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Winkler

AGREEMENT FOR PAYMENT IN LIEU
OF REAL ESTATE TAXES

This is an agreement dated as of November 1, 2016, between the TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY (the "Agency") and CMR OKW PROPERTIES, LLC (the "Company") for the making by the Company of certain payments in lieu of real estate taxes, as required by the Agency Lease Agreement between the parties, entered into as of November 1, 2016, by which the Agency has leased certain premises to the Company (the "Lease Agreement"). The Agency and the Company each accept and agree to the following statements or terms. This Agreement will be referred to herein as the "PILOT Agreement."

Section 1. Definitions. Unless otherwise defined herein, the terms used in this PILOT Agreement shall have the meanings specified in the Lease Agreement.

Section 2. Agency Tax Exemption. Subject to the completion and filing of an Application for Tax Exemption by the Taxable Status Date and the approval of the Application for Tax Exemption by the Assessor, the Project shall be exempt from Real Estate Taxes commencing with the 2017 - 2018 tax fiscal year of the School District and the 2018 tax fiscal year of the Town and County. The Company shall provide the Agency with all information required to complete the Application for Tax Exemption and shall provide such additional information and take such actions as are required by the Assessor in order to process and approve the Application. In the event the exemption from Real Estate Taxes is denied for any reason, the Company agrees to pay all Real Estate Taxes levied upon the Project as they become due. To the extent permitted by law, the Company shall have the right to protest such denial subject, however, to the conditions set forth in Section 8.1 of the Lease Agreement. 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 file the Application for Tax Exemption with the Assessor by the Taxable Status Date.

Section 3. Obligation of the Company to Make Payments in Lieu of Taxes. Subject to the approval of the Application for Tax Exemption, the Agency shall require and the Company agrees to make payments in lieu of real estate taxes to the appropriate taxing authorities pursuant to the terms of this PILOT Agreement.

Section 4. Taxing Authorities and Amounts.

(1) Until the commencement of the tax fiscal years set forth in Section 2 above, the Company shall continue to pay all appropriate taxing authorities all taxes due as if the Agency did not have an interest in the Project. As set forth below, the total payments in lieu of taxes required under this PILOT Agreement are allocated among the affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the Project not been tax exempt due to the status of the Agency. Thereafter, the Company shall make payments in lieu of taxes to all appropriate taxing authorities on the land and buildings constituting the Project (SBL #81.02-3-16.1), in accordance with this section. For each taxing authority, such payments in lieu of taxes shall have: (i) a component which shall be based upon the then current tax rate for the then current tax fiscal year applied against the pre-Project assessed value of the depreciable and non-depreciable portions of all tax parcels comprising the Project (assessed as land, buildings or other improvements), which pre-Project assessed value is \$1,448,700.00 (the "Pre-Project Assessment"); and (ii) a variable component which shall be based upon the then current tax rate applied against the difference between the then total current assessed valuation of all tax parcels comprising the Project (the "Full Assessed Value")

and the Pre-Project Assessment.

For the periods of time indicated below, the Company shall make the indicated payments in lieu of taxes to the indicated taxing authorities:

(a) Payments in lieu of general levy real estate taxes to the Town of Amherst (the "Town") for each of the tax fiscal years 2018 through 2024, or until termination of the Lease Agreement, whichever date occurs first, shall be in an amount equal to the Town Base PILOT Payment plus the Town Variable PILOT Payment (as such terms are defined below) for each such tax fiscal year.

(i) The Town Base PILOT Payment for each tax fiscal year shall be an amount equal to the Town tax rate in effect for such tax fiscal year applied against the Pre-Project Assessment.

(ii) The Town Variable PILOT Payment for each tax fiscal year shall be an amount equal to the Town tax rate in effect for such tax fiscal year applied to the product of (i) the difference between the Full Assessed Value and the Pre-Project Assessment, and (ii) the percentage applicable to such tax fiscal year as shown on Schedule "A" attached hereto and made a part hereof.

Each such payment shall be delivered to the Town through the Agency at 4287 Main Street, Amherst, New York 14226, or such other place as may be designated from time to time. Payments for each tax fiscal year must be made by February 15 of that year, or such payment shall be considered delinquent.

(b) Payments in lieu of general levy real estate taxes to the County of Erie (the "County") for each of the tax fiscal years 2018 through 2024, or until termination of the Lease Agreement, whichever date occurs first, shall be in an amount equal to the County Base PILOT

Payment plus the County Variable PILOT Payment (as such terms are defined below) for each such tax fiscal year.

(i) The County Base PILOT Payment for each tax fiscal year shall be an amount equal to the County tax rate then in effect for such tax fiscal year applied against the Pre-Project Assessment.

