

**CITY OF HORNELL INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**RIEDMAN HORNELL LLC**

---

**PAYMENT IN LIEU OF TAX AGREEMENT**

---

**Street Address:**  
Fairlawn Avenue  
City of Hornell  
County of Steuben  
State of New York

**Tax Map Numbers:**  
Part of 166.05-01-002.000  
Part of 166.05-01-006.000

**Affected Taxing Jurisdictions:**  
County of Steuben  
City of Hornell  
Hornell City School District

Dated as of June 8, 2017

## PAYMENT IN LIEU OF TAX AGREEMENT

**THIS PAYMENT IN LIEU OF TAX AGREEMENT**, dated as of the 8<sup>th</sup> day of June, 2017 (the "PILOT Agreement"), is by and between the **CITY OF HORNELL INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York with offices at 40 Main Street, Hornell, New York 14843 (the "Agency") and **RIEDMAN HORNELL LLC**, a New York limited liability company having offices at 45 East Avenue, Rochester, New York 14604 (the "Company").

### WITNESSETH:

WHEREAS, the Agency was created by Chapter 670 of the Laws of 1974 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has requested the Agency's assistance with a certain project (the "Project") consisting of: (i) the acquisition by the Company of fee title to, with reservation by the Agency of a leasehold or other interest in, (a) approximately three (3) acres of real property located on Fairlawn Avenue, City of Hornell, Steuben County, New York (being more particularly identified as part of tax map number 166.05-01-002.000) ("Parcel B-1") and (b) approximately six (6) acres of real property located at Fairlawn Avenue, City of Hornell, Steuben County, New York (being more particularly identified as part of tax map number 166.05-01-006.000) ("Parcel C-1" and "Parcel C-2"; and collectively with Parcel B-1, the "Land", as each is described and identified on Exhibit A, attached hereto), (ii) (a) the construction and equipping on the Land of a market-rate apartment community containing ten (10) two-story buildings with six (6) units each, containing in the aggregate approximately sixty (60) residential units of various sizes, plus accessory buildings for garages for each residential unit thereon, (b) buildings for an office and for a maintenance facility and (c) related amenities (collectively, the "Improvements"); and (iii) the acquisition and installation by the Company in and around the Land and the Improvements of certain items of equipment and other tangible personal property (collectively, the "Equipment"; and, together with the Land and the Improvements, the "Facility"); and

WHEREAS, in order to induce the Company to acquire, renovate, construct and equip the Facility, the Agency is willing to take a leasehold interest in the Land, the Improvements, and the Equipment constituting the Facility pursuant to the terms and conditions of a certain Lease Agreement dated as of August 31, 2017 (the "Lease Agreement") and lease said Land, Improvements and Equipment constituting the Facility back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement dated as of August 31, 2017 (the "Leaseback Agreement"); and

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

service charges against real property which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes by the Company to the Agency for the benefit of Steuben County, New York (the "County"), the City of Hornell, New York (the "City") and the Hornell City School District (the "School District" and, collectively with the County, and the City, the "Affected Tax Jurisdictions").

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

Section 1 - Payment in Lieu of Ad Valorem Taxes:

Section 1.1 A. Subject to the completion and filing by the Agency by the taxable status date (**January 1, 2018**) (the "Taxable Status Date") of New York State Form RP-412-a "Application For Real Property Tax Exemption" (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law (the "RPTL") and Section 874 of the Act and the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review, the Facility shall be exempt from Real Estate Taxes (as defined below) commencing with the **2019** County tax year, the **2018-2019** City tax year and the **2018-2019** School District tax year. For purposes of the foregoing, "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the County, the City and the School District. The Company shall provide the Agency with the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Leaseback Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; and (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes.

B. As long as the Facility is owned by or leased to the Agency or under its jurisdiction, control or supervision, the Company shall pay, or cause to be paid, on or before January 1 of each calendar year (the "Payment Date"), an amount equal to the Total PILOT Payment, as described on Schedule A attached hereto (the "Total PILOT Payment"), to the Agency at 40 Main Street, Hornell, New York 14843, or at such other address as shall be designated from time to time by the Agency, on behalf of the Affected Tax Jurisdictions, commencing on or before January 1, 2019. The Company shall make all such payments on or

before the Payment Date regardless of whether the Agency, the Affected Tax Jurisdictions or any other party invoices the Company therefor.

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

1.2 Allocation. The Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to an alternative allocation.

1.3 Tax Rates. For purposes of determining the allocation of the Total PILOT Payment among the Affected Tax Jurisdictions, the Agency shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County and special district purposes, the tax rates used to determine the allocation of the Total PILOT Payment shall be the tax rates relating to the calendar year which includes the Payment Date. For City and School District purposes, the tax rates used to determine the Total PILOT Payment shall be the rate relating to the City budget and the School District year which includes the Payment Date.

