

AGREEMENT FOR PAYMENT IN LIEU  
OF REAL ESTATE TAXES

This is an agreement dated as of March 1, 2022, between the TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY (the "Agency") and 111 NORTH MAPLEMERE 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 March 1, 2022, 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 Agency by the Taxable Status Date of March 1, 2023, and the approval of the Application for Tax Exemption by the Assessor, the Project shall be identified as exempt from Real Estate Taxes commencing with the 2023 – 2024 tax fiscal year of the School District (as defined herein) and the 2024 tax fiscal year of the Town (as defined herein) and County (as defined herein). 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 subparagraphs (a), (b) and (c) hereof, 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. Thereafter, the

Company shall make payments in lieu of taxes to all appropriate taxing authorities on the land and buildings constituting the Project (SBL #55.03-1-12), in accordance with this section. For each taxing authority, such payments in lieu of taxes shall have: (i) a land component which shall be based upon the then current tax rate for the then current tax fiscal year applied against the then current assessed valuation of the non-depreciable portion of all tax parcels comprising the Project (assessed as land) (the "Land Value"); and (ii) a variable component which shall be based upon the then current tax rate applied against the difference between the then current assessed valuation of the depreciable portion of all tax parcels comprising the Project (assessed as buildings or other improvements) (the "Full Assessed Value") and the Land Value.

For the periods of time indicated below, the Company shall make payments in lieu of taxes as follows:

(a) Town of Amherst. Payments in lieu of general levy real estate taxes to the Town of Amherst (the "Town") for each of the tax fiscal years 2024 through 2043, or until termination of the Lease Agreement, whichever date occurs first, shall be in an amount equal to the Town Land PILOT Payment plus the Town Variable PILOT Payment (as such terms are defined below) for each such tax fiscal year.

(i) The Town Land PILOT Payment for each tax fiscal year shall be an amount equal to the Town tax rate then in effect for such tax fiscal year applied to the then current assessed valuation of the non-depreciable portion of all tax parcels constituting the Project assessed as land.

(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 then current Land Value, 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. Town PILOT payments will be allocated in accordance with the terms of the PILOT Application Agreement (as defined herein).

(b) County of Erie. Payments in lieu of general levy real estate taxes to the County of Erie (the "County") for each of the tax fiscal years 2024 through 2043, or until termination of the Lease Agreement, whichever date occurs first, shall be in an amount equal to the County Land PILOT Payment plus the County Variable PILOT Payment (as such terms are defined below) for each such tax fiscal year.

(i) The County Land 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 to the then current assessed valuation of the non-depreciable portion of all tax parcels constituting the Project assessed as land.

(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 Full Assessed Value and the current Land Value, 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. The County is not a party to the PILOT Application Agreement and will therefore receive the full amount of the County PILOT payments.

(c) Sweet Home Central School District. Payments in lieu of general levy real estate taxes to the Sweet Home Central School District (the "School District") for each of the tax fiscal years 2023 - 2024 through 2042 - 2043, or until termination of the Lease Agreement, whichever date occurs first, shall be in an amount equal to the School District Land 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 Land PILOT Payment for each tax fiscal year shall be an amount equal to the School District tax rate then in effect for such tax fiscal year applied to the then current assessed valuation of the non-depreciable portion of all tax parcels constituting the Project assessed as land.

(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 then current Land Value, 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 School District 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 October 15 of that year, or such payment shall be considered delinquent. The School District PILOT payments will be allocated in accordance with the terms of the PILOT Application Agreement (as defined herein).

(d) In addition to the foregoing, as the same shall become due and payable, the Company shall pay all special district charges, special assessments, and special *ad valorem* charges (including but not limited to any fire district charges or "curb charges") and pure water charges and sewer charges that are levied against the Project are to be paid in full in accordance with normal billing practices 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.

(5) The parties intend for the Company to receive PILOT tax abatement benefits on the difference between the Full Assessed Value of the Project and the Land Value for the first ten (10) years of the term of this PILOT Agreement only. It is assumed that the Project will be identified as exempt on the tax rolls as of the Taxable Status Date of March 1, 2023. In the event that this assumption is incorrect, then the dates expressed in Section 4(1)(a)-(c) will be adjusted accordingly.

