

**AGREEMENT APPROVING PILOT TERMS  
AND ALLOCATING PILOT PAYMENTS**

**THIS AGREEMENT APPROVING PILOT TERMS AND ALLOCATING PILOT PAYMENTS** (this "Agreement"), dated as of January 17, 2020~~2019~~ (the "Execution Date"), is by, between and among **COUNTY OF ONEIDA**, a New York municipal corporation with offices at County Office Building, 800 Park Avenue, Utica, New York 13501 (the "County"), **CITY OF ROME**, a New York municipal corporation with offices at City Hall, 198 North Washington Street, Rome, New York 13440 (the "City"), **ROME CITY SCHOOL DISTRICT**, a New York school district with offices at 409 Bell Road South, Rome, New York 13440 (the "School District") (the County, the City and the School District are hereinafter sometimes collectively referred to as the "Affected Tax Jurisdictions"), **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a New York public benefit corporation with offices at 584 Phoenix Drive, Rome, New York 13441 (the "Agency"), and **GRIFFISS LOCAL DEVELOPMENT CORPORATION**, a New York local development corporation with offices at 584 Phoenix Drive, Rome, New York 13441 ("GLDC").

**RECITALS:**

**WHEREAS**, the United States of America, acting by and through the Secretary of the Air Force (the "Air Force"), conveyed to the Agency a 152.560± acre parcel of land ("Parcel F11A") located in the Griffiss Business & Technology Park, Rome, Oneida County, New York by means of a Quit Claim Deed dated September 10, 2002 and recorded on January 22, 2003 in the Oneida County Clerk's Office as Instrument No. 2003-001611 ("Air Force Deed No. 1"); and

**WHEREAS**, in Air Force Deed No. 1, the Air Force reserved unto itself "all oil, gas and other mineral resources of any kind or nature in the mineral estate" of Parcel F11A "together with the right to prospect for, mine, and remove the same" (said reservations being hereinafter collectively referred to as the "Reserved Mineral Rights"); and

**WHEREAS**, the Air Force conveyed to the Agency the Reserved Mineral Rights by means of a Quit Claim Deed dated November 30, 2007 and recorded on September 3, 2008 in the Oneida County Clerk's Office as Instrument No. 2008-014913 ("Air Force Deed No. 2"); and

**WHEREAS**, the Agency, as lessor, leased said Parcel F11A (together with other lands) to GLDC, as lessee, for a term of ten (10) years pursuant to that certain lease agreement dated as of July 1, 2012 (the "Agency/GLDC Lease Agreement"); and

**WHEREAS**, a memorandum of the Agency/GLDC Lease Agreement was recorded on July 30, 2012 in the Oneida County Clerk's Office as Instrument No. R2012-000894; and

**WHEREAS**, pursuant to the Agency/GLDC Lease Agreement, GLDC has the right to acquire from the Agency the fee simple title to all or any portion of said Parcel F11A which has not heretofore been conveyed to or acquired by third parties at any time during the term thereof; and

**WHEREAS**, GLDC has notified the Agency that it intends to acquire the fee simple title to a 63.78± acre portion of said Parcel F11A (the “Land”), which Land is more particularly described by metes and bounds in the legal description attached hereto and made a part hereof as **Exhibit A** and depicted on a map entitled “Final Plat Subdivision Map of Property of Oneida County Industrial Development Agency (OCIDA), T.M. #243.00-1-1.12, City of Rome, County of Oneida, State of New York” made by Susan M. Anacker, L.S. Lic. #50321, dated September 3, 2019, and last revised \_\_\_\_\_, 2019, a reduced-sized copy of which map is attached hereto and made a part hereof as **Exhibit A-1**; and

**WHEREAS**, GLDC and Orgill, Inc. (the “Company”) have entered into or are about to enter into a real estate purchase and sale agreement (the “GLDC/Company Agreement”) which provides or will provide that, among other things, upon acquiring the fee simple title to the Land from the Agency, GLDC will sell, transfer and convey said Land to the Company; and

**WHEREAS**, the GLDC/Company Agreement further provides or will further provide that, upon acquiring the fee simple title to the Land from GLDC, the Company will construct (or cause to be constructed) thereon a building (the “Building”) containing approximately 777,600 gross square feet of floor area, and related improvements, (the “Related Improvements”), acquire equipment (the “Equipment”) and install the same in said Building, and thereafter operate said Building and Related Improvements as a distribution center (the “Distribution Center”) servicing the customers of Orgill, Inc. or its subsidiaries and/or affiliates (collectively, “Orgill”) located in the Northeast (the Company’s acquisition of the Land, its construction of the Building and Related Improvements, its acquisition of the Equipment and installation of the same in the Building, and its operation of the Distribution Center are hereinafter sometimes collectively referred to as the “Distribution Center Project”); and

**WHEREAS**, the Distribution Center Project is expected to result in the creation of jobs for two hundred twenty-five (225) direct, full-time, permanent employees at the Distribution Center by the fifth (5th) anniversary of the issuance of the Certificate of Occupancy for the Distribution Center, and the attendant public benefits that would accrue therefrom; and

