

HARRIS BEACH PLLC
ATTORNEYS AT LAW

677 BROADWAY, SUITE 1101
ALBANY, NY 12207
(518) 427-9700

JUSTIN S. MILLER

DIRECT: (518) 701-2710
FAX: (518) 701-2804
JMILLER@HARRISBEACH.COM

October 4, 2011

To: Assessor and Affected Taxing Jurisdiction
Officials on Schedule A

RE: Cayuga County Industrial Development Agency
D&W Diesel, Inc. – Facility Expansion Project
Corrected Amended and Restated PILOT Agreement and
Form RP-412-a Application for Real Property Tax Exemption

Ladies and Gentlemen:

On behalf of the Cayuga County Industrial Development Agency (the “Agency”), please find enclosed corrected versions of Application for Real Property Tax Exemption Form RP-412-a (the “Application”) and related Amended and Restated Payment In Lieu of Tax Agreement (“PILOT Agreement”), each dated as of September 1, 2011.

The Application Supplement and PILOT Agreement (Schedule B) have been corrected to reflect the recently re-assessed value increase for TMID No. 114-1-43.6 from \$500,000 to \$963,000. No other changes have been made to the Application or PILOT Agreement, which were originally circulated on September 8, 2011.

Please do not hesitate to contact me with any questions or for additional assistance with this matter.

Very truly yours,

Justin S. Miller

JSM:kb

Enclosures

cc: Stephen F. Lynch, Agency Executive Director
Douglas Wayne, President, D&W Diesel, Inc.
Robert E. Barry, Esq., Company Counsel

Assessor and Affected Taxing Jurisdiction
Officials on Schedule A
October 4, 2011
Page 2

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SCHEDULE A

Cayuga County, New York

Cayuga County Legislature
Attn: Chairman
County Office Building
160 Genesee Street, 6th Floor
Auburn, New York 13021

Cayuga County Administrator
County Office Building
160 Genesee Street, 6th Floor
Auburn, New York 13021

Town of Aurelius

Town of Aurelius
Attn: Town Supervisor
Aurelius Town Hall
1241 West Genesee Street Road
Auburn, New York 13021

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Town of Aurelius
Attn: Assessor
Aurelius Town Hall
1241 West Genesee Street Road
Auburn, New York 13021

Union Springs Central Schools

Union Springs Central Schools
Attn: Superintendent
239 Cayuga Street
Auburn, New York 13021



NYS BOARD OF REAL PROPERTY SERVICES

RP-412-a (1/95)

INDUSTRIAL DEVELOPMENT AGENCIES
APPLICATION FOR REAL PROPERTY TAX EXEMPTION
(Real Property Tax Law, Section 412-a and General Municipal Law, Section 874)

1. INDUSTRIAL DEVELOPMENT AGENCY (IDA)

Name Cayuga County Industrial Development Agency
Street 60 Genesee Street, 5th Floor
City Auburn, New York 13021
Telephone no. Day (315) 253-1276
Evening ()
Contact Stephen F. Lynch
Title Executive Director

2. OCCUPANT (IF OTHER THAN IDA)

(If more than one occupant attach separate listing)

Name D & W Diesel, Inc.
Street 1503 Clark Street Road
City Auburn, New York 13021
Telephone no. Day (315) 253-2324
Evening ()
Contact Douglas J. Wayne
Title President

3. DESCRIPTION OF PARCEL

- a. Assessment roll description (tax map no./roll year) 114.00-1-43.6; 43.6-1; 43.7 and portions of 43.4
b. Street address 1503 - 1507 Clark Street Road
c. City, Town or Village Town of Aurelius
d. School District Union Springs
e. County Cayuga
f. Current assessment \$ See Attached
g. Deed to IDA (date recorded; liber and page)
Lease to IDA (pending; pending)

4. GENERAL DESCRIPTION OF PROPERTY (if necessary, attach plans or specifications)

- a. Brief description (include property use) Acquisition of land and the construction of an approx. 55,000 square-foot building addition to be used as manufacturing, warehousing and distribution facilities
b. Type of construction Engine manufacturing and refurbishing facility
c. Square footage New 55,000; Existing 57,000
d. Total cost Approx. \$3,000,000
e. Date construction commenced Pending
f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA) December 31, 2027

5. SUMMARIZE AGREEMENT (IF ANY) AND METHOD TO BE USED FOR PAYMENTS TO BE MADE TO MUNICIPALITY REGARDLESS OF STATUTORY EXEMPTION

(Attach copy of the agreement or extract of the terms relating to the project).

