

**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

**JEFFERSON COUNTY FOUNDATION, INC.,  
a West Virginia Non-Profit Corporation,**

*Plaintiff,*

v.

**CIVIL ACTION NO.:** \_\_\_\_\_

**WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY,  
a Public Corporation of the State of West Virginia, and  
ROXUL USA, INC. d/b/a ROCKWOOL,  
a Delaware Corporation,**

*Defendants.*

**COMPLAINT FOR DECLARATORY JUDGMENT**

The Plaintiff, Jefferson County Foundation, Inc. (“JCF”), by counsel, Christopher P. Stroeck, Esq., Robert M. Bastress, Jr., Esq., Robert M. Bastress, III, Esq., and the law firm of DiPiero, Simmons, McGinley & Bastress, PLLC, pursuant to W.Va. Code § 55-13-1, et seq. (2019), and other applicable law, hereby bring the following Complaint against the West Virginia Economic Development Authority (“WVEDA”) and Roxul USA, Inc. d/b/a Rockwool (“Rockwool”). Plaintiff requests that this Court declare a resolution and related actions taken by the WVEDA, specifically to authorize the issuance of revenue bonds for the benefit of Rockwool, and in exchange for certain commercial facilities and equipment owned by Rockwool, to be unconstitutional for the reasons set forth herein. Plaintiff alleges the following in support of this Complaint:

**The Parties**

1. Plaintiff JCF is a West Virginia 501(c)(3) Non-Profit Corporation, formed for the purpose of preserving and protecting the quality of life for all Jefferson County, West Virginia residents. JCF has a primary business address of P.O. Box 460, Ranson, West Virginia, 25438.

2. JCF educates and advocates for effective and accountable government, sustainable development, and the protection of health, heritage, and the environment. It has a current priority focus of ensuring the accountability of all government entities that are involved in and responsible for the location, construction, permitting, and operation of the proposed Rockwool industrial facility in Jefferson County.

3. JCF has a Board of Directors consisting of three (3) members, who all own real and/or personal property in Jefferson County, West Virginia, and who pay related property taxes for the same. This Action is being brought by the Directors, on behalf of the organization, in both their individual capacities as taxpayers and organizational capacities as Directors.

4. Defendant WVEDA is a public body organized pursuant to W.Va. Code § 31-15-1, et seq. (2019).

5. Defendant Rockwool, a Delaware Corporation, is a manufacturer of stone wool insulation, and offers a full range of insulation products for the retail, commercial and industrial markets. Rockwool is a private, for profit entity that does not serve any public purpose.

#### **Jurisdiction and Venue**

6. Jurisdiction and venue are both proper in Kanawha County, West Virginia, as the Defendant WVEDA is located herein.

#### **Undisputed Facts**

7. Rockwool plans to construct, own and operate a heavy industrial manufacturing facility (the "Facility") on a parcel of real property comprising at least 130-acres on a 400-acre tract of real property located in the City of Ranson, in the vicinity of West Virginia State Route 9, in Jefferson County, West Virginia, known as Jefferson Orchards (the "Land" or the "Site").

8. The Land and the Facility, and the cost of equipping the Facility, including the acquisition and installation of new machinery and equipment therein (the "Equipment"), are collectively referred to herein as the "Project."
9. Rockwool and various local, county and state entities have agreed to work together to ensure that Rockwool will be permitted to operate.
10. Rockwool and certain Jefferson County agencies executed a Payment in Lieu of Taxes Agreement ("PILOT"), that purported to exempt Rockwool from paying ad valorem taxes on its real and personal property. *See* PILOT attached hereto as Exhibit A.
11. Pursuant to the PILOT, legal title in the Project would have been acquired by the Jefferson County Development Authority ("JCDA") from Rockwool for the JCDA to hold for an estimated period of nine (9) years, starting at the conclusion of the construction period, which was expected to last three (3) years from Rockwool's acquisition of the Land, subject to a repurchase option reserved by Rockwool.
12. Pursuant to the PILOT, during this entire time period, Rockwool's real and personal property, temporarily held by the JCDA, would have been exempt from ad valorem property taxation.
13. For the same reasons as set forth herein, the PILOT was challenged as being unconstitutional in the Jefferson County Circuit Court.
14. The Circuit Court determined, in part, that the PILOT was invalid as the JCDA, the public body statutorily authorized to enter into a PILOT, was not a proper signatory to the PILOT.
15. Simultaneously, upon information and belief, Rockwool approached the WVEDA to secure certain funding for the construction of the Facility.

16. On May 2, 2019, the WVEDA passed a RESOLUTION AUTHORIZING THE ISSUANCE OF BONDS BY THE WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY TO BE EXCHANGED FOR CERTAIN COMMERCIAL FACILITIES AND EQUIPMENT OWNED BY ROXUL USA INC. D/B/A ROCKWOOL (“RESOLUTION”). *See* RESOLUTION attached hereto as Exhibit B.

17. Pursuant to the RESOLUTION, the WVEDA agreed to issue certain revenue bonds, with the proceeds payable to Rockwool, in an amount not to exceed One Hundred and Fifty Million Dollars (\$150,000,000.00), in exchange for the Project property pursuant to agreed-upon terms and conditions.

18. Pursuant to the RESOLUTION, the Project property would be leased to Rockwool by the WVEDA for a term not to exceed the term of the bonds and for lease payments equal to the debt service payments on the bonds, and otherwise on such agreed-upon terms and conditions.

19. Pursuant to the RESOLUTION, Rockwool will have an option to purchase the Project property from the WVEDA for One Dollar (\$1.00) at the end of the lease term.

20. Upon information and belief, the WVEDA’s interest in the real and personal property that supports the Project will be exempt from ad valorem property taxation. As a result, Rockwool will not have to pay the same real and personal property taxes as assessed against all other Jefferson County citizens and businesses.

**COUNT I - Violation of Article X, Section 1 of the West Virginia Constitution**

21. Plaintiff incorporates by reference all Paragraphs as if fully set forth herein.

22. The conduct and actions of the Defendant WVEDA, as aforesaid, violate Article X, Section 1 of the West Virginia Constitution, which provides that all property shall be taxed

equally, and violate Article 11, Section 3, Chapter 9 of the West Virginia Code of 1931, as amended, as not being one (1) of the authorized articulated exceptions from ad valorem taxation.

