

**CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**FINGER LAKES RAILWAY CORP.**

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**PAYMENT IN-LIEU-OF-TAX AGREEMENT**

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**Railway Properties**  
**Towns of Aurelius and Sennett, Village of Cayuga and City of Auburn**

**Tax Map Numbers:**  
**112.18-1-39.1, 120.00-1-20.11, 109.02-1-63, 102.00-1-66, 96.00-1-43, 109.61-1-6.2,**  
**115.28-1-89, and 115.51-1-43**

**Dated as of February 12, 2016**

**Affected Tax Jurisdictions:**

Cayuga County  
Town of Aurelius  
Town of Sennett  
Village of Cayuga  
City of Auburn  
Union Springs Central School District  
Jordan-Elbridge Central School District  
Weedsport Central School District  
Auburn Central School District

## PAYMENT IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT IN-LIEU-OF TAX AGREEMENT, dated as of February 12, 2016 (the "PILOT Agreement"), is by and between the **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 **FINGER LAKES RAILWAY CORP.**, a foreign business corporation of the State of Delaware and registered to conduct business within the State of New York with an address of P.O. Box 1099, Geneva, New York 14456 (the "Company").

### 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 Agency and Company previously undertook a certain project (herein, the "Project") consisting of the acquisition, operation and maintenance of the "Geneva Cluster" of rail lines located within Yates County, Schuler County, Seneca County, Cayuga County, Onondaga County and Ontario County, such Project having been primarily undertaken pursuant to a certain Lease Agreement, dated as of July 21, 1995 (the "1995 Lease"), and as a "Railroad Facility" authorized and approved in 1995 by the New York State Department of Transportation ("NYSDOT") pursuant to and in accordance with Section 854(11) of the Act; and

WHEREAS, in connection with the Agency's approval of additional ten (10) year term for the Lease, which is contemplated within the Lease as a second renewal term subject to discretion of the Agency, the Agency and Company have entered into a certain Amended and Restated Lease Agreement (the "Agency Lease Agreement") whereby (i) the Company will continue to undertake the Project; (ii) the Agency reserved a leasehold interest in the Land and Improvements constituting the Facility (as each are defined within the 1995 Lease) pursuant to a Lease Agreement, dated as of the date hereof (the "Lease Agreement"), and (iii) the Agency leased its reserved interest in said Land, Improvements, and Facility back to the Company pursuant to the Agency Lease Agreement; and

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

WHEREAS, in addition to the Agency Lease Agreement, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes by the Company to the Agency for the benefit of Cayuga County (the "County"), the Towns of Aurelius and Sennett (the "Towns"), the Village of Cayuga (the "Village"), the City of Auburn (the "City") and the Union Springs Central School District, Jordan-Elbridge Central

School District Central, Weedsport School District and Auburn Central School District (hereinafter the "School Districts" or "Schools" and, collectively with the County, Towns, Village and City, the "Affected Tax Jurisdictions"); and

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 – Prior Exemption Continued; Payment in lieu of Ad Valorem Taxes:

Section 1.1 A. The parties acknowledge and agree that the Facility has been exempt from Real Property taxes (as defined below) due to the Agency's fee ownership of the Facility since July 21, 1995. Pursuant to a certain Quitclaim Deed from the Agency to the Company, dated as of the date hereof, the Agency retained a leasehold interest in the Facility as memorialized within the Lease Agreement. Therefore, the Facility shall remain exempt from Real Property Taxes for the term of the Agency Lease Agreement. For information purposes, and prior to the taxable status date of **March 1, 2016** (the "Taxable Status Date"), the Agency shall file 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 to the appropriate assessors to advise regarding the Agency Lease Agreement and this Agreement. The Facility shall continue to be prospectively exempt from Real Estate Taxes. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by and County, City, Town, Village, City and School District. The Company shall provide 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 to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Agency Lease Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied or revoked for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes except to the extent that such denial results solely from the failure of the Agency to file the Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

B. Payee. As long as the Facility is owned by the Agency or under its jurisdiction, control or supervision, the Company agrees to pay annually to the Agency, on behalf of the Affected Tax Jurisdictions, as a payment in-lieu-of-taxes, on or before May 15 of each year, commencing on May 15, 2016 an amount equal to the Total PILOT Payment as described on **Schedule A** attached hereto.

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

1.2 Allocation. The Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder, 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, City Town, and special district purposes, the tax rates used to determine the allocation of the Total PILOT Payment shall be the tax rates relating to the calendar year which includes the PILOT payment due date. For Village and School District purposes, the tax rates used to determine the PILOT payment shall be the rate relating to the Village and School fiscal year which includes the PILOT payment due date.

1.4 RESERVED

1.5 Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the 2016 County, City and Town tax year through the 2024 County, City and Town tax year; (ii) the 2016-2017 School tax year through the 2024-2025 School tax year; and (iii) the 2016-2017 Village tax year through the 2024-2025 Village tax year. This PILOT Agreement shall expire on June 30, 2025; provided, however, the Company shall pay the 2025 County and Town tax bills and the 2025-2026 School and Village tax bills on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years; provided however, and to the extent permitted by law, that the Company shall receive as credits against such tax bills amounts equal to those portions of the 2025 PILOT payment made by the Company and received by the County, City, Town, School or Village for each of said entities' tax year. 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 RPTL and any other applicable exemption program. 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, Interim Tax Bills and other charges.