- a. Formula for payment Please see attached PILOT Agreement dated as of September 1, 2011

- b. Projected expiration date of agreement December 31, 2027

c. Municipal corporations to which payments will be made

| | | |
|--------------------------------------|-------------------------------------|-------------------------------------|
| | Yes | No |
| County <u>Cayuga</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Town/City <u>Town of Aurelius</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Village <u>N/A</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| School District <u>Union Springs</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

d. Person or entity responsible for payment

Name D & W Diesel, Inc.
 Title Douglas J. Wayne, President
 Address 1503 Clark Street Road
Auburn, New York 13021

e. Is the IDA the owner of the property? Yes (circle one)
If "No" identify owner and explain IDA rights or interest in an attached statement. No - IDA has a leasehold interest in the property - See attached Statement

Telephone (315) 253-2324

6. Is the property receiving or has the property ever received any other exemption from real property taxation? (check one) Yes No

If yes, list the statutory exemption reference and assessment roll year on which granted:
exemption GML 874 and RPTL 412-a assessment roll year 1996 and 2006; see attached

7. A copy of this application, including all attachments, has been mailed or delivered on _____ (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

CERTIFICATION

I, Stephen F. Lynch, Executive Director of
Name Title
Cayuga County Industrial Development Agency hereby certify that the information
Organization

on this application and accompanying papers constitutes a true statement of facts.

September 7, 2011
Date


Signature

FOR USE BY ASSESSOR

1. Date application filed _____
2. Applicable taxable status date _____
- 3a. Agreement (or extract) date _____
- 3b. Projected exemption expiration (year) _____
4. Assessed valuation of parcel in first year of exemption \$ _____
5. Special assessments and special as valorem levies for which the parcel is liable:

Date

Assessor's signature

CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY
D & W DIESEL, INC. 2011 PROJECT
RP-412-A APPLICATION FOR REAL PROPERTY TAX EXEMPTION
DATED AS OF SEPTEMBER 1, 2011

SUPPLEMENTAL INFORMATION

QUESTION 3(f) – Current Assessments:

TMID No. 114.00-1-43.7 - \$290,000.00

TMID No. 114.00-1-43.6 - \$963,000.00

TMID No. 114.00-1-43.6-1 - \$850,000.00

TMID No. 114.00-1-43.4 (portions - 15.343 acres subdivided) - TBD

QUESTION 6 – Exemption Background and Roll Management:

The Agency previously undertook a project (the “1995 Project”) for the benefit of Green Meadows, Ltd. (as predecessor to the Company, “Green Meadows”). The Agency acquired a fee interest in 1995 Facility and the 1995 Facility Land (hereinafter defined) and entered into, among other things, a certain Installment Sale Agreement, dated as of December 28, 1995 (the “Installment Sale Agreement”). The 1995 Project consisted of the acquisition, construction and equipping by Green Meadows, as agent of the Agency, of an approximately 15,000 square foot portion of the Existing Improvements (the “1995 Facility”) on a certain .43 acre subdivided parcel of land located at 1507 Clark Street Road in the Town of Aurelius, New York (the “1995 Facility Land”, being further identified as TMID No. 114.00-1-43.7). The Company and the Agency also entered into a payment-in-lieu-of-tax agreement relating to the 1995 Project (the “1995 PILOT”).

Pursuant to a certain Assignment dated December 28, 1995, by and between Green Meadows and the Company (D&W Diesel, Inc.) and authorized by the Agency pursuant to Article VIII of the Installment Sale Agreement, Green Meadows assigned to the Company all of its rights and obligations under the Installment Sale Agreement, including but not limited to, the payment of installment purchase payments, mortgage payments, and payments-in-lieu-of-taxes (the “Assignment”).

