

CLOSING ITEM NO.: A-7(C)

CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY

AND

LOUGHLIN DAWN LLC

PHASE III PAYMENT IN LIEU OF TAX AGREEMENT

DATED AS OF MARCH 1, 2019

RELATING TO THE PHASE III LAND.

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PHASE III PAYMENT IN LIEU OF TAX AGREEMENT

THIS PHASE III PAYMENT IN LIEU OF TAX AGREEMENT dated as of March 1, 2019 (the "Phase III Payment in Lieu of Tax Agreement") by and between CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 21 Lodge Street, Albany, New York (the "Agency"), and LOUGHLIN DAWN LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 20 Corporate Woods Boulevard, Albany, New York (the "Company");

WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 24 of the Consolidated Laws of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York, as amended; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 325 of the Laws of 1974 of the State, as amended, constituting Section 903-a of said General Municipal Law (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, in September, 2018, Loughlin Dawn LLC (the "Company"), a limited liability company duly organized and validly existing under the laws of the State of New York, presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest in approximately 17 parcels of land containing in the aggregate approximately 6.49 acres located at 261 Fuller Road (being a portion of tax map number 53.00-1-53), 2-12 Sandidge Way and 263-275 Fuller Road (tax map numbers 53.00-1-54-69) in the City of Albany, Albany County, New York (collectively, the "Land"), together with approximately 13 buildings located thereon (collectively, the "Existing Facility"), (2) the demolition of the Existing Facility, (3) the construction on the Land of seven (7) apartment buildings containing in the aggregate approximately 420,000 square feet of space, including a clubhouse/office and related parking spaces (collectively, the "Facility") and (4) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (the "Equipment") (the Land, the Existing Facility, the Facility, and the Equipment being

collectively referred to as the "Project Facility"), all of the foregoing to be owned by the Company and to constitute a residential facility containing approximately 252 unit residential apartment facility to be leased by the Company to various residential tenants and other directly and indirectly related activities; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on October 18, 2018 (the "Public Hearing Resolution"), the Agency authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Project; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency (the "Public Hearing") pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on October 22, 2018 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is to be located, (B) caused notice of the Public Hearing to be posted on October 23, 2018 at Albany City Hall located at 24 Eagle Street in the City of Albany, Albany County, New York, as well as on the Agency's website, (C) caused notice of the Public Hearing to be published on October 25, 2018 in the Times Union, a newspaper of general circulation available to the residents of the City of Albany, New York, (D) conducted the Public Hearing on November 7, 2018 at 12:00 o'clock p.m., local time at the office of the Agency located at 21 Lodge Street in the City of Albany, Albany County, New York, and (E) prepared a report of the Public Hearing (the "Public Hearing Report") fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Agency on November 15, 2018 (the "SEQR Resolution"), the Agency (A) concurred in the determination that the City of Albany Planning Board (the "Planning Board") is the "lead agency" with respect to SEQRA and (B) acknowledged receipt of a negative declaration from the Planning Board issued on April 19, 2018 (the "Negative Declaration"), in which the Planning Board determined that the Project would not have a significant adverse environmental impact on the environment, and therefore, that an environmental statement need not be prepared with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on November 15, 2018 (the "Commercial/Retail Findings Resolution"), the Agency (A) determined that the Project constituted a "commercial project" within the meaning of the Act, (B) found that although the Project Facility appears to constitute a project where facilities or properties that are primarily used in making the retail sales of goods or services to customers who personally visit such facilities may constitute more than one-third of the costs of the Project, the Agency is authorized to provide financial assistance in respect of the Project pursuant to Section 862(2)(a) of the Act because the Project Facility is located in a highly distressed area, (C) determined, following a review of the Public Hearing Report, that the Project would serve the public purposes of the Act by preserving permanent private sector jobs in the State of New York and (D) determined that the Agency would proceed with the Project and the granting of the Financial Assistance; provided however, that no financial assistance would be provided to the Project by the Agency unless and

until the Mayor of City of Albany, as chief executive officer of City of Albany, New York, pursuant to Section 862(2)(c) of the Act, confirmed the proposed action of the Agency with respect to the Project; and

WHEREAS, in connection with the Application, the Company made a request to the Agency to deviate from its uniform tax exemption policy (the "Pilot Request") and pursuant to the Pilot Request, by resolution adopted by the members of the Agency on November 15, 2018 (the "Pilot Deviation Approval Resolution"), the members of the Agency determined to deviate from the Agency's uniform tax exemption policy with respect to the Project; and