**WHEREAS**, the GLDC/Company Agreement further provides or will further provide that GLDC shall obtain one or more loans (including a \$150,000.00 loan from the GLDC Special Capital Reserve Fund) in the aggregate sum not to exceed \$3,650,000.00 (collectively, the “GLDC Project-Related Debt”); and

**WHEREAS**, the proceeds of the GLDC Project-Related Debt will be used by GLDC to either directly or indirectly finance, refinance and/or reimburse various “hard” costs and “soft” costs incurred or to be incurred by it or others (including the Company) in connection with the Distribution Center Project including, without limitation, (i) the cost of undertaking certain “on-site” demolitions on and/or removals from the Land including, but not limited to, the clearing and/or grubbing of trees and other vegetation, the demolition, and/or removal and/or abandonment or place of inactive utility lines and building foundations (or the remnants thereof), the cost of relocating and/or installing various active utility lines and/or systems, the cost of certain earthwork and/or site grading, the cost of deep dynamic soil compaction and other ground improvements required to support the load bearing capacity of the Facility (as such term

hereafter defined), the cost of providing a second source of water supply with sufficient capacity, flow and pressure to meet the requirements of the Facility's site fire protection system, and the cost of other utility extensions and upgrades, (ii) the cost of making certain "off-site" improvements (e.g., the cost of ingress and egress improvements (truck turn lane and traffic signalization), the cost of installing off-site street lighting, pavement striping, staging areas, street signage, sidewalks, landscaping, and intersection, road and other access improvements including the realignment and/or reconstruction of Atlas Drive), and (iii) the cost of architectural, engineering and legal services, the cost of environmental surveys, investigations and remedial actions, the cost of closing on the GLDC Loans (e.g., bank fees, attorneys' fees and disbursements, title insurance premiums, survey expenses), and the cost of interim interest; and

**WHEREAS**, in order to better facilitate the Distribution Center Project, the Company has requested or will request the Agency to undertake a "project", as that term is defined in the New York State Industrial Development Agency Act, General Municipal Law §850, *et seq.* (the "Act") consisting of (A)(i) the acquisition of the Land, (ii) the construction on the Land of the Building and Related Improvements, (iii) the acquisition of the Equipment and the installation of the same in the Building (the Land, the Building and Related Improvements, and the Equipment are hereinafter sometimes collectively referred to as the "Facility"), (B) the granting of certain other "financial assistance", as that term is defined in Section 854(14) of the Act, with respect to the foregoing, including an exemption from sales taxes, real estate transfer taxes, mortgage recording taxes and Real Property Taxes (as hereinafter defined), (C) the leasing of the Facility by the Company to the Agency for a term of up to twenty-eight (28) years pursuant to a lease agreement (the "Company/Agency Lease Agreement"), and the leasing of the Facility by the Agency back to the Company for a term of up to twenty-eight (28) years pursuant to a lease agreement (the "Agency/Company Leaseback Agreement"); and

**WHEREAS**, in connection with the "project", the Company has requested or will request the Agency to enter into a payment-in-lieu-of-tax agreement ("PILOT Agreement") with the Company having a term of up to twenty-seven (27) years; and

**WHEREAS**, under the PILOT Agreement, the Company will be obligated, among other things, to make payments in lieu of taxes (the "PILOT Payments") to the Agency thereby achieving the publicly-desirable objective of generating a revenue stream from lands which have been exempt from real property taxation for over seventy-five (75) years; and

**WHEREAS**, to induce the Agency to enter into said PILOT Agreement, the Company has granted into or will grant the Agency a first-in-priority mortgage on the Facility (the "PILOT Mortgage") to secure its obligations under the PILOT Agreement including, without limitation, its obligation to make the PILOT Payments to the Agency; and

**WHEREAS**, pursuant to the authority contained in Section 858(15) of the Act and the case precedent of Palmateer v. Greene County Industrial Development Agency, 38 A.D.3d 1087 (3d Dept. 2007), the parties also desire to set forth their agreement regarding the allocation of PILOT Payments among GLDC and the Affected Tax Jurisdictions for the entire term of the PILOT Agreement.

**NOW, THEREFORE**, in consideration of the premises, the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. All capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings set forth as follows:

"Additional Project Property" means any real property or interest in real property acquired by the Agency and/or GLDC on or after the Execution Date in connection with or in furtherance of the Project including, without limitation, any real property acquired in fee, any easement or right-of-way upon, across, over or under any real property, any leasehold interest or sub-leasehold interest in any real property, and any license in or right to use or occupy any real property, regardless of whether such real property or interest in real property adjoins or is appurtenant to the Land.

"Affected Tax Jurisdictions' Fund" means that certain fund to be established and administered by the Agency for the benefit of the Affected Tax Jurisdictions. The Affected Tax Jurisdictions' Fund is more particularly described in Section 3 FIRST hereof.

"Closing Date" means the date on which the closing and delivery of the deed occur with respect to the sale of the Land by GLDC to the Company.