The Agency also previously undertook another project (the “2006 Project”) for the benefit of the Company involving the Agency’s acquisition of a leasehold interest in a 7.90 acre parcel of land located at 1503 Clark Street Road in the Town of Aurelius, County of Cayuga in the State of New York (the “2006 Facility Land”, being identified as TMID Nos. 114.00-1-43.6 and 114.00-1-43.6-1) and the construction of an approximately 26,250 square-foot single-story building and related site work improvements (the “2006 Facility”). In furtherance of the 2006 Project, the Agency and the Company entered into (i) a certain Lease Agreement, dated as of January 1, 2006, and pursuant to which the Company leased the 2006 Facility Land and improvements thereon (the “2006 Improvements”) to the Agency, a memorandum of which was recorded in the

Cayuga County Clerk's Office on February 21, 2006 in Liber 1250 at Page 133 (the "Lease Agreement"); (ii) a certain Leaseback Agreement, dated as of January 1, 2006, and pursuant to which the Agency leased the 2006 Facility Land and 2006 Improvements thereon back to the Company, a memorandum of which was recorded in the Cayuga County Clerk's Office on February 21, 2006 in Liber 1250 at Page 140 (the "Leaseback Agreement"); and (iii) a certain Payment-in-Lieu-of-Tax Agreement, dated as of January 1, 2006, between the Agency and the Company (the "PILOT Agreement"); and (iv) related documents (collectively, the Lease Agreement, Leaseback Agreement and PILOT Agreement, along with related documents collectively referred to herein as the "2006 Facility Documents").

The Company and the Agency are now undertaking a project (the "2011 Project") consisting of: (i) the retention and/or acquisition of by the Agency of a leasehold interest in all or portions of certain parcels of real property located at 1503 – 1507 Clark Street Road in the Town of Aurelius, New York (the "Land", consisting of the land from the 1995 Project and the 2006 Project and as more particularly described herein and identified as all or portions of TMID Nos. 114.00-1-43.6, 114.00-1-43.6-1, and 114.00-1-43.7, being comprised of approximately 8.32 acres, along with approximately 15.343 acres of land to be subdivided from TMID No. 114.00-1-43.4, and herein the "2011 Facility Land", for a total of approximately 23.663 acres, as may be merged into a single tax parcel) and the existing approximately 57,000 square feet of structures located thereon (the "Existing Improvements"); (ii) the reconstruction and reconfiguration of certain portions of the Existing Improvements, along with the construction of an approximately 55,000 square foot addition (collectively, the "2011 Improvements"); (iii) the acquisition and installation in and around the Existing Improvements and Improvements of certain machinery, equipment and other items of tangible personal property (the "2011 Equipment" and, collectively with, the Land, Existing Improvements, and the 2011 Improvements, the "2011 Facility"); and (iv) through a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain title to the 1995 Facility, 2006 Facility and 2011 Facility for a period of time and sell or sublease such interest in the Facility back to the Company (the "Straight Lease Transaction"), such Straight Lease Transaction to be effectuated, in part, through the amendment and restatement of certain of the 2006 Facility Documents.

In furtherance of the 2011 Project, the Agency, Company and Green Meadows have terminated the Installment Sale Agreement and 1995 PILOT pursuant to a certain Termination Agreement, dated as of August 1, 2011 (the "Termination").

Following the execution and delivery of the Amended and Restated Lease Agreement, but prior to the execution and delivery of the Amended and Restated Leaseback Agreement and documents relating to the Termination, the Agency and Green Meadow have caused the transfer of fee title to the 1995 Facility Land and the improvements thereon to Green Meadows, subject to the Agency's leasehold interest granted under the Amended and Restated Lease Agreement. Pursuant to the Amended and Restated Lease Agreement, the Agency at all times has retained either a fee or leasehold interest in the 1995 Facility (TMID No. 114.00-1-43.7) and therefore the 1995

Facility should be kept on Roll Section 8 (Exempt) for the term of the Amended and Restated Leaseback Agreement and Amended and Restated PILOT Agreement, which terminate as of December 31, 2027.

Furthermore, pursuant to the Amended and Restated Lease Agreement, the Agency will retain its leasehold interest in the 2006 Facility (TMID Nos. 114.00-1-43.6 and 114.00-1-43.6-1), without interruption. Therefore the 2006 Facility should be kept on Roll Section 8 (Exempt) for the term of the Amended and Restated Leaseback Agreement and Amended and Restated PILOT Agreement, which terminate as of December 31, 2027.

Finally, the additional land to which the Agency is now taking a leasehold interest pursuant to the 2011 Project (approximately 15.343 acres of land to be subdivided from TMID No. 114.00-1-43.4) should be entered on Roll Section 8 (Exempt) as of the March 1, 2012 Taxable Status Date and retained as such for the term of the Amended and Restated Leaseback Agreement and Amended and Restated PILOT Agreement, which terminate as of December 31, 2027.

