

July 5, 2016

HARRIS BEACH PLC

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Hon. Cheryl Dinolfo
Monroe County Executive
39 West Main Street
County Office Building
Rochester, New York 14614
CERTIFIED MAIL RECEIPT #:
7015 0640 0005 9684 1103

Ms. Susan Buck
Monroe County Treasury
B-3 County Office Building
39 West Main Street
Rochester, New York 14614
CERTIFIED MAIL RECEIPT #:
7015 0640 0005 9684 1110

Ms. Lovely Warren, Mayor
City of Rochester
City Hall, 30 Church Street
Rochester, New York 14614
CERTIFIED MAIL RECEIPT #:
7015 0640 0005 9684 1127

Mr. Randy Webb
Bureau of Accounting
30 Church Street, Room 106-A
Rochester, New York 14614
CERTIFIED MAIL RECEIPT #:
7015 0640 0005 9684 1134

Mr. Thomas G. Huonker, Assessor
City Hall
30 Church Street
Rochester, New York 14614
CERTIFIED MAIL RECEIPT #:
7015 0640 0005 9684 1141


Ms. Linda Cimusz, Interim Superintendent
Rochester City School District
131 West Broad Street
Rochester, New York 14614
CERTIFIED MAIL RECEIPT #:
7015 0640 0005 9684 1158

Re: County of Monroe Industrial Development Agency ("COMIDA")
RR Street LLC Project
127-131 Railroad Street in the City of Rochester, NY

Ladies and Gentlemen:

Enclosed herewith please find a copy of the Payment In Lieu of Tax Agreement, the Application for Real Property Tax Exemption and COMIDA Checklist with respect to the above-captioned matter. Also enclosed for your perusal are copies of the lease and leaseback agreements.

Very truly yours,


Rachel Baranello Endress

RBE/lap
Enclosures

cc: COMIDA
Adrian Morgenstern
Jordan Morgenstern, Esq.

COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY

AND

RR STREET LLC

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

Tax Map No.

106.670-0001-084.000

Affected Tax Jurisdictions:

County of Monroe
City of Rochester

Dated as of June 1, 2016

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT (the "PILOT Agreement") made as of June 1, 2016, by and between the **COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, having its offices at 8100 CityPlace, 50 West Main Street, Rochester, New York 14614 (the "Agency"), and **RR STREET LLC**, a limited liability company formed and existing under the laws of the State of New York, with offices at c/o 1080 Pittsford-Victor Road, Suite 200, Pittsford, New York 14534 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 55 of the Laws of 1972 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has requested the Agency to assist in a certain project (the "Project") all as more particularly described in an application dated February 2, 2016 (the "Application", a copy of which is attached to the hereinafter defined Leaseback Agreement) and the Agency has agreed to acquire a leasehold or other interest in an existing approximately 32,000 square-foot warehouse located at 127-131 Railroad Street in the City of Rochester, New York 14609 [Tax Map # 106.670-0001-084] (the "Existing Improvements"); and to assist in the modernization and redevelopment of the Existing Improvements for commercial, office and retail purposes (collectively, the "Improvements" and, together with the Existing Improvements, the "Facility", a description of which is annexed hereto as **Exhibit A**); and related site work; approximately 5,500 square feet of the Facility will be subleased to SCN Hospitality LLC, a commercial restaurant commissary serving several local restaurants, approximately 4,700 square feet of the Facility will be subleased to two restaurant operations (collectively, the "Tenant"), and the remaining portion of the building will be leasable space; and

WHEREAS, the Agency has agreed to lease the Facility to the Company; 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 Legislature of the County of Monroe by Resolution No. 154 of 1989 has adopted a revised tax abatement policy which was modified and readopted by the Agency in June 2000 (the "JobsPlus Tax Abatement Policy," sometimes hereinafter referred to as "JobsPlus") for industrial and/or commercial property leased, licensed and/or owned by the Agency; and

WHEREAS, the Facility meets the criteria of the JobsPlus Tax Abatement Policy; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes by the Company to the County of Monroe and the City of Rochester (collectively, the "Taxing Jurisdictions").

NOW, THEREFORE, in consideration of the Agency providing the Facility and in consideration of the covenants herein contained, it is mutually agreed as follows:

Section I. Payment in Lieu of Ad Valorem Real Property Taxes.

JobsPlus Tax Abatement Policy. Subject to completion and filing by the applicable tax status date of New York State form RP-412-a, Application for Real Property Tax Exemption, (the "Exemption Application") under Section 412-(a) of the New York State Real Property Tax Law and Section 874 of the Act and as long as the Facility is leased by the Agency and leased back to the Company ("Leased"), the Company agrees to pay annually to the Taxing Jurisdictions as a payment in lieu of taxes, an amount equal to 100% of the real estate taxes ("Real Estate Taxes"), less the percentages of exemption set forth on the schedule below. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the Affected Taxing Jurisdictions.

