

## PAYMENT IN LIEU OF TAXES AGREEMENT

**THIS PAYMENT IN LIEU OF TAXES AGREEMENT** (“Agreement”) is made as of the 1st day of February, 2018 (“Effective Date”) by and between **2071 STONEMAN, LLC**, A New York Limited Liability Company, solely owned by Allan B. Steinberg, and having an address at 1888 Niagara Falls Boulevard, Tonawanda, New York 14150 ( the “Lessee”), and the **COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY**, a corporate government agency constituting a body corporate and politic and a public benefit corporation of the State of New York (the “Agency”) having an address at 201 West Third Street, Suite 115, Jamestown, New York 14701.

### WITNESSETH:

**WHEREAS**, the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law of the State of New York, Chapter 24 of the Consolidated Laws of the State of New York, as amended (the “Enabling Act”) authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, expand, construct, reconstruct, lease, improve, maintain, equip, furnish, and dispose of one or more projects for the purpose of promoting, developing, encouraging, and assisting in the acquisition, expansion, construction, reconstruction, improvement, maintaining, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities, and thereby advance the job opportunities, general prosperity, and economic welfare of the people of the State of New York;

**WHEREAS**, pursuant to and in accordance with the provisions of the Enabling Act and Chapter 71 of the 1972 Laws of New York, as amended (together with the Enabling Act, hereinafter referred to as the “Act”), the Agency, which has been created and established pursuant thereto for the benefit of the County of Chautauqua, proposes to undertake the Project described below;

**WHEREAS**, the Agency on behalf of Lessee intends to (i) acquire a leasehold interest in certain land more particularly described on Schedule A hereto (the “Land”) (collectively the “Project”);

**WHEREAS**, the Lessee has a recorded fee simple interest in the Land and the Improvements (collectively, the “Facility”);

**WHEREAS**, Lessee will lease the Facility to the Agency pursuant to a Company Lease Agreement dated as of the date hereof entered into between Lessee, as lessor, and the Agency, as lessee (as amended, modified, restated or replaced from time to time, the “Company Lease”);

**WHEREAS**, the Agency proposes to undertake the Project as an authorized project under the Act and to sublease the interest of the Agency to Lessee pursuant to a sublease agreement dated as of the date hereof entered into between the Agency, as sublessor, and Lessee,

as sublessee (as amended, modified, restated or replaced from time to time, the “Agency Lease”);

**WHEREAS**, under the present provisions of the Act and under the present Section 412-a of the Real Property Tax Law of the State of New York, upon a proper filing, 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 under its control;

**WHEREAS**, the Agency’s grant of real property tax exemptions is guided by its Uniform Tax Exemption Policy (“UTEF”) duly adopted by members of the Agency. The Lessee’s request for real property tax exemptions conforms with the schedule under the UTEF;

**WHEREAS**, the Interim Administrative Director of the Agency (A) caused notice of public hearing of the Agency pursuant to Section 859-a of the Act (the “Public Hearing”) to hear all persons interested in the Project and the Financial Assistance contemplated by the Agency with respect to the Project, to be mailed on January 25, 2018 to the chief executive officer of the County of Chautauqua, New York (the “County”) and of each other affected tax jurisdiction within which the Project Facility is or is to be located; (B) caused notice of the Public Hearing to be published on January 28, 2018 in the *Post-Journal*, a newspaper of general circulation available to residents of the Town of Busti and the County; (C) conducted a Public Hearing on February 7, 2018 at 11:00 a.m. at the at the Town of Busti, Town Building, 125 Chautauqua Avenue, Lakewood, County of Chautauqua, New York and (D) prepared a report of the Public Hearing (the “Report”) which fairly summarizes the views presented at the Public Hearing and distributed the Report to the members of the Agency;

**WHEREAS**, by resolution adopted by the members of the Agency on February 27, 2018 (the “Authorizing Resolution”), the Agency, following a review of the Report, determined to proceed with the Project, to grant the Financial Assistance (as hereinafter defined) and to enter into the “straight lease transaction” (as such quoted term is defined in the Act) contemplated by this PILOT Agreement and the other Transaction Documents (as defined in the Agency Lease executed on today’s date);