WHEREAS, pursuant to the Pilot Request, the Agency will enter into four (4) separate payment in lieu of tax agreements, each payment in lieu of tax agreement attributable to four (4) different phases of the Project as the construction for each phase is completed. Phase I of the Project (the "Phase I Project") will consist of (A) the acquisition of certain parcels of land containing in the aggregate approximately 1.72 acres located on Sandidge Way and Fuller Road in the City of Albany, Albany County, New York (collectively, the "Phase I Land", as more particularly described on Exhibit A of the Lease Agreement), together with portions of the Existing Facility located on the Phase I Land (collectively, the "Phase I Existing Facility"), (B) the demolition of the Existing Facility, (C) the construction on the Phase I Land of approximately two (2) apartment buildings containing in the aggregate approximately 83,448 square feet of space (collectively, the "Phase I Facility") and (D) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (the "Phase I Equipment") (the "Phase I Land, the Phase I Existing Facility, the Phase I Facility and the Phase I Equipment being collectively referred to as the "Phase I Project Facility"). Phase II of the Project (the "Phase II Project") will consist of (A) the acquisition of a certain parcel of land containing approximately 1.95 acres located on Sandidge Way in the City of Albany, Albany County, New York (the "Phase II Land", as more particularly described on Exhibit A of the Lease Agreement), together with portions of the Existing Facility located on the Phase II Land (collectively, the "Phase II Existing Facility"), (B) the construction on the Phase II Land of approximately two (2) apartment buildings containing in the aggregate approximately 83,448 square feet of space (collectively, the "Phase II Facility") and (C) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (the "Phase II Equipment") (the "Phase II Land, the Phase II Existing Facility, the Phase II Facility and the Phase II Equipment being collectively referred to as the "Phase II Project Facility"). Phase III of the Project (the "Phase III Project") will consist of (A) the acquisition of a certain parcel of land containing approximately 2.06 acres located on Sandidge Way in the City of Albany, Albany County, New York (the "Phase III Land", as more particularly described on Exhibit A to the Lease Agreement), together with portions of the Existing Facility located on the Phase III Land (collectively, the "Phase III Existing Facility"), (B) the construction on the Phase III Land of approximately two (2) apartment buildings containing in the aggregate approximately 83,448 square feet of space (collectively, the "Phase III Facility") and (C) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (the "Phase III Equipment") (the "Phase III Land, the Phase III Existing Facility, the Phase III Facility and the Phase III Equipment being collectively referred to as the "Phase III Project Facility"). Phase IV of the Project (the "Phase IV Project") will consist of (A) the acquisition of a certain parcel of land containing approximately 0.65 acres located on Sandidge Way and Fuller Road in the City of Albany, Albany County, New York (the "Phase IV Land", as more particularly described on Exhibit A of the Lease Agreement), together with portions of the Existing Facility located on the Phase IV Land (collectively, the "Phase IV Existing Facility"), (B) the construction on the Phase IV Land of approximately one (1) apartment building containing approximately 41,724 square feet of space (the "Phase IV Facility") and (C) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (the "Phase IV Equipment") (the "Phase IV Land, the Phase IV Existing Facility, the Phase IV Facility and the Phase IV Equipment being collectively referred to as the "Phase IV Project Facility"); and

WHEREAS, by further resolution adopted by the members of the Agency on November 15, 2018 (the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of March 1, 2019 (the "Lease Agreement") between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"). Pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company. The Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, by certificate dated March 13, 2019 (the "Public Approval"), the Mayor, as chief executive officer of the City of Albany, New York, approved the proposed action to be taken by the Agency with respect to the Project for purposes of Section 862(2)(c) of the Act; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency dated as of March 1, 2019 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises"); (2) a certain license agreement dated as of March 1, 2019 (the "License to Agency") by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency (a) a license to enter upon the balance of the Land (the "Licensed Premises") for the purpose of undertaking and completing the Project and (b) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement; and (3) a certain bill of sale dated as of March 1, 2019 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency will execute and deliver (1) certain payment in lieu of tax agreements dated as of March 1, 2019 (collectively, the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility, (2) a certain recapture agreement (the "Section 875 GML Recapture Agreement") by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; and (3) a certain uniform agency project agreement dated as of March 1, 2019 (the "Uniform Agency Project Agreement") relating to the granting of the Financial Assistance by the Agency to the Company, (D) the Agency will file with the assessor and mail to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement, (E) the Agency will execute and deliver to the Company sales tax exemption letters (collectively, the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (F) the Agency will file with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report"); and

WHEREAS, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York (the "Real Property Tax Law"), upon the filing by the Agency of the Real Property Tax Exemption Form, the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or control; and

WHEREAS, pursuant to the provisions of Section 6.6 of the Lease Agreement, the Company has agreed to make payments in lieu of taxes with respect to the Phase III Project Facility in an amount

equivalent to normal taxes, provided that, so long as this Phase III Payment in Lieu of Tax Agreement shall be in effect, the Company shall during the term of this Phase III Payment in Lieu of Tax Agreement make payments in lieu of taxes in the amounts and in the manner provided in this Phase III Payment in Lieu of Tax Agreement, and during such period the provisions of Section 6.6 of the Lease Agreement shall not control the amounts due as payment in lieu of taxes with respect to that portion of the Phase III Project Facility which is covered by this Phase III Payment in Lieu of Tax Agreement; and

WHEREAS, all things necessary to constitute this Phase III Payment in Lieu of Tax Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Phase III Payment in Lieu of Tax Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, in consideration of the matters above recited, the parties hereto formally covenant, agree and bind themselves as follows, to wit:

ARTICLE I

REPRESENTATIONS AND WARRANTIES

SECTION 1.01. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

(A) Power. The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into the transactions contemplated by this Phase III Payment in Lieu of Tax Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Phase III Payment in Lieu of Tax Agreement hereunder.

(B) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Phase III Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Phase III Payment in Lieu of Tax Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Phase III Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Agency is not prohibited from entering into this Phase III Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Phase III Payment in Lieu of Tax Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

SECTION 1.02. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant and covenant as follows:

(A) Power. The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, is duly authorized to do business in the State of New York and has the power under the laws of the State to enter into this Phase III Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Phase III Payment in Lieu of Tax Agreement, and by proper action of its Members has been duly authorized to execute, deliver and perform this Phase III Payment in Lieu of Tax Agreement.

(B) Authorization. The Company is authorized and has the power under its articles of organization, its operating agreement and the laws of the State to enter into this Phase III Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Phase III Payment in Lieu of Tax Agreement. By proper action of its Members, the Company has duly authorized the execution, delivery and performance of this Phase III Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Company is not prohibited from entering into this Phase III Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed

under and pursuant to this Phase III Payment in Lieu of Tax Agreement by (and the execution, delivery and performance of this Phase III Payment in Lieu of Tax Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Phase III Payment in Lieu of Tax Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its articles of organization or its operating agreement or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Phase III Payment in Lieu of Tax Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Phase III Payment in Lieu of Tax Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Phase III Payment in Lieu of Tax Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consent. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Phase III Payment in Lieu of Tax Agreement by the Company or as a condition to the validity of this Phase III Payment in Lieu of Tax Agreement.

