

ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

JEMAL'S SENECA L.L.C.

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

Property Address

1 Seneca Street, Buffalo, New York

222 Main Street, Buffalo, New York

3 Seneca Street, Buffalo, New York

Tax Map No.

111.17-6-4

111.17-6-3

111.17-6-1.111/A

Affected Tax Jurisdictions:

Erie County
City of Buffalo

Dated as of April 1, 2020

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT (the "PILOT Agreement"), dated as of April 1, 2020 (the "Effective Date"), is by and between the **ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, having its offices at 95 Perry Street, Suite 403, Buffalo, New York 14203 (the "Agency"), and **JEMAL'S SENECA L.L.C.**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at c/o Douglas Development Corporation, 702 H. Street NW, Suite 400, Washington, District of Columbia 20001 (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 as amended (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, JEMAL'S SENECA L.L.C., AND/OR INDIVIDUAL(S) OR AFFILIATES, SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (the "Company") submitted an application to the Agency (the "Application") requesting the Agency's assistance with a certain project (the "Project") consisting of: (i) three (3) parcels of land located at 1 Seneca Street, 3 Seneca Street, and 222 Main Street, City of Buffalo, Erie County, New York (the "Land") improved thereon with the approximately 1.2 million square foot Seneca One complex (the "Existing Improvements"); (ii) the renovation, updating and equipping of the Existing Improvements to provide needed commercial class A office space (but excluding tenant-specific fit and finish items), renovating and updating core and shell interior improvements, and other improvements (elevator work, fire protection, internet and technology, plumbing and storm/sanitary systems, lobby, mechanical spaces, cafeteria, and basement spaces) (the "Improvements"); and (iii) the acquisition and installation by the Company of certain items of machinery, equipment and other tangible personal property (the "Equipment", and collectively with the Land, the Existing Improvements, and the Improvements, the "Facility"); and

WHEREAS, commensurate with the submission of the Application to the Agency, the City of Buffalo (the "City") and the Company requested that the Agency consider approving of a deviation from the Agency's Uniform Tax Exemption Policy ("UTEP") to apply a Payment-in-Lieu-of-Taxes Increment Financing ("PIF") structure upon the Project pursuant to a certain 25-year term Payment-in-Lieu-of-Taxes Agreement by and between the Agency and the Company (the "PILOT Agreement"), providing that a portion of the payments made by the Company thereunder, with the consent of the City, would be made available to fund the construction and equipping of certain Project related public infrastructure improvements and public streetscape improvements (the "Infrastructure Improvements") within the City's Accelerator Fund District (the "District"), said Infrastructure Improvements including but not limited to public transportation station improvements and/or enhancements, pavement and sidewalks, track panels and rails, light rapid transit system related improvements and/or related control systems, streetscape enhancements, utilities work, and design and administration costs; and

WHEREAS, the requested PIF structure provides for: (i) the Company to agree to forgo making application for the New York Real Property Tax Law ("RPTL") Section 485-a and 485-b

real property tax exemption; (ii) a non-standard PILOT Agreement with a term greater than the standard 7 or 10 year benefit period, as described below; (iii) an allocation of payments in lieu of taxes to the City in an amount that is not in proportion to the amount of real property tax and other taxes which would have been received by the City had the project not been tax exempt due to the status of the Agency being involved in the Project; (iv) the Company to make payments to Erie County (the "County") with respect to the County PILOT payment during the term of the PILOT Agreement equal to the amount that would otherwise be payable as real estate taxes if the Company owned the Project with no abatement provided by the Agency; and (v) the Company to make payments to the Agency with respect to the City PILOT payments during the term of the PILOT Agreement equal to the amount that would otherwise be payable as real estate taxes if the Company owned the Project with no abatement provided by the Agency where after the Agency shall create the District Fund (the "Fund") and apply said City PILOT Payments in a manner as prescribed by the terms of that certain Infrastructure Fund Agreement dated as of April 1, 2020, between the Company, the City, and the Agency (the "Infrastructure Fund Agreement"); and

WHEREAS, as contemplated by the Infrastructure Fund Agreement, the portion of the City PILOT payment consisting of the City Land Component amount and the City Existing Improvements Component amount, as hereinafter defined, shall be remitted to the City of Buffalo, and the portion of the City PILOT Payment consisting of the City Variable Component amount shall be deposited into the Fund and the Agency, upon receipt of a City invoice (the "City Invoice") with respect to costs incurred by the City for the Infrastructure Improvements, shall thereafter remit payment of said invoiced amount from the Fund, to pay for or reimburse costs incurred by the City for the Infrastructure Improvements; and

