ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT

This Economic Development Performance Agreement ("Agreement") is entered as of June 24, 2025 (the "**Effective Date**"), by and among **Botetourt County, Virginia,** a political subdivision of the Commonwealth of Virginia (the "County"), the **Economic Development Authority of Botetourt County, Virginia,** a political subdivision of the Commonwealth of Virginia under the Industrial Development and Revenue Bond Act (the "Authority"), and **Helio Capital LLC,** a Delaware limited liability company (the "Company"), each a "Party" and together the "Parties." For their Agreement, the Parties state:

Recitals

WHEREAS, the County is a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), and is vitally interested in the economic prosperity of its citizens, the creation and maintenance of sustainable jobs for its citizens, and the development of new infrastructure to serve its citizens, and therefore wishes to provide the necessary conditions to stimulate investment in the local economy and promote business, resulting in the creation of a substantial investment in the County, increase to the tax base, and encouragement of economic growth and development opportunities; and,

WHEREAS, in furtherance of these dominant or animating purposes, the County is authorized to make grants and donations to the Authority, as provided in Sections 15.2-953 and 15.2-1205 of the Code of Virginia of 1950, as amended (the "Code"); and,

WHEREAS, the Authority is a political subdivision of the Commonwealth formed pursuant to the Industrial Development and Revenue Bond Act, Chapter 49 of Title 15.2 of the Code (the "Act"), with the power to make and accept grants, loans and other funds to promote industry and develop trade by inducing manufacturing, industrial, and commercial enterprises to locate in the Commonwealth and the County and to further the use of its agricultural products and resources for the benefit of the inhabitants of the Commonwealth and the County, through the increase of their commerce or the promotion of their safety, health, welfare, convenience, or prosperity, including the grants provided for herein; and,

WHEREAS, the Company is a firm in the business of acquiring, developing, and thereafter owning and operating, itself or in collaboration with its Affiliates, Data Centers, and intends to acquire Property from the Authority, receive other benefits and incentives from the Authority, to create new jobs and make investment in the County, and to make certain funds available to the Authority to use for its purposes as provided hereinafter; and,

WHEREAS, the Parties agree that the animating or dominant purpose of this Agreement is the furtherance of the public health, safety, general welfare, prosperity, the creation of jobs, and the increase of the tax base, as authorized by the Act.

Agreement

In consideration of the foregoing recitals, which are expressly incorporated into this Agreement, together with the mutual promises set forth below and other good and valuable consideration, the Parties agree as follows:

Article I – Definitions

1.1 Definitions.

"Affiliate" means any Person that directly or indirectly, including through one or more intermediaries, controls, is controlled by, or is under common control with another specified Person. For the purposes of this definition, control of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether through ownership of voting securities or of ownership interests, by contract, or otherwise, and specifically with respect to a corporation, partnership, trust, or limited liability company, includes direct or indirect ownership of more than 50% of the voting securities in a corporation or of the voting interest in a partnership or limited liability company or of the beneficial interest in a trust.

"Agreement" means this Economic Development Performance Agreement.

"Article" refers to an article of this Agreement; "section" refers to a clause designated by two numbers, in the form #.#, including all subsections; "subsection" refers to a clause designated by three numbers, in the form #.#.#, including any sub-subsections. Lists may make use of lettered subsections or sub-subsections.

"Business Day" means a day that is not a Saturday, Sunday, or holiday recognized by the Commonwealth of Virginia, and on which commercial banks are generally open for business in Roanoke, Virginia.

"Capital Investment" means any capital expenditure by or on behalf of the Company in taxable real property, taxable tangible personal property, or both, at the Facility.

"Data Center" means a facility whose primary services are the storage, management and processing of digital data and is used to house (i) computer and network systems, including associated components such as servers, network equipment and appliances, telecommunications, and data storage systems; (ii) systems for monitoring and managing infrastructure performance; (iii) equipment used for the transformation, transmission, distribution, or management of at least one megawatt of capacity of electrical power and cooling, including substations, uninterruptible power supply systems, all electrical plant equipment, and associated air handlers; (iv) internet-related equipment and services; (v) data communications connections; (vi) environmental controls; and (vii) fire protection systems; and (viii) security systems and services.