"Construction Period" means the period of time beginning on the Closing Date and continuing through and including June 30, 2021.

"Execution Date" means the date first set forth above.

"First PILOT Year" shall have the meaning ascribed to such term in Exhibit B hereto.

"GLDC Lenders" means those lenders to whom GLDC (including itself) is obligated with respect to the GLDC Project-Related Debt.

"GLDC Loans" means, collectively, the loans made by the GLDC Lenders to GLDC which comprise the GLDC Project-Related Debt.

"GLDC Project-Related Debt Service Fund" means that certain fund to be established and administered by GLDC for the purpose of paying, prepaying and/or otherwise servicing GLDC Project-Related Debt (and to enable GLDC to maintain a minimum debt service coverage ratio of 1.1 to 1.0). The GLDC Project-Related Debt Service Fund is more particularly described in Section 3 SECOND hereof.

"GLDC Special Capital Reserve Fund" means the fund maintained by GLDC pursuant to the Service Fee Payment Agreement dated as of October 1, 2003 by and among the City of Rome, Rome City School District, County of Oneida, the Agency and GLDC into which

GLDC deposits 10% of the gross proceeds of certain sales of land and/or buildings situate in the Griffiss Business and Technology Park .

"PILOT Payment Period" shall have the meaning ascribed to such term in Exhibit B hereto.

"PILOT Year" shall have the meaning ascribed to such term in Exhibit B hereto.

"Project-Related Improvements" means, collectively, (i) certain "on-site" demolitions on and/or removals from the Land including, but not limited to, the clearing and/or grubbing of trees and other vegetation, the demolition, and/or removal and/or abandonment in place of inactive utility lines and building foundations (or the remnants thereof), the relocating and/or installing of various utility lines and/or systems, the performance of certain earthwork and/or site grading, the performance of deep dynamic soil compaction and other required ground improvements, the furnishing of a second source of water supply with sufficient capacity, flow and pressure to meet the requirements of the Facility's site fire protection system, and the making of other utility extensions and upgrades, and (ii) certain "off-site" improvements (e.g., the making of ingress and egress improvements (truck turn lane and traffic signalization), the installation of off-site street lighting, pavement striping, staging areas, street signage, sidewalks, landscaping, and intersection, road and other access improvements including the realignment and/or reconstruction of Atlas Drive), and the making of other improvements related to or a part of the Project.

"Project-Related Development Costs" means the hard costs of making Project-Related Improvements and the soft costs relating thereto, including, without limitation, the cost of architectural, engineering and legal services, the cost of environmental surveys, investigations and remedial actions, the cost of closing on the GLDC Loans (e.g., bank fees, attorneys' fees and disbursements, title insurance premiums, survey expenses), and the cost of interim interest.

"Skyline Gateway Site Redevelopment Project Fund" means that certain fund to be established and administered by GLDC for the general purposes of financing, refinancing and/or otherwise funding various Project-Related Development Costs which are not financed, refinanced and/or otherwise funded by GLDC Project-Related Debt including, without limitation, (a) all costs associated with the acquisition of , Additional Project Property, and (b) all costs incurred by the Agency and/or GLDC associated with the design, engineering, installation and/or construction of Project-Related Improvements. The Skyline Gateway Site Redevelopment Project Fund is more particularly described in Section 3 THIRD hereof.

2. Approval of and Consent to PILOT Agreement. Each of the Affected Tax Jurisdictions hereby approves of and consents to a PILOT Agreement between the Agency and the Company approved by the Agency, which PILOT Agreement shall include terms and conditions approved by the Agency, provided the PILOT Agreement shall comply with the essential terms described in Exhibit B attached hereto and made a part hereof.

3. Allocation of PILOT Payments by Agency. Each of the Affected Tax Jurisdictions acknowledges and agrees that, without the funding provided by the GLDC Project-

Related Debt, there would not be a Project capable of making the payments under the PILOT Agreement. Accordingly, each of the Affected Tax Jurisdictions agrees that the Agency shall allocate the PILOT Payments received from the Company among the Affected Tax Jurisdictions' Fund, the GLDC Project-Related Debt Service Fund and the Skyline Gateway Site Redevelopment Project Fund in the following order of priority and amounts:

FIRST: During each PILOT Year during the PILOT Payment Period (beginning with the First PILOT Year), the Agency shall (a) deposit into the Affected Tax Jurisdictions' Fund an amount equal to the PILOT Payments received by it multiplied by the percentage corresponding to such PILOT Year as set forth in **Column 2 of Exhibit C** attached hereto and made a part hereof and (b) then, within thirty (30) days from the Agency's receipt of the annual payment under the PILOT Agreement, pay over and distribute the Affected Tax Jurisdictions from the Affected Tax Jurisdictions' Fund the following proportional amounts (each, individually, a "Proportional Amount" and, collectively, the "Proportional Amounts") thereof:

16.12% thereof to the County;

51.19% thereof to the School District; and

32.69% thereof to the City.

