

10 NATIONAL MEDFORD LLC

and

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY

SECOND AMENDED AND RESTATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT

Town of Brookhaven Industrial Development Agency
(Assignment of Intercounty Associates II LLC/Intercounty Appliance Corp. Facility)

Originally Dated as of January 1, 2005

Amended and Restated as of September 1, 2013

Further Amended and Restated as of December 1, 2018

Town of Brookhaven, Longwood School District

Districts: 0200

Sections: 812.00

Blocks: 03.00

Lots: 005.012 and 005.013

SECOND AMENDED AND RESTATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS SECOND AMENDED AND RESTATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of December 1, 2018 (this “**Second Amended and Restated PILOT Agreement**”), is by and between 10 NATIONAL MEDFORD LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of New York, having an office at Seven Penn Plaza, Suite 1100, New York, New York 10001 (the “**Company**”) and TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its principal office at 1 Independence Hill, 3rd Floor, Brookhaven, New York 11738 (the “**Issuer**”).

WITNESSETH:

WHEREAS, the Issuer was created by Chapter 358 of the Laws of 1970 of the State of New York, as amended, pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended (collectively, the “**Act**”); and

WHEREAS, the Issuer has previously provided its assistance to Intercounty Associates II LLC (the “**Original Company**”) and Intercounty Appliance Corp., a New York business corporation (the “**Lessee**”), by issuing its (i) \$9,000,000 Taxable Variable Rate Demand Industrial Development Revenue Bonds, Series 2005 (Intercounty Associates II LLC/Intercounty Appliance Corp. Facility) (the “**Series 2005 Bonds**”), which Series 2005 Bonds were used to finance certain costs of an industrial development facility consisting of the acquisition of an approximately 29.77 acre parcel of land located at 10 National Boulevard, Medford, New York, and the construction and equipping thereon of an approximately 250,000 square foot building (collectively, the “**Original Facility**”), and (ii) its additional \$4,500,000 Taxable Variable Rate Demand Industrial Development Revenue Bonds, Series 2013 (Intercounty Associates II LLC/Intercounty Appliance Corp. 2013 Facility) (the “**Series 2013 Bonds**”; and together with the Series 2005 Bonds, the “**Bonds**”), for the acquisition, construction, renovation and equipping of an approximately 75,000 square foot addition to an existing approximately 250,000 square foot building located at the Original Facility all for use by the Lessee as warehouse and office space for the distribution of appliances (collectively, the “**2013 Facility**”; and together with the Original Facility, the “**Facility**”); and

WHEREAS, the Issuer sold the Facility to the Original Company pursuant to an Installment Sale Agreement, dated as of January 1, 2005, as amended by a certain First Amendment to Installment Sale Agreement (collectively, the “**Original Installment Sale Agreement**”), by and between the Issuer and the Original Company, and memoranda of such Original Installment Sale Agreement were to be recorded in the Suffolk County Clerk’s office; and

WHEREAS, in connection therewith, the Issuer, The Bank of New York Mellon, as Trustee, Capital One, National Association, the Original Company and the Lessee entered into a Payment-in-Lieu-of-Tax Agreement, dated as of January 1, 2005, as amended by a

certain Amended and Restated Payment-in-Lieu-of-Tax Agreement, dated as of September 1, 2013 (collectively, the “**Original PILOT Agreement**”), whereby the Company and the Lessee agreed to make certain payments-in-lieu-of real property taxes on the Original Facility (as defined therein); and

WHEREAS, as of the December 13, 2018, the Bonds are deemed paid in full and will be redeemed in accordance with the terms of the Indenture of Trust, dated as of January 1, 2005, as amended and supplemented pursuant to a First Supplemental Indenture of Trust, dated as of September 1, 2013;

WHEREAS, the Company has requested the Issuer’s consent to the assignment by the Original Company of all of its rights, title, interest and obligations under the Original Installment Sale Agreement, the Original PILOT Agreement and other documents in connection therewith, the release of the Original Company from any further liability with respect to the Facility, and the release of the Lessee from certain documents in connection with the Facility, subject to certain requirements of the Issuer, pursuant to a certain Assignment, Assumption and Amendment Agreement, dated December 13, 2018 (the “**Assignment, Assumption and Amendment Agreement**”), by and among the Issuer, the Original Company, the Company and the Lessee;

WHEREAS, the Original Installment Sale Agreement was assigned and amended pursuant to the Assignment, Assumption and Amendment Agreement (the Original Installment Sale Agreement, as so amended shall be hereinafter referred to as the “**Installment Sale Agreement**”);

WHEREAS, the Original PILOT Agreement was assigned pursuant to the Assignment, Assumption and Amendment Agreement, and the Company has requested that the Issuer provide continued abatements of real property taxes to the Company pursuant to this Second Amended and Restated PILOT Agreement;