"Facility" means one or more Data Centers on the Property.

"Fiscal Year" is the standard Virginia governmental fiscal year established pursuant to Section 15.2-2500 of the Code.

"Original Capitalized Cost" means the original capitalized cost of a piece of personal property when purchased new, exclusive of any capitalized interest, or the cost that would have been capitalized if the expense deduction in lieu of depreciation were elected under Section 179 of the Internal Revenue Code of 1986, as amended. The personal property subject to the provisions of Article VI of this Agreement shall be the personal property that has established situs at the Facility as determined by the County Commissioner of the Revenue.

"Person" has the meaning given to it in Sections 1-230 and 1-231 of the Code.

"Property" means that certain parcel or tract of real property known as Botetourt County Tax Map Parcel 88(26)3, situate in the Amsterdam Magisterial District of Botetourt County, Virginia, and comprising 312.55± acres, together with all rights and appurtenances thereto.

"Real Estate Option Agreement" means that certain Real Estate Option Agreement by which the County and the Authority have agreed to sell, and the Company has agreed to purchase, the Property, dated as of October 1, 2024.

"Tax Rate" means the tax rate levied on the personal property at the Facility by the Board of Supervisors of the County for any given year.

1.2 Rules of Interpretation.

1.2.1 If a term is defined as one part of speech (e.g., as a noun), it also has a corresponding meaning when used as a different part of speech (e.g., a verb). Unless the context of this Agreement clearly requires otherwise, words using the masculine gender also include the feminine and neuter genders, and vice versa. The words "includes" or "including" mean "includes without limitation" or "including without limitation," the words "hereof," "hereby," "herein," "hereunder," and the like, when used in this Agreement, refer to this Agreement as a whole and not to any particular Section or Article in which the words appear, and any reference to a Law includes any rules and regulations promulgated thereunder and refers to such Law, rules, and regulations as in effect on the date hereof unless otherwise indicated. Currency amounts are stated in U.S. Dollars.

1.2.2 Whenever this Agreement refers to a number of days, such number refers to calendar days unless Business Days are specified. Whenever any action must be taken hereunder on or by a day that is not a Business Day, then such action may validly be taken or done on the next day that is a Business Day.

1.2.3 This Agreement is intended to be read as a whole in order to give full force and effect to its provisions, and to be interpreted as a single comprehensive whole in light of, and in order to achieve, the purposes of this Agreement. The specific is intended to control the general, but the general is intended to illustrate the purpose of the specific.

1.2.4 Each Party acknowledges that it and its attorneys have been given an equal opportunity to negotiate the terms and conditions of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party or any similar rule operating against the drafter of an agreement is not applicable to the construction or interpretation of this Agreement.

1.2.5 The headings in this Agreement are included for ease of reference, and are not to be used for the purposes of interpretation of this Agreement.

1.3 Severability. This Agreement is to be presumed severable. If any provision of the Agreement, or the application of any provision hereof to a particular entity or circumstance, shall be held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement shall not be affected and all other terms and conditions of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

Article II – Term

2.1 Term. This Agreement shall be effective for a term commencing on the Effective Date and shall terminate as to each Data Center (but not in its entirety) twenty (20) years after such Data Center becomes operational, unless otherwise provided herein.

2.2 Change of Circumstances. The provisions of Article VI of this Agreement are dependent on continuation of the following current general practices: (a) classification of land and buildings affixed thereto as real estate, subject to valuation and levy as real estate; (b) classification of Data Center equipment as business personal property segregated for local assessment and levy under to Chapter 35 of Title 58.1 of the Code, without exemption. In the event that these provisions of law change substantially, the Parties agree to negotiate, in good faith, to reach a mutually agreeable amendment to the provisions of this Agreement in order to address such changes in law.

Article III – Incentives

3.1 Land Purchase. The Authority agrees to convey the Property to the Company for the discounted price of $45,000 per acre, as provided in the separate Real Estate Option Agreement, or an anticipated purchase price of approximately $14,064,885, as adjusted pursuant to the Real Estate Option Agreement.

