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March 9, 2017

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Hon. Cheryl Dinolfo
Monroe County Executive
39 West Main Street
County Office Building
Rochester, New York 14614
CERTIFIED MAIL RECEIPT #:
7016 0750 0000 1817 2643

Ms. Susan Buck
Collector of Fees and Taxes
B-3 County Office Building
39 West Main Street
Rochester, New York 14614
CERTIFIED MAIL RECEIPT #:
7016 0750 0000 1817 2650

Mr. Jack Moore, Supervisor
Henrietta Town Hall
475 Calkins Road
Henrietta, New York 14467
CERTIFIED MAIL RECEIPT #:
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Dr. J. Graham, Superintendent
Rush-Henrietta Central School District
2034 Lehigh Station Road
Henrietta, New York 14467
CERTIFIED MAIL RECEIPT #:
7016 0750 0000 1817 2674

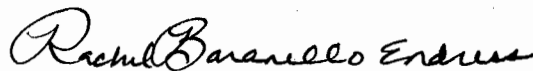
Mr. Nathan T. Gabbert, Assessor
Henrietta Town Hall
475 Calkins Road
Henrietta, New York 14467
CERTIFIED MAIL RECEIPT #:
7016 0750 0000 1817 2681

Re: County of Monroe Industrial Development Agency ("COMIDA")
Morgan Rivers Run, LLC Project – 50 Fairwood Drive in the Town of
Henrietta, New York

Ladies and Gentlemen:

Enclosed herewith please find a copy of the 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
Robert C. Morgan
Jordan Alaimo, Esq.

COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY

AND

MORGAN RIVERS RUN, LLC

TAX AGREEMENT

Tax Map Nos.

174.10-1-68

Affected Tax Jurisdictions:

County of Monroe
Town of Henrietta
Rush-Henrietta Central School District

Dated as of February 1, 2017

TAX AGREEMENT

THIS TAX AGREEMENT (the "Tax Agreement") made as of February 1, 2017, 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 **MORGAN RIVERS RUN, LLC**, a limited liability company duly organized and existing under the laws of the State of New York with offices at 1080 Pittsford-Victor Road, 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 previously assisted with the (i) acquisition of an interest in an approximately 19.93 acre parcel of land located in the Town of Henrietta, County of Monroe and State of New York commonly known as Tax Map No. 174.10-1-68 (the "Land"); (ii) construction thereon of an 152-unit independent living senior residential community consisting of 82 approximately 120,972 square foot apartments and 70 approximately 1,500 square foot cottages (collectively, the "Building"); and (iii) acquisition and installation of related equipment (the "Equipment", and together with the Land and the Building, the "Existing Facility"), a description of which is annexed hereto as **Exhibit A**; and

WHEREAS, Morgan Rivers Run, LLC, a New York limited liability company, or an entity formed or to be formed (collectively, the "Company") has requested that the Agency assist in an expansion of the above described project consisting of the following: (A) the construction thereon of an additional 74 residential units within the existing Rivers Run neighborhood; (i) 11 of the units will be located in the existing Building and will consist of three (3) studio, seven (7) 1-bedroom and one (1) 2-bedroom units together with the creation of a new fitness center and an additional teaching room; and (ii) 60 units will be constructed in a separate building to the north of the existing building and will consist of fifty-six (56) 1-bedroom units and four (4) 2-bedroom units (collectively, the "Improvements"); and (B) the acquisition and installation thereon, therein or thereabout of certain machinery, equipment and related personal property (the "Equipment" and, together with the Land and the Improvements, the "New Facility"; collectively, the Existing Facility and the New Facility are hereinafter referred to as, the "Facility"). The Facility will be initially owned and operated and/or managed by the Company.

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

WHEREAS, the Agency, the Company and the County of Monroe 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 Town of Henrietta and the Rush-Henrietta Central School District (collectively, the "Taxing Jurisdictions"); and

WHEREAS, the Company's predecessor in interest, Rivers Run, LLC, the original Applicant for this Project, assigned to the Company, pursuant to an Assignment and Assumption Agreement, by and between Rivers Run, LLC and the Company, dated December 15, 2014, a copy of which was duly recorded in the Monroe County Clerk's Office in Liber 11481, at page 55 (the "Assignment"); whereby the Company agreed to assume any and all obligations of Rivers Run, LLC in connection with the project and the Original PILOT by and between the County of Monroe and Rivers Run, LLC, dated as of the first day of October, 2007;

WHEREAS, the Company has previously commenced a tax certiorari challenge to the assessed value for the Facility by a petition filed in the Monroe County Supreme Court, Index No. 2016-7622 for the tax year of 2016-17;

WHEREAS, the Board of Assessment Review for the Town of Henrietta and the Assessor for the Town of Henrietta have reached an agreement with the Company to settle this tax certiorari matter pursuant to written Stipulation of Settlement (the "Stipulation") which is annexed hereto and made a part hereof as **Exhibit B** whereby the parties have agreed to settle said action in part by incorporating the terms thereof into this Tax Agreement; 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.