WHEREAS, pursuant to Section 874(1) of the Act, the Issuer is exempt from the payment of taxes and assessments imposed upon real property owned by it, other than special ad valorem levies, special assessments and service charges against real property located in the Town of Brookhaven (including any existing incorporated village or any village which may be incorporated after the date hereof within which the Facility is or may be wholly or partially located) which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Issuer and the Company deem it necessary and proper to enter into an agreement making provision for payments in lieu of taxes and such assessments by the Company to the Town of Brookhaven, any existing incorporated village or any village which may be incorporated after the date hereof within which the Facility is or may be wholly or partially located, Suffolk County, Longwood School District and appropriate special districts (hereinafter the “**Taxing Authorities**”) in which any part of the Facility is or is to be located.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the covenants herein contained, it is mutually agreed as follows:

1. (a) The Company shall make all payments under the Original PILOT Agreement until payment under Section 1(c) hereof become due and payable

(b) Reserved.

(c) Commencing with the 2019/2020 Tax Year, the Company shall pay, as payments in lieu of taxes and assessments with respect to the Facility, the amounts set forth on Exhibit A attached hereto and made a part hereof.

(d) The Company shall pay, or cause to be paid, the amounts set forth in Section 1(c) above, as applicable, after receipt of PILOT bills from the Issuer or the Taxing Authorities, as the case may be. Failure to receive a PILOT bill shall not relieve the Company of its obligations to make all payments provided for hereunder. If, for any reason, the Company does not receive an appropriate PILOT bill, the Company shall have the responsibility and obligation to make all reasonable inquiries to the Issuer or the Taxing Authorities and to have such a bill issued, and thereafter to make payment of the same no later than the due dates provided herein. Payments shall be made directly to the Issuer. Payments made after the due date(s) as set forth in the applicable tax bills shall accrue interest (and penalties) at the rates applicable to late payments of taxes for the respective Taxing Authorities and as further provided in the General Municipal Law, including Section 874(5) thereof, which provides for a penalty of five percent (5%) of the amount then due and interest, at the rate of one percent (1%) per month on payments more than one (1) month delinquent.

(e) During the term of this Second Amended and Restated PILOT Agreement, the Company shall continue to pay all special ad valorem levies, special assessments, and service charges levied against the Facility for special improvements or special district improvements.

(f) In the event any structural addition shall be made to the building or buildings included in the Facility subsequent to the "Completion Date" (as such term is defined in the Installment Sale Agreement), or any additional building or improvement shall be constructed on the real property described on Exhibit B hereto (such structural additions, buildings and improvements being referred to hereinafter as "**Additional Facilities**"), the Company agrees to make additional payments in lieu of taxes to the Issuer in amounts equal to the product of the then current ad valorem tax rates which would be levied upon or with respect to the Additional Facilities by the Taxing Authorities as if the Additional Facilities were owned by the Company and not the Issuer times the assessment or assessments established for that tax year by the Town of Brookhaven. All other provisions of this Second Amended and Restated PILOT Agreement shall apply to this obligation for additional payments.

2. In the event that title to the Facility or any part thereof is transferred from the Issuer to the Company at such time in reference to any taxable status date as to make it impossible to place such Facility or part thereof on the tax rolls of the Town of Brookhaven, Longwood School District, any existing incorporated village or any village which may be incorporated after the date hereof within which the Facility is or may be wholly or partially

located, or appropriate special districts, as the case may be, by such taxable status date, the Company hereby agrees to pay at the first time taxes or assessments are due following the taxable status date at which such Facility or part thereof is placed on the tax rolls, an amount equal to the taxes or assessments which would have been levied on such Facility or part thereof had it been on the tax rolls from the time the Company took title until the date of the tax rolls following the taxable status date as of which such Facility or part thereof is placed on the tax rolls. There shall be deducted from such amount any amounts previously made pursuant to this Second Amended and Restated PILOT Agreement by the Issuer or the Company to the respective Taxing Authorities relating to any period of time after the date of transfer of title to the Company. The provisions of this paragraph 2 shall survive the termination or expiration of the Installment Sale Agreement. Any rights the Company may have against its designee are separate and apart from the terms of this paragraph 2 and this paragraph 2 shall survive any transfer from the Issuer to the Company.

3. In the event the Facility or any part thereof is declared to be subject to taxation for taxes or assessments by an amendment to the Act, other legislative change, or by a final judgment of a court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

4. In the event the Company shall enter into a subsequent payment-in-lieu-of-tax agreement or agreements with respect to the Taxes on the Facility directly with any or all Taxing Authorities under whose jurisdiction the Facility is located, the obligations of the Company hereunder, which are inconsistent with such future agreement or agreements, shall be superseded and shall, to such extent, be null and void.

