
PAYMENT IN LIEU OF TAXES AGREEMENT

Dated as of October 31, 2018

by and between

AHANA HOSPITALITY LLC

and

PUTNAM COUNTY INDUSTRIAL DEVELOPMENT AGENCY

RELATING TO THE FOLLOWING PROJECT

Ahana Hospitality Hotel Project

Affecting the Premises in the Town of Southeast, County of Putnam, State of New York
as more particularly described in Appendix A to this Agreement and located at
7-11 Peach Lake Road, Brewster, New York 10509

Tax Map No. 68.14-1-30

TABLE OF CONTENTS

	Page
Appendix A Description of the Premises	

PAYMENT IN LIEU OF TAXES AGREEMENT

This **PAYMENT IN LIEU OF TAXES AGREEMENT** (this “Agreement”) made as of October 31, 2018, by and between the **PUTNAM COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation duly organized and existing under the laws of the State of New York, having its office at The Lawlor Building, 2 Route 164 Patterson, New York 12563 (the “Agency”) and **AHANA HOSPITALITY LLC**, a limited liability company organized and existing under and by virtue of the laws of the State of Kentucky and authorized to do business within the State of New York (the “Company”), having its office at 26 Mill River Road, Stamford, Connecticut 06902.

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law of the State of New York, as amended (the “Enabling Act”), authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish one or more projects for the purpose of promoting, developing, encouraging and assisting in the acquisition, construction, reconstruction, improvement, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, thereby advancing the job opportunities, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by Chapter 399 of the 1987 Laws of New York, as amended (together with the Enabling Act, the “Act”), for the benefit of the County of Putnam (the “County”) and the inhabitants thereof; and

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Company for a “project” within the meaning of the Act (the “Project”) within the territorial boundaries of the County and (i) located on those certain lots, pieces or parcels of land generally known as and by the street addresses 7- 11 Peach Lake Road, Brewster, New York 10509 identified as Tax Map No. 68-14-1-30 and located in the Town of Southeast, New York 10509 (the “Premises”) and otherwise described in Appendix A attached hereto and made a part hereof; and

WHEREAS, the Project will consist of the completion of the construction, and the operation thereof, of a 57 room hotel, to include the purchase of construction materials and supplies, furniture, fixtures and equipment and any other products convenient, necessary or required therefor (the “Hotel Project”); and

WHEREAS, to facilitate the Project, the Agency and the Company have agreed to enter into a “straight-lease transaction” within the meaning of the Act pursuant to which the Company, as lessor, will lease the Premises to the Agency, as lessee, and the Agency will appoint the Company as agent for the Agency for purposes of developing the Hotel Project, and

the Agency, as lessor, will sublease the Premises back to the Company, as lessee, and, in furtherance of such purposes, on October 25, 2018, the Agency adopted a resolution (the "Authorizing Resolution") authorizing the Company to proceed with the Project; and

WHEREAS, on September 19, 2018, the Agency published a notice of public hearing for the Project in *The Putnam County Courier*, and held such public hearing on October 2, 2018 in the Town of Southeast Town Hall, 1360 Route 22, Brewster, New York 10509 on October 2, 2018 at 10:00 o'clock A.M. (Prevailing Time); and

WHEREAS, concurrently with the execution of this Agreement, the Company and the Agency will enter into a Company Lease Agreement, dated as of even date herewith, as the same may be amended (the "Company Lease") pursuant to which the Company, as lessor, will lease the Premises to the Agency, as lessee; and

WHEREAS, concurrently with the execution of this Agreement, the Agency and the Company will enter into a Lease Agreement dated as of even date herewith, as the same may be amended (the "Lease Agreement") pursuant to which the Agency, as lessor, will sublease the Premises to the Company, as lessee; and

WHEREAS, the provision by the Agency of financial assistance to the Company through a straight-lease transaction has been determined to be necessary to induce the Company to locate and develop the Project within the County and make the project more affordable; and if the Agency does not provide such financial assistance, the Project would be impeded; and

WHEREAS, the Enabling Act authorizes the Agency to provide financial assistance in the form of payments in lieu of taxes, subject to the terms and conditions of the Act; and

WHEREAS, pursuant to Section 874(1) of the Act and Section 412-a of the Real Property Tax Law, the Agency is exempt from payment of taxes and assessments imposed on real property and improvements owned by it or under its jurisdiction, supervision or control (the "Tax Exemption"), including taxes and assessments imposed by the State of New York, the County of Putnam, the Town of Southeast, and the Brewster Central School District (collectively, the "Municipalities") other than special ad valorem levies and special assessments; and

WHEREAS, the Agency is willing to confer the benefits of the Tax Exemption with respect to the Premises on the Company only in accordance with the terms and provisions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and the actions to be taken by the Agency and the Company with respect to the Project, the Agency and the Company agree as follows:

ARTICLE I

DEFINITIONS AND CONSTRUCTION

Section 1.1 Definitions. The following terms shall have the following meanings in this Agreement:

“Benefits Reimbursement Trigger” shall have the meaning set forth in Section 4.1 of this Agreement.