WHEREAS, on March 17, 2020, the Common Council of the City consented to the use of the PIF structure and the Infrastructure Fund Agreement and certain payments made thereunder with respect to the Project as described herein; and

WHEREAS, after complying with its UTEP deviation processes, the Agency, by resolution adopted on March 25, 2020 (the "Resolution") authorized financial assistance to the Company in the form of a mortgage recording tax exemption benefit and also authorized and approved of the PIF Structure, the PILOT Agreement, and the Infrastructure Fund Agreement; and

WHEREAS, in order to induce the Company to acquire, renovate, and equip the Facility, the Agency is willing to take a leasehold interest in the land and improvements constituting the Facility and lease said land and improvements back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement to be dated on or about the date hereof (the "Leaseback Agreement"); 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 located in Erie County owned by or under its jurisdiction, control or supervision, other than special ad valorem levies, special assessments and service charges against real property located in Erie County which are or 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 Agency for

the benefit of Erie County (the "County") and the City (together with the County, the "Affected Tax Jurisdictions").

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

Section 1. Agency Tax Exemption. The Company, in recognition of the benefits provided under this PILOT Agreement, and for so long as the underlying Lease Agreement is in effect, hereby expressly waives any rights it may have for any exemption under Section 485-a and 485-b of the RPTL with respect to the Facility. Subject to the completion and filing of a Form RP-412-a, Application for Real Property Tax Exemption (the "RP-412-a"), by the Taxable Status Date of December 1, 2020 (the "Taxable Status Date"), and the approval of the RP-412-a by the Assessor, the Project shall be exempt from real estate taxes commencing with the:

- (a) 2022 tax fiscal year of the County, and
- (b) 2021-2022 tax fiscal year of the City.

Prior to the 2022 County and 2021-2022 City tax fiscal years, the Company shall continue to timely pay all real estate taxes due as if the Agency were not in leasehold title and had no ownership or control of the Facility such that no exemption from real estate taxes was available to the Facility due to the status of the Agency. This PILOT Agreement shall expire on December 31, 2046; *provided, however*, the Company shall pay the 2047 County and the 2046-2047 City tax bills, on the dates and in the amounts as if the Agency did not have an interest in the Project on the tax status date with respect to said tax years. The Company shall provide the Agency with all information required to complete the RP-412-a and shall provide such additional information and take such actions as are required by the Assessor in order to process and approve the RP-412-a Application. In the event the exemption from real estate taxes is denied for any reason, the Company agrees to pay all real estate taxes levied upon the Project as they become due. To the extent permitted by law, the Company shall have the right to protest such denial subject, however, to the conditions set forth in Section 8.1 of the Leaseback Agreement. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company arising from the denial of an exemption from real estate taxes except to the extent that such denial results solely from the failure of the Agency to file the RP-412-a with the Assessor by the Taxable Status Date.

Section 2. Obligation of the Company to Make Payments in Lieu of Taxes. Subject to the approval of the RP-412-a, the Agency shall require, and the Company agrees to make, payments in lieu of real estate taxes to the appropriate taxing authorities pursuant to the terms of this PILOT Agreement. The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue sources that Affected Tax Jurisdictions would otherwise lose because the subject parcels will not be on the tax rolls. The parties acknowledge that the City and not the Company is in fee title to the underground parking garage portion of the Facility (Tax Map No. 111.17-6-1.111/A) and that the provisions hereof shall only apply to that parcel upon acquisition of fee title to same by the Company.

Section 3. Taxing Authorities and Amounts.

A. (1) Until the commencement of the tax fiscal years set forth in subparagraph (2) below, the Company shall continue to pay all appropriate taxing authorities all taxes due as if the Agency did not have an interest in the Facility. The total PILOT payments required upon commencement of this PILOT Agreement are not allocated among the affected tax jurisdictions in proportion to the amount of real estate taxes and other taxes which would have been received by each affected tax jurisdiction had the Facility not been tax exempt due to the status of the Agency and the Agency's leasehold interest in the Facility, however, the City (which will receive less than its proportionate share) has consented to this PILOT Agreement in accordance with Section 858(15) of the New York General Municipal Law. For each taxing authority, such payments in lieu of taxes shall have a land component, an existing improvements component, and a variable component as follows:

(a) The Land Component ("Land Component") shall be equal to the product of:

- (i) The then current tax rate for the then current tax fiscal year
- x
- (ii) The then current assessed valuation that is to be determined by the Assessor of the City of the non-depreciable portion of all tax parcels comprising the Project (assessed as land)

(b) The Existing Improvements Component ("Existing Improvements Component") shall be equal to the product of:

- (i) The then current tax rate for the then current tax fiscal year
- x
- (ii) The assessed valuation that has been determined to be \$7,629,700 (the "Pre-Project Existing Improvements Assessment Amount") which is calculated as the sum of the current assessment (assessed as buildings or other improvements) of SBL No. 111.17-6-4, being \$7,586,700 and SBL No. 111.17-6-3, being \$43,000. Per Section 2, above, upon the Company's acquisition of SBL No. 111.17-6-1.111/A, the Pre-Project Existing Improvements Assessment Amount shall be increased by then current assessment (assessed as buildings or other improvements) of SBL 111.17-6-1.111/A.

(c) The Variable Component ("Variable Component") shall be equal to the product of:

- (i) The then current tax rate for the then current tax fiscal year
- x
- (ii) The difference between (y) the then current assessed valuation that is to be determined by the Assessor of the City of Buffalo of all buildings and improvements comprising the Project and (z) \$7,629,700 (being the current Pre-Project Existing Improvements Assessment Amount, to be ultimately calculated in the manner as described in Section 3(A)(1)(b), above)
- x
- (iii) A payment factor applicable to such tax fiscal year as shown on Schedule A attached hereto.

(2) For the periods of time indicated below, the Company shall make the indicated payments in lieu of taxes to the indicated taxing authorities:

(a) County PILOT Payments. Payments in lieu of general levy real estate taxes to the County for each of the tax fiscal years 2022 through 2046, or until termination of the Leaseback Agreement, whichever date occurs first, shall be made by the Company in an amount equal to the sum of the County Land Component Payment plus the County Existing Improvements Component Payment plus the County Variable Component Payment (as such terms are depicted above and defined below) for each such tax fiscal year. The County Land Component Payment for each tax fiscal year shall be in an amount equal to the County Tax rate then in effect for such tax fiscal year, applied against the then current assessed valuation that is to be determined by the Assessor of the City of Buffalo of the non-depreciable portion of all tax parcels constituting the Project (assessed as land). The County Existing Improvements Component Payment for each tax fiscal year shall be in an amount equal to the County tax rate in effect for such tax fiscal year, applied against the Pre-Project Existing Improvements Assessment Amount, to be ultimately calculated in the manner as described in Section 3(A)(1)(b), above and determined by the Assessor of the City of Buffalo to currently be \$7,629,700. The County Variable Component Payment for each tax fiscal year shall be an amount equal to the County tax rate then in effect for such tax fiscal year, applied to the product of (i) the difference between (1) the then current assessed valuation that is to be determined by the Assessor of the City of Buffalo of the depreciable portion of all tax parcels comprising the Project (assessed as buildings or other improvements), and (2) \$7,629,700 (the Pre-Project Existing Improvements Assessment Amount, to be ultimately calculated in the manner as described in Section 3(A)(1)(b), above) and (ii) the payment factor applicable to such tax fiscal year as shown on Schedule A attached hereto and made a part hereof. Each such payment shall be delivered to County of Erie, Room 100, 95 Franklin Street, Buffalo, NY 14202, or such other place as may be designated from time to time by the County. Payments for each tax fiscal year must be made by February 15 of that year, or such payment shall be considered delinquent.

(b) City PILOT Payments. Payments in lieu of general levy real estate taxes to the City for each of the tax fiscal years 2021-2022 through 2045-2046, or until termination of the Leaseback Agreement, whichever date occurs first, shall be made by the Company in an amount equal to the sum of the City Land Component Payment plus the City Existing Improvements Component Payment plus the City Variable Component Payment (as such terms are depicted above and defined below) for each such tax fiscal year. The City Land Component Payment for each tax fiscal year shall be in an amount equal to the City Tax rate then in effect for such tax fiscal year, applied against the then current assessed valuation that is to be determined by the Assessor of the City of Buffalo of the non-depreciable portion of all tax parcels constituting the Project (assessed as land). The City Existing Improvements Component Payment for each tax fiscal year shall be in an amount equal to the City tax rate in effect for such tax fiscal year, applied against the Pre-Project Existing Improvements Assessment Amount, to be ultimately calculated in the manner as described in Section 3(A)(1)(b), above and determined by the Assessor of the City of Buffalo to currently be \$7,629,700. The City Variable Component Payment for each tax fiscal year shall be an amount equal to the City tax rate then in effect for such tax fiscal year, applied to the product of (i) the difference between (1) the then current assessed valuation that is to be determined by the Assessor of the City of Buffalo of the depreciable portion of all tax parcels comprising the Project (assessed as buildings or other improvements), and (2) \$7,629,700 (the Pre-Project Existing Improvements Assessment