23. As a direct and proximate result thereof, the Plaintiff and other Jefferson County citizens, have been or will be substantially injured and damaged, by the Defendant's creation of a form of unequal taxation.

24. The Plaintiff has no other adequate remedy at law.

**COUNT II - Chapter 31, Article 15, Section 7 of the West Virginia Code of 1931, as amended, is, on its face, vague, overly broad, irrational, unreasonable and/or violates Plaintiffs' rights under Article III, Section 10 and Article X, Section I of the West Virginia Constitution**

25. Plaintiff incorporates by reference all Paragraphs as if fully set forth herein.

26. Chapter 31, Article 15, Section 7 of the West Virginia Code of 1931, as amended, is, on its face, vague, overly broad, irrational, unreasonable and/or violates Plaintiff's rights under Article III, Section 10 and Article X, Section 1 of the West Virginia Constitution.

27. The conduct of the Defendants, as aforesaid, under the purported authority of Chapter 31, Article 15, Section 7 of the West Virginia Code of 1931, as amended, is an attempt to allow for unequal taxation and is a tax sham upon the citizens of the State of West Virginia.

28. As a direct and proximate result thereof, the Plaintiff has been, or will be, substantially injured and damaged in that the Defendants are perpetrating a form of unequal taxation.

29. The Plaintiff has no other adequate remedy at law.


**Relief Sought**

WHEREFORE, Plaintiff prays that:

- A. The Court declare that the conduct of the Defendants, as aforesaid, violates Article X, Section 1 and 6 of the West Virginia Constitution of 1931, as amended;

- B. The actions of the Defendant WVEDA be declared null and void, of no effect, and not authorized by law;
- C. The Court declare that Chapter 31, Article 15, Section 7 of the West Virginia Code of 1931, as amended is, on its face, vague, overly broad, irrational, unreasonable And/or violates Plaintiff's rights under Article III, Section 10 and Article X, Section 1 of the West Virginia Constitution;
- D. The Plaintiff recovers reasonable attorneys' fees and costs; and
- E. For such other and further relief as the Court deems appropriate.

**JEFFERSON COUNTY FOUNDATION, INC.**  
**Plaintiff, By Counsel**

  
/s/Christopher P. Stroeck  
Christopher P. Stroeck, Esq. (WVSB #9387)  
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/s/Robert M. Bastress, III  
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Charleston, WV 25326  
304-342-0133  
rob.bastress@dbdlawfirm.com

*Counsel for Plaintiff*

TO PICK UP  
JEFFERSON COUNTY DEVELOPMENT AUTHORITY

Jefferson County  
Jacqueline C Shadle, Clerk  
Instrument 201700016957  
10/10/2017 @ 11:06:07 AM  
AGREEMENT NO CHANGE  
Book 1197 @ Page 106  
Pages Recorded 15

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS AGREEMENT is made and entered into this the 3<sup>rd</sup> day of October, 2017, by ROXUL USA Inc. (herein "Company"); THE COUNTY COMMISSION OF JEFFERSON COUNTY, West Virginia (herein the "Commission"); the BOARD OF EDUCATION OF THE COUNTY OF JEFFERSON, West Virginia (herein the "County Board"); the SHERIFF OF JEFFERSON COUNTY, WEST VIRGINIA, (herein the "Sheriff"); the ASSESSOR OF JEFFERSON COUNTY, WEST VIRGINIA, (herein the "Assessor") and the RANSON CITY COUNCIL, West Virginia, (herein City of Ranson).

RECITALS

1. Company desires to develop a heavy industrial manufacturing facility (the "Facility") on an approximately one hundred and thirty acre (130) acre parcel of land (the "Land") located in the City of Ranson, Jefferson County, West Virginia, and more particularly described in Exhibit A attached hereto and made a part hereof, which Land may be purchased by Company pursuant to a letter of intent it holds.
2. The Land and the Facility, and the cost of equipping the Facility, including the acquisition and installation of new machinery and equipment therein (the "Equipment"), are collectively referred to herein as the "Project".
3. Pursuant to this Agreement legal title in the Project will be acquired by JCDA from Company for JCDA to hold starting with the conclusion of the construction period which is expected to be three (3) years from Company's acquisition of the Land, subject to a repurchase option reserved by Company.
4. Also pursuant to this Agreement, the Project will be leased by JCDA back to Company pursuant to a Lease Agreement to be entered into upon completion of construction of the Project ("the Lease").
5. Pursuant to the Lease, Company will be required to pay, as additional advance rent, all costs in connection with the acquisition and construction of the Facility and the installation of the Equipment, which additional advance rent will be paid by Company's remittance directly to the contractors and vendors of such sums it may owe them for providing the same.
6. During the term of the Lease, JCDA will own the real and personal property which comprises the Project, subject to the Lease and other rights and interests aforesaid.
7. Pursuant to the Lease, title to any property constituting improvements, repairs, alterations, renewals, substitutions and replacements of, and additions and appurtenances to, the Project or any part thereof, when made or installed in or about the Project shall, subject to the Lease and the other rights and interests, immediately become vested in JCDA without further action on its part.

EXHIBIT

A

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8. During the term of the Lease, JCDA's freehold interest in the real and personal property which comprise the Project, and which is covered by the Lease, will be, by law, exempt from ad valorem property taxes.

9. Company has agreed to make payments of certain amounts in lieu of ad valorem property taxes and the Commission, the County Board and City of Ranson have agreed to the acquisition, construction and equipping of the Project.

NOW, THEREFORE WITNESSETH, for and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I  
REPRESENTATIONS AND WARRANTIES, ETC.

Section 1.01. Commission Representations, Warranties, Agreements and Findings.

The Commission hereby represents, warrants, agrees, finds and confirms its findings that:

(a) The Commission is a public corporation, acting on behalf of the County of Jefferson, a political subdivision of the State of West Virginia (the "State"), validly created and existing under the Constitution and laws of the State, and is authorized and empowered by the provisions of the Constitution and laws of the State to enter into this Agreement.

