Legal Counsel Approval _____

RL13-099

Introductory No. 013-73

Permanent No. 013-67

THE COUNCIL OF THE CITY OF BINGHAMTON
STATE OF NEW YORK

Date: October 9, 2013

Sponsored by Council Members: Webb, Motsavage, Matzo, Rennia, Mihalko, Berg, Papastrat

Introduced by Committee: Finance

ORDINANCE
entitled
AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO THE PAYMENT IN LIEU OF TAXES (PILOT) AGREEMENT WITH STELLAR 83 COURT, LLC

WHEREAS, on October 20, 2010, the Council of the City of Binghamton adopted Permanent Ordinance 10-51, entitled "An Ordinance authorizing a PILOT Agreement for the Midtown Mall", which legislation authorized a Payment in Lieu of Taxes ("PILOT") agreement with Stellar 83 Court, LLC (the "Company"); and

WHEREAS, thereafter the Company, the Broome County Industrial Development Agency and the City of Binghamton reviewed the form of the PILOT and agreed to make certain revisions; and

WHEREAS, the City of Binghamton wishes to approve the amended form of the PILOT agreement and the amended payment schedule, as outlined in the attached "Exhibit A".

NOW, THEREFORE, the Council of the City of Binghamton, duly convened in regular session, does hereby ordain as follows:

Section 1. That the Mayor, or his designee, is hereby authorized to enter into an amended PILOT agreement and payment schedule, approved as to form and content by the Office of Corporation Counsel and the Assessor of the City of Binghamton, with the Company and the Broome County Industrial Development Agency, in the form annexed hereto.

I hereby certify the above to be a true copy of the legislation adopted by the Council of the City of Binghamton at a meeting held on 10/9/13. Approved by the Mayor on 10/10/13.

Angela Holmes

Introductory No. 013-73

Permanent No. 013-67

Sponsored by City Council Members:
Webb, Motsavage, Matzo, Rennia, Mihalko, Berg, Papastrat

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO THE PAYMENT IN LIEU OF TAXES (PILOT) AGREEMENT WITH STELLAR 83 COURT, LLC

The within Ordinance was adopted by the Council of the City of Binghamton.

OCTOBER 9, 2013
Date

City Clerk

OCTOBER 10, 2013
Date Presented to Mayor

10/10/13
Date Approved

Mayor

	Ayes	Nays	Abstain	Absent
Motsavage	✓			
Mihalko	✓			
Rennia	✓			
Webb	✓			
Papastrat	✓			
Matzo	✓			
Berg	✓			
Total	7	0	0	0

☐ Code of the City of Binghamton

☑ Adopted ☐ Defeated

7 Ayes 0 Nays 0 Abstain 0 Absent

FIRST AMENDMENT TO
PAYMENT IN LIEU OF TAXES AGREEMENT
BY

STELLAR 83 COURT LLC

This First Amendment to Payment in Lieu of Taxes Agreement ("First Amendment") is made and entered into as of the 28th day of May, 2013, by and between STELLAR 83 COURT LLC (the "Company"), a limited liability company organized and existing pursuant to the laws of the State of Delaware, with offices at 60-01 31st Ave., Woodside, New York 11377; the CITY OF BINGHAMTON (the "City"), a municipal corporation located within the County of Broome and the State of New York, with offices at 38 Hawley Street, Binghamton, New York 13901; and the BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the "Agency"), a public benefit corporation organized and existing under the laws of the State of New York, with offices at 60 Hawley Street, P.O. Box 1510, New York 13902 (collectively, the "Parties").

BACKGROUND

Whereas, the Parties entered into a Payment in Lieu of Taxes Agreement ("PILOT") on December 2, 2010; and

Whereas, the Parties wish to extend the term of the PILOT by two (2) years.

Now, therefore, in consideration of the premises set forth above and the mutual covenants contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Paragraph 5 is hereby amended from " The Agency will lease the Project to the Company for a construction period through July 1, 2012, and a ten (10) year taxable term from July 1, 2013 through July 1, 2022" to " The Agency will lease the Project to the Company for a construction period through July 1, 2014, and a ten (10) year taxable term from July 1, 2015 through July 1, 2024".

2. Amount of PILOT is hereby amended form from "During the anticipated construction period in 2011 and 2012 and during the 10-year period commencing July 1, 2013, the Company agrees to pay to the Taxing Entities the amounts set forth in Exhibit A annexed hereto and made a part hereof. The amounts to be paid in Exhibit A provide a total to be paid and the amount and date to be paid to each of the Taxing Entities" to "During the anticipated construction period in 2013 and 2014 and during the 10-year period commencing July 1, 2015, the Company agrees to pay to the Taxing Entities the amount set forth in the First Amendment to Exhibit A attached hereto and made a part hereof.