“Completion Deadline” shall have the meaning set forth in the Lease Agreement.

“County” shall mean the County of Putnam, State of New York.

“Municipalities” shall mean the Town, the County and the School District, collectively.

“Municipality” shall mean each of the Town, the County and the School District.

“PILOT Payment” shall mean payments in lieu of taxes established and required to be paid by the Company pursuant to this Agreement.

“PILOT Mortgage” shall mean the Payment In Lieu of Taxes Mortgage, dated as of even date herewith, from the Company and the Agency in favor of the Municipalities, and shall include any and all amendments and supplements hereto hereafter made in conformity therewith.

“Premises” shall mean those premises described in Appendix A, including all improvements now or hereafter made thereon.

“Real Estate Tax Benefits” means the difference obtained by subtracting the amount of PILOT Payments made pursuant to Section 3.2 from Regular Real Estate Taxes. Calculations are made annually, and the Real Estate Benefits are the sum of all such calculations.

“Regular Real Estate Taxes” shall mean the amount of taxes that are or would be due with respect to the entire Premises if the Premises were listed on the tax rolls as non-exempt property, and if such property were not an Agency project, had no Agency involvement, and remained fully taxable property.

“RPTL” shall mean the Real Property Tax Law of the State of New York, constituting Chapter 49A of the Consolidated Laws of the State of New York.

“School District” means the Brewster Central School District, State of New York.

“Tax Assessor” shall mean the tax assessor of the Town of Southeast, State of New York.

“Town” shall mean the Town of Southeast, State of New York.

Terms used in this Agreement but not defined herein shall have the meanings ascribed to them in the Lease Agreement.

Section 1.2 Construction. In this Agreement, unless the context otherwise requires:

(a) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of the execution and delivery of this Agreement.

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

ARTICLE II

TERM

Section 2.1 Effective Date of Agreement. This Agreement shall become effective on October 31, 2018, the effective date of the Lease Agreement (the “Effective Date”).

Section 2.2 Term of Agreement. Unless sooner terminated pursuant to its terms, this Agreement shall expire upon the later of (i) the date the Premises is listed on the tax rolls as non-exempt property or (ii) the expiration or earlier termination of the Lease Agreement (the “Lease Expiration Date”). The scheduled termination date of the Lease Agreement is expire at midnight (New York time) on [July 1, 2030].

ARTICLE III

COVENANTS AND AGREEMENTS

Section 3.1 Tax-Exempt Status of Premises.

(a) Assessment of the Premises. Pursuant to Section 874 of the General Municipal Law and Section 412-a of the Real Property Tax Law, the parties hereto understand that, following execution and delivery of this Agreement, and continuing for the period during which PILOT Payments are due, the Premises shall be assessed as exempt upon the assessment rolls of the Municipalities, except for Special Levies (hereinafter defined). The parties hereto understand that the Premises shall be entitled to such exempt status on the tax rolls of the Municipalities from the first taxable status date (March 1, 201__) following the completion and

submission of all necessary filings in accordance with Section 412-a(2) of the RPTL, in connection therewith. It is the intent of this Agreement that the Company shall, at all times during its ownership of a fee interest in the Premises or the Agency's leasehold interest in the Premises, be obligated to pay either PILOT Payments or Regular Real Estate Taxes, and that the foregoing obligations shall not be duplicative of each other or otherwise be additive. For example, and without limitation, the Company shall be obligated to pay Regular Real Estate Taxes lawfully levied and/or assessed against the Premises, including Regular Real Estate Taxes and assessments levied for the current tax year and until such time as the Agency's exemption with respect to the Premises lawfully takes effect on the tax rolls of the Municipalities and until all tax payments calculated with respect to prior tax rolls, not reflecting such exemption, shall have been made, the Company shall be obligated to pay PILOT Payments at all times thereafter until the earlier of the Lease Expiration Date or the date the Agency's exemption with respect to the Premises is no longer in effect on the tax rolls. Upon such date or after the Agency conveys such leasehold interest to the Premises to the Company in accordance with the terms of this Agreement and the Lease Agreement, no further PILOT Payments shall be due and the Company shall be obligated to pay all real property taxes as they arise.