Amount, to be ultimately calculated in the manner as described in Section 3(A)(1)(b), above) and (ii) the payment factor applicable to such tax fiscal year as shown on Schedule A attached hereto and made a part hereof. Each City PILOT Payment made pursuant to this paragraph Section 3(2)(b) shall be made to the Erie County Industrial Development Agency, 95 Perry Street, Buffalo, New York, 14203, or to such other address as may be designated in writing to the Company from time to time by the Agency. The City, the Agency and the Company have entered into that certain Infrastructure Fund Agreement, as dated as of April 1, 2020, pursuant to which the City has irrevocably divested itself of the right to receive certain PILOT Payments under this paragraph Section 3(A)(2)(b), and has acknowledged that receipt of such payments by the Agency shall be deemed to be receipt by the City. Such Infrastructure Fund Agreement provides that the Agency will remit the City Land Component amount and the City Existing Improvements Component amount, being a portion of the City PILOT Payment so received, to the City, with the balance, consisting of the City Variable Component amount to be remitted by the Agency to the Fund in accordance with the Infrastructure Fund Agreement. Fifty-percent (50%) of each required annual payment for each City tax fiscal year must be made by July 31 of that year, with the balance to be made by December 31 of such year (unless otherwise required by the City), or such payment shall be considered delinquent.

(c) In addition to the foregoing, the Company shall pay all special district charges, special assessments and special ad valorem levies (specifically including but not limited to any fire district charges or "curb charges"), and pure water charges and sewer charges that are levied against the Project are to be paid in full in accordance with normal billing practices as if the Agency did not have an interest in the Project.

(3) Valuation of Future Additions to the Facility. If there shall be a future addition to the Facility constructed or added in any manner after the date of this PILOT Agreement, the Company shall notify the Agency of such future addition ("Future Addition"). The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the Agency may thereafter request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the total payments in lieu of taxes payable under this PILOT Agreement ("Total PILOT Payment"). The Agency shall notify the Company of any proposed increase in the Total PILOT Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Additions made by the Agency, then and in that event that valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the increased PILOT payment until a different Total PILOT Payment shall be established. If a lesser Total Annual Payment is determined in any proceeding or by subsequent agreement of the parties, the Total PILOT Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the next succeeding PILOT payment(s).

(4) The payments required under Paragraph (2) of this section shall in no event be more than would be otherwise payable as taxes if the Agency did not have an interest in the Project.

(5) Upon the termination of the periods shown in Paragraph (2) of this section, for the respective taxing authorities, the Company shall make full payment in lieu of all taxes on the Project as if the Agency did not have an interest in the Project.

Section 4. Proration and Transfer of Facility.

A. During the last year of the term of the Leaseback Agreement the Company may prorate any of its payments in lieu of taxes on the basis of the actual period during which the Agency has an interest in the Project so that there shall exist no period of time for which the Company is obliged to make payments in lieu of taxes in addition to the actual tax payments to which the Project is subject, under current law, at the time the Agency's interest in the Project is terminated.

B. 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 3 herein, or this 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 date of termination.

Section 5. Obligations and Rights of the Company in Relation to Tax Assessments and Levies.

A. Subject to the provisions of the Leaseback Agreement, the Company in cooperation with the Agency shall:

(1) cause the appropriate real estate tax assessment office and tax levy officers to assess the Project and apply tax rates to the respective assessments as if the Agency did not have an interest in the Project;

(2) cause the appropriate real estate tax assessment office and tax levy officers to submit to the Company, when the respective types of taxes are levied on privately owned property, statements specifying the respective amounts and due dates of taxes involved in this PILOT Agreement which the appropriate taxing authorities would receive if the Agency did not have an interest in such property; and

(3) file any accounts or tax returns required with the appropriate real estate tax assessment office and tax levy officers.

