

3. (a) The Company shall file or cause to be filed with the Agency not later than October 15, 2023 and on October 15th of each year thereafter a statement certified under oath

setting forth the actual number of full-time employees ("FTE") employed at the Project for the preceding October 1 to September 30 period (each, an "Employment Year"). Such statement shall contain such additional information as the Agency may reasonably request. The Company shall make or cause to be made 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 FTEs" shall be determined by adding the actual FTEs employed in each month of the applicable Employment Year and dividing such sum by twelve (12).

- (b) Job Posting and Hiring Requirements. The Company agrees that it shall comply or cause compliance 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 Workforce Investment Act of 1998 (P.L. 105-220) (formerly the Federal Job Training Partnership Act (P.L. No. 97-300)) ("WIA") serving the County and the State Department of Labor Community Services Division. 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 WIA 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.

Except as previously disclosed to the Agency, 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 or cause to be submitted 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 WIA 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 cause the Project to 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.

ARTICLE IV COMPANY'S REPRESENTATIONS AND WARRANTIES

- 4. Representations and Warranties.
 - (a) The Company is duly authorized under all applicable provisions of law to enter into and perform this PILOT Agreement. The Company's entry into and performance of this PILOT Agreement will not violate any applicable provisions of law and except as disclosed on the Disclosure Schedule delivered to the Agency will not result in a breach of or a default under any agreement or instrument to which the Company is a party and will not result in the creation of any lien, charge or encumbrance upon any of the assets of the Company under any such agreement or instrument.
 - (b) The Company is not a party to any agreement or subject to any restriction that materially and adversely effects its business assets or financial condition.
 - (c) When executed, this PILOT Agreement will be a valid and binding obligation of the Company.

ARTICLE V RIGHT TO CHALLENGE ASSESSMENTS

- 5. 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 Agency had no interest in 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 Agency had no interest in the Project, with respect to the assessed value of the Project 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.

ARTICLE VI
TERMINATION OF AGENCY'S INTEREST

6. Termination of Agency's Interest. In the event that the Agency's leasehold interest in the Project is terminated, 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 termination of the Agency's leasehold interest or loss of eligibility of all or a portion of the exemptions provided for herein.

ARTICLE VII
INVOLUNTARY TERMINATION

7. Involuntary Termination of 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.

ARTICLE VIII
EVENTS OF DEFAULT

8. Events 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 bankrupt and the failure to vacate, set aside or terminate such adjudications within ninety (90) days thereafter;
 - (c) The failure of the Company to pay the amounts required to be paid pursuant to Sections 2.6, 3.3 or 3.7 of the Leaseback Agreement and such failure shall have continued for a period of ten (10) days after the Agency gives written notice of such failure to the Company;
 - (d) The appointment by any court of a receiver or trustee to take possession of all, or substantially all, of the assets of the Company which said appointment shall not have been discharged within a period of ninety (90) days after the filing of same;
 - (e) The making by the Company of an assignment for the benefit of creditors;

- (f) The abandonment of the Project by the Company 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 the Company contributing thereto; provided, however, that in the event of fire or other catastrophe, the Company elects within one hundred eighty (180) days from the happening of such event to reconstruct the Project;
- (g) The attachment, execution or other seizure of all or substantially all of the assets of the Company, which such attachment, execution or other seizure is not discharged within a period of sixty (60) days after the date of levy; or
- (h) The failure, refusal or neglect of the Company to perform, keep or observe any of the terms, covenants and agreements herein contained on the part of the Company to be performed, kept or observed.

ARTICLE IX
REMEDIES

9. Remedies.

- (a) Remedies on Default in Payment; Termination. Upon the happening of an event of default as defined in 8(a) hereof, if after ten (10) days written notice to the Company specifying the event of default and the default shall not be remedied within such ten (10) day period, 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 Project under the Leaseback Agreement, as determined by the Agency and the recording of Memorandums of Termination of the 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 and Executive Director, 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.
- (b) Remedies On Other Defaults. Upon the happening of any event of default as defined in ¶8 (b - h) hereof, if after thirty (30) days written notice to the Company specifying the event of default, the default shall not have been remedied within such thirty (30) day period, (or if, with reasonable diligence the default cannot be remedied within such thirty (30) day period, then within such extended period as may be reasonably required therefor) the Agency, at its option, may take any action hereinafter set forth and all such remedies shall be cumulative and not exclusive:
 - (i) Recover damages for the breach of any covenant or condition hereof;

- (ii) Seek an injunction to bar any actual or threatened violation or breach of this PILOT Agreement;
 - (iii) Seek any other remedy authorized by law or in equity; or
 - (iv) Terminate this PILOT Agreement, without prejudice or limitation as to all other rights or remedies herein and/or under law or in equity. Such termination may be accomplished by terminating the Agency's leasehold interest in the Project 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 and Executive Director, 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.
- (c) Legal Fees on Default. If the Agency shall be required to take any action to enforce this PILOT Agreement or to collect any amount due hereunder, the Company shall be liable to pay, in addition to any other costs and expenses incurred by the Agency, its reasonable legal fees and the reasonable fees of any experts, accountants, or other professionals retained by it, without regard to whether the Agency shall have instituted any lawsuit or action at law or in equity in any court or before anybody, provided such expenses were actually and necessarily incurred.
- (d) 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 five percent (5%) 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, the Company shall pay, in addition to said payment, the greater of (a) a late charge equal to five percent (5%) of the amount due plus interest on said payment equal to one percent (1%) 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.