<u>YEARS OF EXEMPTION</u>	<u>PERCENTAGE OF EXEMPTION</u>
1	90%
2	80%
3	70%
4	60%
5	50%
6	40%
7	30%
8	20%
9	10%
10	0%

Further, provided that:

(i) Jobs Requirement. The Company maintains its present impacted job level of six full-time jobs in Monroe County, New York, and the Company or its Tenant(s) creates one (1) new full-time/full-time equivalent job in three (3) years and maintains that one (1) new full-time/full-time equivalent job for the balance of the ten (10) year term hereof. The benefits provided for herein and the three-year job creation period commence when the Facility is substantially complete such that it is reassessed by the City of Rochester Assessor at full value for the Facility; and

(ii) Compliance Report. The Company shall report its compliance with these provisions as requested by the Agency, or its Project Compliance Monitor; and

(iii) Job Failure. If the one (1) new full-time job is not created by the end of the three (3) year period or not continuously maintained during the balance of the term hereof, the exemption schedule will revert back to Section 485-b of the New York Real Property Tax Law and the Company agrees to pay in any year for which the job creation requirements are not met (a "Disqualifying Year"), as an additional payment in lieu of taxes, an amount equal to the difference between the tax benefits received in years one through the Disqualifying Year under this PILOT Agreement and the tax benefits which would have been received in years one through the Disqualifying Year under Section 485-b of the New York Real Property Tax Law.

(iv) Waiver Process. The payments required hereunder for any non-compliance shall be paid by the Company to any and all Affected Taxing Jurisdictions whether or not billed. However, if the Company has made a good faith effort to achieve the job creation requirement, it may apply in writing for relief from the obligation for repayment of taxes abated, based on a showing of unforeseen economic circumstances, fiscal hardship, or other good cause. Application for relief from the repayment obligation shall be made to the Agency, which shall examine the application and grant relief, in whole or in part, from the repayment obligation or grant an alternate schedule for attaining the job creation requirement.

(v) Benefit Period. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than ten (10) consecutive years. The Company agrees that it will not seek any tax exemption for the Facility which would provide benefits for more than ten (10) consecutive years. Notwithstanding the foregoing, nothing contained in this PILOT Agreement shall render the Company ineligible for a continued tax exemption under Real Property Tax Law Section 485-b or any other applicable statute if this PILOT Agreement is terminated prior to the expiration of the exemption schedule set forth herein.

Section II. Special District Charges, Special Assessments and Other Charges.

(a) Special district charges, special assessments, and special ad valorem levies, unless otherwise exempt, and Monroe County Pure Waters charges are to be paid in full in accordance with normal billing practices.

(b) The Company shall pay, within the applicable grace period and without penalty, the amounts set forth in Sections I and II(a) hereof applicable to taxes, special ad valorem levies, special assessments or similar tax equivalents, less the percentages of exemption on similar property subject to taxation by the Taxing Jurisdictions, as appropriate.

Section III. Payment Due Date and Payee Allocation.

As long as the Facility is owned or leased by the Agency, the Company agrees to pay annually to the Affected Taxing Jurisdictions as payment in lieu of taxes, on or before October 1 of each year for school taxes and on or before January 30 of each year for County and Town taxes, the amounts set forth in Section I hereof. The Company shall make PILOT payments in the amounts and on the dates specified above, whether or not any such PILOT payment is billed by the Agency, the Affected Taxing Jurisdictions or any other party. Payments-in-lieu-of-taxes

shall be paid to the Affected Taxing Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Agency's involvement, unless the Affected Taxing Jurisdictions have consented in writing to a different allocation.

The parties agree and acknowledge the payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Taxing Jurisdictions would otherwise lose because the subject parcel(s) are not on the tax rolls.

Section IV. Lease Termination.