2.1 Special district charges, special assessments, and special ad valorem levies ("Special District Charges", specifically including but not limited to any fire district charges or "curb charges"), including any pure water charges, public utility charges and sewer charges are to be paid in full by the Company in accordance with normal billing practices.

### Section III - Transfer of Facility.

3.1 In the event that the Facility is transferred from the Agency to the Company (the Lease Agreement is terminated), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section I herein, or this Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination, subject to the Company's right to grieve or otherwise contest any such assessments pursuant to Section IV below. To the extent permitted by law, the Company shall receive as credits against the tax bills of the Affected Tax Jurisdictions, amounts equal to those portions of the last PILOT payment received by any County, City, Town, School, or Village for each of said entities' tax year..

### Section IV - Assessment Challenges.

4.1 The Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Facility, with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein as same relate to the payment of Special District Charges. Any such challenge shall not affect or diminish the "Total PILOT Payment", as defined within **Schedule A**, hereto.

4.2 The Company shall (i) request the NYS Office of Real Property Services, Tax and Finance, Rail Ceiling Division, along with appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply tax rates to the respective assessments as if the Facility were owned by the Company, (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

### Section V - Changes in Law.

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

### Section VI - Events of Default.

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

6.2 If payments pursuant to Section I herein are not made by the Delinquency Dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows. With respect to payments to be made pursuant to Section I herein, if said payment is not received by the Delinquency Date defined in Section 6.1 herein, Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

#### Section VII - Assignment.

7.1 No portion of any interest in this Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency.

#### Section VIII - Miscellaneous.

8.1 This Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

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

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

With Copy To: Harris Beach PLLC  
677 Broadway, Suite 1101  
Albany, New York 12207  
Attn: Justin S. Miller, Esq.

To the Company: Finger Lakes Railway Corp.  
P.O. Box 1099  
Geneva, New York 14456  
Attn: Michael Smith, President

With Copy To: Law Offices of Lester A. Sittler, Esq.  
P.O.Box 235  
Fly Creek, New York 13337

given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

8.3 This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Cayuga County, New York.

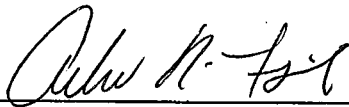
8.4 Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. Neither member of the Agency nor any person executing this Agreement on its behalf shall be liable personally under this Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Agreement.

*(Remainder of page intentionally left blank)*

**[Signature Page to PILOT Agreement]**

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

**CAYUGA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Name: Andrew Fish  
Title: Executive Director

**FINGER LAKES RAILWAY CORP.**

By: \_\_\_\_\_  
Name: Michael V. Smith  
Title: President



**[Signature Page to PILOT Agreement]**

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

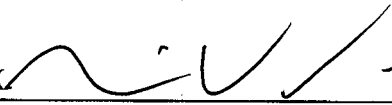
**CAYUGA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_

Name: Andrew Fish

Title: Executive Director

**FINGER LAKES RAILWAY CORP.**

By: X  \_\_\_\_\_

Name: Michael V. Smith

Title: President

[Acknowledgment Page to PILOT Agreement]

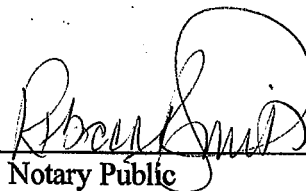
STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF                )

On the \_\_\_ day of February in the year 2016, before me, the undersigned, personally appeared MICHAEL V. SMITH, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF CAYUGA    )

On the 11<sup>th</sup> day of February in the year 2016, before me, the undersigned, personally appeared ANDREW FISH, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

Rebecca R Smith  
01SM6129820  
Notary Public, State of New York  
Qualified in Cayuga County  
My commission expires JULY 5th, 2017

[Acknowledgment Page to PILOT Agreement]

NEW HAMPSHIRE  
STATE OF ~~NEW YORK~~ )  
 ) ss.:  
COUNTY OF BELKNAP )

On the 12 day of February in the year 2016, before me, the undersigned, personally appeared MICHAEL V. SMITH, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Heidi Jackson-Rhine  
Notary Public

HEIDI F. JACKSON-RHINE, Notary Public  
My Commission Expires March 16, 2016

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF CAYUGA )

On the \_\_\_ day of February in the year 2016, before me, the undersigned, personally appeared ANDREW FISH, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**SCHEDULE A**

**TO PILOT AGREEMENT DATED AS OF FEBRUARY 12, 2016**

**CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
AND  
FINGER LAKES RAILWAY CORP.**

“Total PILOT Payment” shall be calculated as follows:

The Company shall pay to the Agency the sum of one sixth (1/6) of the sum of 2.75% multiplied by Annual Freight Revenue, as defined below, as reported to the Agency pursuant to Section 5.5(b) of the Agency Lease Agreement.

Annual Freight Revenue shall be limited to: line haul revenue, including the Company’s share of interline freight revenue, and the Company’s intraline freight revenue, assessed fuel charges, haulage charges for the benefit of Ontario Central traffic, minus any freight adjustments.

Total Freight Revenue x 2.75% x 1/6 = Total PILOT Payment.