(ii) The County Variable PILOT Payment for each tax fiscal year shall be an amount equal to the County tax rate in effect for such tax fiscal year, applied to the product of (i) the difference between the Full Assessed Value and the Pre-Project Assessment, and (ii) the percentage applicable to such tax fiscal year as shown on Schedule "A" attached hereto and made a part hereof.

Each such payment shall be delivered to the County through the Agency at 4287 Main Street, Amherst, New York 14226, or such other place as may be designated from time to time. Payments for each tax fiscal year must be made by February 15 of that year, or such payment shall be considered delinquent.

(c) Payments in lieu of general levy real estate taxes to the Williamsville Central School District (the "School District") for each of the tax fiscal years 2017 - 2018 through 2023 - 2024, or until termination of the Lease Agreement, whichever date occurs first, shall be in an amount equal to the School District Base PILOT Payment plus the School District Variable PILOT Payment (as such terms are defined below) for each such tax fiscal year.

(i) The School District Base PILOT Payment for each tax fiscal year shall be an amount equal to the School District tax rate in effect for such tax fiscal year applied against the Pre-Project Assessment.

(ii) The School District Variable PILOT Payment for each tax fiscal year

shall be an amount equal to the School District tax rate in effect for such tax fiscal year applied to the product of (i) the difference between the Full Assessed Value and the Pre-Project Assessment, and (ii) the percentage applicable to such tax fiscal year as shown on Schedule "A" attached hereto and made a part hereof.

Each such payment shall be delivered to the Williamsville Central School District, 105 Casey Road, P.O. Box 5000, East Amherst, New York 14051 or such other place as may be designated from time to time. Payments for each tax fiscal year must be made by October 15 of that year, or such payment shall be considered delinquent.

(d) In addition to the foregoing, the Company shall pay all special assessments and charges that are levied against the Project as if the Agency did not have an interest in the Project.

(2) The payments required under Paragraph (1) of this section shall in no event be more than would be otherwise payable as taxes if the Agency did not have an interest in the Project.

(3) Each of the foregoing payments shall be made on or before the date specified herein.

(4) Upon the termination of the periods shown in Paragraph (1) of this section, for the respective taxing authorities, the Company shall make full payment in lieu of all taxes on the Project as if the Agency did not have an interest in the Project.

Section 5. Proration.

During the last year of the term of the Lease Agreement the Company may prorate any of its payments in lieu of taxes on the basis of the actual period during which the Agency has an interest in the Project so that there shall exist no period of time for which the Company is obliged to make payments in lieu of taxes in addition to the actual tax payments to which the Project is subject, under current law, at the time the Agency's interest in the Project is terminated.

Section 6. Obligations and Rights of the Company Relating to Tax Assessments and Levies.

(1) Subject to the provisions of the Lease Agreement, the Company in cooperation with the Agency shall:

(a) cause the appropriate real estate tax assessment and tax levy officers to assess the Project and apply tax rates to the respective assessments as if the Agency did not have an interest in the Project.

(b) cause the appropriate real estate tax officers to submit to the Company, when the respective types of taxes are levied on privately owned property, statements specifying the respective amounts and due dates of taxes involved in this PILOT Agreement which the appropriate taxing authorities would receive if the Agency did not have an interest in such property; and

(c) file any accounts or tax returns required with the appropriate officer or officers.

(2) The payments the Company is required to make under this PILOT Agreement are subject to the Company's rights, hereby granted, (a) to obtain reductions in the assessed valuation of the Project or to obtain exemptions and discounts, if any, which are afforded to the Company as a private owner of the Project, and (b) to seek to obtain refunds of any such payments made including payments made pursuant to this PILOT Agreement. The Agency shall join in any procedure for obtaining relief under this paragraph to the extent that the Agency's consent is required for the Company to undertake such procedure; provided, however, that the Company shall continue to make the payments in lieu of taxes required by this PILOT Agreement adjusted for any reduction as provided above so long as the Lease Agreement shall remain in effect.

Section 7. Default in Payment in Lieu of Taxes. In the event the Company fails to make

any such payments in lieu of taxes when due, whether for a full tax fiscal year or years or for a portion of a tax fiscal year pursuant to Sections 4 or 5 hereof, the amount or amounts so in default shall continue as an obligation of the Company until fully paid. In addition, if any payment is not received by the Agency or the affected taxing jurisdiction or jurisdictions when due, the Company shall pay (i) a late payment penalty equal to five (5%) percent of the delinquent amount, and (ii) for each month, or part thereof, that the payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, equal to one (1%) percent per month until the payment is made. The Agency and the Company hereby acknowledge the right of the Town, the County and the School District to recover directly from the Company any amounts so in default pursuant to General Municipal Law §874(6). The Company shall promptly notify the Agency of any action brought, or other measure taken, by a taxing authority to recover such amounts. It is understood that the right of any taxing authority herein acknowledged is in addition to, and shall not impair, the Agency's own rights arising from a breach of this PILOT Agreement. Should the Agency or the Town, the County or the School District commence any action to recover directly from the Company any amounts so in default, such parties shall be entitled to recover from the Company the amount due, the late payment penalty, interest, expenses, costs and disbursements, together with the reasonable attorneys' fees necessary to prosecute such action or proceeding.