(b) The Commission has found, and hereby finds, that the agreements herein contained and the consummation of the transactions in connection herewith will promote the public interest and public purposes by, among other things, providing certainty and soundness in fiscal planning and promoting the present and prospective prosperity, health, happiness, safety and general welfare of the people of Jefferson County.

(c) The execution of this Agreement and the consummation of the transactions in connection herewith and therewith, have been approved by the Commission at one or more duly called and constituted meetings, throughout which quorums of duly elected, qualified and acting members of the Commission were present and acting. The Commission's agreement to the acquisition, construction and equipping of the Project and its authorization for the execution of this Agreement are embodied in a Resolution adopted on August 3, 2017.

Section 1.02. County Board Representations, Warranties, Agreements and Findings.

The County Board hereby represents, warrants, agrees, finds and confirms its findings that:

(a) The County Board is a public corporation of the State of West Virginia and has the power and authority to enter into the transaction contemplated by this Agreement.

(b) The County Board has found, and hereby finds, that the agreements herein contained and the consummation of the transactions in connection herewith will promote the public interest and public purposes by, among other things, providing certainty and soundness in



fiscal planning and promoting the present and prospective prosperity, health, happiness, safety and general welfare of the public school students in Jefferson County.

(c) The agreement to the acquisition, construction and equipping of the Project, and the authorization for the execution of this Agreement, by the County Board are embodied in a Resolution adopted on Sept 25, 2017

Section 1.03. Sheriff Representations, Warranties, Agreements and Findings.

The Sheriff hereby represents, warrants, agrees, finds, and confirms his findings that:

(a) Pursuant to W.Va. Code §§ 11A-1-1 et. seq., he is the officer responsible for collecting ad valorem property taxes levied in Jefferson County, West Virginia, and for disbursing the payments provided for in this Agreement.

(b) The Sheriff has the power to enter into this Agreement and to carry out his obligations hereunder.

(c) To the knowledge of the Sheriff, no consent, or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Sheriff is required as a condition precedent to the execution, delivery or performance of this Agreement by the Sheriff or as a condition precedent to the performance by the Sheriff of his duties contemplated hereby.

Section 1.04. Assessor Representations, Warranties, Agreements and Findings.

The Assessor hereby represents, warrants, agrees, finds, and confirms his findings that:

(a) Pursuant to W.Va. Code § 11-3-1 et seq., he is the officer responsible for assessing properties in Jefferson County, West Virginia, for ad valorem property tax purposes.

(b) The Assessor has the power to enter into this Agreement and to carry out his obligations hereunder.

(c) To the knowledge of the Assessor, no consent, or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Assessor is required as a condition precedent to the execution, delivery or performance of this Agreement by the Assessor or as a condition precedent to the making of the findings by the Assessor of the matters regarding the assessment of property for taxation purposes contemplated hereby.

Section 1.05. City of Ranson Representations, Warranties and Agreements.

The City of Ranson hereby represents, warrants, agrees, finds and confirms its findings that:

(a) The City of Ranson is a public corporation, acting on behalf of the County of Jefferson, a political subdivision of the State of West Virginia (the "State"), validly created and existing

under the Constitution and laws of the State, and is authorized and empowered by the provisions of the Constitution and laws of the State to enter into this Agreement.

(b) The City of Ranson has found, and hereby finds, that the agreements herein contained and the consummation of the transactions in connection herewith will promote the public interest and public purposes by, among other things, providing certainty and soundness in fiscal planning and promoting the present and prospective prosperity, health, happiness, safety and general welfare of the people of Jefferson County.

(c) The execution of this Agreement and the consummation of the transactions in connection herewith and therewith, have been approved by the Ranson City Council at one or more duly called and constituted meetings, throughout which quorums of duly elected, qualified and acting members of the Ranson City Council were present and acting. The Ranson City Council's agreement to the acquisition, construction and equipping of the Project and its authorization for the execution of this Agreement are embodied in a Resolution adopted on July 18, 2017.

Section 1.06. Company Representations, Warranties and Agreements.

Company represents, warrants and agrees that:

(a) It is a Delaware Corporation duly organized, validly existing and in good standing under the laws of Delaware, and is duly qualified and authorized to conduct affairs or do or transact business in the State of West Virginia, with full power and legal right to enter into this Agreement and to perform its obligations hereunder.

(b) The making and performance of this Agreement and all documents, agreements and instruments in connection herewith, on Company's part, are not prohibited under and have been duly authorized in accordance with, and will not violate the terms and provisions of, Company's organizing documents, and are not prohibited by, and will not violate or conflict with or constitute a default under, any statute, order, governmental rule or regulation, agreement, instrument or document by which Company or any of its properties are bound.

ARTICLE II

AD VALOREM PROPERTY TREATMENT OF THE  
PROJECT DURING THE CONSTRUCTION PERIOD  
AND WHILE JCDA LEASES IT TO COMPANY

Section 2.01. JCDA's Freehold Interest in Property Comprising the Project Shall be Exempt  
from Property Taxes.

During the term of the Lease, the freehold interest of JCDA, in all of the real and personal property which comprise the Project, shall not be subject to any ad valorem property taxes, the same being exempt by operation of law.

Section 2.02. Leasehold Interest Assessed and Taxed at Nominal Value.

Except as described in this Section 2.02, the leasehold interest of Company created by the Lease, and of any assignees or sub-lessees thereunder, shall be subject to assessment, and shall be entered accordingly on the property books of Jefferson County, provided however, that the assessed values of such interests shall be the nominal value of only One Dollar (\$1.00) for each such interest under the Lease or any sublease or interest thereunder, it being the understanding, agreement and finding of the parties that: (i) the rents, to be paid under the Lease by Company (which rents shall include, without limitation, sums sufficient to fully construct and equip the Facility and all costs of maintaining and insuring the Project), constitute rental payments that equal, or significantly exceed, fair market rental payments for such property during the entire term of the Lease; (ii) under the Lease, the leasehold interest of Company is not freely assignable; and (iii) the Lease does not constitute a "bargain lease" to Company which would increase any assessment of the said leasehold interest above the said nominal value.

