

SCHUYLER COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

MONTOUR FALLS HOUSE, LLC

PAYMENT IN-LIEU-OF-TAX AGREEMENT

*Regarding the acquisition of land, renovations and
equipping thereon, located at 401 West Main Street in
the Village of Montour Falls, Schuyler County, New York*

Tax Map Number:

086.007-0002-026

Dated as of October 1, 2008

Affected Tax Jurisdictions:

Schuyler County

Town of Montour

Village of Montour Falls

Odessa-Montour Central School District

PAYMENT IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT IN-LIEU-OF TAX AGREEMENT, dated as of October 1, 2008 (the "PILOT Agreement"), is by and between the **SCHUYLER COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 2 North Franklin Street, Suite 330, Watkins Glen, New York 14891 (the "Agency") and **MONTOUR FALLS HOUSE, LLC**, a New York limited liability company having offices at 1803 Castle Gardens Road, Vestal, New York 13850 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 21 of the Laws of 1971 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act"), as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project (the "Project") consisting of (i) the acquisition by the Agency of fee title to or a leasehold or other interest in a certain historic property located at 401 West Main Street within the Village of Montour Falls, such property being commonly referred to as the Montour House, along with the existing improvements located thereon (collectively the "Land"), (ii) the rehabilitation of the structure located on the Land and construction of improvements to accommodate mixed-use commercial and residential tenants (hereinafter referred to collectively as the "Improvements"), and (iii) the acquisition in and around the Improvements of certain items of equipment and other tangible personal property (the "Equipment" and, collectively with the Land and the Improvements, the "Facility"); and

WHEREAS, in order to induce the Company to acquire, renovate, construct and equip the Facility, the Agency is willing to take title to or a leasehold interest in the Land, Improvements Equipment and other personal property constituting the Facility and lease said Land, Improvements, Equipment and other personal property back to the Company pursuant to the terms and conditions of a certain Lease Agreement to be dated on or about the date hereof (the "Lease Agreement"); and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, other than special ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the 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 Schuyler County (the "County"), the Town of Montour (the "Town"), the Village of Montour Falls (the "Village") and the Odessa-Montour Central School District (hereinafter the

"School District" or "School" and, collectively with the County, Town and Village, the "Affected Tax Jurisdictions"); and

WHEREAS, in furtherance of the Project, and at the request of the Company, the Agency duly authorized the undertaking of a deviation from the Agency's uniform tax exemption policy ("Policy") pursuant to Section 874 of the Act, notice of which was provided by the Agency to the Affected Taxing Jurisdictions by letter dated June 5, 2008, such transmission having occurred at least thirty (30) days prior to the Agency's final approval of the Project on July 9, 2008.

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 I - Payment in lieu of Ad Valorem Taxes:

Section 1.1 A. Subject to the completion and filing by the taxable status date (March 1, 2009) (the "Taxable Status Date") of New York State Form RP-412-a Application For Real Property Tax Exemption (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law and Section 874 of the Act and the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review, the Facility shall be exempt from Real Estate Taxes commencing with the 2010 Town and County tax years and the 2009-10 Village and School tax years. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the County, Town, Village and School District. The Company shall provide to the Agency with the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Lease Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. 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 Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

B. Payee. As long as the Facility is owned by the Agency or under its jurisdiction, control or supervision, the Company agrees to pay annually to the Affected Tax Jurisdictions, as a payment in-lieu-of-taxes, on or before September 1 of each year, commencing on **September 1, 2010**, an amount equal to the lower of the otherwise applicable taxes or the Total PILOT payment as described on Schedule A attached hereto.

The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are not on the tax rolls.

1.2 Allocation. The Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder, if any, within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation.

1.3 Tax Rates. For purposes of determining the allocation of the Total PILOT Payment among the Affected Tax Jurisdictions, the Agency shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County, Town, Village and special district purposes, the tax rates used to determine the allocation of the Total PILOT Payment shall be the tax rates relating to the calendar year which includes the PILOT payment due date. For School District purposes, the tax rates used to determine the PILOT payment shall be the rate relating to the school year which includes the PILOT payment due date.

1.4 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 Agreement (apart from the Project described herein), 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 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).

1.5 Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the 2010 County and Town tax years through the 2029 County and Town tax year and (ii) the 2009-10 Village and School tax years through the 2028-29 Village and School tax years. This PILOT Agreement shall expire on December 31, 2029; *provided, however*, the Company shall pay the 2030 County and Town tax bills and the 2029-30 Village and School tax bills on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions

provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b and 485-e of the New York Real Property Tax Law ("RPTL"). It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

Section II - Special District Charges, Special Assessments and other charges.

2.1 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 are to be paid in full in accordance with normal billing practices.

Section III - Transfer of Facility.

3.1 In the event that the Facility is transferred from the Agency to the Company (the lease/leaseback agreements are terminated), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section I 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 IV - Assessment Challenges.

4.1 The Company shall 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 Facility, with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this Agreement, as if and to the same extent as if the Company were the owner of the Facility.

4.3 The Company shall (i) cause the appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply tax rates to the respective assessments as if the Facility were owned by the Company, (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

Section V - Changes in Law.