3.2 Permitting. The County shall provide expedited permitting for the Facility and each Data Center, encompassing all County permits and approvals for the Facility and each Data Center, including but not limited to (i) site development permits (e.g., site plans, grading permits), (ii) building permits (including, without limitation, building plan review and approval, electrical permits, fire suppression system permits), (iii) environmental permits (e.g., stormwater management and erosion and sediment control permits), (iv) special exception permits or zoning ordinance amendments (including, without limitation, any required zoning changes or special exception permits required or the operation of the Facility and each Data Center), (v) operational permits (e.g., certificate of occupancy), and (vi) any other permits required for the Facility and each Data Center. All permit review will commence not later than five business days following initial submission.

The Company shall also be eligible to participate in the Botetourt County Third Party Inspection Program, in which a company seeking expedited issuance of building permits and operational permits and related inspections contracts with a private firm qualified by the County to undertake expedited inspections and review under the oversight and direction of the County Building Official.

The Company recognizes and understands that neither the County nor the Authority can pre-commit to approval of any permit, nor to take (or forbear to take) any legislative act, such as a rezoning or issuance of a special exception permit. Further, the Company recognizes that the County can only control those permits under its regulatory control. Some permits, for instance site plans and subdivision plats, may only be partially under County control, and the County's expedited action on them may be contingent upon prompt and expeditious action by third parties such as the Virginia Department of Transportation and public utility providers; provided that the County agrees to use best efforts to coordinate the prompt and expeditious action by such third parties. Notwithstanding this, the County commits to make all reasonable efforts to expedite permitting.

Article IV – Performance Commitments

4.1 Capital Investment. The Company shall make a Capital Investment of not less than One Billion Dollars ($1,000,000,000.00) in development of each Data Center on the Property.

4.2 Jobs. The Company shall create not fewer than fifty (50) new full-time jobs at a median salary of at least $86,000 per year for each Data Center on the Property, which was calculated by taking one and one-half times $57,257 (the prevailing average annual wage in the Botetourt County).

4.3 No Obligation to Develop. The Parties reasonably expect construction on the first Data Center to commence in calendar year 2026, and for the first Data Center structure to be complete and fit for use and occupancy during calendar year 2028. However, the Parties recognize that the Company may delay, or choose not to, develop a Data Center on the Property. In the event that the first Data Center has not been substantially completed and fit for use and occupancy by Company prior to five (5) years from the Effective Date, the essential purposes of this Agreement shall be deemed frustrated and this Agreement shall terminate; provided, however, for an abundance of clarity, the County will not be required to return any Community Investments made by the Company prior to the date of the termination.

Article V – Community Investment

5.1 Company Investments. The Company shall invest a total of Four Million Dollars ($4,000,000.00) in community projects over a five-year period as follows:

a. The Company shall pay $1,100,000 to the Authority not later than sixty (60) days after the Effective Date, which it shall use for the purchase of three (3) ambulances for the purposes of the County. The County shall provide specifications for such ambulances to the Authority.

b. That Company shall pay $600,000 to the Authority not later than March 1, 2026, which the Authority shall use for the partial or total defeasance of obligations related to the financing of three existing fire trucks owned by the County.

c. Five payments of $100,000 per year, beginning on August 1, 2026, and ending with a final payment not later than August 1, 2030, for the purpose of carrying out capital projects, as defined in generally accepted governmental accounting principles, to renovate or expand facilities of the County Department of Parks and Recreation.

d. Two payments of $150,000 per year, beginning on August 1, 2026, and ending with a final payment not later than August 1, 2027, for the purpose of acquiring Heart Monitors for the County Department of Fire and Emergency Medical Services, which shall be construed to include volunteer rescue squads and fire companies affiliated with and recognized by the County as part of its integrated emergency response system.

e. Five payments of $300,000 per year, beginning on August 1, 2025, and ending August 1, 2029, for the purpose of payment of subscriptions and

acquisition of personal property relating to Axon body camera and less-than-lethal weapons for the Botetourt County Sheriff.

f. The Company shall also invest $1.00 per square foot of each Data Center constructed by the Company or its Affiliates in Botetourt County, Virginia. The voluntary investment is for the purpose of bolstering the County Fire/EMS services. The investments shall take place in concurrence with the issuance of the Building Permit for any Data Center on the Property.