By way of illustration, if during the First PILOT Year the Agency were to receive \$384,404.59 in PILOT Payments from the Company with respect to the Facility, the Agency would be obligated to deposit the sum of \$462.16 into the Affected Tax Jurisdictions' Fund ( $\$384,404.59 \times 0.12\% = \$462.16$ ) and then distribute to each of the Affected Tax Jurisdictions its respective Proportional Amount thereof. By way of further illustration, if during the fourteenth (14<sup>th</sup>) PILOT Year of the PILOT Payment Period the Agency were to receive \$494,234.47 in PILOT Payments from the Company with respect to the Facility, the Agency would be obligated to deposit the sum of \$175,898.89 into the Affected Tax Jurisdictions' Fund ( $\$494,234.47 \times 35.59\% = \$175,898.89$ ) and then distribute to each of the Affected Tax Jurisdictions its respective Proportional Amount thereof.

SECOND: During each PILOT Year during the term of the PILOT Agreement (beginning with the First PILOT Year), the Agency shall deposit into the GLDC Project-Related Debt Service Fund such proportion of the PILOT Payments received by it as are then remaining (after it has deposited the required amount into the Affected Tax Jurisdictions' Fund pursuant to paragraph FIRST above), as is necessary to enable GLDC to pay, prepay and/or otherwise service the GLDC Project-Related Debt (and maintain a minimum debt service coverage ratio of 1.10 to 1.0) during each PILOT Year.

THIRD: During each PILOT Year during the term of the PILOT Agreement (beginning with the First PILOT Year), the Agency shall deposit into

the Skyline Gateway Site Redevelopment Project Fund all of the PILOT Payments received by it as are then remaining (after it has deposited (a) the required amount into the Affected Tax Jurisdictions' Fund pursuant to paragraph FIRST above), and (b) the required amount, if any, into the GLDC Project-Related Debt Service Fund pursuant to paragraph SECOND above).

GLDC shall then allocate and distribute from the Skyline Gateway Site Redevelopment Project Fund all of such monies (but in such proportions as it deems necessary or advisable, in its sole discretion), to do any one or more of the following:

(a) finance, refinance and/or otherwise fund all costs incurred by the Agency and/or GLDC associated with the acquisition of any Additional Project Property;

(b) finance, refinance and/or otherwise fund all costs incurred by the Agency and/or GLDC associated with the design, engineering, installation and/or construction of Project-Related Improvements; and

(c) finance, refinance and/or otherwise fund any other Project-Related Development Costs incurred by the Agency and/or the GLDC.

Within thirty (30) days after a written request therefor, but not more often than once each calendar year, the Agency shall provide to the Affected Tax Jurisdictions such documentation as may be reasonably necessary for said Affected Tax Jurisdictions to verify the accuracy of the allocation and distribution of PILOT Payments made by the Agency pursuant to this Agreement during the preceding calendar year.

As to the PILOT Agreement entered into by the Agency pursuant to this Agreement, the Agency shall provide to the Affected Tax Jurisdictions (1) a summary statement of the anticipated GLDC Project-Related Debt to be serviced by a portion of the PILOT Payments to be generated by such PILOT Agreement and (2) within (30) days after a written request therefor, copies of the promissory note(s) and related loan documents with respect to any such GLDC Project-Related Debt upon which a closing has occurred.

At the end of the fifteenth (15<sup>th</sup>) PILOT Year, should there be any funds remaining in the Skyline Gateway Site Redevelopment Project Fund after all of the GLDC Project-Related Debt has been indefeasibly paid, in full (including, without limitation, the \$150,000.00 loan made by GLDC to itself from the GLDC Special Capital Reserve Fund), GLDC shall disburse to each of the Affected Tax Jurisdictions its respective Proportional Amount of such excess funds and thereafter the Affected Tax Jurisdictions shall receive 100% of all PILOT Payments made pursuant to the terms of this Agreement.

4. PILOT Agreement Provisions for the Benefit of GLDC Lenders.

(a) In addition to the essential terms described in Exhibit B, and other terms approved by the Agency, the PILOT Agreement shall contain such provisions as may be requested by GLDC in order to provide GLDC, and the GLDC Lenders, with assurances satisfactory to them, in their sole discretion, that such PILOT Agreement, the guarantees thereof and/or security instruments relating thereto, if any, may not be amended or modified without the written approval of the GLDC Lenders and will be enforceable against the Company (and other applicable obligors) at all times until the GLDC Project-Related Debt has been indefeasibly paid in full to the GLDC Lenders.