Summary of Actions Requested:

For the following parcels, as may be merged:

TMID No. 114.00-1-43.7 - \$290,000.00 – RETAIN ON ROLL SECTION 8

TMID No. 114.00-1-43.6 - \$963,000.00 – MOVE TO ROLL SECTION 8 ON 3/1/12

TMID No. 114.00-1-43.6-1 - \$850,000.00 – RETAIN ON ROLL SECTION 8

**TMID No. 114.00-1-43.4 (portions 15.343 acres) – MOVE TO ROLL SECTION 8
ON 3/1/12**

CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

D & W DIESEL, INC.

WITH ACKNOWLEDGMENT AND GUARANTY OF

GREEN MEADOWS, LTD.

AMENDED AND RESTATED
PAYMENT IN LIEU OF TAX AGREEMENT

Payment in lieu of Tax Agreement, dated as of January 1, 2006
Amended and Restated as of September 1, 2011
Cayuga County Industrial Development Agency
(D & W Diesel, Inc. Project - 2011 Facility)

Affected Tax Jurisdictions:
Cayuga County
Town of Aurelius
Union Springs School District

Tax Map Nos.:
114.00-1-43.6; 114.00-1-43.6-1; 114.00-1-43.7 and
114.00-1-43.4 (portions thereof, as subdivided);
As may be merged

**AMENDED AND RESTATED
PAYMENT IN LIEU OF TAX AGREEMENT**

THIS AMENDED AND RESTATED PAYMENT IN LIEU OF TAX AGREEMENT (the "Amended and Restated PILOT Agreement"), originally dated as of January 1, 2006 and amended and restated as of September 1, 2011, 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 located at County Office Building, 160 Genesee Street, Auburn, New York 13021 (the "Agency") and **D & W DIESEL, INC.**, a corporation duly organized and validly existing under the laws of the State of New York, with offices at 1503 Clark Street Road, Auburn, New York 13021 (the "Company") with acknowledgment and performance guaranty by **GREEN MEADOWS, LTD.** a New York business corporation having an address of 1501 Clark Street Road, Auburn, New York 13021 ("Green Meadows").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 688 of the Laws of 1970 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 Act authorizes the creation of industrial development agencies for the Public Purposes of the State; and

WHEREAS, pursuant to and in accordance with the provisions of Act, the Agency was created and is empowered under the Act to undertake the providing, financing and leasing of the real property and Facility defined below; and

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

WHEREAS, the Agency previously undertook a certain project (the "1995 Project") for the benefit of Green Meadows (as predecessor to the Company) and entered into, among other things, a certain Installment Sale Agreement, dated as of December 28, 1995 (the "Installment Sale Agreement"), such 1995 Project consisting of the acquisition, construction and equipping by Green Meadows, as agent of the Agency, of an approximately 15,000 square foot portion of the Existing Improvements (the "1995 Facility") on a certain .43 acre subdivided parcel of land

located at 1507 Clark Street Road in the Town of Aurelius, New York (the “1995 Facility Land”, being further identified as TMID No. 114.00-1-43.7); and

WHEREAS, pursuant to a certain Assignment dated December 28, 1995, by and between Green Meadows and the Company and authorized by the Agency pursuant to Article VIII of the Installment Sale Agreement, Green Meadows assigned to the Company all of its rights and obligations under the Installment Sale Agreement, including but not limited to, the payment of installment purchase payments, mortgage payments, and payments in lieu of taxes (the “Assignment”); and