5.1.1 The Company may, in writing, authorize the Authority to use, or permit the use, of funds provided under this Section for other, related purposes in writing without need of a formal amendment to this Agreement.

5.2 Agreed Use of Proceeds of Sale of Property. The Authority may hold and use the proceeds of the sale of the Property to the Company as follows:

a. Purchase of two vehicles for the County Sheriff during fiscal year 2026, including customary outfitting, anticipated to total approximately $162,966.

b. Payment of four years' subscriptions for Axon systems for the County Sheriff, beginning in 2030, anticipated to total not less than $1,093,132.

c. Reserved.

d. Payment for architecture and engineering work on the Daleville Fire Station, as provided in the County Capital Improvement Program, anticipated to total $600,000.

e. Payment for lighting and restrooms for the County soccer field at the County Sports Complex, to commence no later than fiscal year 2026, anticipated to total $430,000.

f. Pay for 2 Tennis Courts and 4 Pickleball Court at the County Sports Complex, to commence no later than fiscal year 2026, anticipated to total $320,000.

g. Pay for Parks and Recreation Community Events Center with Parks and Recreation Offices, to commence no later than fiscal year 2027, anticipated to total $3,600,000.

h. Payment for capital projects designated by the County School Board, to commence no later than fiscal year 2026, anticipated to total $2,000,000. The Parties recognize that these funds may need to be reappropriated to the Schools over multiple fiscal years.

i. Payment for capital projects related to the County Historical Museum, anticipated to total $500,000.

j. Payment for renovations and/or expansion of the Buchanan Library, a part of the County library system, to commence no later than fiscal year 2028, anticipated to total $3,500,000.

k. Develop a County/Authority Small Business and Entrepreneurship Program, which may include capitalization of a grant or revolving loan fund, anticipated to total $250,000 plus such other funds as may be allocated thereto under Section 5.2.2.

l. Upgrades to software, vehicles and other capital expenses of the County Department of Community Development, anticipated to total $400,000.

m. Expenses for upgrades to public safety radio, including renovations and upgrades to the County 911 Dispatch Center, anticipated to total $750,000.

n. Any additional funds shall be considered contingency, and the Authority and the County may allocate them to any of the foregoing projects that run over budget.

5.2.1 In the event that any of the foregoing projects becomes impractical or is accomplished for less than the above-stated amount, the Authority may reallocate such funds to other projects set forth above, or to projects related to or similar to the projects enumerated above provided such projects benefit the community and are to assist the Company's long-term goals of adding value to Botetourt County, Virginia and not adding value for a private party or future development by a private party.

5.2.2 Any interest on funds held by the Authority shall be allocated to the Small Business/Entrepreneurship Program set forth in subsection k above.

5.3 Transfer and Timelines. The Authority may transfer funds to County-affiliated entities, including but not limited to County departments, the County school division, and County constitutional officers as defined in Article VII Section 4 of the Virginia Constitution of 1971, in order to carry out the purposes of this Article. Funds must be committed, as that term is used in generally accepted principles of government accounting to the relevant purpose within two fiscal years after the Company provides them to the Authority, unless otherwise specifically provided by this Article.

Article VI – Grants

6.1 Not a Tax Exemption. The Company shall, in all events, be required to pay all taxes lawfully assessed and collected by the Botetourt County Commissioner of the Revenue and Treasurer. Normal tax assessment and collections processes shall not be integrated with this Agreement in any manner.

6.2 Grant. In the event that, for any year, the Tax Rate is more than $2.40 per $100 of value less Depreciation, as prescribed on the appropriate Botetourt County Commissioner of Revenue Business Tangible Property return form, then the County shall pay to the Authority a sum equal to the amount by which the taxes paid by the Company exceed the amount the Company would have paid if the Tax Rate had been $2.40 per $100. The Authority shall then pay such sum to the Company as a performance grant in consideration of its commitments made under this Agreement.