(b) Effect of Taxability of Premises. To the extent the Premises or any portion thereof is declared to be subject to taxation or assessment by a final judgment of a court of competent jurisdiction, an amendment to the Act, or other legislative or administrative change, the obligation of the Company to make PILOT Payments hereunder shall, to such extent only, be replaced by the obligation of the Company to pay Regular Real Estate Taxes. To the extent that the foregoing declaration of non-exemption is given retroactive effect, any PILOT Payments previously made by the Company during such retroactive period shall be credited against Regular Real Estate Taxes due for such period. Nothing herein contained shall prohibit the Company from contesting the validity or constitutionality of any such amendment, legislative or administrative change or judicial decision.

(c) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the General Municipal Law and Section 412-a of the RPTL may not entitle the Agency to exemption from certain special assessments and special ad valorem levies (collectively, "Special Levies"). The Company shall be obligated to pay any Special Levies with respect to which the Agency is not exempt, in addition to the PILOT Payments provided for hereunder.

(d) Assessment of Premises During Term of Agreement. From and after the date of commencement of PILOT Payments hereunder, the Town shall:

(i) value and assess the Premises as if the Agency had no leasehold interest in the Premises, subject to the abatement as follows:

Year 1 - 50%
Year 2 - 45%
Year 3 - 40%
Year 4 - 35%
Year 5 - 30%
Year 6 - 25%

Year 7 - 20%
Year 8 - 15%
Year 9 - 10%
Year 10 - 5%

(ii) submit to the Company a statement specifying the amount and due date or dates of taxes or assessments which the State, county, town, village, school district or school districts, special districts and other political units having taxing powers would receive if the Agency had no leasehold interest in the Premises.

(e) Real Estate Tax or PILOT Payment Bills: Notice of Change. The Town shall forward bills for Real Estate Taxes or for PILOT Payments directly to the Company (with a copy to the Agency), as and when the Town sends real estate tax bills to taxpayers generally. The Town shall forward any notice of any change in the assessment of the Premises (made pursuant to the applicable provisions of the RPTL) to the Company directly with a copy to the Agency and Wells Fargo Bank, National Association (the "Lender").

(f) Adjustment in Real Estate Taxes; Refund. Notwithstanding any provision of this Agreement to the contrary, if, as a result of a protest or otherwise, Regular Real Estate Taxes payable in respect to all or any portion of the Premises are adjusted or reduced, then, (a) PILOT Payments payable hereunder shall be recalculated to reflect such adjustment or reduction, and (b) if the Company would be entitled to a refund or refunds for having made overpayments (whether of Regular Real Estate Taxes or of PILOT Payments, and computed with respect to PILOT Payments as if the Agency had not obtained a leasehold interest in the Premises), then, the Company may credit the amount of such overpayment against the next PILOT Payment due (or, if the Premises should become taxable, against the next Regular Real Estate Tax payment becoming due), with interest thereon at the rate of interest paid on real estate tax refunds and computed from the date of the overpayment to the date the credit is enjoyed.

Section 3.2 Payments in Lieu of Taxes.

(a) Agreement to Make Payments. The Company shall make PILOT Payments in lieu of real estate taxes pursuant to this Agreement, in an amount equal to the Regular Real Estate Taxes that would have been levied against the Premises had the Agency not acquired a leasehold interest therein, subject to the assessment abatement formula set forth in Section 3.1(d) hereinabove.

(b) Allocation of PILOT Payments. The portion of the PILOT Payments allocable to each of the County, the Town and the School District shall be the same as the portions allocable to each Municipality of Regular Real Estate Taxes that would be levied against the Premises if the Agency had not obtained a leasehold interest therein.

(c) Security for Payments in Lieu of Taxes. The Company shall ensure, and the Agency shall use its best efforts, without a requirement to expend funds of the Agency, to provide, that, commencing on the first taxable status date that this Agreement is in effect, and during the term hereof, the Company's obligation to make PILOT Payments in respect to the

Premises and any other payments set forth in this Agreement shall constitute a valid and enforceable first lien on the Premises prior to all mortgages or other encumbrances on the Premises granted by the Company or the Agency, including without limitation, the Lease Agreement and any mortgages held by any lenders. At the time of the execution and delivery of this Agreement and the conveyance of a leasehold interest in the Premises to the Agency, the Company and the Agency shall grant a first priority lien mortgage to the Municipalities in order to secure the obligations of the Company under this Agreement pursuant to the PILOT Mortgage. The Company hereby covenants and agrees that it will forever warrant and defend the same to the Municipalities and the Agency, and will forever warrant and defend the validity and priority of the lien of the PILOT Mortgage against the claims of all persons and parties whomsoever other than any governmental or quasigovernmental body, agency or other instrumentality which would be entitled to priority over any lien or claim for Regular Real Estate Taxes assertable by the Agency or the Municipalities in the absence of a PILOT agreement.