**WHEREAS**, the Agency owned the Land prior to Lessee’s acquisition of same;

**WHEREAS**, the Land, under Section 412-a of the Real Property Tax Law, was subject to an exemption from real property taxes due to the Agency’s prior ownership; and

**NOW, THEREFORE**, in consideration of the premises and the payments, agreements, and covenants hereinafter contained, Lessee and the Agency formally covenant and agree as follows:

Section 1. Tax-Exempt Status of Facility

(a) Application. Lessee shall complete, and the Agency shall endeavor to submit to be filed, an application for tax exemption pursuant to Section 412-a of the Real Property Tax Law. Such application shall be submitted to the assessor of each of the various taxing entities having jurisdiction over the Facility, including without limitation, the County of Chautauqua, the

Town of Busti, and the Panama Central School District (such taxing entities, and any successors thereto, being hereinafter collectively referred to as the "Taxing Entities" and individually, as a "Taxing Entity"). The Facility shall not be entitled to exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the taxable status date of such Taxing Entity occurring subsequent to the Agency becoming the holder of a leasehold estate in the Facility, the filing by the Agency of the appropriate applications for tax exemption, and the receipt of such applications by the appropriate tax assessors.

(b) Reserved.

(c) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the General Municipal Law 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 Agency Lease, Lessee will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Facility.

(d) Other Charges. If any taxes, assessments, service charges or other governmental charges become payable by the Agency or Lessee on the rents under the Agency Lease or the Company Lease or the occupancy of or any interest of the Agency or Lessee in the Facility or any part thereof or any personal property used in connection with the business conducted and located therein, the amount of any tax, assessment or charges shall be paid by Lessee. Furthermore, water charges, sewer rentals, sewage treatment charges, solid waste charges and any other charges in the nature of utility charges shall be paid directly by Lessee and shall not be credited against nor affect in any manner any payment in lieu of general real estate taxes in any year and shall be computed pursuant to the formula adopted by the relevant Taxing Entity.

## Section 2. Payments.

(a) Tax Payments. Prior to the Facility becoming entitled to exempt status as set forth in Section 1(a) above, the applicable real estate tax levies on the Facility shall be payable in full by Lessee to the applicable Taxing Entity.

(b) Reserved.

(c) Pilot Payments. Commencing in 2018, Lessee shall pay to the Agency for the account and benefit of each Taxing Entity during the "Term of the PILOT" (as hereinafter defined) for each Taxing Entity PILOT Payments in an amount equal to (A) the Assessed Value (as hereinafter defined) of the Land as adjusted from time to time; times (B) the tax equalization rate of the applicable Taxing Entities in effect from year-to-year during the Term of the PILOT; times (C) the Effective Percent (as hereinafter defined). The "Term of the PILOT" shall be the date hereof until December 31, 2027, unless earlier terminated as provided herein. If the Term of the PILOT for any Taxing Entity shall have expired while the Term of the PILOT for any other Taxing Entity shall not have expired, Lessee shall pay to the Agency, until the termination of this Agreement, PILOT Payments in an amount equal to the amount of the tax levies which

would be payable to such Taxing Entity if the Facility was listed on the assessment rolls as fully taxable.

For purposes of the foregoing, "Effective Percent" shall mean the applicable percentage from time to time as specified on the attached Schedule B.

(d) Maximum Payment. Notwithstanding anything to the contrary herein, the PILOT Payments shall not exceed the amount Lessee would pay under normal calculations for any period. Hence, if the general real estate tax (calculated as if Lessee were the record owner of the Facility and the Agency held no interest therein, and the Facility were assessed at full value for purposes of taxation) otherwise due any Taxing Entity decreases due to a reduction in tax rates or otherwise below the PILOT Payments specified in Section 2(c) above, then the PILOT Payments due that Taxing Entity shall be decreased to equal the tax that would otherwise be due. If, however, a PILOT Payment has been so reduced, and the taxes that would otherwise be due subsequently increase, the PILOT Payment shall similarly increase, but not in excess of the amount specified in Section 2(c) above. Except as set forth in this paragraph, once the PILOT Payments are calculated in accordance with Section 2(c) above, such PILOT Payments shall not be reduced during the Term of the PILOT, regardless of any reduction in the underlying assessment for the Facility.