(b) Without limiting the generality of the foregoing, if GLDC so requests, the PILOT Agreement shall provide that if, prior to the date that the GLDC Project-Related Debt has been indefeasibly paid in full to the GLDC Lenders, the PILOT Agreement is set aside, invalidated or otherwise terminates or is terminated then, and in any such event, and regardless of the reason therefor, the GLDC Project-Related Debt shall be deemed (for the purposes of the PILOT Agreement) to have been "accelerated" thereby becoming immediately due and payable, in full, and the Company shall pay an early termination charge (the "Early Termination Charge") to the Agency in an amount equal to the then unpaid and outstanding combined principal balances of the "accelerated" the GLDC Project-Related Debt (including all interest and other sums due pursuant thereto or in connection therewith, e.g., prepayment penalties, hedge agreement "breakage" fees, etc.) and that upon the Agency's receipt of such Early Termination Charge, it shall immediately deposit the same into the GLDC Project-Related Debt Service Fund, whereupon GLDC shall disburse the same in such amounts as are necessary to fully pay the unpaid and outstanding balance of the GLDC Project-Related Debt to the GLDC Lenders, in full. The Early Termination Charge shall be deemed to be a PILOT Payment. For the avoidance of doubt and notwithstanding anything to the contrary contained in this Agreement, before making any other allocations hereunder the Agency first shall allocate 100% of any Early Termination Charge to the GLDC Project-Related Debt Service Fund so as to enable GLDC to indefeasibly pay the GLDC Project-Related Debt, in full.

5. Assignment of PILOT Agreement and Related Documents. As collateral security for the payment of the GLDC Project-Related Debt, the Agency agrees to assign its rights under the PILOT Agreement, the payments due to the Agency under such PILOT Agreement except for the payments due to the Affected Taxing Jurisdictions under this Agreement, the guarantees thereof and/or security instruments relating thereto, if any, and this Agreement to the GLDC Lenders to the extent necessary to enable said GLDC Lenders to enforce and fully collect upon their security for the GLDC Project-Related Debt. Each such assignment shall be in form and content satisfactory to the Agency, GLDC and the GLDC Lenders, in their sole discretion. Each of the Affected Tax Jurisdictions hereby acknowledges and consents to each of such assignments. The Parties to this Agreement acknowledge and agree that the Parties shall be obligated to execute and deliver such other documents and/or agreements to confirm the terms, covenants and conditions of this Agreement and the PILOT Agreement and the priority of the allocation of the payments under the PILOT Agreement. Notwithstanding anything by the contrary contained in this Agreement, the Agency shall have no obligation to assign its



Unassigned Rights (as such term is defined in its Agency/Company Leaseback Agreement) to any person or entity.

6. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, addressed as follows:

To the Agency: Oneida County Industrial Development Agency  
584 Phoenix Drive  
Rome, New York 13441  
Attn.: Chairman

With a Copy To: Bond, Schoeneck & King, PLLC  
501 Main Street  
Utica, New York 13501  
Attn.: Linda E. Romano, Esq.

To the City: City of Rome  
Rome City Hall  
198 North Washington Street  
Rome, New York 13440  
Attn.: Mayor

With a Copy To: Gerard F. Feeney, Esq.  
Corporation Counsel  
City of Rome  
Rome City Hall  
198 North Washington Street  
Rome, New York 13440

To the County: County of Oneida  
County Office Building  
800 Park Avenue  
Utica, New York 13501  
Attn.: Commissioner of Finance

With a Copy To: Peter M. Rayhill, Esq.  
County Attorney  
Oneida County Office Building  
800 Park Avenue  
Utica, New York 13501

To the School District: Rome City School District  
409 Bell Road South  
Rome, New York 13440  
Attn.: Superintendent of Schools

With a Copy To: Ferrara Fiorenza PC  
5010 Campuswood Drive  
East Syracuse, New York 13057  
Attn.: \_\_\_\_\_, Esq.

To GLDC: Griffiss Local Development Corporation  
584 Phoenix Drive  
Rome, New York 13441  
Attn.: Authorized Representative

With a Copy To: Saunders Kahler, L.L.P.  
185 Genesee Street, Suite 1400  
Utica, New York 13501  
Attn.: Joseph E. Saunders, Esq.

or at 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.

7. Special Obligation of Agency. (a) The obligations and agreements of the Agency contained herein and in any other instrument or document executed in connection herewith or therewith, and any instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent or employee of the Agency in his or her individual capacity, and the members, officers, agents and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State of New York or of the County of Oneida, and neither the State of New York nor the County of Oneida shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues (if any) of the Agency derived and to be derived from the PILOT Payments actually paid by the Company to the Agency and/or the lease, sale or other disposition of the Facility. The limitations on the obligations of the Agency contained in this Section 7 by virtue of any lack of assurance required by Section 7(b) hereof shall not be deemed to prevent the occurrence and full force and effect of any event of default pursuant hereto.

(b) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or thereunder shall be sought or enforced against the Agency unless the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

9. Consents. Each Party represents and warrants to the other Parties that it has obtained all of the corporate and/or governing board approvals, consents and/or authorizations necessary for it to enter into this Agreement and that it knows of no other approvals, consents and/or authorizations which would be needed in order for this Agreement to take effect.

10. Release of Land. If requested by the Agency and GLDC, the parties shall release all or any one or more portions of the Land from the operation of this Agreement.

11. Section Headings. The section headings contained in this Agreement are for convenience and reference only and shall not be used to interpret or construe provisions.

12. Further Assurances. The parties agree to do such further acts and things and to execute and deliver such additional agreements and instruments as may be reasonably necessary to give effect to the purposes of this Agreement and the Parties' agreements hereunder.

13. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14. Recitals. The Recitals set forth above are hereby incorporated into and made a part of this Agreement as if set forth in full herein.

15. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

16. Effective Date. The effective date (the "Effective Date") of this Agreement shall be the date that the last of the Parties hereto to sign this Agreement signs the same. Notwithstanding the preceding sentence, Section 9 of this Agreement shall be effective as of the Execution Date.

17. Entire Agreement; Amendments; Waivers. This Agreement (including the exhibits and schedules hereto) contains the entire agreement of the Parties with respect to the subject matter hereof and no oral statement or written matter prior to the date of this Agreement shall have any effect or force. This Agreement may not be changed, modified, amended, waived, superseded, renewed, extended or terminated orally, but only by an agreement in writing signed by the Parties or, in the case of a waiver, by the Party waiving compliance.


**[Remainder of Page Intentionally Left Blank;  
Signature Page Follows]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement Approving PILOT Terms and Allocating PILOT Payments to be executed and delivered by their duly authorized officers as of the day and year first above written.

COUNTY OF ONEIDA

By:   
Anthony J. Picente, Jr.  
County Executive

CITY OF ROME

By:   
Jacqueline Izzo  
Mayor

ROME CITY SCHOOL DISTRICT

By:   
Peter C. Blake  
Superintendent

ONEIDA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
David C. Grow  
Chairman

GRIFFISS LOCAL DEVELOPMENT  
CORPORATION

By:   
Steven J. DiMeo  
Authorized Representative

APPROVED  
ONEIDA COUNTY ATTORNEY

BY:   
ASST ONEIDA COUNTY ATTORNEY

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF ONEIDA )

AMANDA DANIELS CARROLL  
Commissioner of Deeds  
City of Utica, New York  
Commission Expires Dec. 31, 2020

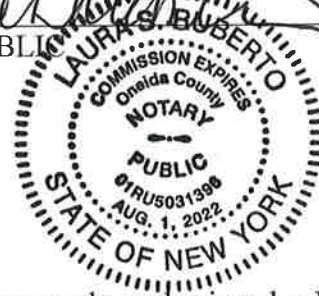
On this 2 day of January, 20~~19~~, before me, the undersigned, a Notary Public in and for said State, personally appeared ANTHONY J. PICENTE, JR., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged 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 the instrument.

  
NOTARY PUBLIC

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF ONEIDA )

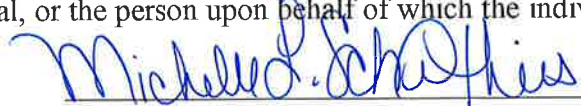
On this 17<sup>th</sup> day of January, 20~~19~~, before me, the undersigned, a Notary Public in and for said State, personally appeared JACQUELINE IZZO, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
NOTARY PUBLIC



STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF ONEIDA )

On this 16<sup>th</sup> day of January, 20~~19~~, before me, the undersigned, a Notary Public in and for said State, personally appeared PETER C. BLAKE, 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 the instrument.

  
NOTARY PUBLIC

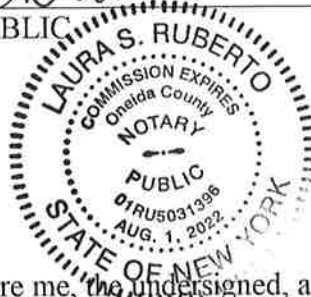
MICHELLE L. SCHULTHEIS  
Notary Public, State of New York  
No. 01SC6341184  
Commission Expires May 02, 2020



STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF ONEIDA )

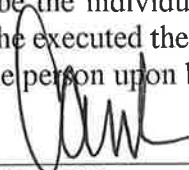
On this 17<sup>th</sup> day of January, <sup>2020</sup> 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared DAVID C. GROW, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within 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 the instrument.

  
\_\_\_\_\_  
NOTARY PUBLIC



STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF ONEIDA )

On this 9<sup>th</sup> day of January, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared STEVEN J. DIMEO, 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 the instrument.

  
\_\_\_\_\_  
NOTARY PUBLIC

Camille Tranker  
app'd Oneida County  
My comm exp 10/31/22

**Exhibit A**  
(Legal Description of Land)

ALL THAT PIECE OR PARCEL OF LAND situate in the City of Rome, County of Oneida, and State of New York, bounded and described as follows:

Beginning at a capped iron rod set in the proposed easterly highway boundary of an existing State Highway (New York State Route 825), at its intersection with a proposed realignment of an existing street (Atlas Drive) said capped iron rod set being S 03° 02' 06" E, 3282.77 feet from a capped iron rod found labeled "DFAS12"; Thence the following four (4) courses and distances along the said proposed realignment of the said Atlas Drive:

