

February 9, 2016

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VIA CERTIFIED MAIL\
RETURN RECEIPT REQUESTED

Mr. Nathan T. Gabbert, Assessor
Henrietta Town Hall
475 Calkins Road
Henrietta, New York 14467
CERTIFIED MAIL RECEIPT #:
7015 1520 0003 1915 0790

Mr. Kevin Tubiolo
Collector of Fees and Taxes
B-3 County Office Building
39 West Main Street
Rochester, New York 14614
CERTIFIED MAIL RECEIPT #:
7015 1520 0003 1915 0806

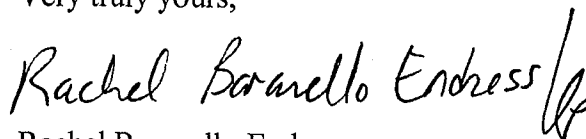
Dr. J. Graham, Superintendent
Rush-Henrietta Central School District
2034 Lehigh Station Road
Henrietta, New York 14467
CERTIFIED MAIL RECEIPT #:
7015 1520 0003 1915 0813

Re: County of Monroe Industrial Development Agency ("COMIDA")
USL Rochester I, LLC Project – 4255 East River Road in the Town of
Henrietta, New York

Gentlemen:

Enclosed herewith please find a blacklined Schedule A to the Payment In Lieu of Tax Agreement filed with your offices earlier this month, marked to note a change requested by the Town Assessor. Please note, the abatement applies to new value of the Facility and the Land. Please update your records accordingly. I've attached a copy of the PILOT Agreement with updated Schedule A attached for your files. Thank you.

Very truly yours,



Rachel Baranello Endress

MJT/lap

Enclosures

cc: Paul A. Johnson, COMIDA
Robert C. Morgan
James A. Malesich, Jr.
Jordan Alaimo, Esq.
John Acierno, Esq.

Exhibit A

Description of the Project and Facility

The "Project" consists of the construction of an approximately 300,000 square-foot cottage-style student housing development consisting of 85 two-story cottage-style buildings in 172 units, housing 687 students, offering 1-, 2-, 4- or 5-bedroom configurations with private bathrooms in each bedroom together with related improvements (the "Facility") to be occupied by Rochester Institute of Technology students as off-campus housing.

~~[N.B. PILOT abatement applies to the approximately 300,000 square-foot housing development but not to the land.]~~

PAYMENT IN LIEU OF TAX AGREEMENT

THIS AGREEMENT made as of the 1st day of January, 2016 (the "PILOT Agreement"), is 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 **USL ROCHESTER I, LLC**, a limited liability company formed and existing under the laws of the State of Delaware, with offices at 1080 Pittsford-Victor Road, Suite 100, 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 Agency has agreed to acquire a leasehold interest in certain real property on a portion of a parcel of land located at 4255 East River Road in the Town of Henrietta, County of Monroe and State of New York (Tax Map ID Nos.: 174.03-2-1.12 and Part of 174.03-2-1.11), and to assist in the construction thereon of an approximately 300,000 square-foot cottage-style student housing development and other related improvements to be known as The Cottages at East River and more particularly described in the attached **Exhibit A** (the "Facility"); and

WHEREAS, the Agency has agreed to lease or sublease the Facility to the Company; and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes and assessments imposed upon real property and improvements owned by it, other than special ad valorem levies, special assessments and service charges against real property which are nor may be imposed for special improvements or special district improvements; 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 (the "County"), the Town of Henrietta (the "Town") and the Rush-Henrietta Central School District (the "School District" and, collectively with the County and the Town, 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:

1. **Tax Abatement Policy.** As long as the Facility is operated as a student housing development by the Company, its subsidiary or affiliate, the Company agrees to pay annually to the Taxing Jurisdictions payments in lieu of taxes in accordance with the provisions of this Section 1 (the "PILOT Payment"). The term of this PILOT Agreement shall be thirty (30) years

from the "Effective Date" (as defined in Section 14 below) unless otherwise earlier terminated pursuant to the terms and conditions hereof. The PILOT Payment shall be made to the Town of Henrietta, in arrears, pursuant to the terms and conditions of the invoice the municipality shall send the Company on an annual basis. The Henrietta Town Assessor shall distribute to each of the affected Taxing Jurisdictions a pro rata share of the PILOT Payments pursuant to General Municipal Law §857(15).

2. (a) "Shelter Rent" shall mean the gross rents actually collected for the Facility in a given calendar year (the "Collected Rents") minus utilities and charges described in subsection (d) hereof payable for such period. The PILOT Payment paid by the Company shall be five percent (5%) of Shelter Rent in the first five (5) years and shall be ten percent (10%) of the Shelter Rent for the balance of the PILOT term.