ARTICLE II

COVENANTS AND AGREEMENTS

SECTION 2.01. TAX-EXEMPT STATUS OF THE PHASE III PROJECT FACILITY. (A) Assessment of the Phase III Project Facility. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of the Phase III Project Facility by the Agency and the filing by the Agency of a New York State Board of Real Property Services Form RP-412-a (a "Real Property Tax Exemption Form") with respect to the Phase III Project Facility, and for so long thereafter as the Agency shall own the Phase III Project Facility, the Phase III Project Facility shall be assessed by the various taxing entities having jurisdiction over the Phase III Project Facility, including, without limitation, any county, city, school district, town, village or other political unit or units wherein the Phase III Project Facility is located (such taxing entities being sometimes collectively hereinafter referred to as the "Taxing Entities", and each of such Taxing Entities being sometimes individually hereinafter referred to as a "Taxing Entity") as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the acquisition by the Agency of the leasehold interest to the Phase III Project Facility created by the Lease to Agency and the filing of the Real Property Tax Exemption Forms. The Company shall, promptly following acquisition by the Agency of the leasehold interest to the Phase III Project Facility created by the Lease to Agency, take such action as may be necessary to ensure that the Phase III Project Facility shall be assessed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to such acquisition by the Agency, including ensuring that a Real Property Tax Exemption Form shall be filed with the appropriate officer or officers of each respective Taxing Entity responsible for assessing properties on behalf of each such Taxing Entity (each such officer being hereinafter referred to as an "Assessor"). For so long thereafter as the Agency shall own such leasehold interest in the Phase III Project Facility, the Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Taxing Entity. The parties hereto understand that the Phase III Project Facility shall not be entitled to such tax-exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the tax status date of such Taxing Entity occurring subsequent to the date upon which the Agency becomes the owner of record of such leasehold interest in the Phase III Project Facility and the Real Property Tax Exemption Forms are filed with the Assessors. Pursuant to the provisions of the Lease Agreement, the Company will be required to pay all taxes and assessments lawfully levied and/or assessed against the Phase III Project Facility, including taxes and assessments levied for the current tax year and all subsequent tax years until the Phase III Project Facility shall be entitled to exempt status on the tax rolls of the respective Taxing Entities. The Agency will cooperate with the Company to obtain and preserve the tax-exempt status of the Phase III Project Facility.

(B) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease Agreement, the Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Phase III Project Facility.

SECTION 2.02. PAYMENTS IN LIEU OF TAXES. (A) Agreement to Make Payments. The Company agrees that it shall make annual payments in lieu of property taxes in the amounts hereinafter provided to the respective Taxing Entities entitled to receive same pursuant to the provisions hereof. The Company also agrees to give the Assessors a copy of this Phase III Payment in Lieu of Tax Agreement. The payments due hereunder shall be paid by the Company to the respective appropriate officer or officers of the respective Taxing Entities charged with receiving payments of taxes for such Taxing Entities (such officers being collectively hereinafter referred to as the "Receivers of Taxes") for distribution by the Receivers of Taxes to the appropriate Taxing Entities entitled to receive same pursuant to the provisions hereof.

(B) Valuation of the Phase III Project Facility. (1) The value of the Phase III Project Facility for purposes of determining payments in lieu of taxes due hereunder (hereinafter referred to as the "Assessed Value") shall be determined in accordance with the terms of Exhibit B attached hereto and this Section 2.02(B). The Company agrees to give the Assessors a copy of this Phase III Payment in Lieu of Tax Agreement. The parties hereto agree that the Assessors shall (a) appraise the Phase III Facility and any portion of the Equipment assessable as real property pursuant to the New York Real Property Tax Law (collectively with the Phase III Facility, the "Improvements") in the same manner as other similar properties in the general area of the Improvements, and (b) place an Assessed Value upon the Improvements, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial determination of the Assessed Value of the Phase III Land or the Improvements and of any change in the Assessed Value of the Phase III Land or the Improvements.

(2) If the Company is dissatisfied with the amount of the Assessed Value of the Phase III Project Facility as initially established or as changed by the Assessors, the Company shall be entitled to challenge the Assessed Value in accordance with the terms and conditions contained in Article 7 of the Real Property Tax Law. The Company shall be entitled to take any actions under Article 7 of the Real Property Tax Law notwithstanding the fact that the Agency has an interest in the Phase III Land pursuant to the Lease to Agency.

(3) Any payments in lieu of taxes due upon such Phase III Project Facility pursuant to Section 2.02(C) hereof may not be withheld by the Company pending determination of the Assessed Value.

(C) Amount of Payments in Lieu of Taxes. The payments in lieu of taxes to be paid by the Company to the Receivers of Taxes annually on behalf of each Taxing Entity pursuant to the terms of this Phase III Payment in Lieu of Tax Agreement shall be the amount computed separately for each Taxing Entity set forth in Exhibit B attached hereto.

(D) Additional Amounts in Lieu of Taxes. Commencing on the first tax year following the date on which any structural addition shall be made to the Phase III Project Facility or any portion thereof or any additional building or other structure shall be constructed on the Phase III Land (such structural additions and additional buildings and other structures being hereinafter referred to as "Additional Facilities") the Company agrees to make additional annual payments in lieu of property taxes with respect to such Additional Facilities (such additional payments being hereinafter collectively referred to as "Additional Payments") to the Receivers of Taxes with respect to such Additional Facilities, such Additional Payments to be computed separately for each Taxing Entity as follows:

(1) Determine the amount of general taxes and general assessments (hereinafter referred to as the "Additional Normal Tax") which would be payable to each Taxing Entity with respect to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency as follows: (a) multiply the Additional Assessed Value (as hereinafter defined) of such Additional Facilities determined pursuant to subsection (E) of this Section 2.02 by (b) the tax rate or rates of such Taxing Entity that would be applicable to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency, and (c) reduce the amount so determined by the amounts of any tax exemptions that would be afforded to the Company by such Taxing Entity if such Additional Facilities were owned by the Company and not the Agency.