ARTICLE III

ACQUISITION AND CONSTRUCTION  
OF THE PROJECT AND PAYMENT IN LIEU OF TAX

Section 3.01. Acquisition, Construction and Equipping of the Facility.

The Commission, County Board, and the City of Ranson each hereby agrees to the acquisition, construction, and equipping of the Project pursuant to this Agreement, provided that Company shall be solely responsible for such acquisition, construction and equipping of the Project.

Section 3.02. Tax Exemption.

The Commission, Commission, the City of Ranson, and the County Board recognize that under West Virginia law, all real and personal property owned by JCDA which is part of the Project, is exempt from ad valorem property taxation.

Section 3.03. Payment in Lieu of Taxes.

Once actual, physical construction of the Facility is concluded and the Facility is conveyed to JCDA, Company shall make only the payments in lieu of taxes in the amounts, if any, shown on Attachment A, PILOT Payment Schedule attached hereto and made a part hereof, during the period that this Agreement remains in effect as provided in Section 4.02 below. The amount of the payments due under this Agreement will be based on increasing percentages of estimates of the taxes that would be imposed, as if the Facility were fully taxable on its real estate (starting with 0% for the first five years), and, after the first seven years, on the ad valorem property taxes that would be imposed on the salvage value of the Equipment and any other tangible personal property situate at the Facility, the taxable value of which to be determined by multiplying the book value of the Equipment and other tangible personal property, determined according to accounting standards applied by the Company in the maintenance of its regular books of account for financial reporting purpose, by five percent (5%), and designated as

"Salvage Value," and which taxes that would be imposed thereon being hereinafter designated as "Equivalent Personal Property Tax," all as shown in Attachment A, PILOT Payment Schedule.

Company hereby agrees to make each annual payment in lieu of taxes, if and when shown to be due on Attachment A, to the Sheriff who shall distribute each such payment to the Commission, the City of Ranson and the County Board in proportion to the applicable combined levy rates (including regular and special levies, if any), for each tax year during the term of this Agreement in which such payments are made.

Section 3.04. Payment in Lieu of Tax Payable in Installments.

Company may pay each payment in lieu of tax payable under Subsection 3.03 in two equal installments per year, the first installment of which shall be paid by each March 1 and the second installment of which shall be paid by each September 1, as shown on Attachment A, or Company may pay the entire annual payment amount due in a particular calendar year on or before March 1, provided however, that the final payment in lieu of tax, shall be payable in full on or before March 1 of the year in which that payment is due.

Section 3.05. Events of Default: Remedies.

If Company shall fail to pay any payment in lieu of taxes to the Sheriff at the times and in the amounts as prescribed herein, and such failure to pay continues for a period of 30 days after written notice thereof has been sent to Company, then and in such event, the County Commission may take whatever action at law or in equity may appear necessary or desirable to enforce its rights, the rights of the County Board and the rights of the City of Ranson under this Agreement, including, without limiting the generality of the foregoing, immediately terminating this Agreement, conveying the Project to Company and causing the assessment and collection by the Assessor and Sheriff of ad valorem taxes thereon. The County Commission shall not be obligated to do any of the acts hereinabove authorized, but, in the event that the County Commission elects to do any such act, all costs and expenses incurred by the County Commission in doing any such act shall be owed by Company hereunder. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time, as often as may be deemed expedient.

ARTICLE IV  
GENERAL AND MISCELLANEOUS PROVISIONS

Section 4.01. Expenses and Costs.

Each party will bear its own respective legal and other costs and expenses associated with this Agreement and all documents, instruments and agreements in connection herewith, and the consummation of the transactions set forth herein and therein.

Section 4.02. Term of This Agreement.

Unless terminated sooner by the express provisions hereof, this Agreement shall remain in effect for (a) a period of nine (9) years from the date Company completes construction of the

Facility, (b) for the entire term of the Lease, and any renewals thereof, or (c) until the date that this final payment in lieu of tax is paid, in accordance with Attachment A, whichever is the shortest period of time. Until the first tax year as to which the JDCA holds title to the Facility and, then, beginning with the first tax year after to termination hereof, and as to which JCDA does not hold title to the Facility, and for each tax year thereafter, so long as Company has an interest in the Facility, it shall pay the full amount of the ad valorem property taxes on the real and personal property which comprise the Facility, as determined by applicable law, regardless of whether it held fee simple title to the Project. This provision shall survive the termination of this Agreement.

Section 4.03. Notices.

All notices to Company, the Commission, the City of Raision, and the County Board, the Sheriff and the Assessor with respect to this Agreement, shall be deemed to be completed upon mailing by registered or certified mail, postage prepaid, addressed as follows or to such other address as shall be furnished in writing by any party to the remaining parties hereto:

- a) If to Company, as follows:  
Kenneth J Cammarato  
Vice President, General Counsel  
ROXUL USA Inc.  
4594 Cayce Rd.  
Byhalia, MS 38611
- b) If to the Commission, as follows:  
President, Jefferson County Commission  
P. O. Box 250  
Charles Town, West Virginia 25414
- c) If to the Assessor, as follows:  
Assessor of Jefferson County  
104 E. Washington Street  
Charles Town, West Virginia 25414
- d) If to the Sheriff, as follows:  
Sheriff of Jefferson County  
P. O. Box 9  
Charles Town, West Virginia 25414
- e) If to the County Board, as follows:  
Superintendent, Jefferson County Schools  
110 Mordington Avenue  
Charles Town, West Virginia 25414

f) If to the City of Ranson, as follows:

Mayor, Ranson, West Virginia  
312 South Mildred Street

Ranson, West Virginia 25438

Section 4.04. Credit for Payments Made.

In the event that any amounts are paid by Company, its successors or assigns, as ad valorem property taxes levied by the Commission or the County Board on their leasehold interests in the Project, such amounts shall be fully credited against and reduce the payments in lieu of taxes otherwise due pursuant to Article III herein, and Company, its successors or assigns, shall, likewise, be entitled to a refund of the same by virtue of any overpayment thereof resulting from such credit and reduction.

