

CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

PG AUBURN MOB, LLC

PAYMENT IN LIEU OF TAX AGREEMENT

Project

PG Auburn MOB, LLC Project

Premises:

**17 Lansing Street, Auburn, New York
Approx. 1.117 acres of a Tax parcel No. 116.21-1-35.132**

IDA Project No. 0502-22-01A

Taxing Jurisdictions

**Cayuga County
City of Auburn
Auburn Enlarged City School District**

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT (the "Agreement"), dated as of November 3, 2022, by and between **CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 2 State Street, Auburn, New York 13021 (the "Agency") and **PG AUBURN MOB, LLC**, a New York limited liability company having offices at 46 Prince Street, Suite 2003, Rochester, New York 14607 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 1030 of the Laws of 1969 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 previously submitted an application to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of (i) the acquisition by the Agency of a leasehold interest in an approximately 1.117 acre portion of a parcel of real property located at 17 Lansing Street in the City of Auburn, New York (the "Land", being more particularly described as a portion of tax parcel No. 116.21-1-35.132); (ii) the planning, design, construction and operation of an approximately 12,000 square foot cancer treatment facility to be commercially leased to and operated by **AUBURN COMMUNITY HOSPITAL** for the delivery of radiation oncology services, including exam rooms, equipment rooms, treatment spaces, office spaces and common areas, sitework, parking improvements, curbage, signage, landscaping, fencing, security and related improvements (collectively, the "Improvements"); (iii) the acquisition of and installation in and around the Land and Improvements by the Company and primary tenant of machinery, equipment, fixtures and other items of tangible personal property (the "Equipment" and, collectively with, the Land and the Improvements, the "Facility"); and (iv) entering into a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain a leasehold interest in the Facility for a period of time and sublease such interest in the Facility back to the Company (the "Straight Lease Transaction"); and

WHEREAS, in order to induce the Company to acquire, renovate, construct and equip the Facility, the Agency is willing to acquire and retain a leasehold interest in the Land, the Improvements and personal property constituting the Facility pursuant to a Lease Agreement, and thereafter the Agency will lease back the Facility to the Company pursuant to the terms and conditions of a certain Leaseback Agreement to be dated on or about the date hereof (the "Leaseback Agreement" and together with the Lease Agreement, the "Lease Agreements"); 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 Charges as defined in Section 2.1 which shall be paid by the Company outside this Agreement as billed by respective third parties; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into this Agreement to make provisions for payments in lieu of taxes by the Company to the Agency relative to the Land and Improvements for the benefit of Cayuga County (the “County”), the City of Auburn (the “City”) and the Auburn Enlarged City School District (hereinafter the “School District” or “School” and, collectively with the County and the Town, the “Affected Tax Jurisdictions”).

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

Section I - Payment in lieu of Ad Valorem Taxes:

1.1 A. Acquisition of Land; Prior Exemption Continued. Prior to the date hereof, the Land was owned by Auburn Community Hospital and has been exempt from Real Estate Taxes (as defined herein). Pursuant to Section 874 of the Act, Section 412-a of the New York State Real Property Tax Law, and relevant opinions issued by the New York State Office of Real Property Tax Services, the Agency's acquisition of a leasehold interest in the Land pursuant to the Lease Agreement as of the date of and commensurate with the Company's acquisition of fee title to the Land shall have the effect of continuing and maintaining the exempt status (Section Roll 8) of the Land. The Company acknowledges and agrees that as of the date hereof, the Company shall be responsible for payment of all Special District Charges accruing on and after the date hereof.

B. Subject to the completion and filing by the taxable status date of February 1, 2023 (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 Land (along with the Improvements once constructed by the Company, as agent of the Agency) shall be exempt from Real Estate Taxes for the periods set forth in Section 1.5. For purposes of the foregoing “Real Estate Taxes” means all general levy real estate taxes levied against the Facility by the County, Town and the School. 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 Leaseback 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. Interim Real Estate Taxes. To the extent imposed by any of the Affected Tax Jurisdictions, the Company shall pay all Real Estate Taxes relating to the Land due and payable from the date hereof through the Taxable Status Date.