(2) In each fiscal tax year during the term of this Phase III Payment in Lieu of Tax Agreement (commencing in the fiscal tax year when such Additional Facilities would first appear

on the assessment roll of any Taxing Entity) if such Additional Facilities were owned by the Company and not the Agency, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax with respect to such Additional Facilities pursuant to this Phase III Payment in Lieu of Tax Agreement shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to such Additional Facilities for such fiscal tax year (unless the Agency and the Company shall enter into a separate written agreement regarding payments in lieu of property taxes with respect to such Additional Facilities, in which case the provisions of such separate written agreement shall control).

(E) Valuation of Additional Facilities. (1) The value of Additional Facilities for purposes of determining payments in lieu of taxes due under Section 2.02(D) hereof shall be determined by the Assessors of each respective Taxing Entity. The parties hereto agree that the Assessors shall (a) appraise the Additional Facilities in the same manner as other similar properties in the general area of the Phase III Project Facility, and (b) place a value for assessment purposes (hereinafter referred to as the "Additional Assessed Value") upon the Additional Facilities, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial establishment of such Additional Assessed Value and of any change in such Additional Assessed Value.

(2) If the Company is dissatisfied with the amount of the Additional Assessed Value of the Additional Facilities as initially established or as changed, the Company shall be entitled to challenge the Additional Assessed Value in accordance with the terms and conditions contained in Article 7 of the Real Property Tax Law. The Company shall be entitled to take any actions under Article 7 of the Real Property Tax Law notwithstanding the fact that the Agency has an interest in the Phase III Land pursuant to the Lease to Agency.

(F) Statements. Pursuant to Section 858(15) of the Act, the Agency agrees to give each Taxing Entity a copy of this Phase III Payment in Lieu of Tax Agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy hereof be given to the appropriate officer or officers of the respective Taxing Entities responsible for preparing the tax rolls for said Tax Entities (each, a "Tax Billing Officer") and a request that said Tax Billing Officers submit to the Company and to the appropriate Receiver of Taxes periodic statements specifying the amount and due date or dates of the payments due each Taxing Entity hereunder, such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed by such Taxing Entities.

(G) Time of Payments. The Company agrees to pay the amounts due hereunder to the Receivers of Taxes for the benefit of each particular Taxing Entity in any fiscal tax year to the appropriate Receiver of Taxes within the period that such Taxing Entity allows payment of taxes levied in such fiscal tax year without penalty. The Company shall be entitled to receive receipts for such payments.

(H) Method of Payment. All payments by the Company hereunder shall be paid to the Receivers of Taxes in lawful money of the United States of America. The Receivers of Taxes shall in turn distribute the amounts so paid to the various Taxing Entities entitled to same.

SECTION 2.03. CREDIT FOR TAXES PAID. (A) Amount of Credit. The parties hereto acknowledge and agree that the obligation of the Company to make the payments provided in Section 2.02 of this Phase III Payment in Lieu of Tax Agreement shall be in addition to any and all other taxes and governmental charges of any kind whatsoever which the Company may be required to pay under the Lease Agreement. It is understood and agreed, however, that, should the Company pay in any fiscal tax year to any Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Phase III Project Facility or the

interest therein of the Company or the occupancy thereof by the Company (but not including, by way of example, (1) sales and use taxes, and (2) special assessments, special ad valorem levies or governmental charges in the nature of utility charges, including but not limited to water, solid waste, sewage treatment or sewer or other rents, rates or charges), then the Company's obligation to make payments in lieu of property taxes attributed to such fiscal tax year to such Taxing Entity hereunder shall be reduced by the amounts which the Company shall have so paid to such Taxing Entity in such fiscal tax year, but there shall be no cumulative or retroactive credit as to any payment in lieu of property taxes due to any other Taxing Entity or as to any payment in lieu of property taxes due to such Taxing Entity in any other fiscal tax year.

(B) Method of Claiming Credits. If the Company desires to claim a credit against any particular payment in lieu of tax due hereunder, the Company shall give the governing body of the affected Taxing Entity and the Agency prior written notice of its intention to claim any credit pursuant to the provision of this Section 2.03, said notice to be given by the Company at least thirty (30) days prior to the date on which such payment in lieu of tax is due pursuant to the provisions of Section 2.02(G) hereof. In the event that the governing body of the appropriate Taxing Entity desires to contest the Company's right to claim such credit, then said governing body, the Agency and the Company shall each select an arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall meet the qualifications set forth in Section 2.02(B) hereof, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Company is entitled to claim any credit pursuant to the provisions of this Section 2.03 and, if so, the amount of the credit to which the Company is entitled. It is understood that the arbitrators are empowered to confirm the amount of the credit claimed by the Company or to determine a lower or higher credit. When the Company shall have given notice, as provided herein, that it claims a credit, the amount of any payment in lieu of property taxes due hereunder against which the credit may be claimed may be withheld (to the extent of the credit claimed by the Company, but only to the extent that such credit may be claimed against said payment in lieu of taxes pursuant to the provisions of this Section 2.03) until the decision of the arbitrators is rendered. After the decision of the arbitrators is rendered, the payment in lieu of taxes due with respect to any reduction or disallowance by the arbitrators in the amount of the credit claimed by the Company shall, to the extent withheld as aforesaid, be immediately due and payable and shall be paid by the Company within thirty (30) days of said decision.