(d) **Time and Manner of Payments.** All payments due hereunder shall be paid by the Company to the Town, by check made payable to "Receiver of Taxes" and mailed to "1360 Route 22, Brewster, New York 10509". Upon receipt of such check by the Town, it is anticipated that the Town shall disburse to the other Municipalities their allocated portions of the PILOT Payments as determined by Section 3.2(b), within thirty (30) days of receipt. The Company shall forward notice to the Agency and the Lender of its payments made hereunder, in the form of copies of its checks. The Company agrees to so pay to the Town, on or before each January 31 (for payments allocated to the Town and the County), and each September 30 (for payments allocated to the School District), for the term of this Agreement, the applicable amounts due hereunder on such dates, provided the Company has received bills therefor at least thirty (30) days prior to such dates. If the Company does not receive timely bills, it shall not be in default hereunder if payments are made within thirty (30) days following receipt of such bill. All payments hereunder shall be subject, in each case, to the Company's right to obtain any exemption, abatement, reduction or discounts, if any, from such taxes and assessments which would be afforded to the Company if the Agency had not obtained a leasehold interest in the Premises, and to the Company's right to seek to obtain a refund of any such payments made.

Section 3.3 Interest and Penalties. If the Company shall fail to make any PILOT Payment required by this Agreement when due, its obligation to make the payment so in default shall continue as an obligation of the Company until such payment in default shall have been made in full, and the Company shall pay the same together with the applicable late payment penalty, as prescribed by the Act, on the amount due at the time such PILOT Payment is paid. For each month, or part thereof, that the PILOT Payment is delinquent beyond the first month when due, interest shall accrue to and be paid by the Company on the total amount due plus the late payment penalty, at the applicable rate prescribed by the Act.

Section 3.4 Special Assessments and Benefits. The Company shall also be obligated to make payments in respect of special and/or benefit assessments duly made against the Project by governmental authorities from the date the Agency is conveyed leasehold interest. Nothing contained herein shall exempt the Company from paying all fire district taxes, special district benefit assessments or user charges, including sewer and water charges, rents,

assessments or fees imposed or that would be imposed if the Agency had no leasehold interest in the Premises.

Section 3.5 Adjustments.

(a) Adjustment Event. It is understood and agreed by the parties to this Agreement that the Agency is entering into this Agreement in order to provide assistance to the Company for the Project and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees that if there shall occur an "Adjustment Event" (as hereinafter defined), upon prior written notice by the Agency to the Company of the occurrence of such Adjustment Event, the amounts payable by the Company pursuant to Section 3.2(a) shall thereafter be adjusted upward such that in each year thereafter the amount payable by the Company shall be an amount equal to 100% of the real property taxes and assessments that would be levied upon the Project if owned by the Company without Agency participation.

(b) Notification. The Company covenants and agrees to furnish the Agency with written notification upon any Adjustment Event or disposition of the Premises or any portion thereof made during the term of this Agreement, which notification shall set forth the terms of such Adjustment Event or disposition.

(c) Survival. The provisions of this Section shall survive the termination of this Agreement for any reason whatsoever, notwithstanding any provision of this Agreement to the contrary.

(d) Definition of 'Adjustment Event'. For the purposes of this Section, "Adjustment Event" shall with respect to the Premises mean any of the following events:

- (1) there shall be an Event of Default under the Lease Agreement which continues and remains uncured beyond the expiration of any applicable notice and cure period and the Agency shall have exercised its right to terminate the Lease Agreement; or
- (2) the Company shall be in default of any payment obligation beyond any applicable grace and/or cure period or any other material obligation under this Agreement and such default shall remain uncured for 30 days following delivery to the Company by the Agency or any Municipality of written notice of such default.

Notwithstanding the foregoing, an Adjustment Event shall not be deemed to have occurred if the Adjustment Event shall have arisen as a direct result of (i) a taking or condemnation by a governmental authority of all or substantially all of the Premises, or (ii) the inability of the Company to rebuild, repair, restore or replace the Premises after the occurrence of a Loss Event to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Company.

Section 3.6 Review of Assessments.

As long as this Agreement is in effect, the Agency and the Company agree that, notwithstanding that the Agency shall have a leasehold interest in the Premises subject to the Company Lease, as long as this Agreement is in effect, (i) the Company shall have sole authority, right and power to file grievances or to institute and prosecute proceedings or protest or complaints or challenges or other forms of judicial or administrative review, seeking any adjustment or decrease in the assessment of all or any portion of the Premises or challenging the tax rate applicable to all or any portion of the Premises or seeking clarification of or challenging the valuation of other methods utilized to compute Regular Real Estate Taxes (or, consequently, PILOT Payments) payable in respect of all or any portion of the Premises, and (ii) the Agency hereby irrevocably appoints the Company as its agent and attorney-in-fact (such appointment being coupled with an interest) for the purpose of filing or instituting or prosecuting any of the aforesaid grievances, protests, proceedings, challenges or reviews at the sole cost and expense of the Company (including, without limitation, reasonable attorneys' fees and expenses). In order to undertake the foregoing, the Agency shall provide any written authorization and/or execute any documents required by statute or the applicable taxing authority or reasonably requested by the Company, so long as not prohibited by applicable law.