- (1) On a curve to the left, having a radius of 3213.69 feet, and arc length of 189.85 feet, and a delta angle of 03° 23' 05" to a point,
- (2) On a curve to the left, having a radius of 737.95 feet, and arc length of 291.99 feet, and a delta angle of 22° 40' 13" to a point,
- (3) On a curve to the right, having a radius of 355.13 feet, and arc length of 110.09 feet, and a delta angle of 17° 45' 39" to a capped iron rod set, and
- (4) N 00° 00' 00" W, 187.42 feet to a capped iron rod set in the line between the remaining lands of Oneida County Industrial Development Agency (OCIDA) (Instrument #2003-001611) on the north and the property herein described on the south;

Thence the following six (6) courses and distances through the lands of the said OCIDA:

- (1) N 90° 00' 00" E, 756.22 feet to a capped iron rod set,
- (2) S 00° 00' 00" E, 179.01 feet to a capped iron rod set,
- (3) N 90° 00' 00" E, 698.79 feet to a capped iron rod set,
- (4) S 00° 00' 00" E, 532.36 feet to a capped iron rod set,
- (5) S 33° 18' 24" W, 454.75 feet to a capped iron rod set, and
- (6) S 07° 34' 02" E, 544.11 feet to a capped iron rod set in the line between the lands of Joan Anne Kowalski and Paul Zawislak (Instrument #2006-001609) on the southeast and the property herein described on the northwest;

Thence S 40° 19' 16" W along the last mentioned division line 393.86 feet to a capped iron rod set in the line between the lands of Tami A. Garland (Liber 2801 of Deeds at Page 54) on the southwest and the property herein described on the northeast; Thence N 73° 51' 09" W along the last mentioned division line, and along the lands of Brian Norris and Nicole Freeman (Instrument #2004-026651), 313.28 feet to an iron pipe found in the line between the lands of Edward J. and Lisa Jarosz (Liber 2786 of Deeds at Page 660) on the southwest and the property herein described on the northeast; Thence N 60° 49' 23" W along the last mentioned division line, and along the lands of Guy Pirillo (Instrument #2011-018882) 1054.98 feet to a concrete monument found in the line between the lands of Ronald P. Gualtieri (Instrument #2007-008836) on the southwest and the property herein described on the northeast; Thence N 65° 32' 12" W along the last mentioned division line, and along the lands of Griffiss Local Development Corporation (Instrument #2007-008834), 167.20 feet to a capped iron rod set in the line between the lands of the said Gualtieri on the northwest and the property herein described on the southeast; Thence the following three (3) courses and distances along the lands of the said Gualtieri:

- (1) N 63° 29' 40" E, 48.63 feet to a capped iron rod set,
- (2) N 07° 20' 45" W, 149.18 feet to a capped iron rod set, and
- (3) S 82° 28' 22" W, 226.72 feet to capped iron rod set in the easterly boundary of the proposed highway boundary of the above referenced New York State Route 825;

Thence the following three (3) courses and distances along the proposed highway boundary:

- (1) N 07° 20' 37" W, 97.15 feet to an iron rod found,
- (2) N 01° 49' 11" W, 591.81 feet to a capped iron rod found, and
- (3) N 01° 53' 08" E, 151.13 feet to the point of beginning, containing 63.78 acres.

All bearings are referred to Grid North of Central Meridian.

BEING part of the premises conveyed to Oneida County Industrial Development Agency by deed recorded January 22, 2003 in the Oneida County Clerk's Office as Instrument #2003-001611.



**Exhibit A-1**  
(Survey Map)



## Exhibit B

### ESSENTIAL PILOT AGREEMENT TERMS

The PILOT Agreement entered into by the Agency and the Company with respect to the Facility shall contain such terms as the Agency deems necessary or appropriate, provided such PILOT Agreement shall comply with the terms described in this Exhibit B.

A. Definitions. Capitalized terms used in this Exhibit B not otherwise defined in this Exhibit B shall have the meaning set forth in the Agreement Approving PILOT Terms and Allocating PILOT Payments to which this Exhibit B is attached (the "PILOT Allocation Agreement"). For purposes of this Exhibit B, the following terms shall have the meanings set forth opposite them:

*"Closing Date"* means the date on which the closing and delivery of the deed occur with respect to the sale of the Land by GLDC to the Company.

*"Construction Period"* means the period of time beginning on the Closing Date and continuing through and including December 31, 2021.

*"First PILOT Year"* means the PILOT Year beginning on January 1, 2022 and continuing through and including December 31, 2022.

*"PILOT Payment Period"* means that period of time of up to twenty-five (25) years beginning on January 1, 2022.

*"PILOT Year"* means each period of twelve (12) months occurring during the PILOT Payment Period.

B. Obligation to Make PILOT Payments - General

1. Construction Period PILOT Payments. No PILOT Payments shall be required during the Construction Period.

2. PILOT Payment Period PILOT Payments. Within thirty (30) days after the beginning of each PILOT Year during the PILOT Payment Period (beginning with the First PILOT Year), the Company shall make an annual PILOT Payment to the Agency with respect to the Facility in the amount set forth for such PILOT Year on the attached Schedule 1. The Facility shall, upon the expiration or termination of the PILOT Agreement, become subject to real property taxation or the Company shall be required to make PILOT Payments in an amount equal to 100% of real property taxes that would be due if the Agency had no interest in the Facility.

