

PAYMENT IN LIEU OF TAXES AGREEMENT ("PILOT")

Project: Safeway University Town Center

This Payment in Lieu of Taxes Agreement (this "**Agreement**"), is made this day of _____, 2013, by and between ECHO-UTC, LLC (the "**Contract Purchaser**"), and PRINCE GEORGE'S COUNTY, MARYLAND, a body corporate and politic (the "**County**").

WHEREAS, Section 7-516 of the Tax-Property Article of the Annotated Code of Maryland, as amended (the "**Act**") provides that the County may exempt or partially exempt an "**Economic Development Project**" within the meaning of the Act from County real property taxes under certain conditions; and

WHEREAS, the Contract Purchaser is contracted to purchase, on or before December 31, 2013, a parcel of land located in Prince George's County, Maryland within the municipal boundaries of the City of Hyattsville with a street address of 6401 America Boulevard and more particularly identified on Exhibit A attached hereto (the "**Property**"), as may be amended from time to time in accordance with Paragraph 12 of this Agreement; and

WHEREAS, the Contract Purchaser proposes to develop the Property into a mixed-use project consisting of an approximately 55,000 square foot Safeway grocery store and other separately demised commercial/retail, restaurant or office space totaling approximately 27,000 square feet, which is projected to add 102 full-time, permanent jobs upon its completion, including 76 jobs expected to be held by County residents; and

WHEREAS, the Contract Purchaser hereby represents that the Project will qualify under the provisions of said Act for an agreement for payments in lieu of County real property taxes upon the Property; and

WHEREAS, pursuant to Council Resolution No. _____ adopted on _____, 2013, the County Council approved the exemption of the Property from County real property taxes, and an agreement for payments in lieu of taxes for the Project, and authorized the County Executive to enter into such an agreement; and

WHEREAS, the County is entering into this Agreement for the payment of negotiated amounts in lieu of County real property taxes, provided that the Contract Purchaser complies with the terms of this Agreement and purchases the property on or before June 1, 2014.

NOW THEREFORE, THIS AGREEMENT WITNESSETH:

In consideration of the mutual covenants, terms and agreements hereof and pursuant to the power and authority of the Act, it is hereby agreed as follows:

1. The payments to be made by the Contract Purchaser to the County, provided for herein with respect to the Property, shall be in lieu of all County real property taxes on the Property under the Tax-Property Article of the Annotated Code of Maryland, as amended. Such payments shall be made by the Contract Purchaser and shall be accepted by the County only as long as the Contract Purchaser shall comply with all of its obligations under this Agreement and the requirements of the Act.

2. The Property shall be exempt from County real property taxes commencing on the date a certificate of occupancy for the tenancy of Safeway is issued and continuing each County tax year for 15 years thereafter (the “**Term**”).

3. During the Term, the Contract Purchaser will be obligated to pay an amount equal to 100% of the County real property taxes that would otherwise be due on or before September 30th of each year based on the assessed value of the Property (the “**Taxes**”).

4. The Parties agree that the negotiated Payment in Lieu of Taxes (the “**PILOT Amount**”) during the Term shall be calculated as follows: The PILOT shall include (a) the real property taxes assessed on the Property as of the July 1st date prior to the commencement of construction of the Project (the “**Pre-Use & Occupancy Taxes**”), currently assessed at \$16,870.56 plus (b) Forty percent (40%) of the Incremental Taxes that was collected from the Contract Purchaser on or before September 30th of each year above the Pre-Use and Occupancy Taxes.

5. During the Term, the County shall refund an amount equal to the Taxes paid by the Contract Purchaser less the PILOT Amount (the “**Refund**”) to the Contract Purchaser. The Refund shall be paid by the County to the Contract Purchaser no later than sixty (60) days after receipt of 100% of the real property taxes. If the County is in default with respect to any payment required under this Agreement, the Contract Purchaser may declare a default by providing written notice of such default to the County. If within 30 days of such notice the payments have not been brought current, then the Contract Purchaser may seek all available remedies in law and equity including, but not limited to, specific performance, and if so litigated, be entitled to all reasonable attorneys’ fees, litigation costs and expenses.

6. Each year after the expiration of the Term, the Contract Purchaser shall pay all County real property taxes on the Property when due and the County's obligations hereunder with respect to the Refund shall terminate.

7. All payments due under this Agreement shall be subject to the same interest rate, collection, and tax sale provisions of the Prince George's County Code as for the collection of County real property taxes, except as otherwise expressly set forth in this Agreement.

8. If the Contract Purchaser is in default for 60 days with respect to any payments or obligations required under this Agreement, the County may declare a default by providing written notice of such default to the Contract Purchaser. If within 30 days of such notice, the

payments have not been brought current, then the County may declare all taxes due as follows: a sum equal to the total current real property taxes which would have been due from the Contract Purchaser based on the current assessed value of the Property, plus all interest, if any, which may be assessed pursuant to Paragraph 7, less all amounts actually paid by the Contract Purchaser. If there is a default on the part of the Contract Purchaser, the County may either renegotiate this Agreement, or seek any other remedy available at law or in equity. All payments past due under this Agreement shall be considered a lien against the Property.