Notwithstanding the foregoing, the Company shall, pending the resolution or final adjudication of, and as a condition of instituting, any such protest or judicial review, pay all PILOT Payments or Regular Real Estate Taxes assessed or billed by the Town. Notwithstanding the foregoing, the Company shall have the unrestricted right to seek, at the expense of the Company, a reduction of any assessments applicable to the tax years prior to the year in which the PILOT Payments commence.

Section 3.7 Adjustment Upon Termination of the Lease Agreement. It is the intention of the Agency and the Company that, as soon as is legally permissible following the Lease Expiration Date, the Premises be restored to the tax rolls and all applicable real property taxes shall apply, without abatement, offset or reduction. If the Lease Agreement should be terminated, whether at or prior to the scheduled maturity date of the term, then, with respect to such period of time (i) from and after the date on which the Lease Agreement terminates through (ii) the date on which the Premises is restored to the tax rolls and the real property taxes coming due shall become subject to tax liens (the "Restoration Period"), the Company shall be obligated to pay an amount equal to 100% of the taxes and assessments that would have been levied during the Restoration Period if the Premises had been owned by the Company without Agency participation and such entire amount shall be due and payable by the Company promptly upon the determination by the Tax Assessor of the proper amount therefor. The provisions of this Section shall survive any termination of this Agreement.

Section 3.8 PILOT Payments Following the End of the Last PILOT Year. Following the end of the PILOT Payments, and until such time the Premises are not listed as "exempt property" on the tax rolls and subject to payment of regular taxes, the Company shall be obligated to pay a payment in lieu of taxes equal to the amount of Regular Real Estate Taxes applicable for such period. For purposes of clarification, this provision is intended to terminate any tax abatement or exemptions that the Company may derive by virtue of Agency

participation in the project and is not intended to preclude any other tax abatement or exemptions to which the Company may be entitled under applicable law.

ARTICLE IV

REIMBURSEMENT OF BENEFITS FOLLOWING CERTAIN EVENTS

Section 4.1 Conditions Upon Which Reimbursement of Real Estate Tax Benefits May be Required. Upon the occurrence of any of the following conditions (a "Benefits Reimbursement Trigger"), the Agency may make demand upon the Company for reimbursement of Real Estate Tax Benefits claimed pursuant to this Agreement:

- (1) the Lease Agreement, the Company Lease or this Agreement is terminated prior to the originally stated termination date for any reason;
- (2) the Company fails to complete the Project by the Completion Deadline;
- (3) the Company liquidates all or substantially all of its operating assets or shall have ceased all or substantially all of its operations;
- (4) the Company transfers all or substantially all of its employees to a location outside of the County;
- (5) the Company has substantially changed the scope and nature of its operations at the Premises;
- (6) the Company has sold, leased (other than to the Agency and the Operator), or assigned without the consent of the Agency or otherwise disposed of all or substantially all of its fee or leasehold interest the Premises; or
- (7) the Company has failed to materially comply with the employment projections set forth in its Application for Benefits to the Agency.

Notwithstanding the foregoing, a Benefits Reimbursement Trigger shall not be deemed to have occurred if the Benefits Reimbursement Trigger arises as a direct, immediate result of (i) a taking or condemnation by governmental authority of all or substantially all of the Premises, or (ii) the inability of the Company to rebuild, repair, restore or replace the Premises after the occurrence of a Loss Event to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Company or any Affiliate.

Section 4.2 Payment of Reimbursement Amount. Upon the occurrence of a Benefits Reimbursement Trigger and the making of a demand for payment pursuant to Section 4.1, the Company shall pay as the reimbursement amount an amount equal to the amount of all Real Estate Tax Benefits claimed or received during the 5-year period preceding the date of the Benefits Reimbursement Trigger (the "Reimbursement Amount").

Section 4.3 Procedures for Making Demand.

(a) **Written Notification.** The Company covenants and agrees to furnish the Agency with written notification upon any Benefits Reimbursement Trigger during the term of this Agreement, which notification shall set forth the nature of such Benefits Reimbursement Trigger.

(b) **Notice and Demand by the Agency.** Upon becoming aware of the occurrence of a Benefits Reimbursement Trigger, the Agency shall notify the Company of the occurrence of such event and make a demand for the payment of the Reimbursement Amount, to be due and payable within 30 days following receipt of such demand notice.