SECTION 2.04. LATE PAYMENTS. (A) First Month. Pursuant to Section 874(5) of the Act, if the Company shall fail to make any payment required by this Phase III Payment in Lieu of Tax Agreement when due, the Company shall pay the same, together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter. If the Company shall fail to make any payment required by this Phase III Payment in Lieu of Tax Agreement when due and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the affected Taxing Entity until such payment in default shall have been made in full, and the Company shall pay the same to the affected Taxing Entity together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

ARTICLE III

LIMITED OBLIGATION

SECTION 3.01. NO RECOURSE; LIMITED OBLIGATION OF THE AGENCY. (A) No Recourse. All obligations, covenants, and agreements of the Agency contained in this Phase III Payment in Lieu of Tax Agreement shall be deemed to be the obligations, covenants, and agreements of the Agency and not of any member, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Phase III Payment in Lieu of Tax Agreement, or otherwise based upon or in respect of this Phase III Payment in Lieu of Tax Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent (other than the Company), servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Phase III Payment in Lieu of Tax Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Phase III Payment in Lieu of Tax Agreement, it being expressly understood that this Phase III Payment in Lieu of Tax Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company), servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Phase III Payment in Lieu of Tax Agreement under or by reason of the obligations, covenants or agreements contained in this Phase III Payment in Lieu of Tax Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Phase III Payment in Lieu of Tax Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Phase III Payment in Lieu of Tax Agreement by the Agency.

(B) Limited Obligation. The obligations, covenants and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or City of Albany, New York, and neither the State of New York nor City of Albany, New York shall be liable thereon, and further such obligations, covenants 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 of the Agency derived and to be derived from the lease, sale or other disposition of the Phase III Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Lease Agreement).

(C) Further Limitation. Notwithstanding any provision of this Phase III Payment in Lieu of Tax Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (1) the Agency shall have been requested to do so in writing by the Company, and (2) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity and an agreement from the Company to defend and hold harmless the Agency satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

ARTICLE IV

EVENTS OF DEFAULT

SECTION 4.01. EVENTS OF DEFAULT. Any one or more of the following events shall constitute an event of default under this Phase III Payment in Lieu of Tax Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Phase III Payment in Lieu of Tax Agreement, any one or more of the following events:

(A) Failure of the Company to pay when due any amount due and payable by the Company pursuant to this Phase III Payment in Lieu of Tax Agreement and continuance of said failure for a period of fifteen (15) days after written notice to the Company stating that such payment is due and payable;

(B) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed hereunder (other than as referred to in paragraph (A) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Company shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days in the aggregate from the date of default; or

(C) Any warranty, representation or other statement by or on behalf of the Company contained in this Phase III Payment in Lieu of Tax Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Phase III Payment in Lieu of Tax Agreement and (1) shall be materially adverse to the Agency at the time when the notice referred to below shall have been given to the Company and (2) if curable, shall not have been cured within thirty (30) days after written notice of such incorrectness shall have been given to a responsible officer of the Company, provided that if such incorrectness cannot reasonably be cured within said thirty-day period and the Company shall have commenced action to cure the incorrectness within said thirty-day period and, thereafter, diligently and expeditiously proceeds to cure the same, such thirty-day period shall be extended for so long as the Company shall require, in the exercise of due diligence, to cure such default.

SECTION 4.02. REMEDIES ON DEFAULT. (A) General. Whenever any Event of Default shall have occurred with respect to this Phase III Payment in Lieu of Tax Agreement, the Agency (or if such Event of Default concerns a payment required to be made hereunder to any Taxing Entity, then with respect to such Event of Default such Taxing Entity) may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Phase III Payment in Lieu of Tax Agreement.

(B) Cross-Default. In addition, an Event of Default hereunder shall constitute an event of default under Article X of the Lease Agreement. Upon the occurrence of an Event of Default hereunder resulting from a failure of the Company to make any payment required hereunder, the Agency shall have, as a remedy therefor under the Lease Agreement, among other remedies, the right to terminate the Lease Agreement and convey the Phase III Project Facility to the Company, thus subjecting the Phase III Project Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State.

(C) Separate Suits. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.

(D) Venue. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Phase III Payment in Lieu of Tax Agreement may be brought in the courts of record of the State, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

SECTION 4.03. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. Pursuant to Section 874(6) of the Act, if the Company should default in performing any of its obligations, covenants or agreements under this Phase III Payment in Lieu of Tax Agreement and the Agency or any Taxing Entity should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency or such Taxing Entity, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.04. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or any Taxing Entity is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Phase III Payment in Lieu of Tax Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required. In order to entitle the Agency or any Taxing Entity to exercise any remedy reserved to it in this Phase III Payment in Lieu of Tax Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Phase III Payment in Lieu of Tax Agreement.

(D) No Waiver. In the event any provision contained in this Phase III Payment in Lieu of Tax Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Phase III Payment in Lieu of Tax Agreement shall be established by conduct, custom or course of dealing.

ARTICLE V

MISCELLANEOUS

SECTION 5.01. TERM. (A) General. This Phase III Payment in Lieu of Tax Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the approval of this Phase III Payment in Lieu of Tax Agreement by resolution of the Agency and the execution and delivery of this Phase III Payment in Lieu of Tax Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Phase III Payment in Lieu of Tax Agreement shall continue to remain in effect until the earlier to occur of (1) December 31, 2042 or (2) the date on which the Phase III Project Facility is reconveyed by the Agency to the Company pursuant to Article X or Article XI of the Lease Agreement.