5.1 To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

Section VI - Events of Default.

6.1 The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section I within thirty (30) days of the Payment Date (the "Delinquency Date"); (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; or (iii) the occurrence and continuance of any events of default under the Lease Agreement after the expiration of any applicable cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the General Municipal Law and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

6.2 If payments pursuant to Section I herein 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 follows. With respect to payments to be made pursuant to Section I herein, if said payment is not received by the Delinquency Date defined in Section 6.1 herein, 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.

Section VII - Assignment.

7.1 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 VIII - Miscellaneous.

8.1 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.

8.2 All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Agency: Schuyler County Industrial Development Agency
2 North Franklin Street, Suite 330
Watkins Glen, New York 14891
Attn: Executive Director

With Copy To: Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attn: Justin S. Miller, Esq.

To the Company: Montour Falls House, LLC
1803 Castle Gardens Road
Vestal, New York 13580
Attn: Bruce Nelson, Member

With Copy To: Pope, Schrader & Sacco LLP
20 Hawley Street, 7th Floor
Binghamton, New York 13901
Attn: Kurt D. Schrader, 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.

8.3 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 Schuyler County, New York.

8.4 Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. Neither member of the Agency nor any person executing this Agreement on its behalf shall be liable personally under this Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification

of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Agreement.

(Remainder of page intentionally left blank)

[Signature Page to PILOT Agreement]

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

**SCHUYLER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____

Name: Kevin Murphy

Title: Chairman

MONTOUR FALLS HOUSE, LLC

By: _____

Name: Bruce Nelson

Title: Member

SCHEDULE A
TO PILOT AGREEMENT DATED AS OF SEPTEMBER 1, 2008
BY AND BETWEEN THE
SCHUYLER COUNTY INDUSTRIAL DEVELOPMENT AGENCY AND
MONTOUR FALLS HOUSE, LLC

“Total PILOT Payment” shall be calculated as follows:

For PILOT Years 1 through PILOT Year 20, the Company shall continue to pay a

<u>PILOT Year</u>	<u>County and Town Tax Years</u>	<u>Village and School Tax Years</u>	<u>Total PILOT Payment</u>
Year 1	2010	2009-10	Base Payment, plus (Added Value x .00)
Year 2	2011	2010-11	Base Payment, plus (Added Value x .00)
Year 3	2012	2011-12	Base Payment, plus (Added Value x .00)
Year 4	2013	2012-13	Base Payment, plus (Added Value x .00)
Year 5	2014	2013-14	Base Payment, plus (Added Value x .00)
Year 6	2015	2014-15	Base Payment, plus (Added Value x .00)
Year 7	2016	2015-16	Base Payment, plus (Added Value x .00)
Year 8	2017	2016-17	Base Payment, plus (Added Value x .00)
Year 9	2018	2017-18	Base Payment, plus (Added Value x .00)
Year 10	2019	2018-19	Base Payment, plus (Added Value x .00)
Year 11	2020	2019-20	Base Payment, plus (Added Value x .10)
Year 12	2021	2020-21	Base Payment, plus (Added Value x .20)
Year 13	2022	2021-22	Base Payment, plus (Added Value x .30)
Year 14	2023	2022-23	Base Payment, plus (Added Value x .40)
Year 15	2024	2023-24	Base Payment, plus (Added Value x .50)
Year 16	2025	2024-25	Base Payment, plus (Added Value x .60)
Year 17	2026	2025-26	Base Payment, plus (Added Value x .70)
Year 18	2027	2026-27	Base Payment, plus (Added Value x .80)
Year 19	2028	2027-28	Base Payment, plus (Added Value x .90)
Year 20	2029	2028-29	Full Taxes

minimum, base amount of Total PILOT Payment equal to the Total Assessed Valuation of the Land and Existing Improvements prior to the construction of the Project Improvements (such amount being \$50,000.00, or “Base Valuation”) multiplied by then-current tax rates, subject to equalization (hereinafter, the “Base Payment”).

For purposes of calculating a Base Payment for PILOT Years 11-20, the Total PILOT Payment shall be the Base Payment, as defined above, plus a graduated abatement factor (“Abatement Factor”) applied to the increased assessed valuation attributable to the Improvements made to the Project Facility by the Company, as an Agent of the Agency, for the Project (the “Added Value”), such increased assessed valuation to be measured as of the end of

PILOT Year 10 (the "Total Taxable Valuation"). The abatement schedule shall allow for a 100% exemption from taxation for the Added Value PILOT Year 1 through PILOT Year 10, with such exemption being eliminated in 10% increments in PILOT Year 11 through PILOT Year 20.

Once the Total Taxable Valuation is established, the Total PILOT Payment for PILOT Years 11-20 shall reflect the Base Payment, as defined above, plus an amount reflecting the Total Taxable Valuation or Added Value, multiplied by the corresponding Abatement Factor, multiplied by the respective tax rate for each affected tax jurisdiction (after application of any applicable equalization rate). After the twentieth PILOT Year, the Project Facility shall be subject to full taxation by the affected taxing jurisdictions.