(c) **Interest on Delinquent Payments.** If payment is owed by the Company under this Section and is not be paid by within 10 days after written demand by the Agency, such payment shall bear interest from the date of such demand at the then current interest rate imposed by the Municipalities on delinquent payments until the Company shall have paid such payment in full, together with such accrued interest to the date of payment.

(d) **Agency Right of Waiver.** The Agency, in its sole and absolute discretion, may waive all or any portion of any payment owing by the Company under this Section for any reason, including if the Agency determines that (i) the Benefits Reimbursement Trigger is minor in nature, or (ii) the Company would experience undue hardship. The Agency may, in its sole and absolute discretion, offer the Company a reasonable period of time to cure the conditions resulting in the Benefits Reimbursement Trigger, and rescind the applicable demand notice if the Company cures such conditions to the satisfaction of the Agency.

(e) **Survival.** The provisions of this Section shall survive the termination of this Agreement for any reason whatsoever, notwithstanding any provision of this Agreement to the contrary.

ARTICLE V

EVENTS OF DEFAULT; REMEDIES

Section 5.1 Events of Default. The following constitute an "Event of Default" under this Agreement:

- (1) Failure by the Company to pay any amount due hereunder within 60 days following notice by the Agency of past due amounts and a demand for payment;
- (2) The occurrence of an Event of Default under the Lease Agreement which Event of Default remains uncured during the period allowed therefor under the Lease Agreement; and
- (3) Failure of the Company to observe and perform any covenant, condition or agreement hereunder on its part to be performed (other than those set forth in clauses (1) and (2) above) and (1) continuance of such failure for

a period of thirty (30) days after receipt by the Company of written notice specifying the nature of such default from the Agency; or (2) if by reason of the nature of such default the same can be remedied, but not within the said thirty (30) days, the Company fails to proceed with reasonable diligence after receipt of said notice to cure the same or fails to continue with reasonable diligence its efforts to cure the same.

Section 5.2 Remedies on Default. Whenever any Event of Default referred to in Section 5.1 shall have occurred and be continuing, the Agency may take any one or more of the following remedial steps:

- (1) The Agency may send to the Company a notice stating that this Agreement shall terminate on a date certain, which date shall not be less than ten (10) days after the date of such notice, in which event this Agreement shall expire and terminate on the date set forth in such notice as if such date were the herein stated expiration date of this Agreement,
- (2) The Agency may bring an action for injunction or specific performance;
- (3) The Agency may take whatever action at law or in equity as may appear necessary or desirable to enforce performance or observance of any obligations, agreements or covenants of the Company under this Agreement; or
- (4) The Agency may take whatever action at law or in equity as may appear necessary or desirable to collect amounts due hereunder as of the date of termination (including but not limited to amounts due under Article V of this Agreement).

Section 5.3 Remedies Cumulative. The rights and remedies of the Agency under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency allowed by law with respect to any default under this Agreement. Failure by the Agency to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Company hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy a strict compliance by the Company with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Company be continued or repeated, or of the right to recover possession of the Premises by reason thereof.

Section 5.4 No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Agency and the Company or any delay or omission on the part of the Agency in exercising any rights hereunder or under any other Project Document shall operate as

a waiver. To the extent permitted by applicable law, the Company hereby waives the benefit and advantage of, and covenants not to assert against the Agency, any valuation, inquisition, stay, appraisal, extension or redemption laws now existing or which may hereafter exist which, but for this provision, might be applicable to any sale or reletting made under the judgment, order or decree of any court or under the powers of sale and reletting conferred by this Agreement or otherwise.

Section 5.5 Effect on Discontinuance of Proceedings. In case any proceeding taken by the Agency under this Agreement or under any other Project Document on account of any Event of Default hereunder shall have been discontinued or abandoned for any reason, then, and in every such case, the Agency shall be restored, to its former positions and rights hereunder and thereunder.

Section 5.6 Agreement to Pay Attorneys' Fees and Expenses. In the event of the occurrence of an Event of Default, and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company agrees that it will on demand therefor pay to the Agency the reasonable fees and disbursements of such attorneys and such other expenses so incurred.

Section 5.7 Rights of the Lenders. For the purposes of this Agreement, the term "mortgage" shall include any mortgage, leasehold mortgage, purchase money mortgage or other security instrument or instruments secured by the Premises and used in the jurisdiction in which the Premises is located, such as, without limitation, mortgages, deeds of trust, mortgage deeds, security deeds and conditional deeds, as well as financing statements, assignments of leases, rents and/or profits, security agreements and other documentation which a lender may require, and the terms "holder of a mortgage" and "mortgagee" shall mean the secured party under any of the foregoing instruments or the prospective secured party if the instruments have not been delivered. The term "lender" shall mean any person who shall loan money to the Company in connection with the Premises or otherwise, and shall include any "mortgagee."