(B) Extended Term. In the event that (1) the Phase III Project Facility shall be reconveyed to the Company, (2) on the date on which the Company obtains the Agency's interest in the Phase III Project Facility, the Phase III Project Facility shall be assessed as exempt upon the assessment roll of any one or more of the Taxing Entities, and (3) the fact of obtaining title to the Agency's interest in the Phase III Project Facility shall not immediately obligate the Company to make pro-rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of the State (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), this Phase III Payment in Lieu of Tax Agreement shall remain in full force and effect and the Company shall be obligated to make payments to the Receiver of Taxes in amounts equal to those amounts which would be due from the Company to the respective Taxing Entities if the Phase III Project Facility were owned by the Company and not the Agency until the first tax year in which the Company shall appear on the tax rolls of the various Taxing Entities having jurisdiction over the Phase III Project Facility as the legal owner of record of the Phase III Project Facility.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Phase III Payment in Lieu of Tax Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENTS. This Phase III Payment in Lieu of Tax Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy or (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, properly addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Notices Given by Taxing Entities. Notwithstanding the foregoing, notices of assessment or reassessment of the Phase III Project Facility and other notices given by a Taxing Entity under Article II

hereof shall be sufficiently given and shall be deemed given when given by the Taxing Entity in the same manner in which similar notices are given to owners of taxable properties by such Taxing Entity.

(C) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

Loughlin Dawn LLC
20 Corporate Woods Boulevard
Albany, New York 12211
Attention: Spencer B. Jones

WITH A COPY TO:

Law Office of Debra J. Lambek PLLC
27 Esopus Drive
Clifton Park, New York 12065
Attention: Debra J. Lambek, Esq.

IF TO THE AGENCY:

City of Albany Industrial Development Agency
21 Lodge Street
Albany, New York 12207
Attention: Chair

WITH A COPY TO:

William G. Kelly, Jr., Esq.
City Hall, Eagle Street - Room 106
Albany, New York 12207
Attention: William G. Kelly, Jr., Esq.

and

Hodgson Russ LLP
677 Broadway, Suite 301
Albany, New York 12207
Attention: A. Joseph Scott, III, Esq.

(D) Copies. A copy of any notice given hereunder by the Company which affects in any way a Taxing Entity shall also be given to the chief executive officer of such Taxing Entity.

(E) Change of Address. The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 5.06. BINDING EFFECT. This Phase III Payment in Lieu of Tax Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns.

The provisions of this Phase III Payment in Lieu of Tax Agreement are intended to be for the benefit of the Agency and the respective Taxing Entities.

SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Phase III Payment in Lieu of Tax Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Phase III Payment in Lieu of Tax Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION 5.08. COUNTERPARTS. This Phase III Payment in Lieu of Tax Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.09. APPLICABLE LAW. This Phase III Payment in Lieu of Tax Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Agency and the Company have caused this Phase III Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

CITY OF ALBANY INDUSTRIAL
DEVELOPMENT AGENCY

BY: T. Metzger
Chair

LOUGHLIN DAWN LLC


BY: _____
Jessie Albert, Authorized Representative

IN WITNESS WHEREOF, the Agency and the Company have caused this Phase III Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

CITY OF ALBANY INDUSTRIAL
DEVELOPMENT AGENCY

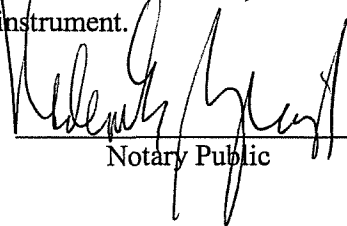
BY: _____
Chair

LOUGHLIN DAWN LLC

BY:  _____
Jessie Albert, Authorized Representative

STATE OF NEW YORK)
)ss:
COUNTY OF ALBANY)

On the 29th day of March, in the year 2019, before me, the undersigned, personally appeared TRACY L. METZGER, 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

Nadene E. Zeigler
Notary Public, State of New York
No. 02ZE5050898
Qualified in Albany County
Commission Expires October 23, 2021

STATE OF NEW YORK

COUNTY OF

Albany

)
)ss:
)

On the 28th day of March, in the year 2019, before me, the undersigned, personally appeared JESSIE ALBERT, 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/she executed the same in his capacity and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

NAOMI ANN STORCH
Notary Public, State of New York
No. 01ST6316783
Qualified in Albany County
Commission Expires December 22, 20*22*

EXHIBIT A

DESCRIPTION OF THE PHASE III LAND

PHASE III

**LEGAL DESCRIPTION OF
PROPOSED No.3 SANDIDGE WAY
ALBANY, NEW YORK**

All that certain piece or parcel of land situate in the City of Albany, County of Albany, State of New York bounded and described as follows:

BEGINNING at a point on the southerly bounds of Sandidge Way, said point being further located North 38°17'00" West a distance of 235.86 feet northwesterly as measured along the south line of Sandidge Way from its intersection with the westerly bounds of Fuller Road;

THENCE the following Four (4) courses and distances:

1. South 51°50'44" West for a distance of 202.93 feet to a point;
2. North 48°22'00" West for a distance of 386.26 feet to a point;
3. North 51°43'00" East for a distance of 270.53 feet to a point;
4. South 38°17'00" East for a distance of 380.75 feet to **POINT OF BEGINNING**;

Containing 89,791 Square Feet or 2.06 Acres of Land more or less.

SUBJECT to all easements and Rights-of-Way of record.

Date: 3/28/2019

Job No.: 2016-0093

File: S:/docs/Nick/160093 3 Sandidge Way.doc

EXHIBIT B

PILOT PAYMENT TERMS

I. Defined Terms:

“Applicable Fiscal Year” means the fiscal year of the Company ending no later than one hundred and twenty (120) days prior to the January 1 payment date in question. For example, assuming that the Company uses the calendar year for its fiscal year, and the payment date in question is January 1, 2030, the Applicable Fiscal Year for the Company for the January 1, 2030 payment date is the fiscal year of the Company ending December 31, 2028.