3. All of the terms and agreements contained in the PILOT are hereby made a part of this instrument as though fully set forth herein. If the terms of the PILOT in any way conflict with the terms of this agreement, this agreement shall prevail.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be duly executed the dates set forth herein.

STELLAR 83 COURT LLC

By: STELLAR 60-01 LLC

By:_____
Lawrence Gladstone,
A Managing Member

CITY OF BINGHAMTON

By:_____
Matthew T. Ryan, Mayor

BROOME COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By:_____
Richard D'Attilio, Executive Director

STATE OF NEW YORK)
) SS.:
COUNTY OF Broome)

On this 4th day of June, in the year 2013, before me, the undersigned, personally appeared LAWRENCE GLADSTONE, 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.

Ruth L Fiaro
Notary Public

STATE OF NEW YORK)
) SS.:
COUNTY OF BROOME)

RUTH L FIARO
Notary Public - State of New York
NO. 01FI6244600
Qualified in Broome County
My Commission Expires 10/24/2014

On this _____ day of _____, in the year 2013, before me, the undersigned, personally appeared MATTHEW T. RYAN, 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 BROOME)

On this _____ day of _____, in the year 2013, before me, the undersigned, personally appeared RICHARD D'ATTILIO, 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

FIRST AMENDMENT TO EXHIBIT A DATED 5/28/2013

Assessment final roll date MD. /Year	Mid Town Mall 10 years with 2 years prep Beginning Assessment	years 1-7 @0% Pilot year with % of assessment NA- normal levies		Effective assessment	Effective City tax rate plus 3%/Yr.	Annual Payment to The City 37.235 x 1.03/y	Effective County tax rate plus 3%/Yr.	Annual Payment to The County 8.358 x 1.03/y	Schedule of Payment to City & County	Effective School tax rate plus 3%/Yr.	Annual Payment to The School 35.712 x 1.03/y	Schedule of payments to The School	<---- 7/1/2011 rate
7/1/2013	535,000.00		0%	535,000.00	39.503	$ 21,133.90	8.867	$ 4,743.85	1/1/2014	37.887	$ 20,269.47	9/1/2013	
7/1/2014	535,000.00		0%	535,000.00	40.688	$ 21,767.91	9.133	$ 4,886.16	1/1/2015	39.023	$ 20,877.55	9/1/2014	
7/1/2015	4,900,000.00	1 with 0%		535,000.00	41.908	$ 22,420.95	9.407	$ 5,032.75	1/1/2016	40.194	$ 21,503.88	9/1/2015	
7/1/2016	4,900,000.00	2 with 0%		535,000.00	43.166	$ 23,093.58	9.689	$ 5,183.73	1/1/2017	41.400	$ 22,149.00	9/1/2016	
7/1/2017	4,900,000.00	3 with 0%		535,000.00	44.461	$ 23,786.39	9.980	$ 5,339.24	1/1/2018	42.642	$ 22,813.47	9/1/2017	
7/1/2018	4,900,000.00	4 with 0%		535,000.00	45.794	$ 24,499.98	10.279	$ 5,499.42	1/1/2019	43.921	$ 23,497.87	9/1/2018	
7/1/2019	4,900,000.00	5 with 0%		535,000.00	47.168	$ 25,234.98	10.588	$ 5,664.40	1/1/2020	45.239	$ 24,202.81	9/1/2019	
7/1/2020	4,900,000.00	6 with 0%		535,000.00	48.583	$ 25,992.03	10.905	$ 5,834.33	1/1/2021	46.596	$ 24,928.89	9/1/2020	
7/1/2021	4,900,000.00	7 with 0%		535,000.00	50.041	$ 26,771.79	11.232	$ 6,009.36	1/1/2022	47.994	$ 25,676.76	9/1/2021	
7/1/2022	4,900,000.00	8 with 75%		1,225,000.00	51.542	$ 63,138.89	11.569	$ 14,172.55	1/1/2023	49.434	$ 60,556.36	9/1/2022	
7/1/2023	4,900,000.00	9 with 50%		2,450,000.00	53.088	$ 130,066.11	11.917	$ 29,195.45	1/1/2024	50.917	$ 124,746.09	9/1/2023	
7/1/2024	4,900,000.00	10 with 25%		3,675,000.00	54.681	$ 200,952.13	12.274	$ 45,106.97	1/1/2025	52.444	$ 192,732.71	9/1/2024	
					Total	$ 608,858.63		$ 136,668.20			$ 583,954.87		
									Grand Total		$ 1,329,481.70		
7/1/2025	4,900,000.00	11 with 0%		4,900,000.00	Taxes are calculated at this years levies				1.03				