5. As long as this Second Amended and Restated PILOT Agreement is in effect, the Issuer and the Company agree that (i) the Company shall be deemed to be the owner of the Facility and of the Additional Facilities for purposes of instituting, and shall have the right to institute, judicial review of an assessment of the real estate with respect to the Facility and of the Additional Facilities pursuant to the provisions of Article 7 of the Real Property Tax Law or any other applicable law, as the same may be amended from time to time, and (ii) the Issuer shall request the Assessor of the Town of Brookhaven, or any other assessor having jurisdiction to assess the Facility, to take into consideration the value of surrounding properties of like character when assessing the Facility. Notwithstanding the foregoing, in the event that the assessment of the real estate with respect to the Facility and the Additional Facilities is reduced as a result of any such judicial review so that such complaining party would be entitled to receive a refund or refunds of taxes paid to the respective Taxing Authorities, if such complaining party were the owner of the Facility and the Additional Facilities, such complaining party shall not be entitled to receive a refund or refunds of the payments in lieu of taxes paid pursuant to this Second Amended and Restated PILOT Agreement. In no event shall the Issuer be required to remit to the Company or any Taxing Authority any moneys otherwise due as a result of a reduction in the assessment of the Facility (or any part thereof) due to a certiorari review. The Company hereby agrees that it will notify the Issuer if the Company shall have requested a reassessment of the Facility or a reduction in the taxes on the Facility or have instituted any tax certiorari proceedings with respect to the Facility. The Company shall deliver copies of all notices, correspondence, claims, actions and/or proceedings brought by or against the Company in connection with

any reassessment of the Facility, reduction of taxes with respect to the Facility, or any tax certiorari proceedings with respect to the Facility.

6. The Company, in recognition of the benefits provided under the terms of this Second Amended and Restated PILOT Agreement, including, but not limited to, the schedule for Payments-In-Lieu-of-Taxes set forth in Exhibit A hereto, and for as long as the Installment Sale Agreement is in effect, expressly waives any rights it may have for any exemption under Section 485-b of the Real Property Tax Law or any other exemption under any other law or regulation (except, however, for the exemption provided by Title 1 of Article 18-A of the General Municipal Law) with respect to the Facility. The Company however, reserves any such rights with respect to all special ad valorem levies, special assessments and service charges levied against the Facility referred to in paragraph 1(e) and the Additional Facilities as referred to in paragraph 1(f) and with respect to the assessment and/or exemption of the Additional Facilities.

7. Reserved.

8. Except as otherwise provided herein, any notice required to be given by or under this Second Amended and Restated PILOT Agreement shall be deemed to have been duly given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, return receipt requested, addressed to the respective parties hereto at their respective addresses specified below or such other addresses as either party may specify in writing to the other:

To the Issuer:

Town of Brookhaven Industrial Development Agency
1 Independence Hill, 2nd Floor
Farmingville, New York 11738
Attention: Chief Executive Officer

With a copy to:

Annette Eaderesto, Esq.
Town of Brookhaven
1 Independence Hill, 3rd Floor
Farmingville, New York 11738

To the Company:

10 National Medford LLC
Seven Penn Plaza, Suite 1100
New York, New York
Attention: Brian Palumbo, Esq

Notice by mail shall be effective when delivered but if not yet delivered shall be deemed effective at 12:00 p.m. on the third business day after mailing.

9. Failure by the Issuer in any instance to insist upon the strict performance of any one or more of the obligations of the Company under this Second Amended and Restated PILOT Agreement, or to exercise any election herein contained, shall in no manner be or be deemed to be a waiver by the Issuer of any of the Company's defaults or breaches hereunder or of any of the rights and remedies of the Issuer by reason of such defaults or breaches, or a waiver or relinquishment of any and all of the Company's obligations hereunder. No waiver, amendment, release or modification of this Second Amended and Restated PILOT Agreement shall be established by conduct, custom or course of dealing. Further, no payment by the Company or receipt by the Issuer of a lesser amount than the correct amount or manner of payment due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction, and the Issuer may accept any checks or payments as made without prejudice to the right to recover the balance or pursue any other remedy in this Second Amended and Restated PILOT Agreement or otherwise provided at law or equity.

10. This Second Amended and Restated PILOT Agreement shall become effective December 13, 2018. All taxes, assessments, special assessments, service charges, special ad valorem levies, or similar tax equivalents due or to become due based upon prior taxable status dates shall be paid by the Company when due. Upon termination of the Installment Sale Agreement and reconveyance of title to the Facility to the Company, this Second Amended and Restated PILOT Agreement shall terminate.