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. (a) **JobsPlus Tax Abatement Policy.** As long as the Facility is leased by the Agency and leased back to the Company, the Company agrees to pay annually to the Taxing Jurisdictions as a payment in lieu of taxes, an amount equal to 100% of the taxes, service charges, special ad valorem levies, special assessments and improvement district charges or similar tax equivalents, less the percentages of exemption set forth on the schedule below, with respect to taxes and special ad valorem levies on that portion of the Facility within the description contained in paragraph 5 of Section 485-b of the New York Real Property Tax Law (notwithstanding that the procedural steps to obtain an exemption may not have been complied with) which would be levied upon or with respect to the Facility by the Taxing Jurisdictions if the Facility were owned by the Company and not by the Agency, following next applicable tax status date:

<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%

provided, however, that the Company need not comply with procedures to obtain such exemption as provided in the New York Real Property Tax Law, and provided, further, that the Company and/or the Agency, at the request of the Company, shall do all things necessary and shall make application and follow such procedures to obtain such exemption to the extent that the Company shall determine necessary.

Further, provided that:

(i) The Company creates one (1) new job in three (3) years and maintains that one (1) new job for the balance of the ten (10) year term hereof. The three-year period commences when all of the following have occurred: (A) the Facility is completely constructed; (B) the Company receives a Certificate of Occupancy; and (C) the Facility is reassessed by Town of Henrietta Assessor at full value for the Facility; and

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

(iii) If the one (1) new job is not created by the end of the three-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 (the "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 Tax 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. In the event the Company abandons or otherwise vacates the County of Monroe, then the Company shall pay back all benefits for all years as if the Facility was owned by it outright and absolutely with no tax abatement.

(iv) 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

standard, 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 make recommendations to the Legislature regarding the requested relief; the recommendations may include, but not be limited to, relief in whole or in part from the repayment obligation, or an alternate schedule for attaining the job creation standard.

(v) 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 Tax 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 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.

(b) Special district charges, unless otherwise exempt, and Monroe County Pure Waters charges are to be paid in full in accordance with normal billing practices.

(c) The Company shall pay, within the applicable grace period and without penalty, the amounts set forth in Paragraphs 1(a) and 1(b) 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.

2. The Town Assessor and the Company have agreed that the final stipulated assessment for tax parcel number 174.10-1-68 shall be the baseline assessed value for this Tax Agreement commencing tax year 2017. The baseline assessment shall not change for tax years 2017, 2018; 2018/2019 and 2019/2020. The Town and the Company agree and understand that pursuant to the aforementioned Stipulation that this assessed value shall be the baseline assessed value of the project as presently constituted and constructed in the amount of \$8,865,900 for tax parcel number 174.10-1-68. The new PILOT Agreement and tax abatement shall apply to the new value and assessment added as a result of this new Project as referenced in Exhibit A attached hereto.

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 Tax 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) Subject to the terms and conditions of the Stipulation, 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 Tax Agreement, as if and to the same extent as if the Company were the owner of the Facility.

(b) Subject to the terms and conditions of the Stipulation, the Company (and its Tenant, if any) 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 Tax 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 Tax 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 November 8, 2016 (the "Application"), to wit, 4. 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 Tax 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 Tax 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 Tax 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: Morgan Rivers Run, LLC
1080 Pittsford Victor Road
Pittsford, New York 14534
Attn: Robert C. Morgan, Manager

With a Copy to: Bond Schoeneck & King PLLC
350 Linden Oaks, Third Floor
Rochester, New York 14625
Attn: Jordan Alaimo, 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 Tax Agreement on its behalf shall be liable personally under this Tax 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 Tax Agreement.

[Remainder of Page Intentionally Left Blank]

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

**COUNTY OF MONROE INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: Jeffrey R. Adair
Title: Executive Director

MORGAN RIVERS RUN, LLC

By: _____
Name: Robert C. Morgan
Title: Manager

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

**COUNTY OF MONROE INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: Jeffrey R. Adair
Title: Executive Director

MORGAN RIVERS RUN, LLC

By: _____
Name: Robert C. Morgan
Title: Manager

Exhibit A

Description of the Project and Facility

The "Project" consists of: (A) the construction of an additional 74 residential units within the existing Rivers Run neighborhood in the Town of Henrietta, New York: (i) 11 of the units will be located in the existing Building and will consist of three (3) studio, seven (7) 1-bedroom and one (1) 2-bedroom units together with the creation of a new fitness center and an additional teaching room; and (ii) 60 units will be constructed in a separate building to the north of the existing building and will consist of fifty-six (56) 1-bedroom units and four (4) 2-bedroom units (collectively, the "New Facility"; collectively, the Existing Facility and the New Facility are referred to as, the "Facility").

[N.B. – PILOT abatement applies to new value of the existing Building as well as the New Facility but not to the land.]

Exhibit B

Stipulation of Settlement

[See Attached]