In the event that the Facility is no longer Leased by the Agency, and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption is less than that described in Section I herein, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Taxing Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date the Facility is no longer Leased by the Agency or the date of loss of eligibility of all or a portion of the exemption described herein. Notwithstanding anything contained herein to the contrary, in the event that the Facility, or any portion thereof, is no longer Leased by the Agency, or if the Agency's interest is otherwise transferred to the Company or any person or entity not otherwise entitled to an exemption from taxation (collectively with the Company, the "Transferee") such that the Facility, or portion thereof, is subject to immediate assessment and taxation and is taxed pro rata for the unexpired portion of any fiscal year during which said transfer of title to the Transferee occurred pursuant to the provisions of Section 520 of the New York Real Property Tax Law, any amounts payable or made, as the case may be, pursuant to this PILOT Agreement by the Company to the respective Taxing Jurisdictions shall be reduced or refunded, as the case may be, in accordance with 10 Op. Off. Real Property Services 87 (1999), from the amount of taxes required to be paid pursuant to such Section 520 with respect to the fiscal year during which said transfer of title to the Transferee occurred. The provisions of the immediately preceding sentence shall survive the termination or expiration of the leaseback agreement, dated as of the date hereof, entered into between the Agency and Company and executed simultaneously herewith (the "Leaseback Agreement").

Section V. Assessment Challenges.

(a) 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 Company were the owner of the Facility.

(b) The Company and its Tenant shall have all of the rights and remedies of a taxpayer with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Taxing Jurisdictions and likewise 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 or the validity or amount of any tax equivalent provided for herein. If the assessment of all or a portion of the Facility is reduced as a result of any such proceedings so that

the Company would be entitled to receive a refund or refunds of monies paid to the respective Taxing Jurisdictions (taking into account, however, the impact of any abatement allowed the Company hereunder), the Company shall be entitled to receive a refund or refunds from the applicable Taxing Jurisdictions of any payment in lieu of real estate taxes and assessment paid pursuant to this PILOT Agreement in such amount.

Section VI. Changes in Law.

To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

Section VII. Events of Default.

(a) If payments are not made as provided for herein, the Agency and/or Taxing Jurisdictions, individually or collectively, shall be entitled to pursue any and all remedies afforded them at law or in equity.

Notwithstanding anything contained herein to the contrary, upon the occurrence of (i) the sale or closure of the Facility; (ii) a significant unapproved change in use of the Facility; (iii) a significant reduction in employment at the Facility (as defined below); (iv) the Company abandons or otherwise vacates the County of Monroe; (v) the failure by the Company to make any payments required under this PILOT Agreement; or (vi) the breach of covenants or event of default under the Leaseback Agreement (singularly or collectively an "Event of Default"), the Agency shall have the right to recapture real property tax abatements provided hereunder pursuant to the following schedule:

Year of Recapture	Percent of Recapture, Applicable to Current Year and All Prior Years
1	100%
2	100%
3	50%
4	50%
5	25%
6	25%
After year 6	At Agency's Discretion, 25% or Less

Any such recapture is at the sole and exclusive discretion of the Agency. The Agency shall notify the Company in writing of such Event of Default of its intent to recapture the PILOT benefits (or any portion thereof). For purposes of this Section only, a "significant reduction in employment" shall mean more than twenty percent (20%) of the employment as stated in the Company's application to the Agency, dated February 2, 2016 (the "Application"), to wit, 6. Any and all recaptured payments received pursuant to this provision shall be remitted to the Taxing Jurisdictions on a pro rata basis within sixty (60) days of receipt of payment.

(b) If payments pursuant to Section II(a) herein are not made by the due dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows: With respect to payments to be made pursuant to Section II(a) herein, if said payment is not received by the due date defined in Section II(a) herein, the Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus a late payment penalty, in an amount equal to one percent (1%) of the amount due per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, the Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

Section VIII. Transfer of Facility.

In the event that the Facility is transferred from the Agency to the Company (the lease/leaseback agreements are terminated), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section I hereof, or this PILOT Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or the date of termination.

Section IX. Assignment.

No portion of any interest in this PILOT Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency, which consent shall not be unreasonably withheld.

Section X. Miscellaneous.

(a) This PILOT Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

(b) All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follow:

To the Agency: County of Monroe Industrial Development Agency
8100 CityPlace, 50 West Main Street
Rochester, New York 14614
Attn: Executive Director

With a Copy to: Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attn: Rachel Baranello Endress, Esq.

To the Company: RR Street LLC
c/o 1080 Pittsford-Victor Rd., Suite 200
Pittsford, New York 14534
Attn: Adrian Morgenstern, Member

With a copy to: Morgenstern DeVoesick PLLC
1080 Pittsford-Victor Road, Suite 200
Pittsford, New York 14534
Attn: Jordan Morgenstern, Esq.

or such other address as any party may from time-to-time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

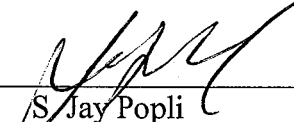
Section XI. No Recourse.

Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. No member of the Agency nor any person executing this PILOT Agreement on its behalf shall be liable personally under this PILOT Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of, or supplement to, against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such member, officer, agent, servant and employee being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this PILOT Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this PILOT Agreement as of the day and year first above written.