1.4 Valuation of Future Additions to the Facility: If there shall be a future addition to the Facility constructed or added in any manner after the date of this PILOT Agreement, the Company shall notify the Agency of such future addition (the "Future Addition"). The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the Agency may thereafter request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for the payment of an increase in the Total PILOT Payment (the "Increased PILOT Payment"). The Agency shall notify the Company of any proposed increase in the Total PILOT Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Additions made by the Agency, then and in that event, valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the Increased PILOT Payment until a different Total PILOT Payment shall be established. If a lesser Total PILOT Payment is determined in any proceeding or by subsequent agreement of the parties, the Total PILOT Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the next succeeding PILOT payment(s).

1.5 Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the 2019 County tax year through the 2038 County tax year, (ii) the 2018-2019 City tax year through the 2037-2038 City tax year and (iii) the 2018-2019 School District tax year through the 2037-2038 School District tax year. **This PILOT Agreement shall expire on December 31, 2038.** In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this PILOT Agreement executed by both parties after any applicable public

hearings. The Company agrees that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b of the RPTL. It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

Section 2 - Special District Charges, Special Assessments and other Charges. Special district charges, special assessments, and special ad valorem levies (specifically including but not limited to fire district charges), and pure water charges and sewer charges are to be paid in full by the Company in accordance with normal billing practices.

Section 3 - Transfer of Facility. In the event that the Facility is transferred from the Agency to the Company, and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section 1 herein, or this PILOT Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

Section 4 - Assessment Challenges.

4.1 The Company shall not have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Facility, with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions and likewise shall not be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall not be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this PILOT Agreement, as if and to the same extent as if the Company were the owner of the Facility.

4.3 The Company shall cause the appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply tax rates to the respective assessments as if the Facility were owned by the Company, and shall file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

Section 5 - Changes in Law. To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final

judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

#### Section 6 - Events of Default.

6.1 The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section 1 hereof within thirty (30) days of the Payment Date (the "Delinquency Date"); (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; or (iii) the occurrence and continuance of any event of default under the Lease Agreement or the Leaseback Agreement after any applicable cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions), pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the Act and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

6.2 If payments pursuant to Section 1 and Section 2 herein are not made by the Delinquency Dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows. With respect to payments to be made pursuant to Section 1 herein, if said payment is not received by the Delinquency Date, the Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, the Company shall pay, in addition to said payment, the greater of the applicable penalties and interest incurred hereunder or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

Section 7 - Assignment. No portion of any interest in this PILOT Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency, which shall not be unreasonably withheld, conditioned or delayed.

#### Section 8 - Miscellaneous.

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

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

To the Agency: City of Hornell Industrial Development Agency  
40 Main Street  
Hornell, New York 14843  
Attn.: James W. Griffin, Executive Director

With a copy to: Harris Beach PLLC  
99 Garnsey Road  
Pittsford, New York 14534  
Attn.: Shawn M. Griffin, Esq.

To the Company: Riedman Hornell LLC  
45 East Avenue  
Rochester, New York 14604  
Attn.: David J. Riedman, Managing Member

With a copy to: Woods Oviatt Gilman LLP  
700 Crossroads Building  
2 State Street  
Rochester, New York 14614  
Attn.: W. Stephen Tierney, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

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

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

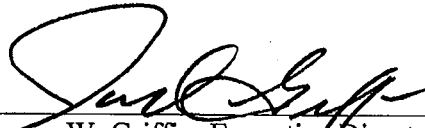
such members, officer, agents (other than the Company), servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this PILOT Agreement.

*[Remainder of this Page Intentionally Left Blank; Signature Page to Follow]*

**[Signature Page to PILOT Agreement]**

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

**CITY OF HORNELL INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
James W. Griffin, Executive Director

**RIEDMAN HORNELL LLC**

By: \_\_\_\_\_  
David J. Riedman, Manager

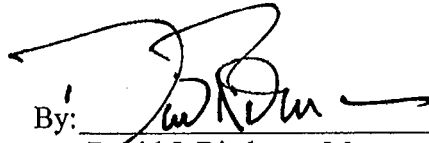
[Signature Page to PILOT Agreement]

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

**CITY OF HORNELL INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
James W. Griffin, Executive Director

**RIEDMAN HORNELL LLC**

By:  \_\_\_\_\_  
David J. Riedman, Manager

**SCHEDULE A**

**PILOT Agreement dated as of June 8, 2017  
by and between the City of Hornell Industrial Development  
Agency and Riedman Hornell LLC**

"Total PILOT Payment" shall mean an amount equal to (A) the Assessed Value (as such term is defined below) of the Facility *multiplied* by the then existing tax rate for the applicable Affected Tax Jurisdiction (after application of any applicable equalization rate) *reduced* by the Percentage Abatement set forth in the table below, plus (B) the assessed value of all Future Additions (determined in accordance with Section 1.4 of this PILOT Agreement), *multiplied* by the then existing tax rate for the applicable Affected Tax Jurisdiction (after application of any applicable equalization rate).