B. The payments the Company is required to make under this PILOT Agreement are subject to the Company's rights, hereby granted, to have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Project, with respect to any proposed assessment or change in assessment with respect to the Project by any of the Affected Tax Jurisdictions, and to seek to obtain refunds of any such payments made including payments made pursuant to this PILOT Agreement. The Company shall have the unfettered right, at any time during the term of this PILOT Agreement, to institute judicial or other proceedings to review or contest any valuation assessment or tax classification of the real property with respect to the Facility whether pursuant to the provisions of Article 7 of the RPTL or other applicable law, as the same may be amended from time to time. Such judicial or other

review shall be for purposes of setting the real property taxes applicable to the Facility as though the Facility was on the tax rolls of each Affected Tax Jurisdiction as taxable real property but shall have no effect on the validity of this PILOT Agreement or the tax-exempt status of the Facility during the term of this PILOT Agreement. The Agency shall join in any procedure for obtaining relief under this paragraph to the extent that the Agency's consent is required for the Company to undertake such procedure; provided, however, that the Company shall continue to make the payments in lieu of taxes required by this PILOT Agreement adjusted for any reduction as provided above so long as the Leaseback Agreement shall remain in effect.

Section 6. Effect of Fulfillment of the Requirement and Clawback. Once having paid the amounts required by this PILOT Agreement, the Company shall not be required to pay any real estate taxes for which payments in lieu of taxes have been made. Notwithstanding the foregoing, in the event that the Agency shall determine (i) that the Company has submitted an application, or documentation in support of an application, which contained a false or intentionally misleading statement as to any fact which is material to the Company's application for benefits or which omitted any information which, if included, would have rendered any information in the application or supporting documentation false or misleading in any material respect, and (ii) that such false or misleading statement or omission was made knowingly and intentionally for the purpose of obtaining financial assistance, then the Company shall forfeit any future tax exemptions or abatements and shall be required to pay to the appropriate taxing authority the amount of any mortgage recording tax abatement exemptions received.

Section 7. Events of Default. The following shall constitute "Event(s) of Default" hereunder:

A. The failure by the Company to (i) make any such payments in lieu of taxes when due, whether for a full tax fiscal year or years or for a portion of a tax fiscal year pursuant to Sections 2 or 3 hereof within thirty (30) days of the payment due date (the "Delinquency Date"), whereupon the amount or amounts so in default shall continue as an obligation of the Company until fully paid; (ii) make any other payments described herein on or before thirty days after the last day of any applicable cure period within which said payment can be made without penalty; or (iii) the occurrence and continuance of any events of default under the Leaseback Agreement after the expiration of any applicable cure periods.

B. 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.

C. In addition, if payments pursuant to this PILOT Agreement 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, the Company shall pay penalties and interest as set forth herein. With respect to payments to be made pursuant to Section 3 herein, if said payment is not received by the Delinquency Date defined above, 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. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, 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. 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 General Municipal Law § 874(6). The Company shall promptly notify the Agency of any action brought, or other measure taken, by taxing authority to recover such amounts. It is understood that the right of any taxing authority herein acknowledged is in addition to, and shall not impair, the Agency's own rights arising from a breach of this PILOT Agreement. Should the Agency or the City or the County commence any action to recover directly from the Company any amounts so in default, such parties shall be entitled to recover from the Company the amount due, the late payment penalty, interest, expenses, costs and disbursements, together with the reasonable attorneys' fees necessary to prosecute such action or proceeding.

D. If the Project is not being used in accordance with the Act or the Leaseback Agreement, or if an Event of Default occurs, the Company shall make payments in lieu of taxes on the Project in such amounts as would be payable as real estate taxes levied on the Project if the Agency did not have an interest in the Project. The applicable tax assessment and tax levy rates shall be those in effect in the records of the appropriate taxing authorities.

E. The period for the payments required by Paragraph (D) of this section shall commence on the date the Agency determines (a) that the use of the Project under the Act or the Leaseback Agreement is not being complied with, or (b) that an Event of Default has occurred and is continuing.

Section 8. Survival of the Company's Obligations.

The obligations of the Company under this PILOT Agreement shall survive the termination or expiration of the Leaseback Agreement, for whatever reason terminated or expired.

Section 9. Assignment.

No portion of any interest in this 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.

Section 10. Non-Recourse of Agency.

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 Project and paid to the Agency by the Company. Neither members 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 member, officer, agent, servant and employee being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this PILOT Agreement.

Section 11. Miscellaneous.

A. This Agreement may be executed in any number of counterparts each of which shall be deemed an original but 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, or by nationally-recognized overnight courier, as follows:

To the Agency: Erie County Industrial Development Agency
95 Perry Street, Suite 403
Buffalo, New York 14203
Attention: Chief Executive Officer

With a Copy to: Harris Beach PLLC
726 Exchange Street, Suite 1000
Buffalo, New York 14210
Attention: Robert G. Murray, Esq.