**COUNTY OF MONROE INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: S. Jay Popli
Title: Secretary

RR STREET LLC

By: 
Name: Adrian Morgenstern
Title: Member

Exhibit A

Description of the Project and Facility

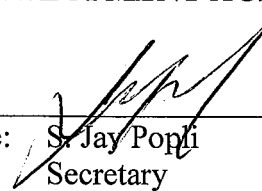
The "Project" consists of: the acquisition by lease, license or otherwise, of an interest in an existing approximately 32,000 square-foot warehouse located at 127-131 Railroad Street in the City of Rochester, New York 14609 [Tax Map # 106.670-0001-084] (the "Existing Improvements") and the modernization and redevelopment of the Existing Improvements for commercial, office and retail purposes (collectively, the "Improvements" and, together with the Existing Improvements, the "Facility"); approximately 5,500 square feet of the Facility will be subleased to SCN Hospitality LLC, a commercial restaurant commissary serving several local restaurants, approximately 4,700 square feet of the Facility will be subleased to two restaurant operations, and the remaining portion of the building will be leasable space.

[N.B. – PILOT abatement applies to new value of the existing approximately 32,000 square-foot building but not to the land.]

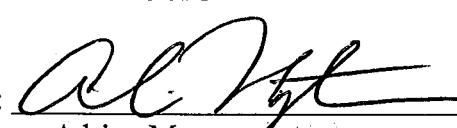
**PILOT ADDENDUM
[SCN HOSPITALITY LLC)**

The County of Monroe Industrial Development Agency (the "Agency") and RR Street LLC (the "Applicant" or "Landlord"), agree and understand that the Applicant who filed the application for Agency benefits is not the party creating the jobs directly. The Agency and the Applicant agree and understand that Applicant is the landlord for SCN Hospitality LLC (the "Tenant" and together with the Agency and the Applicant, the "Parties"). The Tenant executes this agreement to acknowledge and all Parties agree and understand that the Tenant is maintaining and creating the jobs in question. However, the Applicant is the one receiving benefits directly from the Agency. In the event the Tenant does not create the jobs, the Landlord is responsible for any and all penalties due as a result of Tenant's failure. The Applicant may attempt to find a substitute tenant and create the jobs with such new tenant provided the Agency is informed and consents to the new tenant's occupying the premises in question. The Agency's criteria for consent would be that the new tenant uses the facility as a "project" as defined for purposes of General Municipal Law Article 18-A and is otherwise creditworthy. The Landlord may require the Tenant in its sublease to create the jobs as the Parties agreed and understood or, in the alternative, to reimburse it for any and all fees it pays to the Agency. However, the Agency takes no position with respect to this issue and will look solely and exclusively to the Applicant as the direct beneficiary of its tax abatement programs.

**COUNTY OF MONROE INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: S. Jay Popli
Title: Secretary

RR STREET LLC

By: 
Name: Adrian Morgenstern
Title: Member

SCN HOSPITALITY LLC

By: _____
Name:
Title:

**PILOT ADDENDUM
[SCN HOSPITALITY LLC)**

The County of Monroe Industrial Development Agency (the "Agency") and RR Street LLC (the "Applicant" or "Landlord"), agree and understand that the Applicant who filed the application for Agency benefits is not the party creating the jobs directly. The Agency and the Applicant agree and understand that Applicant is the landlord for SCN Hospitality LLC (the "Tenant" and together with the Agency and the Applicant, the "Parties"). The Tenant executes this agreement to acknowledge and all Parties agree and understand that the Tenant is maintaining and creating the jobs in question. However, the Applicant is the one receiving benefits directly from the Agency. In the event the Tenant does not create the jobs, the Landlord is responsible for any and all penalties due as a result of Tenant's failure. The Applicant may attempt to find a substitute tenant and create the jobs with such new tenant provided the Agency is informed and consents to the new tenant's occupying the premises in question. The Agency's criteria for consent would be that the new tenant uses the facility as a "project" as defined for purposes of General Municipal Law Article 18-A and is otherwise creditworthy. The Landlord may require the Tenant in its sublease to create the jobs as the Parties agreed and understood or, in the alternative, to reimburse it for any and all fees it pays to the Agency. However, the Agency takes no position with respect to this issue and will look solely and exclusively to the Applicant as the direct beneficiary of its tax abatement programs.

**COUNTY OF MONROE INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: S. Jay Popli
Title: Secretary

RR STREET LLC

By: _____
Name: Adrian Morgenstern
Title: Member

SCN HOSPITALITY LLC

By: _____
Name: *Jose Milas*
Title: *managing member.*