<b>PILOT Year</b>	<b>County Tax Year</b>	<b>City Tax Year</b>	<b>School District Tax Year</b>	<b>Percentage Abatement</b>
Year 1	2019	2018-2019	2018-2019	100%
Year 2	2020	2019-2020	2019-2020	95%
Year 3	2021	2020-2021	2020-2021	90%
Year 4	2022	2021-2022	2021-2022	85%
Year 5	2023	2022-2023	2022-2023	80%
Year 6	2024	2023-2024	2023-2024	75%
Year 7	2025	2024-2025	2024-2025	70%
Year 8	2026	2025-2026	2025-2026	65%
Year 9	2027	2026-2027	2026-2027	60%
Year 10	2028	2027-2028	2027-2028	55%
Year 11	2029	2028-2029	2028-2029	50%
Year 12	2030	2029-2030	2029-2030	45%
Year 13	2031	2030-2031	2030-2031	40%
Year 14	2032	2031-2032	2031-2032	35%
Year 15	2033	2032-2033	2032-2033	30%
Year 16	2034	2033-2034	2033-2034	25%
Year 17	2035	2034-2035	2034-2035	20%
Year 18	2036	2035-2036	2035-2036	15%
Year 19	2037	2036-2037	2036-2037	10%
Year 20	2038	2037-2038	2037-2038	5%
Year 21 and Thereafter...Full Taxes				

During the entire term of this PILOT Agreement, the "Assessed Value" of the Facility shall be Two Million Four Hundred Thousand and 00/100 Dollars (\$2,400,000.00).

The abatement schedule shall allow for a 100% exemption from taxation for the Facility in first (1<sup>st</sup>) PILOT Year, with such exemption thereafter being eliminated in a five percent (5%) increment for each PILOT Year and after the twentieth (20<sup>th</sup>) PILOT Year, the Facility shall be subject to full taxation by the Affected Taxing Jurisdictions.

Exhibit A

**Property Description**

**Property Address:** Part of Fairlawn Avenue, City of Hornell, New York  
**Tax Account Number:** Part of 166.05-01-002.000

**Parcel B- 1 Surveyors Description:**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Hornell, County of Steuben and State of New York, bounded and described as follows:

Beginning at a point on the westerly boundary of Fairlawn Avenue S 04° 29' 09" W a distance of 50.02 feet from an Iron Pin Found on the westerly right of way boundary of Fairlawn Avenue.

Thence S 04° 29' 09" W a distance of 737.66 feet along the westerly boundary of Fairlawn Avenue.

Thence N 84° 37' 48" W a distance of 175.02 feet.

Thence N 04° 29' 09" E a distance of 730.59 feet.

Thence S 86° 56' 50" E a distance of 175.05 feet to a point intersecting the westerly boundary of Fairlawn Avenue and the point and place of beginning.

CONTAINING 2.949 acres of land more or less.

Together With The Following:

**Property Address:** Part of Fairlawn Avenue, City of Hornell, New York  
**Tax Account Number:** Part of 166.05-01-006.000

**Parcel C - 1 Surveyors Description:**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Hornell, County of Steuben and State of New York, bounded and described as follows:

Beginning at a Iron Pin Found on the easterly right of way boundary of Fairlawn Avenue.

Thence S 89° 03' 51" E a distance of 148.73 feet.

Thence S 04° 28' 48" W a distance of 154.88 feet.

Thence N 85° 31' 12" W a distance of 186.79 feet to a point intersecting the easterly boundary of Fairlawn Avenue.

Exhibit A-1

Thence N 04° 29' 05" E a distance of 47.46 feet along the easterly boundary of Fairlawn Avenue.

Thence N 25° 44' 09" E a distance of 105.33 feet along the easterly boundary of Fairlawn Avenue to the point and place of beginning.

CONTAINING 0.597 acres of land more or less.

Together With The Following:

**Property Address:** Part of Fairlawn Avenue, City of Hornell, New York  
**Tax Account Number:** Part of 166.05-01-006.000

**Parcel C - 2 Surveyors Description:**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Hornell, County of Steuben and State of New York, bounded and described as follows:

Beginning at a point on the easterly boundary of Fairlawn Avenue N 04° 29' 05" E a distance of 97.46 feet and N 25° 44' 09" E a distance of 105.33 from a Iron Pin Found on the easterly right of way boundary of Fairlawn Avenue.