6.3 Mechanics of Grant. In the event that a grant is determined to be due under section 6.2, the following shall be the mechanics of such rebate:

6.3.1 The Parties recognize that the Company must report its personal property to the County Commissioner of the Revenue not later than April 15 of each year as provided by Section 23-338 of the Code of Botetourt County, Virginia of 1985, as amended (the "County Code"), that Board of Supervisors of the County must set the annual personal property levy not later than June 30 of each year pursuant to Section 58.1-3001 of the Code, and that County tax bills are normally sent to taxpayers on or about September 1 of each year. Pursuant to Section 23-339 of the County Code, the due date for all tax payments is November 1 of each year.

6.3.2 The Company shall provide its initial tax return filed with the County Commissioner of the Revenue to the Authority promptly after providing it to the County Commissioner of the Revenue, showing the depreciated value of the personal property of the Facility as directed by the Commissioner of the Revenue. The Company shall segregate the tax returns by Data Center structure so as to provide the Authority the information necessary to comply with Section 2.1 of this Agreement. Any such information shall be treated as Confidential Information as provided in Section 9.4 of this Agreement.

6.3.3 In the event of a change causing a grant to be payable under Section 6.4, the Authority shall calculate the amount to be paid to it by the County, if any, not later than November 1 of each year and provide its calculation to the County and the Company. Unless delayed as provided in Sections 6.3.4 or 6.3.5 of this Agreement, such amount shall be due and payable to the Authority not later than January 31. The Authority shall then make payment to the Company not later than May 1. In the event of a dispute regarding a grant under this Article of litigation regarding the Company's tax assessment, the undisputed portion of the grant shall be paid at the time provided in this subsection.

6.3.4 In the event that the Company or the County disputes the calculation of the grant under this Article, it shall provide notice to the Authority within 30 days after receipt of the calculation by the Authority. The Authority shall within 30 days thereafter retain the services of a certified public accountant or firm of certified public accountants (the "CPA") to review the Authority's calculations, and provide the name of such CPA to the County and the Company. If the County or Company has reasonable and good faith objection to the CPA chosen by the Authority, it shall promptly provide notice to the Authority of its object and the reasons for its objection, not later than 14 days following notice of the identity of the CPA. The Authority shall then choose another CPA. This process may be repeated not more than three (3) times, or the calculation made by Authority's third chosen CPA shall be considered approved. The calculation of such CPA carried out in accordance with this Article, once certified by the CPA, shall be conclusive evidence of amount to be paid into the Fund and by whom.

6.3.5 In the event of an extension of the tax due date for the County of either personal property returns, tax payments, or both, as permitted by Section 58.1-3916 of the Code or other provision of law, the dates provided in this Section occurring after such resolution is adopted shall be extended a like time period.

6.3.6 The County shall pay to the Authority $10,000, which shall increase by 10% every five years during the term of this Agreement, for the purpose of administering the grant.

6.4 Limited Pledge. This Agreement constitutes a limited pledge of the revenues of both the Authority and the County. With respect to each:

6.4.1 THIS AGREEMENT DOES NOT CONSTITUTE A PLEDGE OF THE FULL FAITH, CREDIT AND TAXING POWER OF THE COMMONWEALTH OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE COUNTY. THIS AGREEMENT DOES NOT CONSTITUTE OR EVIDENCE A "DEBT" OF THE COUNTY WITHIN THE MEANING OF ARTICLE X SECTION 10(B) OF THE VIRGINIA CONSTITUTION OF 1971, THE PUBLIC FINANCE ACT OF 1991, OR ANY OTHER PROVISION OF LAW.

6.4.2 THIS AGREEMENT CONSTITUTES A LIMITED PLEDGE OF THE REVENUES OF THE AUTHORITY, AND IS NOT A GENERAL DEBT OF THE AUTHORITY, AS PROVIDED BY SECTION 15.2-4910 OF THE CODE. THE AUTHORITY POSSESSES NO TAXING POWER. In the event of a dispute between the County, the Company, or any third party claiming a lien in the Fund, the Authority, without any liability to the Authority, reserves the right to interplead some or all of the Fund or to place it in escrow with a good and solvent financial institution until such dispute and all appeals are finally resolved and/or dismissed.

6.5 Not a Security; Disclosure Matters. This Agreement is not intended to constitute a "security" or "negotiable instrument" within the meaning of the Securities Act of 1933, the Securities and Exchange Act of 1934, the Uniform Commercial Code, or any other law or regulation. The Parties each intend to treat this Agreement as a loan, and not as a security. No Party has any intention of transferring its right(s), if any, to payment of money to any other person.