ARTICLE X
INDEMNIFICATION

10. Indemnification. The Company shall indemnify, defend and hold harmless the Agency, its directors, officers, employees, members, agents (except the Company), representatives, and their respective successors and assigns and personal representatives from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Project or (ii) liability arising from or expense incurred by the Agency's acquiring, owning, leasing, constructing, installing and equipping the Project, including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or its directors, officers, employees, members, agents (except the Company), representatives, and their respective successors and assigns and personal representatives and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing obligations of the Company shall remain in full force and effect after the termination of this PILOT Agreement.

ARTICLE XI
AGENCY NO RECOURSE

11. No Recourse, Special Obligation.
- (a) The obligations and agreements of the Agency contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not any director, officer, employee, member, agent (other than the Company) or representative of the Agency in his individual capacity, and the directors, officers, employees, members, agents (other than the Company) or representatives of the Agency shall not be liable personally hereon or 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.
- (b) The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State or of the County and neither the State nor the County shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived and to be derived from the sale or other disposition of the Project (except for revenues derived by the Agency with respect to the Unassigned Rights (as defined in the Leaseback Agreement)).

- (c) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (i) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonable be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (ii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its directors, officers, employees, members, agents (other than the Company) or representatives of the Agency shall be subject to potential liability, the party seeking such order or decree shall agree to indemnify and hold harmless the Agency and its directors, officers, employees, members, agents (other than the Company) and representatives of the Agency against all liability expected to be incurred as a result of compliance with such request.
- (d) The obligations and agreements of the Company contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Company, and not of any member, direct or indirect beneficial owners, affiliates, partners, shareholders, officers, directors, agents, employees or representatives of the company in his or their individual capacity, and the members, direct or indirect beneficial owners, affiliates, partners, shareholders, officers, directors, agents and employees or representatives of the Company shall not be liable personally hereon or 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.

ARTICLE XII
GENERAL PROVISIONS

12. 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:
To the Agency:

County of Sullivan Industrial Development Agency
548 Broadway
Monticello, New York 12701
Attn: Executive Director

with a copy to:

Walter F. Garigliano, Esq.
449 Broadway – P.O. Drawer 1069
Monticello, New York 12701

To the Company:

Monticello Industrial Park LLC
171 East Industry Court
Deer Park, New York 11729

with a copy to:

Connell Foley LLP
875 Third Avenue, 21st Floor
New York, New York 10022
Attn: George C.D. Duke, Esq.

and to such other addresses and/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 ¶12(a). All notices shall be deemed given when mailed or personally delivered in the matter provided in this ¶12(a).

- (b) Assignment. Except as otherwise provided herein, 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 not be unreasonably withheld by the Agency. This PILOT Agreement may be assigned to any affiliate of the Company without consent of the Agency. "Affiliate" shall mean as applied to a person or entity, any other person or entity directly or indirectly controlling, controlled by, or under common control with, that person or entity.
- (c) Binding Effect. This PILOT Agreement shall inure to the benefit of and shall be binding upon the Agency, the Company and its respective permitted successors and assigns.
- (d) Waiver. No waiver of any of the provisions of this PILOT Agreement shall be deemed to or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.
- (e) Severability. If any provision of this PILOT Agreement shall be determined to be illegal and unenforceable by any court of law or any competent governmental or other authority, the remaining provisions shall be severable and enforceable in accordance with its terms so long as this PILOT Agreement without such terms or provisions does not fail of its essential purpose or purposes. The parties will negotiate in good faith to replace any such illegal or unenforceable provision or

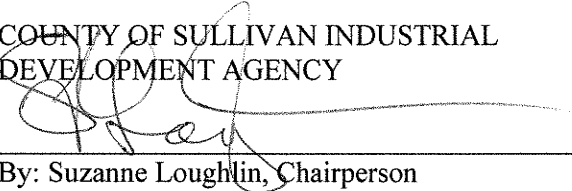
provisions with suitable substitute provisions which will maintain the economic purposes and intentions of this PILOT Agreement.

- (f) Governing Law, Venue. This PILOT Agreement shall be governed by and construed in accordance with the laws of the State of New York. The parties hereby designate a court of proper jurisdiction located in the County of Sullivan, State of New York as the exclusive venue for resolution of any disputes which may arise under or by reason of this PILOT Agreement.
- (g) Survival of Obligations. The obligations of the Company to make PILOT Payments and all of the Company's indemnification obligations shall survive any termination or expiration of this PILOT Agreement.
- (h) Section Headings Not Controlling. The headings of the several sections in this PILOT Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this PILOT Agreement.
- (i) Entire Agreement. This PILOT Agreement sets forth the entire agreement and understanding between the parties relating to the subject matter hereof and supersedes all prior discussions and negotiations between them. This PILOT Agreement may not be amended in any respect except by a written amendment expressly referring to this PILOT Agreement and executed by the parties to be bound thereby.

[REMAINDER OF PAGE INTENTIONALLY BLANK]


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

COUNTY OF SULLIVAN INDUSTRIAL
DEVELOPMENT AGENCY



By: Suzanne Loughlin, Chairperson

MONTICELLO INDUSTRIAL PARK LLC



By: Cono Cimino, Managing Member