Section 8. Effect of Fulfillment of the Requirement. Once having paid the amounts required by this PILOT Agreement, the Company shall not be required to pay any real estate taxes for which payments in lieu of taxes have been made.

Section 9. Effect of Events of Default.

(1) The following shall constitute "Event(s) of Default" hereunder:

(a) The Company fails to make any payments in lieu of taxes required

hereunder, or fails to perform any other obligation imposed on the Company hereunder.

(b) The occurrence and continuance of any other Event of Default as defined in the Lease Agreement.

(2) If the Project is not being used in accordance with the Act or the Lease Agreement, or if an Event of Default occurs, the Company shall make payments in lieu of taxes on the Project in such amounts as would be payable as real estate taxes levied on the Project if the Agency did not have an interest in the Project. The applicable tax assessment and tax levy rates shall be those in effect in the records of the appropriate taxing authorities.

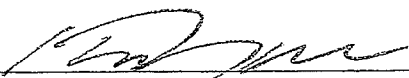
(3) The period for the payments required by Paragraph (2) of this section shall commence on the date the Agency determines (a) that the use of the Project under the Act or the Lease Agreement is not being complied with, or (b) that an Event of Default has occurred and is continuing.

Section 10. Survival of the Company's Obligations. The obligations of the Company under this PILOT Agreement shall survive the termination or expiration of the Lease Agreement, for whatever reason terminated or expired.

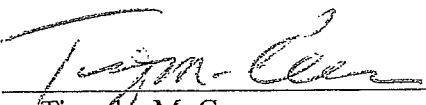
Section 11. Joint and Several Liability. The liability of each individual constituting the Company under this PILOT Agreement shall be joint and several and each such individual acknowledges that his or her obligations under this PILOT Agreement are independent of the obligations of the other individual or any other person and that a separate cause of action or separate causes of action may be brought against either such individual without the necessity of joining any other person or previously proceeding with or exhausting any other remedy against any other person who may be liable under this PILOT Agreement.

IN WITNESS WHEREOF, the Agency and the Company have caused this PILOT Agreement to be executed by their Authorized Representatives, all as of the date first above written.

TOWN OF AMHERST INDUSTRIAL
DEVELOPMENT AGENCY

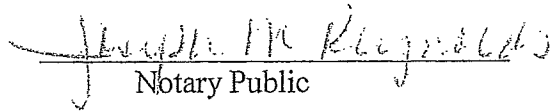
By: 
Name: Kevin J. Zanner
Its: Assistant Secretary

CMR OKW PROPERTIES, LLC

By: 
Name: Timothy M. Creenan
Its: Member

STATE OF NEW YORK)
) SS.:
COUNTY OF ERIE)

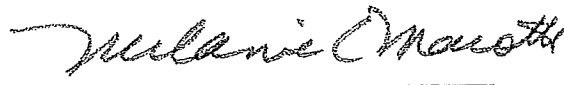
On the 21st day of November, in the year 2016 before me, the undersigned, a Notary Public in and for said state, personally appeared Kevin J. Zanner, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.


Notary Public

JOSEPH M. REYNOLDS
Notary Public of New York
Qualified in Erie County
My Commission Expires 4/12/ 17

STATE OF NEW YORK)
) SS.:
COUNTY OF ERIE)

On the 21st day of November, in the year 2016, before me, the undersigned, a Notary Public in and for said state, personally appeared Timothy M. Creenan, 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 s/he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.


Notary Public

MELANIE C. MAROTTO
No. 01MA4973387
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Oct. 22, 2018

SCHEDULE "A"

<u>TAX FISCAL YEAR</u>			<u>APPLICABLE PERCENTAGE</u>
<u>Town</u>	<u>County</u>	<u>School</u>	
2018	2018	2017-18	10%
2019	2019	2018-19	10%
2020	2020	2019-20	20%
2021	2021	2020-21	20%
2022	2022	2021-22	30%
2023	2023	2022-23	30%
2024	2024	2023-24	30%

Lease Expiration Date: December 31, 2024