6.6 No Warranty as to Tax Consequences. Neither the County, the Authority nor the Company has made any representations to the other(s) with regard to the tax consequences of this Agreement, either under the Internal Revenue Code of 1986, as amended, Virginia law or any other law. Any such representation or warranty, whether oral or written, is disclaimed and is merged into this Agreement.

6.7 True-Up. In the event that the Company corrects its tax returns due to an inadvertent error, and such correction is accepted by the Commissioner of the Revenue, the associated true-up of sums owed under this Agreement shall be calculated into the following year's Annual Cashflow, without interest.

6.8 Separate and Independent Requirements. The County recognizes and agrees that the community investment requirements of Company in Article V are separate and independent of the County's and Authority's requirements under this Article VI.

Article VII – Default and Right to Cure

7.1 Default. The following are Events of Default under this Agreement:

a. Material Default. Any Party breaches any material term of this Agreement.

b. Insolvency. (i) A Party is unable to pay its debts (including trade debts and taxes) as they become due, publicly admits is inability to pay its debts as they come due, or otherwise becomes insolvent; (ii) a Party commences any proceeding seeking to adjudicate it as bankrupt or seeking relief under any law relating to bankruptcy or reorganization or protection of debtors; (iii) any proceeding for any of the foregoing is commenced against a Party and not dismissed or stayed within sixty (60) days; (iv) any proceeding is instituted, with the consent or acquiescence of the Party involved, for the purpose of effecting an agreement or composition between such Party and its creditors for the purpose of adjusting the claims of such creditors; or (v) a Party makes a general assignment or consents to the appointment of a trustee or receiver for all or substantially all of its assets.

7.2 Right to Cure. In the event of an Event of Default under this Agreement, the defaulting Party shall have thirty (30) days after receiving written notice of default from a non-defaulting Party in which to effect a cure satisfactory to the non-defaulting Party, *provided*, that if the default is not reasonably able to be cured within thirty (30) days, the defaulting Party shall have a reasonable additional time to cure, provided the defaulting Party expeditiously commences the cure and diligently pursues such cure to completion.

7.3 Remedies. Following an uncured Event of Default, the non-defaulting Party may seek any remedy available to it under law or in equity, including, without limitation, money damages; specific performance; or injunctive relief; provided, however, that the County shall only have a right to terminate this Agreement for an uncured monetary Event of Default beyond all applicable notice and cure periods.

7.4 Jurisdiction and Venue. Jurisdiction and venue for any dispute arising from this Agreement shall be in the state courts for Botetourt County, as jurisdiction may lie, or in the United States District Court for the Western District of Virginia, Roanoke Division.

7.5 Non-waiver. No Party's waiver, failure, or delay to enforce or require performance of any term or condition of this Agreement or the waiver of any particular breach of this Agreement extends to that instance only. Such waiver or failure is not and shall not be a waiver of any of the terms or conditions of this Agreement or a waiver of any other breaches of the Agreement by the breaching Party and does not bar a non-breaching Party from requiring the breaching Party to comply with all the terms and conditions of the Agreement and does not bar the any Party from asserting any and all rights and/or remedies it has or might have against the breaching Party under this Agreement or at law or in equity.

7.6 LIMITATION ON LIABILITY. NO PARTY SHALL BE LIABLE FOR ANY LOSS OF PROFIT, LOSS OF BUSINESS, LOSS OF REVENUE, BUSINESS INTERRUPTION, COST OF REPAIR OR REPLACEMENT SERVICES (INCLUDING THE COST OF LABOR AND MATERIALS), OR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR PUNITIVE DAMAGES RESULTING FROM ANY CLAIM (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY) RELATED TO OR ARISING OUT OF THIS CONTRACT, NO MATTER THE FORM OF THE CLAIM AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Article VIII – Representations of the Parties