“Certificate of Occupancy” means a written certificate delivered by the appropriate governmental entity or agency in the City of Albany indicating that the Phase III Facility meets the local building code requirements.

“Gross Revenue” means the total amount of income generated at the Phase III Project Facility, including tenant rent, unreturned security deposits (to the extent applied to rental payments due and owing and not to damages to a rental unit), lease cancellation/termination payments (net of damage), any receivables (including past due rent), parking fees, any payments in kind, and other miscellaneous revenue generated at the site (e.g., vending machines, washing machines and other landlord services paid by the tenant); provided, however, that Gross Revenue shall not include any Pass Through Revenue.

“Person” means an individual, partnership, corporation, trust, or unincorporated organization.

“Pass Through Revenue” means revenue generated at the Phase III Project Facility relating to parking fees for tenant parking at a parking facility or parking lot not included in or on the Phase III Land. Revenue for such activities shall be considered Pass Through Revenue only if (1) the Company serves as a pass-through for such revenues between the tenant and the actual vendor, (2) the payee or recipient of the fees is not a Related Person to the Company, and (3) there is no “mark-up” or “profit” accruing to the Company relating to such fees (except as hereinafter provided). In connection with the determination of Pass Through Revenue, Gross Revenue will be subject to further adjustment as described as follows: if there is any “mark-up” or “profit” accruing to the Company, the amount of such “mark-up” or “profit” shall be included in the determination of Gross Revenue.

“Related Person” means, with respect to the Company, (1) a group of entities subject to “direct control” or “indirect control” by the same entity or group of entities, determined on the basis of all relevant facts and circumstances, (2) any organization under common management or control with the Company, (3) a Person which is a related person as defined in Section 144(a)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), by reference to Sections 267, 707(b) and 1563(a) of the Code, except that (a) one percent (1%) is substituted for fifty percent (50%) for purposes of applying Sections 267 and 707(b), and (b) one percent (1%) is substituted for eighty percent (80%) for purposes of applying Section 1563(a).

II. Assessed Value:

(A) The Assessed Value of the Phase III Project Facility shall consist of two components, the base Assessed Value (the “Project Base Assessed Value”) and the additional Assessed Value (the “Project Improvements Assessed Value”).

(B) The Project Base Assessed Value shall equal the value of the Phase III Land prior to the undertaking of the Project. The Project Base Assessed Value shall be established pursuant to the terms of Section 2.02(B) of this Phase III Payment in Lieu of Tax Agreement.

(C) The Project Improvements Assessed Value shall equal the value of the Phase III Facility improved pursuant to the undertaking and completion of the Project (the "Improvements"). The Project Improvements Assessed Value shall be established pursuant to the terms of Section 2.02(B) of this Phase III Payment in Lieu of Tax Agreement.

(D) The parties hereto understand and agree that the Project Based Assessed Value and the Project Improvements Assessed Value shall change during the term of this Phase III Payment in Lieu of Tax Agreement as the Assessors appraise and re-appraise, as the case may be, the Phase III Project Facility during the term of this Phase III Payment in Lieu of Tax Agreement, as provided in Section 2.02(B) of this Phase III Payment in Lieu of Tax Agreement; provided, however, that the Project Base Assessed Value shall never be lower than the Project Base Assessed Value in effect on the Closing Date.

III. Amount of Payments in Lieu of Taxes:

Prior to Completion of the Phase III Project:

Beginning on the effective date of this Phase III Payment in Lieu of Tax Agreement and ending in the year the Company receives a Certificate of Occupancy with respect to the Phase III Project Facility, the amount of payments in lieu of taxes shall be calculated annually as follows:

First, determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Taxing Entity if the Phase III Land and the Phase III Existing Facility were owned by the Company and not the Agency by multiplying (i) the Project Base Assessed Value (as set forth in II(B) above) by (ii) the tax rate or rates of such Taxing Entity that would be applicable to the Phase III Land and the Phase III Existing Facility if the Phase III Land and the Phase III Existing Facility were owned by the Company and not the Agency.

Then, in each tax year during the term of this Phase III Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which the Phase III Land and the Phase III Facility shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Phase III Payment in Lieu of Tax Agreement with respect to the Phase III Land and the Phase III Existing Facility shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to the Phase III Land and the Phase III Existing Facility for such tax year.

Following the Completion of the Phase III Project:

(A) In the first calendar year following the date the Company receives a Certificate of Occupancy with respect to the Phase III Project Facility, the amount of payments in lieu of taxes shall be the sum of the following: (1) the amount of payments in lieu of taxes payable with respect to the Phase III Land and the Phase III Existing Facility based on the Project Base Assessed Value, and (2) the amount of payments in lieu of taxes payable with respect to the Improvements based on the Project Improvements Assessed Value.

(1) Payments - Project Base Assessed Value. (a) First, determine the amount of general taxes and general assessments (hereinafter referred to as the "Normal Tax") which would be payable to each Taxing Entity if the Phase III Land and the Phase III Existing Facility were owned by the Company and not the Agency by multiplying (i) the Project Base Assessed Value (as set forth in II(B) above) by (ii) the tax rate or rates of such Taxing Entity that would be applicable to the Phase III Land and the Phase III Existing Facility if the Phase III Land and the Phase III Existing Facility were owned by the Company and not the Agency.

(b) Then, in each tax year during the term of this Phase III Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which the Phase III Land and the Phase III Facility shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Phase III Payment in Lieu of Tax Agreement with respect to the Phase III Land and the Phase III Existing Facility shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to the Phase III Land and the Phase III Existing Facility for such tax year.