WHEREAS, the Agency previously undertook another certain project (the “2006 Project”) for the benefit of the Company involving the acquisition of a leasehold interest in a 7.90 acre parcel of land located at 1503 Clark Street Road in the Town of Aurelius, County of Cayuga in the State of New York (the “2006 Facility Land”, being identified as TMID Nos. 114.00-1-43.6 and 114.00-1-43.6-1) and the construction and equipping of an approximately 26,250 square-foot single-story building and related site work improvements (the “2006 Facility”), such 2006 Facility having been constructed by the Company, as agent of the Agency, pursuant to (i) a certain Lease Agreement, dated as of January 1, 2006, and pursuant to which the Company leased the 2006 Facility Land and improvements thereon (the “2006 Improvements”) to the Agency, a memorandum of which was recorded in the Cayuga County Clerk’s Office on February 21, 2006 in Liber 1250 at Page 133 (the “Lease Agreement”); (ii) a certain Leaseback Agreement, dated as of January 1, 2006, and pursuant to which the Agency leased the 2006 Facility Land and 2006 Improvements thereon back to the Company, a memorandum of which was recorded in the Cayuga County Clerk’s Office on February 21, 2006 in Liber 1250 at Page 140 (the “Leaseback Agreement”); and (iii) a certain Payment-in-Lieu-of-Tax Agreement, dated as of January 1, 2006, between the Agency and the Company (the “PILOT Agreement”); and (iv) related documents (collectively, the Lease Agreement, Leaseback Agreement and PILOT Agreement, along with related documents collectively referred to herein as the “2006 Facility Documents”); 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 “2011 Project”) consisting of: (i) the retention and/or acquisition by the Agency of a leasehold interest in all or portions of certain parcels of real property located at 1503 – 1507 Clark Street Road in the Town of Aurelius, New York (the “Land”, as more particularly described herein and identified as all or portions of TMID Nos. 114.00-1-43.6, 114.00-1-43.6-1, and 114.00-1-43.7, being comprised of approximately 8.32 acres, along with approximately 15.343 acres of land to be subdivided from TMID No. 114.00-1-43.4, and herein the “2011 Facility Land”, for a total of approximately 23.663 acres, as may be merged into a single tax parcel) and the existing approximately 57,000 square feet of structures located thereon operated by the Company for the remanufacture, warehouse and distribution of, among other things, diesel engine components, hose and couplings, pneumatic conveying equipment, vacuum and liquid pumps, hydraulic drive systems and tank trunk accessories (the “Existing Improvements”); (ii) the reconstruction and reconfiguration of certain portions of the Existing Improvements, along with the construction of an approximately 55,000 square foot addition to the Existing Improvements, along with certain site work, parking and access improvements for use as additional warehousing and distribution

facilities (collectively, the “2011 Improvements”); (iii) the acquisition and installation in and around the Existing Improvements and Improvements of certain machinery, equipment and other items of tangible personal property (the “2011 Equipment” and, collectively with, the Land, Existing Improvements, and the 2011 Improvements, the “2011 Facility”); and (iv) through a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain title to the 1995 Facility, 2006 Facility and 2011 Facility for a period of time and sell or sublease such interest in the Facility back to the Company (the “Straight Lease Transaction”), such Straight Lease Transaction to be effectuated, in part, through the amendment and restatement of certain of the 2006 Facility Documents; and

WHEREAS, commensurate with the execution and delivery of this Agreement, the Agency and Company have entered into (i) an Amended and Restated Lease Agreement, dated as of the date hereof (the “Amended and Restated Lease Agreement”); and (ii) an Amended and Restated Leaseback Agreement, dated as of the date hereof (the “Amended and Restated Leaseback Agreement”, together herein with this Agreement, the Amended and Restated Lease Agreement, and related documents, the “2011 Facility Documents”); and

WHEREAS, the Agency, Company and Green Meadows terminated the Installment Sale Agreement pursuant to a certain Termination Agreement, dated as of September 7, 2011 (the “Termination Agreement”), and the Agency transferred fee title to the 1995 Facility Land back to Green Meadows pursuant to a certain Quitclaim Deed to Green Meadows, dated as of September 7, 2011 (the “Quitclaim Deed”), along with a certain Bill of Sale, also dated as of September 7, 2011 (the “Bill of Sale”, and with the Termination Agreement, the Quitclaim Deed, and related documents, the “Termination Documents”), such Quitclaim Deed being subject to the leasehold interest in the 1995 Facility acquired by the Agency pursuant to the Amended and Restated Lease Agreement, along with the terms and conditions of 2011 Facility Documents; and

WHEREAS, pursuant to the 2011 Facility Documents, the Agency has appointed the Company as agent to undertake the construction, equipping and operation of the 2011 Facility, and, among other things, (i) extended the Lease Term to December 31, 2027; (ii) amended the definition of “Facility” in the Leaseback Agreement to collectively mean the 1995 Facility, the 2006 Facility and the 2011 Facility; and (iii) modified and added certain other provisions therein; and