(b) The Shelter Rent PILOT Payment shall be calculated on a calendar year (except for year one (1), which shall be a portion of that calendar year).

(c) The PILOT Payments required hereunder shall be made in arrears to the Town Assessor each May 15 during the term hereof. In order to calculate the PILOT Payments, the Company agrees to provide annual audited financial statements by March 15 of each year of the PILOT term with a copy to the Agency.

(d) Special district charges, special assessments, and special ad valorem levies (specifically including, but not limited to, fire district charges, pure water charges and sewer charges) are to be paid in full in accordance with normal Town billing practices.

3. 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.

4. The Company 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.

5. 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.

6. The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section 1 hereof within thirty (30) days of the Payment Date (the "Delinquency Date") or any applicable cure period; (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; or (iii) cure any defaults or any events of default under the Leaseback Agreement after any applicable cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the

Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the General Municipal Law and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

7. If payments pursuant to Section 1 hereof are not made by the Delinquency 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 as stated on the PILOT Payment invoice or in the absence thereof within thirty (30) days of receipt of any such invoice, the Company shall pay penalties and interest as follows: (A) with respect to payments to be made pursuant to Section 1 hereof, if said payment is not received by the Delinquency Date defined in this Section, 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 the late payment penalty in an amount equal to one percent (1%) per month; and (B) 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.

8. 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 shall not be unreasonably withheld or delayed.

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

10. 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 follows:

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.: Michael J. Townsend, Esq.

To the Company:

USL Rochester I, LLC
1080 Pittsford-Victor Road, Suite 100
Pittsford, New York 14534
Attention: Robert C. Morgan, Managing Member

And to:

Harrison Street Real Estate Capital, LLC
71 South Wacker Drive
Suite 3575
Chicago, Illinois 60606
Attention: Stephen Gordon
Email: sgordon@harrisonst.com

With a copy to:

Woods Oviatt Gilman LLP
700 Crossroads Building
2 State Street
Rochester, New York 14614
Attention: Jerry Goldman, Esq.

With a copy to:

DLA Piper LLP (US)
203 North LaSalle Street
Suite 1900
Chicago, Illinois 60601-1293
Attn: Jesse Criz
Email: jesse.criz@dlapiper.com

11. This PILOT Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in the City of Rochester, Monroe County, New York.

12. Notwithstanding any other terms or conditions 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 hereto 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 members, officers, agents, servants and employees 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.

13. If the Company enters into any written agreement with any Taxing Jurisdiction providing for payments in lieu of taxes by the Company to any or all of them, so much of this PILOT Agreement as relates to the Taxing Jurisdiction with which the Company has entered into said written agreement shall be automatically modified to reflect the terms of any such written agreement, and any such written agreement shall be deemed to be incorporated herein by reference and made a part hereof as an amendment or modification hereof. Should the Company receive any exemption from any of the Taxing Jurisdictions, this PILOT Agreement shall automatically be modified to reflect the extent of such exemption.

14. The tax benefits provided for herein shall be deemed to commence in the first year in which the Company receives any tax benefits relative to the Facility, whether under this

PILOT Agreement, another agreement, or any statutory exemption. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than thirty (30) consecutive years from the Effective Date. Unless otherwise requested by the Company, this PILOT Agreement will become effective as of the tax status date immediately following the issuance of Certificate of Occupancy (conditional or otherwise) or any assessment of the Facility at full value, whichever occurs first (the "Effective Date").

15. After the expiration of the term hereof, the Company shall make payments equal to full taxes, with no exemptions.

16. Notwithstanding anything contained herein to the contrary, upon the occurrence of any significant Event of Default (as determined solely by Agency in good faith) in the Leaseback Agreement between the Agency and Company, dated as of January 1, 2016 and executed simultaneously herewith (the "Leaseback Agreement"), the Agency shall have the right to recapture all real property tax abatements provided hereunder pursuant to the following schedule:

<u>Year of Recapture</u>	<u>Percent of Recapture</u>
1	100%
2	100%
3	50%
4	50%
5	25%
6	25%

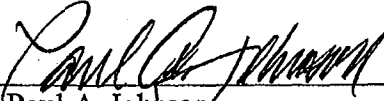
No Recapture after year 6

The above-reference periods begin on the Effective Date of this PILOT Agreement. Any such recapture is at the sole and exclusive discretion of the Agency or the Town of Henrietta, as the case may be. The Agency shall notify the Company in writing within ninety (90) days of such Event of Default of its intent to recapture the PILOT benefits (or any portion thereof); provided, however, that such period shall not commence to run until the Agency has been properly notified or ascertains any such Event of Default. Any such recapture shall be paid to the Affected Taxing Jurisdiction within thirty (30) days of receipt of same pursuant to Section 1 hereof.