Section 4.05. Use of Payments in Lieu of Taxes.

Company shall not have any responsibility or liability for the application or expenditure by the Sheriff, the County Board, the City of Ranson, or by the Commission of any amount paid to the Sheriff by Company pursuant to this Agreement. The Sheriff alone shall be responsible for the proper disposition of any amount paid in lieu of tax by Company, and of any ad valorem property taxes determined to be due with respect to the Project. Subject to the Constitution and laws of the State of West Virginia, Company is hereby indemnified and held harmless, by the other parties hereto, from any lawsuit or legal action, and any liability, arising from or relating to the manner in which the Sheriff distributes or the County Board or the Commission or City of Ranson applies or expends or otherwise distributes or disposes of any such amount paid by Company under this Agreement.

Section 4.06. Construction.

It is the intention of the parties in entering into this Agreement to provide for certainty in the assessment of ad valorem property taxes with respect to the Project, to provide an inducement for Company to invest in the Project in Jefferson County, West Virginia, to clarify ambiguities as to the appropriate assessment of leasehold interests in the Project during the period it is leased by JCDA to Company, and to provide for payments in lieu of taxes as an inducement for the Commission, the County Board, the City of Ranson, the Sheriff and the Assessor to enter into this Agreement. It is the intention of the parties that this Agreement be construed liberally in order to effect the aforesaid intent of the parties.

Section 4.07. Miscellaneous.

Neither this Agreement nor any provision hereof may be amended, modified, waived, discharged or terminated orally, except by an instrument in writing signed by the parties hereto. With the written consent of the Commission, which consent shall not be unreasonably withheld or delayed, this Agreement may be assigned by Company and the provisions of this Agreement

shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto. The captions in this Agreement are for the convenience of reference only and shall not define or limit the provisions hereof.

Section 4.08. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia.

Section 4.09. Severability.

The parties hereby agree that in the event one or more portions of this Agreement shall be declared to be invalid by appropriate authority, the remaining provisions of this Agreement shall continue in full force and effect, provided, however, that should the aggregate ad valorem property taxes charged to Company, its successors or assigns, by the Sheriff, with respect to the Project, or the leasehold interests in it, in any one year after the tax year 2020, exceed the payments in lieu of taxes provided for in Article III herein (prior to the adjustment as provided in Section 4.04 herein), for that year, then, at the election of Company, in its sole discretion, this Agreement may be canceled and rendered void and of no further force and effect from and after the earlier of the dates on which such taxes are paid to the Sheriff or the ownership interest of JCDA is terminated.

Section 4.10. Condition to Agreement Becoming Effective.

Notwithstanding any other provision herein, this Agreement shall not become effective unless and until Company acquires the Land and title, constructs the Project and transfers ownership in and to the Project to the JCDA. In the event that Company does not acquire the Land, or construct the Project, or transfer ownership of the Project to the JCDA, it is expressly agreed that this Payment in Lieu of Taxes Agreement shall terminate and be null and void.

Section 4.11. Force Majeure

No Party shall be responsible for any delay or failure in performance of any part of this Agreement if such delay or failure is caused by fire, flood, explosion, war, act of terror, embargo, economic crisis, government requirement, civil or military authority, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or non-performing Party. The affected Party will notify the other Parties in writing within ten (10) days after the beginning of any such Force Majeure event. Notwithstanding, if a Party's performance is delayed for a period exceeding thirty (30) days from the date the other Parties receives notice under this paragraph, the non-affected Parties may, without any liability to the other Parties, terminate this agreement.

Section 4.13 Press Release

Neither party shall issue any press releases or make public announcements relating to this Agreement without the other party's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed; *provided, however*, that nothing in this Section shall impair either party's compliance with law or regulation generally or with any requirements

of the Securities and Exchange Commission or of any national securities exchange or other stock market on which such party's securities are traded.

Section 4.14. Expansion Operations.

If at any time, the Company anticipates a substantial expansion of its operations in the County beyond the scope currently planned for the Project, and has met or exceeded the Project thresholds, the County will review such any expansion plans with the intent to provide additional economic development incentives to the Company but shall not have an obligation to provide any particular incentives to the Company in respect of such expansion.

Section 4.15 Contingencies

This Agreement is made expressly contingent upon the occurrence of the following conditions precedent ("Project Contingencies"), the failure of any of which will entitle Company to unilaterally terminate this Agreement without any penalty or obligation:

- a) **Site Acquisition:** Company shall close on the Land within 180 days of fully executing this Agreement ("Site Closing) and upon terms and conditions acceptable to Company, including, but not limited to, Company being able to obtain acceptable representations, warranties, covenants, indemnities, and title for the Land and contingent upon the completion of the subdivision and rezoning of the parcel by the seller;
- b) **PSD air permit:** Company shall obtain an appropriate PSD air permit from the West Virginia Department of Environmental Protection no later than the second quarter of 2018.
- c) **Zoning and Land Use:** Company, or designated third party, shall obtain and secure all lot changes, zoning changes, permits, including PSD air permits, and/or any other land use approvals necessary to use and operate the Facility at the West Virginia Site in accordance with its intended plans.
- d) **Voluntary Remediation Program:** The Land shall be eligible to participate in the West Virginia Voluntary Remediation Program (the "Remediation Program") and obtain or receive a Certificate of Completion under the Remediation Program from the West Virginia Department of Environmental Protection ("WVDEP") that provides Rosul acceptable immunity from liability as determined by Company in its sole discretion;
- e) **Board Approval.** Company shall obtain and secure necessary approval from its Board of Directors to make the Final Investment Decision to construct and operate the Facility at the West Virginia Site within 180 days of fully executing this Agreement.
- f) **Third Party Commitments.** the Company shall negotiate independent agreements and/or memorandums of understanding with the City of Ranson and the State of West Virginia acceptable to Company prior to the Site Closing.



Section 4.16. Indemnification.