C. Payee. As long as the Facility is owned by the Agency or leased by the Company to the Agency, or under the Agency's jurisdiction, control or supervision, the Company agrees to pay annually to the Agency as a payment in lieu of taxes, on or before **March 1** of each year for County taxes, on or before **October 1** of each year for City taxes and School taxes (collectively, the "Payment Date"), beginning March 1, 2024 and October 1, 2024, respectively, an amount equal to the Total PILOT Payment, which is defined and set forth within **Schedule A**, 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 and City and/or any 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 Payment 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 Payment Date.

1.4 Valuation of Future Additions to the Facility: If there shall be a future addition to the Facility that has not been described in the Application constructed or added in any manner after the date of this Agreement, the Company shall notify the Agency of such future addition ("Future Addition"). The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the Agency may thereafter request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the Total 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 Total PILOT Payment until a different Total PILOT Payment shall be established. If a lesser Total PILOT 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 Total PILOT Payment(s).

1.5 Period of Benefits. The tax benefits provided for herein shall be deemed to include for the Land and the Existing Improvements, if any (i) the 2024 County tax year through the 2039 County Tax year, and (iii) the 2024/2025 City and School tax years through the 2038/2039 City and School tax year. This PILOT Agreement shall expire on December 31, 2039 (unless otherwise extended upon the prior written request of the Company and with the prior written consent of the Agency); *provided, however*, the Company shall pay the 2039/2040 County tax bill and the 2039/2040 City and School tax bills on the dates and in the amounts as if the Agency were not in title on the tax lien 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, 485-e and 487 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 (collectively, the "Special Charges") are to be paid in full in accordance with normal billing practices.

Section III - Transfer of Facility.

3.1 In the event that 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. The foregoing rights shall not include the ability to lower or modify the “Base Value”, as defined herein, nor to lower or in any way alter the Total PILOT Payments payable hereunder.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any Special Charges as if and to the same extent as if the Company were the owner of the Facility.

4.3 The Company shall file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers and provide information to the Agency as requested from time to time.

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 – Job Creation.

6.1 As specific inducement for Agency entering into this PILOT Agreement with the Company, the Company shall retain and create the full-time or equivalent jobs set forth in the Application for Financial Assistance dated August 10, 2022 (the “Application”), during the term of this PILOT Agreement at the Facility. Further, the Company pledges commercially reasonable efforts to hire persons from the Cayuga County, New York work force. The Company shall promptly provide employment figures to the Agency as requested. Notwithstanding anything contained herein to the contrary, the Agency acknowledges and agrees that job creation and employment requirements set forth in this Agreement may be satisfied by Auburn Community Hospital as the operator and tenant of the Facility.

Section VII - Events of Default.

7.1 The following shall constitute “Events of Default” hereunder. The failure by the Company to: (i) make the payments described in Section I on or before 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; (iii) the occurrence and continuance of any events of default under the Lease Agreements after the expiration of any applicable cure periods; (iv) to create the jobs set forth in Section 6.1 above; or (v) to exercise its best efforts to recruit and hire new employees from the Cayuga County, New York work force. 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.

7.2 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 7.1 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.

7.3 Prior to exercising any remedy hereunder, any Lender (as defined in the Leaseback Agreement) shall be afforded notice and the cure rights set forth in such section, as if such section were set forth in full herein.

Section VIII - Assignment.

8.1 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 IX - Miscellaneous.

9.1 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.

9.2 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, or by nationally-recognized overnight courier, as follows:

To the Agency: Cayuga County Industrial Development Agency
2 State Street
Auburn, New York 13021
Attn: Executive Director

And to: Harris Beach PLLC
677 Broadway, Suite 101

Albany, New York 12207
Attn: Justin S. Miller, Esq.

To the Company: PG Auburn MOB, LLC
46 Prince Street, Suite 2003
Rochester, New York 14607
Attn: Andrew Bodewes

With a Copy to: Woods Oviatt Gilman LLP
1900 Bausch & Lomb Place
Rochester, New York 14604
Attn: James Pronti, Esq.

To the Lender: Five Star Bank
55 North Main Street
Warsaw, New York 14569
Attn: Commercial Loan Operations

With a Copy to: Phillips Lytle LLP
28 East Main Street, Suite 1400
Rochester, New York 14614
Attn: Raymond L. Ruff, 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.