The Company and every successor and assignee of the Company (including, without limitation, any sublessee of the Company with respect to all or a portion of the Premises, but only with the Company's prior written consent) may, without any requirement to obtain the Agency's consent, grant a mortgage or a security interest in the Company's interest in the Premises under one or more mortgages or security agreements as collateral security for such mortgage(s), upon the conditions that all rights acquired under such mortgage(s) shall be subject to (i) the prior lien of the PILOT Mortgage; (ii) each and all of the covenants, conditions and restrictions set forth in this Agreement and the Lease Agreement; and (iii) all rights and interests of the Agency herein, none of which covenants, conditions and restrictions is or shall be waived by the Agency by reason of this right to mortgage or grant a security interest in the Company's interest in the Premises, except as expressly provided herein.

If, in accordance with the immediately preceding paragraph, the Company, with respect to all or a portion of the Premises and/or the Company's successors and assigns (including, without limitation, any sublessee of the Company, but only with the Company's

prior written consent), shall mortgage or grant a security interest in the Company's interest in the Premises, and if, except as otherwise set forth below, the mortgagee shall send to the Agency and the Municipalities (pursuant to the notice provisions of Section 6.8 herein) a true copy of its mortgage, together with written notice specifying the name and address of the mortgagee, so long as such mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the holder to the Agency, the following provisions shall apply (in respect of such mortgage and of any other mortgages which also comply with the above):

- (1) The Company or any assignee of the Company shall cause the name of the mortgagee to be added to the loss payable endorsement of any and all fire and other casualty insurance policies to be carried by the Company in respect to the Premises, and all such policies shall state that the insurance proceeds are to be paid as provided in the mortgage. Any insurance proceeds in respect of the Premises shall be paid in the manner specified in the mortgage. If more than one mortgagee is named as an insured, the insurance proceeds will be paid to the mortgagee whose mortgage is prior in lien among those so named.
- (2) Any award or payment in condemnation or eminent domain in respect of the Premises shall be paid to the mortgagee to be applied in the manner specified in the mortgage. If more than one mortgage is in effect, the funds shall be paid to the mortgagee whose mortgage is prior in lien among those in effect.
- (3) No fire or casualty loss claims shall be settled and no agreement will be made in respect of any award or payment in condemnation or eminent domain except in accordance with the terms of the mortgage.
- (4) Any property insurance proceeds or condemnation awards received by the Agency shall be immediately be turned over to the mortgagee entitled to receive the same.
- (5) Simultaneously with the delivery of any notice of default or any other notice by the Agency to the Company hereunder, the Agency shall deliver a copy of such notice to each mortgagee of which it has notice. Each such mortgagee shall be entitled to cure such default for a period of 30 days beyond the relevant cure period established herein for cure of such default by the Company, provided that if such default cannot reasonably be cured during such period and such mortgagee is diligently pursuing such cure, then such mortgagee shall have such additional period of time to effect such cure as may reasonably be required. The Agency agrees to accept cure of any such default from such mortgagee. In the event of any monetary payment made by such mortgagee to the Agency to effect any such cure, such mortgagee shall be subordinated to all the rights and remedies of the Agency with respect to the obligation so paid by such mortgagee.

- (6) Any mortgagee shall have the right, but not the obligation, prior to such mortgagee succeeding to the interests of the Company in the Premises, to make any payments which the Company fails to make or perform any of the Company's covenants and agreements under this Agreement. No payment made by the mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of this Agreement; and the mortgagee having made any payment to the Agency pursuant to the Agency's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof, provided it shall have made demand therefor not later than one year after the date of such payment.
- (7) Any mortgagee under this Section 5.7 agrees that it is not a party to this Agreement and that any obligation of the Agency created under this Section is and shall be subject to the terms of the Lease Agreement.

ARTICLE VI

MISCELLANEOUS

Section 6.1 Assignment. The duties and obligations of the Company under this Agreement shall not be assigned without the written consent of the Agency. The rights of the Company under this Agreement are not assignable by the Company without the express consent of the Agency, and such rights shall not be construed as running with the Premises to any transferee of the Premises.

Section 6.2 Transfer of Premises. In the event that the Agency's interest in the Premises is transferred from the Agency to the Company or another entity, the provisions of New York State Real Property Tax Law §520 shall apply and the obligation of the Company hereunder to pay amounts (except those payable pursuant to Section 3.7 and amounts that have accrued and remain unpaid) shall be null and void with respect to the Premises.

Section 6.3 Change in Law. In the event that the Premises is declared to be subject to taxation by an amendment to the Act, by other legislative change, or by a final judgment of a court of competent jurisdiction, the obligation of the Company hereunder to pay amounts hereunder with respect to the Premises shall to such extent be null and void.