Company agrees, whether or not the transactions contemplated by this Agreement or the Lease shall be consummated, to protect, indemnify and save JCDA, the Commission, the County Board, the City of Ranson, the Sheriff and the Assessor (hereinafter individually called "Indemnified Party" and collectively called the "Indemnified Parties") harmless from and against all liability, loses, damages, costs, reasonable expenses (including reasonable counsel fees), taxes, causes of action, suits, claims, demands and judgments of any nature or form, by or on behalf of any person arising in any manner from the transactions of which this Agreement is a part or arising in any manner in connection with the Project, and, without limiting the generality of the foregoing, arising from (i) this Agreement [except the representations, warranties, and obligations expressly made and undertaken by the Indemnified Parties hereby], (ii) the design, acquisition, construction, installation, operation, use, occupancy, maintenance, ownership or leasing of the Project; (iii) any written statements or representations made or given by Company or any of its officers, employees or agents to any person, with respect to Company, the Project, and any financing therefor, including, but not limited to, statements or representations of facts, financial information or corporate affairs; (iv) damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project; (v) any breach or default on the part of Company in the performance of any of its obligations under this Agreement; (vi) any violation of contract, agreement or restriction by Company relating to the Project; or (vii) any violation of law, ordinance or regulation affecting the Project or any part thereof or the ownership or occupancy or use thereof.

In the event that any action or proceeding is brought against any of the Indemnified Parties by reason of any such claim, such action or proceeding shall be defended against by counsel to such Indemnified Party or Indemnified Parties or by Company, as the Indemnified Party or Indemnified Parties, upon advice of counsel, shall determine. In the event such defense is by counsel to the Indemnified Party or Indemnified Parties, Company shall indemnify the Indemnified Party or Indemnified Parties for reasonable costs of counsel allocated to such defense and charged to the Indemnified Party or Indemnified Parties. Company, upon notice from an Indemnified Party, shall resist and defend such an action or proceeding on behalf of such Indemnified Party.

The provisions of this Section shall apply to any claim or liability not resulting from an Indemnified Party's own negligence, but shall not apply to any claim or liability resulting from an Indemnified Party's negligence, bad faith, fraud or deceit or for any claim or liability which Company was not given the opportunity to contest. The provisions of this Section 4.16 shall survive the termination of this Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first written above.

ROXUL USA Inc  
By: [Signature]  
Its: President

THE COUNTY COMMISSION OF  
JEFFERSON COUNTY, WEST VIRGINIA  
By: [Signature]  
Its: MES10241, JCL

[Signature]  
Clerk of the County Commission  
of Jefferson County, West Virginia

CITY OF RANSON, WEST VIRGINIA  
By: [Signature]  
Its: Mayor

ASSESSOR OF JEFFERSON COUNTY,  
WEST VIRGINIA  
By: [Signature]

SHERIFF OF JEFFERSON COUNTY,  
WEST VIRGINIA  
By: [Signature]

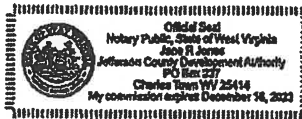
THE BOARD OF EDUCATION OF  
JEFFERSON COUNTY, WEST VIRGINIA  
By: [Signature]  
Its: President

ACKNOWLEDGMENTS

State of Mississippi  
County of DeSoto  
Signed or attested before me on 10/3/2017  
by Christina F. Swindle  
  
(Notary Public)  
My Commission Expires 02/08/2019



State of West Virginia  
County of Jefferson  
Signed or attested before me on August 22, 2017,  
by Peter Onozko.  
Peter Onozko  
(Notary Public)  
My Commission Expires December 16, 2023.