WHEREAS, pursuant to Section 1.4 of the PILOT Agreement, the 2011 Facility would constitute an “Additional Facility” subject to full taxation, however, in furtherance of the 2011 Project and 2011 Facility, the Agency and the Company desire to enter into this Amended and Restated PILOT Agreement for purposes of (i) maintaining the terms of the PILOT Agreement with respect to the 2006 Facility; and (ii) providing the Company with a partial abatement from real estate taxes relating to the 2011 Facility; 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 District Charges as defined in Section 2.1 which shall be paid by the Company outside this Amended and Restated PILOT 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 require payments in lieu of taxes to be made by the Company to the Agency for the benefit of Cayuga County (the "County"), the Town of Aurelius (the "Town"), and the Union Springs School District (hereinafter the "School District" or "School" and, collectively with the County and the Town, the "Affected Tax Jurisdictions") for the 2011 Facility, which, pursuant to the 2011 Facility Documents, includes the 1995 Facility and 2006 Facility.

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. Pursuant to the Lease Agreement, Leaseback Agreement, PILOT Agreement, and prior filing by the taxable status date March 1, 2006 of New York State Form RP-412-a Application For Real Property Tax Exemption (the "Exemption Application"), the 2006 Facility, including all of the 2006 Facility Land, was or should have been placed on the exempt rolls (Section 8) and the Company has from time to time has made certain PILOT Payments pursuant to the PILOT Agreement for the benefit of the Affected Tax Jurisdictions. Further, pursuant to the Installment Sale Agreement, the 1995 Facility was placed on the exempt rolls (Section 8) and the Company has from time to time has made certain PILOT Payments pursuant to the Installment Sale Agreement for the benefit of the Affected Tax Jurisdictions. Pursuant to the Amended and Restated Lease Agreement, the Agency acquired a leasehold estate in the 1995 Facility prior to the effective date of the Termination Agreement and Quitclaim Deed. Therefore, the Agency has retained an interest in the 1995 Facility for purposes of maintaining the 1995 Facility as exempt for purposes of real property taxation pursuant to GML Section 874 and Real Property Tax Law Section 412-a, such continuing leasehold interest and exemption to be governed by the 2011 Facility Documents, including the terms and conditions hereof.

Pursuant to the terms hereof, and subject to the completion and filing of a Supplemental Exemption Application by March 1, 2012 with respect to the 2011 Facility under Section 412-a of the New York State Real Property Tax Law and Section 874 of the Act, along with the approval of the Supplemental Exemption Application by the appropriate assessors or Board of Assessment Review, the 1995 Facility and 2006 Facility shall continue to be exempt from Real Estate Taxes, and the 2011 Facility shall be exempt from Real Estate Taxes, all for the periods set forth in Section 1.3 hereof. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the 2006 Facility and 2011 Facility by the County, Town, and School. The Company shall provide to the Agency with the information necessary for the completion and filing of the Supplemental 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 Supplemental Exemption Application. Notwithstanding anything contained herein or in the Leaseback Agreement (as amended) 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 1995

Facility, 2006 Facility and 2011 Facility as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the Supplemental Exemption Application, provided that (i) the overall operating efficiency of the 2011 Facility is not impaired and the 2011 Facility continues to qualify as a "project" under the Act; (ii) neither the 2011 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 Supplemental Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

B. Payee. As long as the Facility is 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 February 10 of each year for County and Town taxes and on or before October 5 of each year for School taxes (each a "Payment Date"), commencing on February 10, 2013, and October 5, 2012, respectively, an amount equal to the Total PILOT payment, which is the product of the following:

The then current tax rate for such Affected Tax Jurisdiction (after application of any applicable equalization rate) multiplied by the Total Taxable Valuation (as defined in Schedule B).

The Company shall continue to pay all Total PILOT Payments relating to the 2006 Facility (and as applicable, all Real Estate Taxes relating to the 2006 Facility, including the Land and Existing Improvements thereon) pursuant to the PILOT Agreement due and payable prior to October 5, 2012. Furthermore, and as set forth herein, the Company shall continue to pay Total PILOT Payments relating to the 1995 Facility (including the 1995 Facility Land and Existing Improvements thereon) pursuant to this PILOT Agreement due and payable prior to October 5, 2011. 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.

C. Empire Zone Matters. On or before July 1, 2012, the Agency shall consult with the applicable assessor to establish an allocation of the 2011 Facility and "Added Value", as defined herein and attributable to the 2011 Facility, as located within a New York State Empire Zone. Beginning with Total PILOT Payments due October 5, 2012, PILOT Invoices sent by the Agency to the Company shall reflect an allocation of Total PILOT Payments within a New York State Empire Zone.