8.1 The Company represents as of the date of this Agreement that:

a. The Company is (i) a Delaware limited liability company duly organized and validly existing under the laws of the State of Delaware; (ii) is duly qualified to transact business and is in good standing in the Commonwealth of Virginia; (iii) is not in violation of any provision of its organizational documents; (iv) has full corporate power to own its properties and conduct its business as contemplated by this Agreement; (v) has full power and authority to enter this Agreement and to enter into and carry out the transactions contemplated by this Agreement; (vi) has authorized the execution and delivery of this Agreement by appropriate corporate action; (vii) is not in default under any provision of this Agreement.

b. To its knowledge, after due inquiry, the Company's execution and delivery of this Agreement neither conflicts with, nor will result in a breach or default under, its organizational documents; nor, to its knowledge, will its execution and delivery of this Agreement conflict with, or result in a breach or default under, the terms, conditions or provisions of any statute, order, rule, regulation, agreement or instrument to which the Company is a party or by which it is bound.

c. This Agreement constitutes a legal, valid and binding obligation of the Company, enforceable in accordance with its terms.

d. To the Company's knowledge, after due inquiry, there is no litigation or proceeding pending or threatened against the Company that would adversely affect the validity of this Agreement.

8.2 The County and Authority, each for itself, represents as follows:

a. Each has (i) full power and authority to enter this Agreement and to carry out the transactions contemplated by this Agreement; (ii) by proper action has duly authorized the execution and delivery of this Agreement; and (iii) is not in default under any provision of this Agreement.

b. This Agreement constitutes a valid, legal and binding obligation, enforceable in accordance with its terms.

c. To its knowledge, after due inquiry, there is no litigation or proceeding pending or threatened against it or affecting it which would adversely affect the validity of this Agreement, or its ability to meet its obligations under this Agreement.

d. To the best of its knowledge, after due inquiry, it is not in default of any provision of Virginia law that would affect its existence or powers.

Article IX – Miscellaneous Terms

9.1 No Third-Party Beneficiaries. The Parties covenant and agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the Parties hereto; (iii) except as expressly provided no other individual or entity shall obtain any right to make any claim against any Party under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity.

9.2 Assignment. No Party shall assign its interest or rights in this Agreement without the consent of all other Parties. Notwithstanding this prohibition, any Party may assign its rights and obligations hereunder to an Affiliate or, in the case of the Authority or the County, a governmental entity succeeding to substantially the same powers and functions as the Authority or the County with respect to this Agreement without the consent of all other Parties.

9.3 Notices.

9.3.1 Any communication required or permitted by this Agreement shall be in writing and must refer to this Agreement, unless expressly provided otherwise.

9.3.2 Any communication under this Agreement will be considered sufficiently given when personally delivered, sent by receipted facsimile transmission, two days after deposit with a qualified commercial courier (e.g., UPS), or five days after deposit in the U.S. Mail, postage prepaid. Notice shall be given simultaneously by email. Notice shall be given as follows:

If to the Company:

1001 Haxall Point, 15th Floor
Richmond, VA 23219
Attn: Carl Bivens
Email: carl.bivens@troutman.com

If to the County:

County Administrator
57 South Center Drive
Daleville, Virginia 24083
(540) 928-2006
glarrowe@botetourtva.gov
Attn: Gary Larrowe, County Administrator

If to the Authority:

Botetourt EDA Board
57 South Center Drive
Daleville, Virginia 24083
Jfkilby50@gmail.com
Attn: John Kilby, Board Chair

With a copy to, which shall not constitute notice:

Botetourt County Attorney
Spilman Thomas & Battle, PLLC
310 First Street, Suite 1100 (ZIP 24011 for Deliveries)
Post Office Box 90
Roanoke, Virginia 24002-0090
(540) 512-1800
mlockaby@spilmanlaw.com
Attn: Michael W.S. Lockaby, Esq.

9.3.3 Any Party may designate additional or different addresses for communications by notice given under this section to the other Parties, without need of a formal amendment to this Agreement.