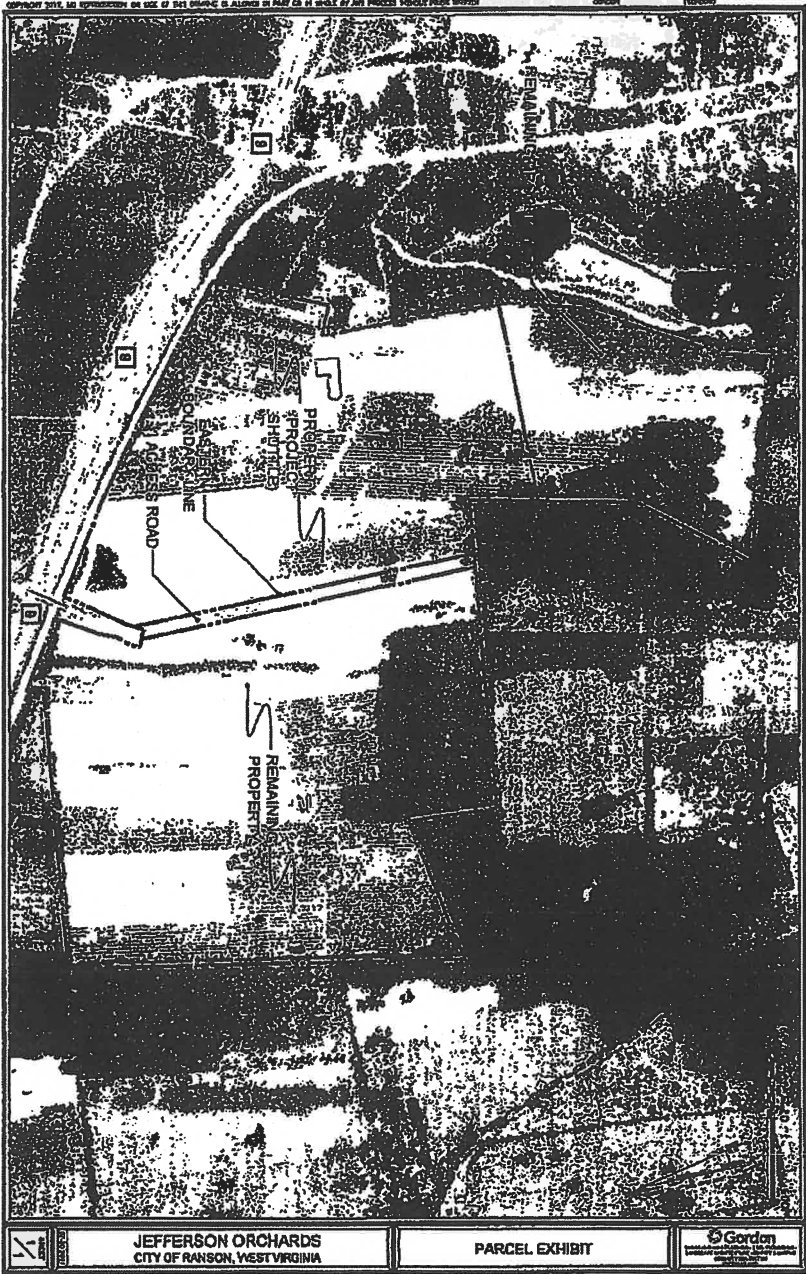


State of West Virginia  
County of Jefferson  
Signed or attested before me on August 25, 2017,  
by Jacqueline C. Shadle, Peter J. Dougherty,  
Keith D. Pierson and Angela L. Banks.  
Jane R. Jones  
(Notary Public)  
My Commission Expires December 16, 2023.



State of West Virginia  
County of Jefferson  
Signed or attested before me on Sept. 25, 2017  
by Janet J. Barnes  
A. Scott Sudduth  
(Notary Public)  
My Commission Expires April 4, 2020





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**JEFFERSON ORCHARDS**  
 CITY OF RANSON, WEST VIRGINIA

**PARCEL EXHIBIT**



Attachment A - PILOT Payment Schedule

<u>Payment Date</u>	<u>Real Estate</u>	<u>Personal Property</u>
September 1, 2018	N/A	N/A
September 1, 2019	N/A	N/A
September 1, 2020	\$225,000	N/A
September 1, 2021	\$0	\$0
September 1, 2022	\$0	\$0
September 1, 2023	\$0	\$0
September 1, 2024	\$0	\$0
September 1, 2025	\$0	\$0
September 1, 2026	\$90,000	\$0
September 1, 2027	\$180,000	\$0
September 1, 2028	\$725,000	EPPT**
September 1, 2029	\$815,000	EPPT**

\*\* - Equivalent Personal Property Tax (EPPT) which shall be equal to the amount of *ad valorem* property tax chargeable against the tangible personal property of the Project were it fully taxable and appraised at salvage value based on 5% of its book value.

**WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY**

**RESOLUTION AUTHORIZING THE ISSUANCE OF  
BONDS BY THE WEST VIRGINIA ECONOMIC  
DEVELOPMENT AUTHORITY TO BE EXCHANGED FOR  
CERTAIN COMMERCIAL FACILITIES AND  
EQUIPMENT OWNED BY ROXUL USA INC. D/B/A  
ROCKWOOL**

WHEREAS, the West Virginia Economic Development Authority ("WVEDA") is a public corporation and government instrumentality of the State of West Virginia (the "State") that is empowered and authorized by the West Virginia Economic Development Authority Act, Chapter 31, Article 15, Section 1, *et seq.*, of the Code of West Virginia, 1931, as amended (the "Act"), in furtherance of the public purposes as found and determined by the Legislature of the State and as set forth in Section 6 of the Act, to issue and exchange revenue bonds of WVEDA for a commercial or industrial undertaking, for such undertakings to create or preserve jobs and to enhance the economic welfare and benefit of the citizens of the State; and

WHEREAS, Roxul USA Inc. d/b/a ROCKWOOL, a Delaware corporation (the "Corporation"), has acquired a parcel of real property comprising approximately 130 acres (the "Project Site") which is a part of the approximately 400-acre tract of real property located in Jefferson County, West Virginia, that is commonly known as Jefferson Orchards, is constructing a manufacturing facility thereon (the "Facility"), and will install certain manufacturing equipment and machinery and other personal property at the Facility (the "Equipment" and collectively with the Project Site and the Facility, the "Project Property"), which will result in the Corporation creating a minimum of 120 full-time equivalent jobs in connection with the operation of the Facility and which will provide for future potential employment opportunities within the State; and

WHEREAS, the Corporation has requested that WVEDA enter into certain arrangements by which, among other things, the Corporation will convey to WVEDA its ownership interest in the Project Property and WVEDA will lease the Project Property to the Corporation; and

WHEREAS, the conveyance of the Project Property to WVEDA will be made by the Corporation from time to time, in exchange for one or more series of West Virginia Economic Development Authority Lease Revenue Bonds (ROCKWOOL Project) (the "Bonds"), to be issued pursuant to a Bond Indenture and Security Agreement (the "Indenture"), between WVEDA and a trustee to be selected, and in accordance with other terms and conditions, set forth in Contracts of Exchange between the Corporation and WVEDA. As such exchanges are made, the Corporation will lease the Project Property from WVEDA for its exclusive use and benefit, pursuant to one or more Lease Agreements (the "Lease"), between the Corporation and WVEDA.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF WVEDA AS  
FOLLOWS:**