(e) Payments to Agency. All PILOT Payments shall be made by Lessee directly to the Agency promptly upon receipt of billings from the Agency. It is understood that the Agency shall receive the PILOT Payments in trust for each of the Taxing Entities, and the Agency shall forward such payments to each such Taxing Entity within thirty (30) days after receipt thereof.

(f) Due Dates; Interest; and Penalties. The Agency will bill Lessee for the respective PILOT Payments as if the Facility were on the tax rolls at the time when taxes for each Taxing Entity are due. All payments are net if paid on or before the due dates listed below. If any PILOT Payment is not made on or before the due date, such payment shall be delinquent and Lessee shall pay, for the benefit of the applicable Taxing Entity, a late charge equal to five percent (5%) of the payment. For each month, or part thereof, that the payment is delinquent beyond the first month, Lessee shall pay an additional late charge equal to one percent (1%) per month of the total amount payable.

As of the date of this Agreement, the due dates for the PILOT Payment are as follows:

County and Town Taxes:	January 30th
School Taxes:	September 30th

(g) Partial Sale; Transferee's Obligation; Apportionment of Reduction to Local Taxing Entities. During the term of this Agreement, in the event that the Agency's interest in any portion of the Land or the Improvements located thereon is sold or disposed of by the Lessee, the transferees thereof will thereafter pay the real property taxes on such Improvements as may be located on the portion of the Land sold and on the portion of the Land sold as may be required by applicable law.

(h) Sale; Lessee's Obligation. In the event that the Agency terminates its interest in and/or transfers the Facility to any party other than Lessee, Lessee's obligation for PILOT Payments shall be prorated to the date of the closing of the transaction and thereupon all obligations of Lessee for PILOT Payments shall cease, but the Agency shall take such steps with the purchaser other than Lessee to assure that each of the Taxing Entities shall suffer no loss of revenue until such Facility can be placed back on the tax rolls and taxes levied and billed therefor.

Section 3. Jobs. Lessee covenants and agrees that it shall, throughout the term of this Agreement, use commercially reasonable efforts to maintain, and preserve, for the Term of this Agreement, the permanent, private sector jobs that currently exist at the Tenants' businesses; forty six (46) full time equivalent positions. The Lessee agrees to deliver to the Agency on each annual anniversary of this Agreement a written report describing its compliance or noncompliance with the provisions of this Section 3 and to permit the Agency to audit the books and records of Lessee supporting such report. The Lessee further agrees that in the event of a departure of any Tenant, it will use commercially reasonable efforts to replace said Tenant in an expedient manner, with selection of a replacement Tenant guided in part by replacement of any jobs lost by the departure of an existing Tenant.

Section 4. Effective Date; Duration of Agreement. This Agreement shall become effective upon the delivery of the Agency Lease and the Company Lease by Lessee and the Agency and shall continue in effect until the earlier of (i) December 31, 2027, or (ii) the date on which the Agency's interest in the Facility is terminated pursuant to the Agency Lease or this Agreement.

Section 5. Events of Default. The following shall constitute "Events of Default" under this Agreement:

(a) failure by Lessee to make any payment specified herein and the continuance of such failure for a period of ten (10) days following written notice from the Agency or any Taxing Entity; and/or

(b) failure by Lessee to comply with or perform any provision of this Agreement other than the payment provisions hereof and the continuance of such failure for a period of thirty (30) days following written notice thereof by the Agency to Lessee; and/or

(c) Reserved; and/or

(d) default in the terms of any Transaction Document (as defined in the Agency Lease) entered into between the Agency and Lessee (beyond any applicable grace period).

Upon the occurrence and continuance of an Event of Default hereunder, Lessee shall be required to make payments in lieu of general real estate taxes levied by the Taxing Entities on the Facility (or those portions of the Facility then exempt) as if it were owned by Lessee and the Agency held no interest therein, such amounts to commence to be paid for the



period subsequent to the date it is determined by the Agency that there is an Event of Default hereunder. In such event, the tax rate, interest and penalties shall be those then in effect in the jurisdiction(s) in which the Facility is (or those portions of the Facility then exempt are) located.