Thence S 85° 31' 12" E a distance of 186.80 feet.

Thence S 04° 28' 48" W a distance of 488.86 feet.

Thence S 85° 31' 12" E a distance of 140.00 feet.

Thence S 04° 28' 48" W a distance of 188.89 feet.

Thence S 19° 22' 41" W a distance of 277.85 feet.

Thence N 86° 56' 51" W a distance of 255.52 feet to a point intersecting the easterly boundary of Fairlawn Avenue.

Thence N 04° 29' 05" E a distance of 952.63 feet along the easterly boundary of Fairlawn Avenue to the point and place of beginning.

CONTAINING 5.327 acres of land more or less.

Exhibit A-2

# Property Identification

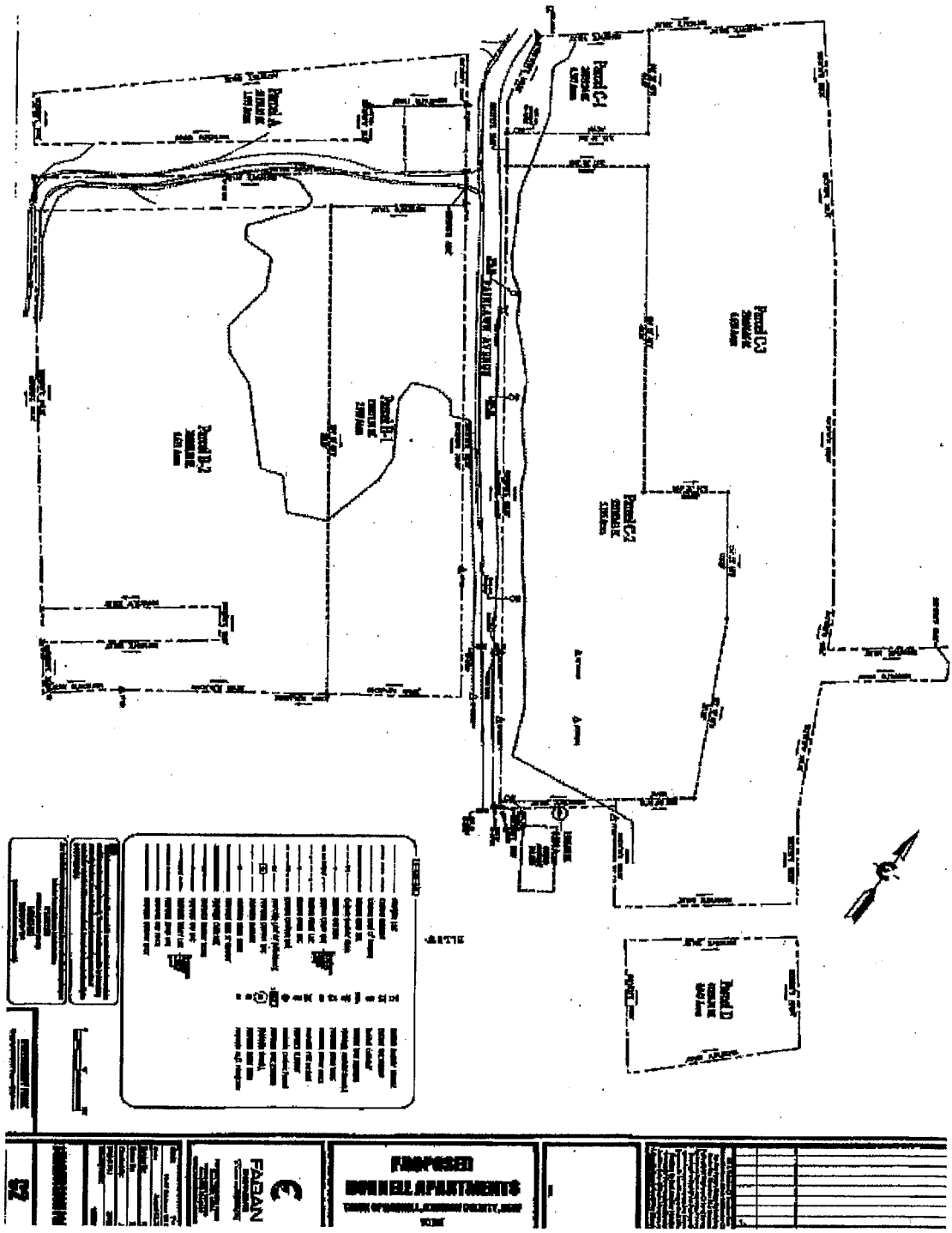


Exhibit A-3