1. Public Purpose. WVEDA hereby finds and determines that the acquisition of the Project Property to the Corporation promotes economic development and other public purposes of WVEDA pursuant to the Act.
2. Cooperation in Bond Issuance. WVEDA will cooperate with the Corporation, and such parties as the Corporation may select for the purpose of assisting or participating in the issuance and exchange of the Bonds on mutually agreeable terms, and WVEDA will adopt such resolutions and proceedings and authorize the execution and delivery of such instruments and the taking of such further actions as may be necessary or advisable to the authorization, issuance and exchange of the Bonds with the Corporation or its designee for the Project Property, all as shall be authorized by law and mutually satisfactory to WVEDA and the Corporation.
3. Designation of Trustee. WVEDA will designate one or more banks located either within or without the State of West Virginia at the direction of the Corporation to serve as trustee and will enter into the Indenture with such trustee.
4. The Lease. The Project Property shall be leased to the Corporation by WVEDA pursuant to the Lease for a term not to exceed the term of the Bonds and for lease payments equal to the debt service payments on the Bonds, and otherwise on such additional terms, conditions, agreements and provisions as the Chairman, Executive Director, including any acting or interim Executive Director, and legal counsel for WVEDA determine are reasonably necessary, desirable or appropriate with regard to the leasing of the Project Property to the Corporation which Lease and terms are hereby authorized and approved. The Corporation shall have an option under the Lease to purchase the Project Property from WVEDA for One Dollar (\$1.00) at the end of the term of the Lease.
5. The Bonds. There are hereby authorized to be issued and WVEDA hereby determines to issue, pursuant to the Act, the Bonds, as requested by the Corporation, in an aggregate principal amount to be agreed upon by WVEDA and the Corporation, not to exceed the maximum aggregate face amount of \$150,000,000, and to exchange the Bonds for the Project Property from time to time pursuant to Contracts of Exchange, the Bonds to be secured by and payable exclusively from the revenues to be derived by WVEDA under the terms of the Lease and the Indenture. The exact principal amount of the Bonds not to exceed \$150,000,000 shall be approved by the Chairman, such approval to be evidenced by the execution by the Chairman of a Certificate of Determinations setting forth such principal amount. The Bonds shall contain a recital that they are issued pursuant to the Act, which recital shall be conclusive evidence of their validity and of the regularity of their issuance. WVEDA shall require the Corporation to reimburse WVEDA for all costs incurred by or for WVEDA in connection with the issuance of the Bonds.
6. Authorized Officers. The Indenture, the Lease and any other documents required to complete this transaction, except the Bonds, are hereinafter collectively referred to as the "Bond Documents." The Chairman, Secretary and Executive Director, including any acting or interim Executive Director, are hereby authorized, empowered and directed to execute and deliver the Bond Documents prior to or simultaneously with the issuance of the Bonds for and on behalf of WVEDA, in the form and upon those terms and conditions as approved by the

Chairman, with the assistance of counsel, and the Executive Director and such approval shall be conclusively evidenced by the execution of the Bond Documents by the Chairman, Secretary or Executive Director. The Chairman is hereby authorized and directed to execute and deliver, by manual or facsimile signature, and the Secretary is hereby authorized and directed to affix the corporate seal of WVEDA to, and attest to, by manual or facsimile signature, the Bonds; and the Chairman is authorized and directed to deliver the Bonds to the trustee, as paying agent, for authentication under the Indenture and, when the Bonds have been authenticated, to deliver the same or cause said Bonds to be delivered to the Corporation in exchange for the receipt of Project Property, as provided in the Indenture.

7. Term of the Bonds. The Bonds shall be dated such date(s) as approved by the Chairman, and as otherwise described in the Indenture, shall be issued in one or more series not to exceed \$150,000,000 in the aggregate, with maturity dates not to exceed ten (10) years from the date of issuance of each series of Bonds, and the final principal amount (or principal amounts if issued in one or more than one series), maturity dates, interest rate or rates, redemption provisions and other terms of the Bonds to be approved by the Chairman, such approval to be evidenced by the execution by the Chairman of a Certificate of Determinations setting forth such principal amount (or principal amounts if issued in more than one series), interest rate or rates, redemption provisions and other terms of the Bonds. The Bonds shall be in the denominations and in registered form, be payable in the medium of payment and at such places, be subject to optional redemption prior to maturity and be entitled to the priorities and the revenues of WVEDA from the Project Property all as provided in the Indenture as finally approved by the Chairman. All of the provisions of the Indenture, as amended, shall be deemed to be part of this Resolution as fully and to the same extent as if incorporated herein and shall be in force and effect from the date of the execution thereof.

8. Limited Obligations. Any Bonds issued by WVEDA for the acquisition of the Project Property are special obligations of WVEDA payable solely from and secured by the Project Property and any rental or other payments derived therefrom, and shall not be construed to obligate the expenditure of any funds or monies of WVEDA derived from any other source whatsoever. The State shall not be liable for the payment or performance of any Bonds issued by WVEDA for the acquisition of the Project Property, and such bonds as to both principal and interest are not a debt of the State of West Virginia or any county, municipality or political subdivision thereof, and are payable solely from the revenues and funds pledged for their payment. Any Bonds issued by WVEDA for the acquisition of the Project Property as to both principal and interest shall not constitute a debt or a pledge of the faith and credit or taxing power of the State or of any county, municipality or other political subdivision of the State, and the holders and owners of such Bonds shall have no right to have taxes levied by the Legislature of the State or the taxing authority of any county, municipality or any other political subdivision of the State for the payment of such Bonds.

9. Indemnification. WVEDA shall require the Corporation to hold harmless, indemnify and defend WVEDA and its board members, officers, employees and representatives from any and all actions, liabilities, lawsuits, damages, expenses (including, without limitation, reasonable attorneys' fees and expenses), claims, obligations and other costs to, against or incurred by WVEDA and its board members, officers, employees and representatives (collectively, "Losses") arising out of or caused by the adoption of this Resolution or the



transactions contemplated hereby or the operations, actions, omissions, business or other activities of the Corporation and its contractors and subcontractors or arising from or relating to the purchase of the Project Property by WVEDA, the lease back of the Project Property to the Corporation, the use or operation of the Project Property and any other activities with regard thereto, regardless of whether such Losses are incurred before or after the Lease has been executed.

10. Expenses of WVEDA. The Corporation shall pay and/or reimburse all costs and expenses incurred by WVEDA, including without limitation, attorney's fees and expenses in connection with the acquisition, leasing, financing, including the issuance and sale of the Bonds, and operation of the Project Property. WVEDA shall receive a fee of \$10,000 upon the issuance and sale of the Bonds.

11. Open Meeting. WVEDA hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of WVEDA and that all deliberations of WVEDA that resulted in formal action were taken in meetings open to the public, in full compliance with all applicable legal requirements.

12. Notice. Publication in the *West Virginia Register* of the notice for the regular meeting at which this Resolution was adopted by WVEDA's Board is deemed sufficient availability to the news media as contemplated by Procedural Rule 117-2-3.5 of WVEDA.

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ADOPTED BY THE BOARD OF WVEDA at a regularly scheduled meeting held in Charleston, West Virginia, on May 2, 2019.

WEST VIRGINIA ECONOMIC  
DEVELOPMENT AUTHORITY

*Michael R. Casaway*  
Chairman

ATTEST:

*Robert W. Stange*  
Secretary

[SEAL]