Upon the occurrence and continuance of an Event of Default hereunder, the Agency shall be entitled to sue to enforce any provision of this Agreement and to recover the payments in default from Lessee, together with all the costs and expenses of the Agency, its successors or assigns, paid or incurred in such recovery (including court costs and attorney's fees and expenses) and interest at the rate specified in Section 2(f) above. In addition, the Agency shall have the right to terminate the Agency Lease and the Company Lease at any time.

The Agency, in enforcing payment by Lessee of said amounts, may take whatever action and exercise any or all of the rights and remedies specified in this Agreement or any other remedy provided by law.

Each and every 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. Lessee irrevocably agrees that any suit, action, or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State of New York, or the courts of United States District Court for the Western District of New York, 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.

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 by the Agency.

In no event shall the Agency be liable to any of the Taxing Entities for the payments specified herein, whether or not Lessee makes such payments. Lessee hereby agrees to indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency from and against any such liability for such payments and against all penalties, interest, and other charges resulting from the delinquency of such payments.

Section 6. Covenants by the Agency. The Agency covenants that, unless otherwise required by law, the Agency will not enact or adopt any laws, ordinances, rules, or regulations imposing any taxes, assessments, or other charges or payments on the Project or Lessee's subleasehold interest or personal property therein, or its use or occupancy thereof or its gross receipts or income therefore, except as Lessee and the Agency have herein agreed, or may agree from time to time in the future.

Section 7. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given, if by delivery, when delivered and, if delivered by mail, on the second day following the day on which mailed by certified mail, postage prepaid, addressed as follows:

To the Agency: County of Chautauqua Industrial Development Agency  
201 West Third Street Suite 115  
Jamestown, New York 14701  
Attention: Administrative Director

With a copy to: Phillips Lytle LLP  
201 West Third Street, Suite 205  
Jamestown, New York 14701  
Attention: Gregory Peterson, Esq.

To the Company: 2071 Stoneman, LLC  
Allan B. Steinberg  
1888 Niagara Falls Boulevard  
Tonawanda, New York 14150

with a copy to: Martin J. Clifford, Esq.  
403 Main Street, Suite 716  
Buffalo, New York 14203

The Agency or Lessee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

Section 8. Assignment of Agreement. This Agreement shall be binding upon the successors and assigns of Lessee, but no assignment shall be effective to relieve Lessee of any of its obligations hereunder unless expressly authorized and approved in writing by the Agency.

Section 9. Independent Agreement. Notwithstanding any other provision of this Agreement, including the recitals hereof, the parties agree that the Agency Lease and Company Lease executed between the parties hereto shall be separate and independent documents from this Agreement, and irrespective of whether any provision of this Agreement or the entirety hereof shall be held invalid or unenforceable by any court of competent jurisdiction, the Agency Lease and the Company Lease shall be construed, interpreted, and otherwise regarded separate and apart from this Agreement. The parties hereto specifically note that the considerations and terms provided for in this Agreement and provided for in the Agency Lease and the Company Lease are the only considerations and terms for which the parties hereto have executed this Agreement.

Section 10. Amendments. This Agreement may not be modified, amended, supplemented, or changed without the written consent of the Agency and Lessee and as required under the Act, any Taxing Entity which is affected by the amendment.

Section 11. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12. Prior Agreements; Counterparts. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, whether written or oral, among the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 13. Delivery of Agreement. The Agency agrees to use its best efforts to deliver to each Taxing Entity a copy of this Agreement within fifteen (15) days after its execution by the Agency.

Section 14. Applicable Law. This Agreement shall be governed and construed under the internal laws of the State of New York, as the same may be in effect from time to time, without regard to principles of conflicts of law.

Section 15. WAIVER OF JURY TRIAL. THE AGENCY AND LESSEE HEREBY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING IN CONNECTION WITH THIS AGREEMENT.

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**IN WITNESS WHEREOF**, the Agency and Lessee have executed this Agreement as of the date first above written.