(2) Payments - Project Improvements Assessed Value. (a) First, determine the Normal Tax which would be payable to each Taxing Entity if the Improvements were owned by the Company and not the Agency by multiplying (i) the Project Improvements Assessed Value determined pursuant to Section 2.02(B) of this Phase III Payment in Lieu of Tax Agreement, by (ii) the tax rate or rates of such Taxing Entity that would be applicable to the Improvements if the Improvements were owned by the Company and not the Agency.

(b) Then, in each tax year during the term of this Phase III Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which the Improvements shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Phase III Payment in Lieu of Tax Agreement with respect to the Improvements shall be the product of: (i) the amount set forth in Section III(A)(2)(a) above and (ii) the applicable percentage of the Normal Tax due each Taxing Entity with respect to the Improvements for such tax year, as shown in the following table:

<u>Tax Year Commencing in Calendar Year¹</u>	<u>County/ City Percentage of Normal Tax on Assessed Value of the Improvements</u>	<u>School Percentage of Normal Tax on Assessed Value of the Improvements</u>
1	10%	10%
2	10%	10%
3	10%	10%
4	10%	10%
5	10%	10%
6	10%	10%

¹ As noted in Section III(C) hereof, Year 1 shall be the first calendar year following the date the Company receives the Certificate of Occupancy; provided, however, that as described in Section III(D) hereof, Year 1 shall not in any event be later than calendar year 2024.

7	10%	10%
8	10%	10%
9	10%	10%
10	10%	10%
11	15%	15%
12	20%	20%
13	30%	30%
14	35%	35%
15	35%	35%
16	40%	40%
17	45%	45%
18	50%	50%
19	55%	55%
20	60%	60%
21 and thereafter during the term of this Phase III Payment in Lieu of Tax Agreement	100%	100%

(c) The parties acknowledge that the tax years shown in the table above do not reflect assessment roll years. For example, the 2019 assessment roll will be used to generate the 2019-20 School payment in lieu of tax bill and the 2020 City/County payment in lieu of tax bill.

(B) Except as otherwise provided in Section IV below, in each tax year during the term of this Phase III Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which any portion of the Phase III Project Facility shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Phase III Payment in Lieu of Tax Agreement with respect to the Phase III Project Facility shall be the sum of (1) the amount due each Taxing Entity with respect to the Phase III Land and the Phase III Existing Facility for such tax year, as determined pursuant to subsection (A)(1) hereof, **plus** (2) the amount due each Taxing Entity with respect to the Improvements for such tax year, as determined pursuant to subsection (A)(2) hereof.

(C) Upon the receipt by the Company of the Certificate of Occupancy, the Company shall:

(1) Deliver a copy of the Certificate of Occupancy to the Agency and the Treasurer of the City of Albany.

(2) The table contained in Section III(A)(2)(b) above shall be modified to reflect that Year 1 shall be the first calendar year following the date the Company received the Certificate of Occupancy.

(D) Notwithstanding anything herein to the contrary, Year 1 in the table contained in Section III(A)(2)(b) shall not in any event be later than calendar year 2024.

IV. Alternative Determination of Amount of Payments in Lieu of Taxes:

(A) Beginning in Year 13, the Company will pay payments in lieu of taxes in an amount equal to the greater of (1) the amount determined pursuant to Section III above, or (2) 11.5% of the Gross Revenue for the Applicable Fiscal Year of the Phase III Project Facility.

(B) On each September 1, beginning in Year 12, the Company will provide the Treasurer of the City of Albany with a complete and executed copy of the Company Affidavit, a form of which is attached as Exhibit C.

(C) The Company agrees to provide to the Treasurer of the City of Albany and the CEO of the Agency, within thirty (30) days of their written request, with a copy of the Company's unaudited financial statement verified by the Company or such other person as may be authorized by the Company to verify said statement supporting the Company's calculation of the Gross Revenue. In the event that the Company's unaudited financial statement is not prepared in accordance with GAAP, the Company agrees to provide such additional information regarding the Company's calculation of Gross Revenue as reasonably requested by the Agency.

(D) Notwithstanding the foregoing, the Company agrees to provide financial statements audited in accordance with GAAP if the Company prepares audited statements for delivery to its lender.

EXHIBIT C

COMPANY AFFIDAVIT REGARDING
GROSS REVENUE

STATE OF NEW YORK)
)Ss:
COUNTY OF ALBANY)

I, the undersigned, an Authorized Officer of Loughlin Dawn LLC (the "Company"), do hereby depose and state as follows:

1. The City of Albany Industrial Development Agency (the "Agency") and the City of Albany may rely on the contents of this Affidavit in determining the amount of payments in lieu of taxes payable by the Company for the year commencing January 1, 20__.

2. Initial capitalized words used in this Affidavit shall have the meanings ascribed to such terms in the payment in lieu of tax agreement dated as of March 1, 2019 (the "Phase III Payment in Lieu of Tax Agreement") by and between the Agency and the Company.

3. The Applicable Fiscal Year of the Company is the fiscal year of the Company ending on _____.

4. Attached hereto as Schedule A is a summary memorandum/report describing the Gross Revenue of the Company for the Applicable Fiscal Year.

5. The Gross Revenue of the Company for the Applicable Year has been determined in accordance with the terms of the Phase III Payment in Lieu of Tax Agreement.

6. 11.5% of the Gross Revenue equals \$_____.

IN WITNESS WHEREOF, the undersigned has set forth their hand as of the ____ day of _____, 20__.

LOUGHLIN DAWN LLC

BY: _____
Authorized Representative

Sworn to before me this ____ day
of _____, 20__.

Notary Public

SCHEDULE A
SUMMARY MEMORANDUM/REPORT
DESCRIBING GROSS REVENUE

[To Be Completed By The Company]