9.3 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 Cayuga County, New York.

9.4 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.

9.5 The Company acknowledges receipt of the Agency's Uniform Tax Exemption Policy and Project Recapture and Termination Policy, the terms of which are incorporated by reference. The Company acknowledges and agrees that, in addition to any other remedies that may be available to the Agency, all or part of the benefits conferred on the Company hereunder may be subject to recapture pursuant to the provisions of such Uniform Tax Exemption Policy and Project Recapture and Termination Policy.

[Signature Page to PILOT Agreement]

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

CAYUGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: Michael Miller
Name: Michael Miller
Title: Executive Director

PG AUBURN MOB, LLC, a New York limited
liability company

By: Park Grove Realty, LLC, a New York
limited liability company, its sole member

By: _____
Name: Andrew Bodewes
Title: Authorized Person

[Signature Page to PILOT Agreement]

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

CAYUGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY


By: _____

Name: Michael Miller

Title: Executive Director

PG AUBURN MOB, LLC, a New York limited
liability company

By: Park Grove Realty, LLC, a New York
limited liability company, its sole member

By:  _____

Name: Andrew Bodewes

Title: Authorized Person

SCHEDULE A

“Total PILOT Payment” shall be calculated as follows:

<u>PILOT Year</u>	<u>County Tax Year</u>	<u>City/School Tax Year</u>	<u>Total PILOT Payment</u>
Interim	2022 (partial), 2023 & 2024	2022/2023 & 2023/2024	Interim Tax Bills, as applicable, or Base Valuation
Year 1	2025	2024/2025	Base Valuation, plus (Added Value x .00)
Year 2	2026	2025/2026	Base Valuation, plus (Added Value x .00)
Year 3	2027	2026/2027	Base Valuation, plus (Added Value x .00)
Year 4	2028	2027/2028	Base Valuation, plus (Added Value x .00)
Year 5	2029	2028/2029	Base Valuation, plus (Added Value x .00)
Year 6	2030	2029/2030	Base Valuation, plus (Added Value x .00)
Year 7	2031	2030/2031	Base Valuation, plus (Added Value x .00)
Year 8	2032	2031/2032	Base Valuation, plus (Added Value x .00)
Year 9	2033	2032/2033	Base Valuation, plus (Added Value x .25)
Year 10	2034	2033/2034	Base Valuation, plus (Added Value x .25)
Year 11	2035	2034/2035	Base Valuation, plus (Added Value x .25)
Year 12	2036	2035/2036	Base Valuation, plus (Added Value x .50)
Year 13	2037	2036/2037	Base Valuation, plus (Added Value x .50)
Year 14	2038	2037/2038	Base Valuation, plus (Added Value x .50)
Year 15	2039	2038/2039	Base Valuation, plus (Added Value x .50)

For the term of this PILOT Agreement, the Company shall pay full taxes based on the assessed value of the Land before the completion of any Project improvements (the “Base Valuation”). **During the term of this PILOT Agreement, the Base Valuation shall be frozen at the lesser of: (i) \$174,800.00, or (ii) such amount as initially assessed for the Land upon re-subdivision of same and establishment of a new tax parcel.** The Total Taxable Valuation for each Total PILOT Payment shall be calculated such that a graduated abatement factor (“Abatement Factor”) shall be 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”). The abatement schedule shall allow for a 100% exemption from taxation for the Added Value in PILOT Years 1 through 8, a 75% exemption from taxation for the Added Value in PILOT Years 9 through 11, and a 50% exemption from taxation for the Added Value in PILOT Years 12 through 15.

Once the Total Taxable Valuation is established using the Abatement Factor, the Total PILOT Payment shall be determined by multiplying the Total Taxable Valuation by the respective tax rate for each affected tax jurisdiction (after application of any applicable equalization rate). After the tenth PILOT Year, the Project Facility shall be subject to full taxation by the affected taxing jurisdictions.

Total Taxable Valuation = Base Valuation + (Added Value x Abatement Factor)
 Total PILOT Payment = Total Taxable Valuation (after equalization) x Tax Rate