C. Challenges to Assessed Value.

The Company may pursue review of the Facility's assessed value under Article 7 of the New York State Real Property Tax Law or any other law or ordinance then in effect relating to

disputes over assessed valuation of real property in the State of New York, and may take any and all other action available to it at law or in equity. If an Article 7 challenge is brought by the Company, the challenge to the assessment may not be used to modify or reduce the PILOT Payments due pursuant to the PILOT Agreement.

D. Waiver of Right to Other Real Property Tax Exemptions.

The Company will unconditionally and irrevocably waive its right, if any, to apply for and/or receive the benefit of, any other real property tax exemption including, without limitation, any real property tax exemptions that may be available under Section 485-b and Section 485-e of the Real Property Tax Law for so long as the PILOT Agreement is in effect.

E. No Recourse against GLDC.

Neither the Agency nor the Affected Tax Jurisdictions shall have any remedies against or seek recourse against GLDC and the sole recourse of the Agency and the Affected Taxing Jurisdictions shall be against the Company, and the Agency and the Affected Taxing Jurisdictions shall look only to the Company for the complete and sole satisfaction of any remedies for unpaid sums due under the PILOT Agreement.

F. PILOT Mortgage.

At the Agency's election, the Company's obligations under the PILOT Agreement shall be secured by a first-in-priority mortgage on the Company's interest in the Facility (the "PILOT Mortgage"), which PILOT Mortgage shall contain such terms as the Agency, GLDC and the GLDC Lenders deem necessary or appropriate.

G. Agency's Right to Modify Terms.

The PILOT Agreement terms described in this Exhibit B may be modified by the Agency, in its discretion, provided such modifications do not reduce the annual PILOT Payment due in any PILOT Year before the GLDC Project-Related Debt has been indefeasibly paid, in full.

[remainder of page intentionally left blank]

**Schedule 1 to Exhibit B**

<b>PILOT Year</b>	<b>Date</b>	<b>Fixed PILOT Payment</b>
1	1/1/22-12/31/22	\$384,404.59
2	1/1/23-12/31/23	\$384,404.59
3	1/1/24-12/31/24	\$384,404.59
4	1/1/25-12/31/25	\$384,404.59
5	1/1/26-12/31/26	\$384,404.59
6	1/1/27-12/31/27	\$439,319.53
7	1/1/28-12/31/28	\$439,319.53
8	1/1/29-12/31/29	\$439,319.53
9	1/1/30-12/31/30	\$439,319.53
10	1/1/31-12/31/31	\$439,319.53
11	1/1/32-12/31/32	\$494,234.47
12	1/1/33-12/31/33	\$494,234.47
13	1/1/34-12/31/34	\$494,234.47
14	1/1/35-12/31/35	\$494,234.47
15	1/1/36-12/31/36	\$494,234.47
16	1/1/37-12/31/37	\$549,149.41
17	1/1/38-12/31/38	\$549,149.41
18	1/1/39-12/31/39	\$549,149.41
19	1/1/40-12/31/40	\$549,149.41
20	1/1/41-12/31/41	\$549,149.41
21	1/1/42-12/31/42	\$658,979.29
22	1/1/43-12/31/43	\$658,979.29
23	1/1/44-12/31/44	\$658,979.29
24	1/1/45-12/31/45	\$658,979.29
25	1/1/46-12/31/46	\$658,979.29

**Exhibit C**

**Percentage of PILOT Payments Received by Agency from the Company with respect to the Facility to be Allocated to Affected Tax Jurisdictions' Fund During each PILOT Year of the PILOT Payment Period**

<b>1</b>		<b>2</b>
<b>PILOT Year of PILOT Payment Period</b>	<b>Date</b>	<b>Percentage of PILOT Payments Received by Agency Allocated to Affected Tax Jurisdictions' Fund</b>
1	1/1/22-12/31/22	0.12%
2	1/1/23-12/31/23	0.12%
3	1/1/24-12/31/24	0.12%
4	1/1/25-12/31/25	0.12%
5	1/1/26-12/31/26	0.12%
6	1/1/27-12/31/27	12.61%
7	1/1/28-12/31/28	12.61%
8	1/1/29-12/31/29	12.61%
9	1/1/30-12/31/30	12.61%
10	1/1/31-12/31/31	12.61%
11	1/1/32-12/31/32	35.59%
12	1/1/33-12/31/33	35.59%
13	1/1/34-12/31/34	35.59%
14	1/1/35-12/31/35	35.59%
15	1/1/36-12/31/36	35.59%
16	1/1/37-12/31/37	100.00%
17	1/1/38-12/31/38	100.00%
18	1/1/39-12/31/39	100.00%
19	1/1/40-12/31/40	100.00%
20	1/1/41-12/31/41	100.00%
21	1/1/42-12/31/42	100.00%
22	1/1/43-12/31/43	100.00%
23	1/1/44-12/31/44	100.00%
24	1/1/45-12/31/45	100.00%
25	1/1/46-12/31/46	100.00%