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 Town 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 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 that has not been described in the Application constructed or added in any manner after the date of this Amended and Restated PILOT 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 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 shall be deemed to include the following:

- (i) Pursuant to the PILOT Agreement and this Amended and Restated PILOT Agreement, tax benefits have and shall be provided with respect to the 2006 Facility (without interruption) for (a) the 2007 County and Town tax years through the 2021 County and Town tax years; and (b) the 2006/2007 School tax year through the 2020/2021 School tax year.
- (ii) Pursuant to the Installment Sale Agreement and this Amended and Restated PILOT Agreement, tax benefits were provided with respect to the 1995 Facility for (a) the 1997 County and Town tax years through the 2010 County and Town tax years; and (b) the 1996/1997 School tax year through the 2009/2010 School tax year. Pursuant to the 2011 Facility Documents, the Agency retains a leasehold interest in the 1995 Facility and pursuant to the terms hereof, the Company shall, as a component of Total PILOT Payments due hereunder, pay the equivalent of full taxes assessed against the 1995 Facility during the term hereof.
- (iii) Pursuant to this Amended and Restated PILOT Agreement, tax benefits shall be provided with respect to the 2011 Facility for (a) the 2013 County and

Town tax year through the 2027 County and Town tax years; and (b) the 2012/2013 School tax year through the 2026/2027 School tax year.

This Amended and Restated PILOT Agreement shall expire on December 31, 2027; *provided, however*, the Company shall pay the 2028 County and Town tax bill and the 2027/2028 School tax bill 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 2006 Facility and/or 2011 Facility for more than the periods provided for herein, unless the period is extended by amendment to this Amended and Restated PILOT Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the 2006 Facility and/or 2011 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 (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 Amended and Restated PILOT 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 1995 Facility, 2006 Facility and/or 2011 Facility is same 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 1995 Facility, 2006 Facility and/or 2011 Facility, with respect to any proposed assessment or change in assessment with respect to the 1995 Facility, 2006 Facility and/or 2011 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.

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 1995 Facility, 2006 Facility and/or 2011 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 Amended and Restated PILOT Agreement with the Company, the Company shall retain and create the full-time or equivalent jobs set forth in its initial application for financial assistance dated May 17, 2005 with respect to the 2006 Facility and its subsequent application for financial assistance dated November 1, 2011 with respect to the 2011 Facility, during the term of this Amended and Restated PILOT Agreement at the Facility. Further, the Company pledges its best effort to hire persons from the Cayuga County, New York work force. Company shall promptly provide employment figures to the Agency as requested.

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 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; (iii) the occurrence and continuance of any events of default under the Lease Agreement or Leaseback Agreement, as amended, 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.

Section VIII - Assignment.

8.1 No portion of any interest in this Amended and Restated PILOT 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 Amended and Restated PILOT 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
County Office Building
160 Genesee Street
Auburn, New York 13021
Attn: Executive Director

With a Copy to: Karpinski, Stapleton, Galbato & Tehan, P.C.
110 Genesee Street
Suite 200
Auburn, New York 13021
Attn: Ricardo Galbato, Esq

And to: Harris Beach PLLC
677 Broadway, Suite 1101
Albany, New York 12207

Attn: Justin S. Miller, Esq.

To the Company: D & W Diesel, Inc.
1503 Clark Street Road
Auburn, New York 13021
Attn: President

With a copy to: Boyle & Anderson, P.C.
110 Genesee Street, Suite 300
Auburn, New York 13021-3655
Attn: Robert E. Barry, 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 Amended and Restated PILOT 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 1995 Facility, 2006 Facility and/or 2011 Facility and paid to the Agency by the Company. Neither member of the Agency nor any person executing this Amended and Restated PILOT Agreement on its behalf shall be liable personally under this Amended and Restated PILOT 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 Amended and Restated PILOT Agreement.

9.5 The Company acknowledges receipt of the Agency's Uniform Tax Exemption 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.