9. The payments in lieu of taxes shall at no time exceed the amount of County taxes otherwise payable on the Property based on the current assessment for County real property taxes.

10. During the Term, the Contract Purchaser shall not take any action with respect to the Project which would change its use as an Economic Development Project within the meaning of the Act, except as expressly permitted in writing by the County.

11. The Contract Purchaser has submitted a Minority Business Enterprise Plan which includes a goal of thirty-five percent (35%) for local business enterprise (LBE), minority business enterprise (MBE) and local minority business enterprise (LMBE), with a minimum LBE, MBE or LMBE participation of twenty-five percent (25%) of the Contract Purchaser's total project building costs, site work costs, and related construction services, as depicted in the project pro forma. The Parties agree that no less than fifteen (15%) of the Contract Purchaser's total project building costs, site work costs, and related construction services must be allocated to LBEs or LMBEs. The Plan has also been approved by the County's Minority Business Compliance Officer (Exhibit B).

12. Until the earlier of the end of the Term or ratification of any foreclosure sale, this Agreement shall be binding upon and shall inure to the benefit of the parties and their successors and assigns and shall bind and run with the Property; provided, however, that in the event of foreclosure by the holder of any mortgage or deed of trust on the Property, the foreclosing party shall have the option to continue this Agreement by written election filed among the Land Records of Prince George's County, but only if the purchaser at said foreclosure sale shall assume in writing the terms and conditions of this Agreement. The written assumption shall be delivered to the County in accordance with Paragraph 16 of this Agreement.

13. Exhibit A may be amended from time to time to take into account the future subdivision of the Property. If, as a result of the subdivision of the Property, there are new parcels (within the boundaries of the Property), such parcels shall be identified in a new Exhibit A provided by the Owner to the County and attached to this Agreement.

14. On or before December 1st of each year, commencing in the year 2014, the Contract Purchaser agrees to supply such information as may be reasonably required by the County in order to comply with its reporting requirements under the Act.

15. This Agreement shall not waive or defer the payment of other County taxes, assessments and fees, including but not limited to sanitation taxes, County solid waste service charges, or other taxes assessed by entities or jurisdictions other than the county, including but not limited to State of Maryland taxes, municipal taxes, the Washington Suburban Sanitary Commission, Washington Suburban Transit Commission and the Maryland-National Capital Park and Planning Commission.

16. All notices or other communication required to be given or authorized to be given pursuant to this Agreement shall be in writing and shall be delivered or sent by registered or certified mail, postage prepaid, or by hand delivery to:

County: Office of the County Executive
14741 Governor Oden Bowie Drive, 5th Floor
Upper Marlboro, Maryland 20772
Attention: Thomas Himler, Deputy Chief Administrative Officer
for Budget, Finance and Administration

With a copy to: Prince George's County Office of Law
14741 Governor Oden Bowie Drive, 5th Floor
Upper Marlboro, Maryland 20772
Attention: County Attorney

Contract Purchaser: ECHO-UTC, LLC
Attn: Howard Biel
2176 Wisconsin Avenue, N.W.
Suite 200
Washington, D.C. 20007
HBiel@echorealty.com

With a copy to: Matthew C. Tedesco, Esq.
McNamee, Hosea, Jernigan, Kim, Greenan & Lynch, P.A.
6411 Ivy Lane, Suite 200
Greenbelt, Maryland 20770
MTedesco@mhlawyers.com

or at such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this Paragraph.

17. This Agreement shall be governed and construed in accordance with the laws of the State of Maryland, and any action for enforcement shall be brought in the Circuit Court for Prince George's County.

18. If any clause, covenant, paragraph or provision herein shall be declared fully or partially invalid or unenforceable, the remaining clauses, covenants, paragraphs and provisions shall remain enforceable and valid to the fullest extent permitted by law.

19. This Agreement constitutes the full and complete agreement (between/among) the parties, and no amendments thereto shall be valid, except in writing and dully approved and executed by the parties.

20. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and date first above written.

WITNESS:

ECHO-UTC, LLC

By:

Howard Biel
Sr. Vice President of Development

WITNESS:

PRINCE GEORGE'S COUNTY, MARYLAND

By:

Thomas Himler, Deputy Chief
Administrative Officer for Budget, Finance,
and Administration

APPROVED FOR LEGAL FORM AND SUFFICIENCY:

OFFICE OF THE COUNTY ATTORNEY

EXHIBIT A

PROPERTY DESCRIPTION

Address: 6401 America Boulevard
Hyattsville, Maryland 20782

Legal Description: Parcel S

Tax ID: 17-3720745

Property Land Area: 3.49 acres

Primary Structure Built: Not Applicable

Assessed Value – Base: \$2,075,100

EXHIBIT B
MINORITY BUSINESS ENTERPRISE PLAN