[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: Paul A. Johnson
Title: Acting Executive Director

USL ROCHESTER I, LLC, a Delaware limited liability company

By: HSRE-USL IV, LLC, a Delaware Limited liability company, its Sole Member

By: _____
Name: James A. Malesich, Jr.
Title: Authorized Signatory

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: Paul A. Johnson
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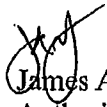
By: 
Name: James A. Malesich, Jr.
Title: Authorized Signatory

Exhibit A

Description of the Project and Facility

The "Project" consists of the construction of an approximately 300,000 square-foot cottage-style student housing development consisting of 85 two-story cottage-style buildings in 172 units, housing 687 students, offering 1-, 2-, 4- or 5-bedroom configurations with private bathrooms in each bedroom together with related improvements (the "Facility") to be occupied by Rochester Institute of Technology students as off-campus housing.



INDUSTRIAL DEVELOPMENT AGENCIES
APPLICATION FOR REAL PROPERTY TAX EXEMPTION
(Real Property Tax Law, Section 412-a and General Municipal Law, Section 874)

1. INDUSTRIAL DEVELOPMENT AGENCY (IDA)

Name County of Monroe Industrial Develop. Agency
Street 8100 CityPlace, 50 West Main Street
City Rochester, New York 14614
Telephone no. Day (585) 419-8769
Evening ()
Contact Rachel Baranello Endress
Title Agency Counsel

2. OCCUPANT (IF OTHER THAN IDA)

(If more than one occupant attach separate listing)

Name USL Rochester I, LLC
Street 1080 Pittsford-Victor Road, Suite 100
City Pittsford, New York 14534
Telephone no. Day (585) 330-6203
Evening ()
Contact Robert C. Morgan
Title Managing Member

3. DESCRIPTION OF PARCEL

a. Assessment roll description (tax map no./roll year)
174.03-2-1.12 and Part of 174.03-2-1.11
b. Street address
4255 East River Road
c. City, Town or Village Henrietta (Town)

d. School District Rush-Henrietta CSD
e. County Monroe
f. Current assessment
g. Deed to IDA (date recorded; liber and page)
Lease Agreement, a memorandum of which was
recorded on or about January 21, 2016.

4. GENERAL DESCRIPTION OF PROPERTY (if necessary, attach plans or specifications)

a. Brief description (include property use) construct an approximately 300,000 square-foot
cottage-style student housing development
b. Type of construction
c. Square footage 300,000 sq.ft.
d. Total cost approx. \$47,353,250
e. Date construction commenced Fall 2015
f. Projected expiration of exemption (i.e.
date when property is no longer
possessed, controlled, supervised or
under the jurisdiction of IDA)
See Attached PILOT Agreement

5. SUMMARIZE AGREEMENT (IF ANY) AND METHOD TO BE USED FOR PAYMENTS TO BE
MADE TO MUNICIPALITY REGARDLESS OF STATUTORY EXEMPTION

(Attach copy of the agreement or extract of the terms relating to the project).

a. Formula for payment Please see attached PILOT Agreement

b. Projected expiration date of agreement See Attached PILOT Agreement

c. Municipal corporations to which payments will be made

	Yes	No
County <u>Monroe</u>	X	
Town/City <u>Henrietta</u>	X	
Village <u>N/A</u>		
School District <u>Rush-Henrietta</u>	X	

d. Person or entity responsible for payment

Name USL Rochester I, LLC
 Title _____
 Address 1080 Pittsford-Victor Road,
Suite 100, Pittsford, New York 14534

e. Is the IDA the owner of the property? Yes/No (circle one)
If "No" identify owner and explain IDA rights or interest in an attached statement. The IDA has a leasehold interest in the property.

Telephone (585) 330-6203

6. Is the property receiving or has the property ever received any other exemption from real property taxation? (check one) Yes No

If yes, list the statutory exemption reference and assessment roll year on which granted:
exemption Section 874 of GML assessment roll year _____

7. A copy of this application, including all attachments, has been mailed or delivered on 02/04/2016 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

CERTIFICATION

I, Rachel Baranello Endress, Agency Counsel of _____ of _____
Name Title
County of Monroe Industrial Development Agency hereby certify that the information
Organization
on this application and accompanying papers constitutes a true statement of facts.

1/21/16
Date

Rachel Baranello Endress
Signature

FOR USE BY ASSESSOR

1. Date application filed _____
2. Applicable taxable status date _____
- 3a. Agreement (or extract) date _____
- 3b. Projected exemption expiration (year) _____
4. Assessed valuation of parcel in first year of exemption \$ _____
5. Special assessments and special as valorem levies for which the parcel is liable:

Date

Assessor's signature