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SCHEDULE B

“Total PILOT Payment” shall be calculated as follows:

| <u>PILOT Year</u> | <u>County and Town Tax Year</u> | <u>School Tax Year</u> | <u>Total Taxable Valuation</u> |
|--------------------------|--|-------------------------------|---|
| Year 6 | 2012 | 2011/2012 | Base Valuation, plus (2006 Added Value x .30), plus (2011 Added Value x .00) |
| Year 7 | 2013 | 2012/2013 | Base Valuation, plus (2006 Added Value x .35), plus (2011 Added Value x .05) |
| Year 8 | 2014 | 2013/2014 | Base Valuation, plus (2006 Added Value x .40), plus (2011 Added Value x .10) |
| Year 9 | 2015 | 2014/2015 | Base Valuation, plus (2006 Added Value x .45), plus (2011 Added Value x .15) |
| Year 10 | 2016 | 2015/2016 | Base Valuation, plus (2006 Added Value x .50), plus (2011 Added Value x .20) |
| Year 11 | 2017 | 2016/2017 | Base Valuation, plus (2006 Added Value x .55), plus (2011 Added Value x .25) |
| Year 12 | 2018 | 2017/2018 | Base Valuation, plus (2006 Added Value x .60), plus (2011 Added Value x .30) |
| Year 13 | 2019 | 2018/2019 | Base Valuation, plus (2006 Added Value x .65), plus (2011 Added Value x .35) |
| Year 14 | 2020 | 2019/2020 | Base Valuation, plus (2006 Added Value x .70), plus (2011 Added Value x .40) |
| Year 15 | 2021 | 2020/2021 | Base Valuation, plus (2006 Added Value x .75), plus (2011 Added Value x .45) |
| Year 16 | 2022 | 2021/2022 | Base Valuation, plus (2006 Added Value x 1.00), plus (2011 Added Value x .50) |
| Year 17 | 2023 | 2022/2023 | Base Valuation, plus (2006 Added Value x 1.00), plus (2011 Added Value x .55) |
| Year 18 | 2024 | 2023/2024 | Base Valuation, plus (2006 Added Value x 1.00), plus (2011 Added Value x .60) |
| Year 19 | 2025 | 2024/2025 | Base Valuation, plus (2006 Added Value x 1.00), plus (2011 Added Value x .65) |
| Year 20 | 2026 | 2025/2026 | Base Valuation, plus (2006 Added Value x 1.00), plus (2011 Added Value x .70) |
| Year 21 | 2027 | 2026/2027 | Base Valuation, plus (2006 Added Value x 1.00), plus (2011 Added Value x .75) |
| | 2028 | 2027/2028 | FULL TAXES |

For the term of this Amended and Restated PILOT Agreement, the Company shall continue to pay full taxes based on the assessed value of: (i) 1995 Facility, inclusive of land and improvements thereon (\$290,000 as of the date hereof); plus (ii) the 2006 Land and Existing Improvements prior to the construction of the 2006 Facility (\$963,000 as of the date hereof); plus (iii) the 2011 Land (comprised of approximately 15.343 acres of land to be subdivided from TMID No. 114.00-1-43.4), prior to the construction of any of the 2011 Facility, such value to be determined by the applicable assessor (collectively, the “Base Valuation”). During the term of this Amended and Restated PILOT Agreement, the Base Valuation shall be increased from time to time by the percentage increase in the assessed valuation in all taxable real property in the Town of Aurelius, Cayuga County, New York, as of the respective tax status date for the tax year for which the recalculation is being made.

The Total Taxable Valuation for a portion of 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 2006 Facility constructed by the Company, as Agent of the Agency (the “2006 Added Value”, being \$850,000 as of the date hereof, inclusive of TMID No. 114.00-1-43.6-1, as established by the assessor and as may be merged or discontinued). During the term of this Amended and Restated PILOT Agreement, the 2006 Added Value shall be frozen. The Total Taxable Valuation for a portion of each Total PILOT Payment shall be calculated such that an Abatement Factor shall be applied to the increased assessed valuation attributable to the 2011 Facility constructed by the Company, as Agent of the Agency (the “2011 Added Value”). During the term of this Amended and Restated PILOT

Agreement, the 2011 Added Value, once established by the applicable assessor, shall be frozen. For purposes of this Agreement, the Company shall pay the equivalent of full taxes on the Base Valuation and 2006 Added Value beginning with PILOT Year 16 (the 2022 County and Town Tax years and 2021/2022 School Tax Year), plus Total PILOT Payment amounts attributable to the 2011 Facility.

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 21st PILOT Year, the Facility shall be subject to full taxation by the affected taxing jurisdictions.

Total Taxable Valuation = Base Valuation + (2006 Added Value x Abatement Factor) + (2011 Added Value x Abatement Factor)

Total PILOT Payment = Total Taxable Valuation (after equalization) x Tax Rate