To the Company: Jemal's Seneca L.L.C.
c/o Douglas Development Corporation
702 H. Street NW, Suite 400
Washington, District of Columbia 20001
Attention: Paul Millstein, Member and Authorized Agent

With a Copy To: Phillips Lytle LLP
One Canalside
125 Main Street
Buffalo, New York 14203
Attn: Adam S. Walters, Esq. and Milan K. Tyler, 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.

C. This 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 Erie County, New York.

D. 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.

(Remainder of page intentionally left blank)

[Signature page to PILOT Agreement]

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

**ERIE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: Karen M. Fiala
Name: Karen M. Fiala
Title: Assistant Treasurer

JEMAL'S SENECA L.L.C.

By: _____
Name: Douglas Jemal
Title: Managing Member

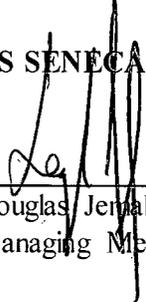
[Signature page to PILOT Agreement]

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

**ERIE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: Karen M. Fiala
Title: Assistant Treasurer

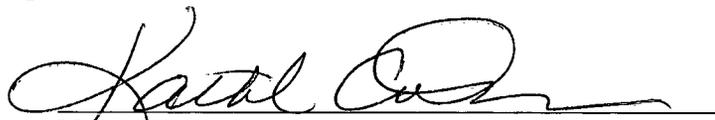
JEMAL'S SENECA L.L.C.

By:  _____
Name: Douglas Jemal
Title: Managing Member

[Acknowledgment Page to the PILOT Agreement]

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

On the 2nd day of April, 2020, before me, the undersigned, personally appeared **KAREN M. FIALA**, 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

KATHLEEN A. DRUMM
Notary Public State of New York
Qualified in Erie County
My Commission Expires: June 30, 2022

DISTRICT OF COLUMBIA) ss:

On the _____ day of April, 2020, before me, the undersigned, personally appeared **DOUGLAS JEMAL**, 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

[Acknowledgment Page to the PILOT Agreement]

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

On the _____ day of April, 2020, before me, the undersigned, personally appeared **KAREN M. FIALA**, 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.

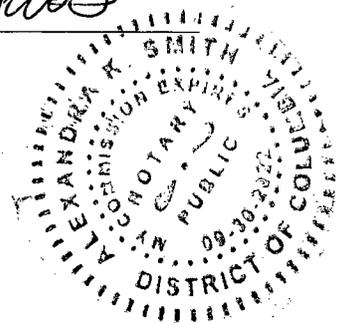
Notary Public

DISTRICT OF COLUMBIA) ss:

On the 1st day of April, 2020, before me, the undersigned, personally appeared **DOUGLAS JEMAL**, 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.

Alexandra K Smith

Notary Public



SCHEDULE A

Project/PILOT Tax Year	Tax Fiscal Year		PAYMENT FACTOR
	County	City	
Project Year 1	2020	2019-2020	N/A-as if owned
Project Year 2	2021	2020-2021	N/A-as if owned
PILOT Year 1	2022	2021-2022	100%
PILOT Year 2	2023	2022-2023	100%
PILOT Year 3	2024	2023-2024	100%
PILOT Year 4	2025	2024-2025	100%
PILOT Year 5	2026	2025-2026	100%
PILOT Year 6	2027	2026-2027	100%
PILOT Year 7	2028	2027-2028	100%
PILOT Year 8	2029	2028-2029	100%
PILOT Year 9	2030	2029-2030	100%
PILOT Year 10	2031	2030-2031	100%
PILOT Year 11	2032	2031-2032	100%
PILOT Year 12	2033	2032-2033	100%
PILOT Year 13	2034	2033-2034	100%
PILOT Year 14	2035	2034-2035	100%
PILOT Year 15	2036	2035-2036	100%
PILOT Year 16	2037	2036-2037	100%
PILOT Year 17	2038	2037-2038	100%
PILOT Year 18	2039	2038-2039	100%
PILOT Year 19	2040	2039-2040	100%
PILOT Year 20	2041	2040-2041	100%
PILOT Year 21	2042	2041-2042	100%
PILOT Year 22	2043	2042-2043	100%
PILOT Year 23	2044	2043-2044	100%
PILOT Year 24	2045	2044-2045	100%
PILOT Year 25	2046	2045-2046	100%