Section 6.4 Non-Recourse to Agency. Obligations arising out of this Agreement are solely the responsibility of the Company and not of the Agency and are payable out of receipts, funds or other monies of the Company.

Section 6.5 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard or giving effect to the principles of conflicts of laws thereof.

Section 6.6 Counterparts. This Agreement may be executed by one or more parties in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 6.7 PILOT Agreement to Run with the Land. This Agreement shall run with the land, both as respects benefits and burdens created herein, and shall be binding upon and inure to the benefit of the Agency, the Municipalities and the Company, and shall be binding upon the Agency and the Company, and their respective successors.

Section 6.8 Notices. All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed received, served or noticed, as applicable, when delivered by a commercially recognized overnight carrier service with a receipt evidencing same or when mailed by United States registered or certified mail, postage prepaid, return receipt requested, to the Agency, the Municipalities, the Lender and the Company listed below, as the case may be, addressed as follows:

(a) To the Agency:

Putnam County Industrial Development Agency
The Lawlor Building
2 Route 164
Patterson, New York 12563
Attention: Chairman

With a copy to:

Putnam County Attorney's Office
48 Gleneida Avenue
Carmel, New York 10512
Attention: County Attorney

(b) To the Municipality:

Town of Southeast
1360 Route 22
Brewster, New York 10509
Attention: Town Supervisor

With a copy to:

Town of Southeast
1360 Route 22
Brewster, New York 10509
Attn: Receiver of Taxes

(c) To the Company:

Ahana Hospitality LLC
26 Mill River Road
Stamford, Connecticut 06902
Attention: Anita Mehra

With a copy to:

Hogan & Rossi
3 Starr Ridge Road, Suite 200
Brewster, New York 10509
Attention: Michael T. Liguori, Esq.
Donald M. Rossi, Esq.

(d) To the County:

Hon. William Carlin
Commissioner of Finance
Putnam County
40 Gleneida Avenue
Carmel, New York 10512

(e) To the School District:

Brewster Central School District
Farm to Market Road
Brewster, New York 10509
Attention: Superintendent of Schools

(f) To the Lender:

Savoy Bank
600 Fifth Avenue, 17th Floor
New York, New York 10020
Attention: Blanca Garcia-Luciano

The Agency, each of the Municipalities, the Lender and the Company may, by notice given hereunder to each of the others, designate any further or different addresses to which the subsequent notices, certificates or other communications to them shall be sent.


Section 6.9 Severability. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this 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.

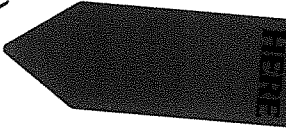
Section 6.10 Recording. The PILOT Mortgage shall be filed in the Office of the Putnam County Clerk, Division of Land Records of the County of Putnam pertaining to the real property described in Appendix A hereto.

[INTENTIONALLY LEFT BLANK]

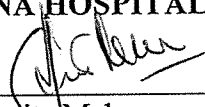
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names and on their behalf by their duly authorized officers, all as of the day and year first above written.

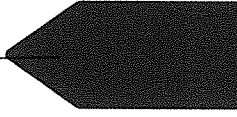
**PUTNAM COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
William H. Nulk
Chairman



AHANA HOSPITALITY LLC

By: 
Anita Mehra
Managing Member



APPENDIX A

Description of the Premises

[INSERT LEGAL DESCRIPTION OF 7-11 PEACH LAKE ROAD]

All that certain plot, piece or parcel of land situate, lying and being in the Town of Southeast, County of Putnam and State of New York being more particularly described as follows:

Beginning at a point on the westerly side of Route No. 121, aka State Highway No. 1842, where the same is intersected by the southwest side of US Route No. 6, aka State Highway No. 1455 and the southerly line of lands now or formerly of the City of New York and which point is the northeasterly corner of the parcel herein described; thence from said point of beginning along the westerly side of Route No. 121, aka State Highway No. 1842 S 20-52-21 E 69.33, S 20-52-50 E 173.36, S 0-58-10 W 309.65 and S 12-55-01 W 106.35 to a point on the northerly line of Interstate Route No. 503-3-3, aka Interstate Highway No. 84 and the southeasterly corner of the parcel herein described; thence along the northerly and easterly lines, respectively, of Interstate Route No. 503-3-3, aka Interstate Highway No. 84 N 77-06-30 W 223.97, N 77-06-30 W 16.46, N 46-44-59 W 617.81, N 46-44-59 W 33.19, N 37-57-10 W 806.82 and N 20-43-50 W 182.07 to a point on the southerly line of lands now or formerly of the City of New York; thence along the southerly line of lands now or formerly of the City of New York S 53-18-35 E 592.55, S 67-04-50 E 118.79 and S 67-01-40 E 681.17 to the point and place of beginning. Containing within said bounds 12.487 acres more or less.