11. Whenever the Company fails to comply with any provision of this Second Amended and Restated PILOT Agreement, the Issuer may, but shall not be obligated to, take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Second Amended and Restated PILOT Agreement. The Issuer agrees to notify the Company in writing of any failure by the Company to comply with any provision of this Second Amended and Restated PILOT Agreement within thirty (30) business days after the Issuer becomes aware of such failure and shall provide the Company with the opportunity to cure such failure within thirty (30) days after receipt by the Company of such notice.

12. This Second Amended and Restated PILOT Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

13. The Company agrees to hold the Issuer harmless from and against any liability arising from any default by the Company in performing its obligations hereunder or any expense incurred under this Second Amended and Restated PILOT Agreement, including any expenses of the Issuer, including without limitation reasonable attorneys' fees.

14. This Second Amended and Restated PILOT Agreement may be modified only by written instrument duly executed by the parties hereto.

15. This Second Amended and Restated PILOT Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, heirs, distributees and assigns.

16. If any provision of this Second Amended and Restated PILOT Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such provision so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Second Amended and Restated PILOT Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

(Remainder of Page Intentionally Left Blank – Signature Page Follows)

IN WITNESS WHEREOF, the parties hereto have executed this Second Amended and Restated PILOT Agreement as of the date first written above.

**10 NATIONAL MEDFORD LLC, a
Delaware limited liability company**

By: Feil Properties, LLC, a Delaware limited liability company, its Managing Member

By: _____
Name: Jeffery J. Feil
Title: President

**TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: Lisa MG Mulligan
Title: Chief Executive Officer

IN WITNESS WHEREOF, the parties hereto have executed this Second Amended and Restated PILOT Agreement as of the date first written above.

**10 NATIONAL MEDFORD LLC, a
Delaware limited liability company**

By: Feil Properties, LLC, a Delaware limited liability company, its Managing Member

By: _____
Name: Jeffery J. Feil
Title: President

**TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY**

By:  _____
Name: Lisa MG Mulligan
Title: Chief Executive Officer

EXHIBIT A

Second Amended and Restated Schedule of Payments-In-Lieu-of-Taxes: The Town of Brookhaven (including any existing incorporated village or any village which may be incorporated after the date hereof within which the Facility is wholly or partially located), Longwood School District and Appropriate Special Districts.

Tax Year	PILOT Payments
2019/2020	\$ 441,199
2020/2021	\$ 450,023
2021/2022	\$ 459,023
2022/2023	\$ 468,204
2023/2024	\$ 477,568
2024/2025	\$ 590,073

EXHIBIT B

Legal Description of Real Property

ALL that certain plot, piece or parcel of land, situate, lying and being at Medford, in the Town of Brookhaven, County of Suffolk and the State of New York, bounded and described as follows:

BEGINNING at a point on the westerly line of Patchogue-Yaphank Road (C.R. 101) said point being the intersection of the westerly line of Patchogue-Yaphank Road (C.R. 101) with the northerly line of Southaven Avenue, as widened;

RUNNING THENCE the following eleven (11) courses:

1. south 84 degrees 29 minutes 41 seconds west, a distance of 731.02 feet along the northerly line of Southaven Avenue to a point;
2. north 06 degrees 02 minutes 16 seconds west, a distance of 1,600.47 feet to a point on the southerly line of National Boulevard;
3. north 83 degrees 57 minutes 44 seconds east, a distance of 423.86 feet along the southerly line of National Boulevard to a point;
4. along an arc bearing to the left, in a general southwesterly direction, whose radius is 30.00 feet a length of 47.12 feet to a point or tangency;
5. south 06 degrees 02 minutes 16 seconds east, a distance of 512.02 feet to a point;
6. north 83 degrees 57 minutes 44 seconds east, a distance of 627.80 feet to a point;
7. south 06 degrees 02 minutes 16 seconds east, 118.98 feet;
8. south 65 degrees 31 minutes 06 seconds east, a distance of 239.02 feet to a point on the westerly side of Patchogue-Yaphank Road (C.R. 101);
9. along the westerly line of Patchogue-Yaphank Road (C.R. 101) south 24 degrees 28 minutes 54 seconds west, a distance of 481.04 feet to a point;
10. Continuing along the westerly line of Patchogue-Yaphank Road (C.R. 101) south 24 degrees 27 minutes 08 seconds west, a distance of 446.96 feet to a point;
11. Continuing along the westerly line of Patchogue-Yaphank Road (C.R. 101) south 39 degrees 09 minutes 10 seconds west, a distance of 35.95 feet to the point or place of BEGINNING.

Said premises being commonly known as 10 National Boulevard, Medford, NY
DISTRICT 0200 SECTION 812.00 BLOCK 03.00 LOT 005.012 & 005.013