(6) The Agency, Town and School District are parties to that certain Amherst Central Park Infrastructure Fund and PILOT Application Agreement dated December 20, 2021 (the "PILOT Application Agreement"), a copy of which is attached hereto as Exhibit A and made a part hereof. Under the terms of the PILOT Application Agreement, all or a portion of the Town PILOT payments and School District PILOT payments will be re-allocated into the Amherst Central Park Infrastructure Fund (the "Fund") in accordance with the percentages listed under Column 2 of Schedule "B" of the PILOT Application Agreement. Notwithstanding any termination or expiration of the PILOT Application Agreement, the Town PILOT payments and the School District PILOT payments shall be due and payable as calculated in accordance with the terms of this Agreement.

#### 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

(b) The Company fails to perform any other obligation imposed on the Company hereunder, and the Company fails to cure within thirty days after notice of said event or such longer period of time as is reasonably necessary to cure such non-monetary default provided the Company commences such cure within 30 days and continues in good faith to effectuate a cure of the default.

(c) 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 any termination or expiration of the Lease Agreement.

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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

111 NORTH MAPLEMERE LLC,  
a New York limited liability company

By: Quaker 20A Realty LLC, its sole member

By: Audubon Park Manager LLC

By: \_\_\_\_\_  
Name: Paul F. Ciminelli  
Its: Manager

By: \_\_\_\_\_  
Name: Brian E. McGrath  
Its: Manager

[signature page to PILOT Agreement]

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DEVELOPMENT AGENCY

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By: Quaker 20A Realty LLC, its sole member

By: Audubon Park Manager LLC

By:  \_\_\_\_\_  
Name: Paul E. Ciminelli  
Its: Manager

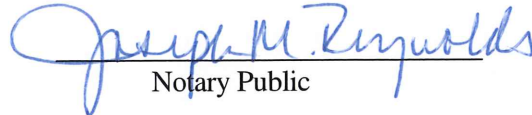
By:  \_\_\_\_\_  
Name: Brian E. McGrath  
Its: Manager

*[signature page to PILOT Agreement]*



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

On the 17 day of March, in the year 2022 before me, the undersigned, 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 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 this instrument.

  
Notary Public

Joseph M. Reynolds  
Notary Public, State of New York  
Reg. No. 02RE6022684  
Qualified in Erie County  
Commission Expires 04/12/23

STATE OF ) ) SS.:  
COUNTY OF )

On the \_\_\_\_ day of March, in the year 2022, before me, the undersigned, personally appeared Paul F. Ciminelli, 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 this instrument.

\_\_\_\_\_  
Notary Public

STATE OF ) ) SS.:  
COUNTY OF )

On the \_\_\_\_ day of March, in the year 2022, before me, the undersigned, personally appeared Brian E. McGrath, 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 this instrument.

\_\_\_\_\_  
Notary Public

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

On the \_\_\_ day of March, in the year 2022 before me, the undersigned, 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 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 this instrument.

\_\_\_\_\_  
Notary Public

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


On the 16<sup>th</sup> day of March, in the year 2022, before me, the undersigned, personally appeared Paul F. Ciminelli, 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 this instrument.

  
\_\_\_\_\_  
Notary Public

STATE OF New York )  
 ) SS.:  
COUNTY OF Erie )

KATHLEEN A. GUENTHER #01GU4675162  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN ERIE COUNTY  
My Commission Expires August 31, 2022

On the 16<sup>th</sup> day of March, in the year 2022, before me, the undersigned, personally appeared Brian E. McGrath, 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 this instrument.

  
\_\_\_\_\_  
Notary Public

[acknowledgement page to PILOT Agreement]

ADAM M. FAETH No. 02FA6376731  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN ERIE COUNTY  
My Commission Expires June 18, 2022

SCHEDULE "A"

<u>TAX FISCAL YEAR</u>			<u>APPLICABLE PERCENTAGE</u>
<u>Town</u>	<u>School</u>	<u>County</u>	
2024	2023-24	2024	80%
2025	2024-25	2025	80%
2026	2025-26	2026	80%
2027	2026-27	2027	80%
2028	2027-28	2028	80%
2029	2028-29	2029	90%
2030	2029-30	2030	90%
2031	2030-31	2031	90%
2032	2031-32	2032	90%
2033	2032-33	2033	90%
2034	2033-34	2034	100%
2035	2034-35	2035	100%
2036	2035-36	2036	100%
2037	2036-37	2037	100%
2038	2037-38	2038	100%
2039	2038-39	2039	100%
2040	2039-40	2040	100%
2041	2040-41	2041	100%
2042	2041-42	2041	100%
2043	2042-43	2043	100%

Lease Expiration Date: December 31, 2043

EXHIBIT A  
PILOT Application Agreement