

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (“Agreement”) is made as of the 1st day of June, 2018 (“Effective Date”) by and between **COCKAIGNE DEVELOPMENT LLC** a domestic limited liability company organized under the laws of the state of New York and having a place of business at 1493 Thornton Road, Cherry Creek, New York 14723 (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”); (ii) construct certain improvements on the Land (the “Improvements”); and (iii) acquire the equipment more particularly described on Exhibit B to the Agency Lease (as hereinafter defined) (the “Equipment”) (the Land, Improvements and Equipment are hereinafter collectively referred to as the “Project”);

WHEREAS, the Lessee is the owner in fee simple of 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, the Lessee intends to sublease its interest in the Project to another entity, Cockaigne Resort, LLC (“Operator”). The Operator and the Agency will enter into an Operator Agreement on the date hereof whereby the Operator will agree to be bound completely to the Agency Lease and this PILOT Agreement. Further, to avoid any confusion, the Operator will also be a party to the Agency Lease and agree to the terms thereof. Any further subleasing of the Project must be done by the Agency providing Lessee or Operator written permission which consent shall not be unreasonably withheld;

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 (“UTEP”) duly adopted by members of the Agency. The Lessee’s request for real property tax exemptions is for financial assistance according to the “Tourism Destination Projects” category in the Agency’s UTEP;

WHEREAS, by resolution adopted by the members of the Agency on August 22, 2017, (the “Authorizing Resolution”), the Agency 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); and

WHEREAS, subsequent to the date of the Authorizing Resolution, the Applicant revised its project as initially described within the Authorizing Resolution, and members of the Agency were thereafter notified of revisions to the initial project as so described within the Authorizing Resolution, at a meeting open to the public on April 25, 2018, whereat it was determined that it was not necessary to otherwise amend or revise the Authorizing Resolution; 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 Cherry Creek and the Cassadaga Valley 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) Completion Date/Assessment. The Completion Date of the Project shall be the date on which (i) the Project is substantially completed, (ii) a certificate of occupancy has been issued, and (iii) the Land and the Improvements thereon are assessed by the appropriate tax assessor(s) as completed in accordance with the Plans and Specifications (as defined in the Agency Lease) on file with the Agency (“Final Assessed Value”), and (iv) the Facility has become entitled to exempt status pursuant to Section 1(a) above. Lessee estimates that the Completion Date will be September 1, 2018 (“Estimated Completion Date”). Lessee shall establish a Completion Date within six (6) months following the Estimated Completion Date.

(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) Pilot Payments During Construction. After the Facility becomes entitled to exempt status until the last day of the tax fiscal year of the applicable Taxing Entity in which the Completion Date occurs, Lessee shall pay to the Agency at its address set forth in the heading of this Agreement, for the account and benefit of each Taxing Entity, payments in lieu of the general real estate tax levies on the Facility (“PILOT Payments”) in an amount equal to the amount of the tax levies which would be payable if the Facility were listed on the assessment

rolls as fully taxable. All such payments shall be payable on the same dates on which general real estate taxes are payable.

(c) Pilot Payments after Completion of Construction. Commencing with the first tax year for the applicable Taxing Entity following the Completion Date, 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 the sum of (A) the taxes applicable on the Current Actual Assessed Value (as hereinafter defined) of the Land and (B) (i) the tax equalization rate of the applicable Taxing Entity, times (ii) the current tax rate for the applicable Taxing Entity in effect on the Completion Date, times (iii) the Effective Percent (as hereinafter defined), times (iv) the Assessed Value Increase (as hereinafter defined). The "Term of the PILOT" shall be the period of time from the first day of the first tax fiscal year of the applicable Taxing Entities following the Completion Date until the last day of the tax fiscal year of the applicable Taxing Entities following fifteen (15) annual PILOT Payments for taxes owed to such Taxing Entities. 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, (i) "Current Actual Assessed Value" shall mean the assessed value of the Land prior to the construction of the Improvements, (ii) "Effective Percent" shall mean the applicable percentage from time to time as specified on the attached Schedule B, and (iii) "Assessed Value Increase" shall mean the difference between the Final Assessed Value and the Current Actual Assessed Value.

(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 Agency, 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 its best efforts to maintain, or create within three (3) years from the Completion Date as so related to the Project, the number of permanent, private sector jobs at the site of the Project as set forth in the Application and as promised to by the Lessee in the Agency Lease. 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.

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) last day prior to the taxable status date following the final tax fiscal year of a Taxing Entity in which a PILOT Payment is payable pursuant to Section 2(c) above, 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;

(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;

(c) failure by Lessee to establish a Completion Date within six (6) months after the Estimated Completion Date; and/or

(d) default in the terms of any agreement 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: Mark Geise, 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: Cockaigne Development LLC
1493 Thornton Road
Cherry Creek, New York 14723
Attention: Isaac Gratto

With a copy to: Harris Beach PLLC
726 Exchange Street, Suite 1000
Buffalo, NY 14210
Attn: Robert G. Murray, Esquire

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, Lessee and 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: 
Mark Geise
Administrative Director/CEO

COCKAIGNE DEVELOPMENT LLC

By: _____
Isaac Gratto
Member

By: _____
Adam Pirtz
Member

By: _____
Aura Consulting LLC
By: Rex Butcher, Sole Member

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: _____
Mark Geise
Administrative Director/CEO

COCKAIGNE DEVELOPMENT LLC

By: _____
Isaac Gratto
Member

By: _____
Adam Pitt
Member

By: _____
Aura Consulting LLC
By: Rex Butcher, Sole Member

Schedule A

LAND

(A) (1) the acquisition of an interest in approximately 425 acres of land of the Cockaigne Recreation Center located at 1493 Thornton Road, Cherry Creek, County of Chautauqua, New York 14723 (collectively, the "Land"), (2) the construction of an approximately 10,000 square foot lodge and an approximately 3,000 square foot stage located on the Land and renovation of approximately 1,000 square foot A-frame building on the Land (collectively, the "Buildings"), and potential driveway, parking, landscaping and related improvements to the Land (together with the Building, collectively, the "Facility"), and (3) renovation of certain existing furniture, fixtures, machinery and equipment as well as the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment on the Land (the "Equipment"), all of the foregoing for use by the Applicant as a four-season recreation facility and ski resort (collectively, the "Project Facility"); (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 or partial exemptions from sales and use taxes, mortgage recording taxes and real property taxes (but not special assessments or ad valorem levies) (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Applicant or such other entity as may be designated by the Applicant and agreed upon by the Agency.

Schedule B

EFFECTIVE PERCENT

During the Term of the Pilot, the Effective Percent will remain the same in accordance with the following chart:

<u>Pilot Year</u>	<u>Effective Percent</u>
Year 1	0%
Year 2	0%
Year 3	0%
Year 4	0%
Year 5	0%
Year 6	25%
Year 7	25%
Year 8	25%
Year 9	25%
Year 10	25%
Year 11	50%
Year 12	50%
Year 13	50%
Year 14	50%
Year 15	50%