COUNTY OF CHAUTAUQUA  
INDUSTRIAL DEVELOPMENT AGENCY

By:   
Richard E. Dixon  
Chief Financial Officer

2071 Stoneman, LLC

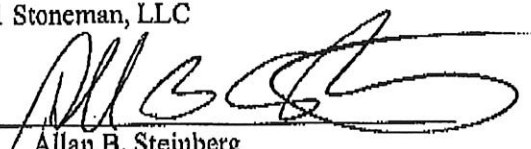
By: \_\_\_\_\_  
Allan B. Steinberg  
Manager

**IN WITNESS WHEREOF**, the Agency and Lessee have executed this Agreement as of the date first above written.

**COUNTY OF CHAUTAUQUA  
INDUSTRIAL DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Richard E. Dixon  
Chief Financial Officer

2071 Stoneman, LLC

By:   
Allan B. Steinberg  
Manager

## Schedule A

### LAND

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Busti, County of Chautauqua, and State of New York, being part of Lot Nos. 22 and 41, Town 1 and Range 12 of the Holland Land Company's Survey and further bounded and described as follows:

BEGINNING at a point on the southerly line of Hunt Road (49.50 feet wide) at the intersection of said southerly line of Hunt Road with the southeasterly right of way line of Chautauqua, Cattaraugus, Allegany & Steuben Southern Tier Extension Railroad Authority, formerly Erie Railroad, formerly Conrail;

THENCE N 89° 54' 18" E, along the southerly line of Hunt Road, 367.38 feet to a point on the northwesterly line of Stoneman Circle (60 feet wide);

THENCE southwesterly along the northwesterly line of Stoneman Circle, on a curve to the right, 924.96 feet to a point, said curve having a radius of 1,115.92 feet and a chord S 23° 45' 53" W, 898.71 feet;

THENCE S 47° 31' 38" W, and still along the northwesterly line of Stoneman Circle, 114.58 feet to an existing iron stake at the southeasterly corner of lands of Theodore J. and Patsy J. Kosinski, as described in a Deed recorded in the Chautauqua County Clerk's Office in Liber 2531 of Deeds at page 64;

THENCE N 48° 42' 26" W, along the northeasterly line of said lands of Kosinski and further along the northeasterly line of lands of Theodore J. and Patsy J. Kosinski, as described in a Deed recorded in the Chautauqua County Clerk's Office as Instrument No. DE2013005055, a distance of 629.45 feet to an existing iron stake on the aforementioned southeasterly right of way line of Chautauqua, Cattaraugus, Allegany & Steuben Southern Tier Extension Railroad Authority;

THENCE N 48° 46' 26" E, along the southeasterly right of way line of Chautauqua, Cattaraugus, Allegany & Steuben Southern Tier Extension Railroad Authority, 626.30 feet to an existing iron stake at the northwesterly corner of lands of Southern Tier Brewing Company, Inc., as described in a Deed recorded in the Chautauqua County Clerk's Office as Instrument No. DE2013001893;

THENCE S 46° 19' 39" E, along the southwesterly line of said lands of Southern Tier Brewing Company, Inc., 174.41 feet to a point;

THENCE N 41° 17' 34" E, along the southeasterly line of said lands of Southern Tier Brewing Company, Inc., 92.10 feet to a point;

THENCE N 46° 19' 39" W, along the northeasterly line of said lands of Southern Tier Brewing Company, Inc., 162.37 feet to a point on the southeasterly right of way line of Chautauqua, Cattaraugus, Allegany & Steuben Southern Tier Extension Railroad Authority;

THENCE N 48° 46' 26" E, along the southeasterly right of way line of Chautauqua, Cattaraugus, Allegany & Steuben Southern Tier Extension Railroad Authority, 15.51 feet to the point of beginning.

**Schedule B**

**EFFECTIVE PERCENT**

During the Term of the Agreement, the Effective Percent (as defined in the Agreement) will change from time to time in accordance with the following chart:

<u>Pilot Year</u>	<u>Effective Percent</u>
2018	10%
2019	10%
2020	20%
2021	20%
2022	30%
2023	30%
2024	40%
2025	40%
2026	50%
2027	50%