9.4 Confidentiality; Waiver.

9.4.1 Confidential Information. "Confidential Information" means all information disclosed by the Company or its Affiliates, consultants or contractors that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. The County and the Authority may only use Confidential Information in pursuit of their business relationship with the Company. The Company reserves the right to control and approve the method, manner and content of any and all Confidential Information. Except as provided below, the County and the Authority will not disclose Confidential Information to anyone without the Company's prior written consent. The County and the Authority will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of Confidential Information, including, at a minimum, those measures they take to protect their own confidential information of a similar nature. The County and the Authority will restrict the possession, knowledge, and use of Confidential Information to each of its employees, consultants, or officials who (i) has a need to know the Confidential Information, and (ii) is legally obligated to protect the Confidential Information to the same or greater degree as required under this Section. The County and the Authority will ensure that its employees, consultants, or officials comply with this Section. The County and the Authority may disclose Confidential Information as required to comply with applicable public disclosure or open records laws or as otherwise required to comply with orders of governmental entities that have jurisdiction over them or by law. Prior to making any such disclosure, however, the County or the Authority will (i) provide prompt written notice to Company of the need for such disclosure together with a copy of the materials and information it intends to disclose, and Company shall have one (1) business day before such disclosure is due pursuant to Va. Code § 2.2-3700, et seq., as may be extended by Va. Code § 2.2-3700, et seq. from the County or the Authority, to review and approve such materials or to allow the Company to seek a protective order or other remedy (except to the extent that the County's or the Authority's compliance would cause it to violate the public disclosure or open records laws, applied in good faith and in consultation with legal counsel)); (ii) consult with Company on the advisability of taking steps to resist or narrow such disclosure; (iii) cooperate with Company in any attempt that Company may make to obtain

an order or other reliable assurance that confidential treatment will be accorded to such documents and materials; and (iv) disclose only such information as is required. Should the County and/or the Authority receive any public records request implicating the Confidential Information, the County and the Authority will (i) promptly notify Company in writing of the request and provide Company with copies of all relevant documents related to the request; (ii) cooperate with Company in asserting any applicable exemptions from disclosure under the Virginia Freedom of Information Act, including, but not limited to, the proprietary records and trade secrets exemption provided by Va. Code § 2.2-3705.6(3); and (iii) allow Company to take any and all actions it deems necessary and appropriate to protect its Confidential Information, including, but not limited to, intervening in any legal proceedings related to the disclosure of the Confidential Information. For the avoidance of doubt, this Section does not limit the County's ability to publish an annual report as required by law or generally accepted principles of government accounting. Without limiting the foregoing, Company will manage all media and press relation services regarding Company's involvement with the County and the Authority. The County and the Authority acknowledge and understand that the unauthorized disclosure of any Confidential Information would be extremely prejudicial to Company. This prohibition of disclosure of Confidential Information shall survive the termination of this Agreement. Any breach by the County or Authority of any provisions of this Section shall entitle Company to terminate this Agreement and, without prejudice to any rights and remedies as may be available to Company at law or in equity by reason of such breach, Company shall be entitled to equitable relief including an injunction.

9.4.2 Partial Waiver. For the purposes of verifying the accuracy of reports, and for no other purpose, the Company hereby waives its protections under Section 58.1-3 of the Code and authorizes the Commissioner of the Revenue and Treasurer for Botetourt County, Virginia, to provide verification of the amount of personal property taxes paid and the returns for personal property taxes to the County and the Authority from their records; provided, however, that such disclosure shall not waive the protections of Section 58.1-3 as to any other person, nor authorize the County or the Authority to disclose such information to any other person.

9.5 Independent Contractors. The Parties hereto are independent contractors and are not agents, partners, or joint venturers. No Party shall have the ability to bind another to any contract with a third party and no Party shall hold itself out to any third party as having the right to bind another Party to any contract.

9.5 No Covenants of Officials. No provision of this Agreement shall be deemed a covenant, agreement, or obligation of any present or future, director, officer, employee, or agent of the Company, Authority or the County in his or her individual capacity, and neither County officials, directors of the Authority, nor members of the Company, nor any officer, employee, or agent thereof executing this Agreement or any related instrument shall be liable personally on this Agreement or on such instrument or be subject to any personal liability by reason of the execution and delivery thereof. No director, officer, employee, or agent of the Company, the Authority or the County shall incur any personal liability with respect to any other action taken by him or her pursuant to this Agreement or the Industrial Development and Revenue Bond Act or any of the transactions contemplated hereby or thereby, provided he or she acts in good faith.

9.6 Covenant of Authority. All Parties warrant that the signatories below have full authority, and have undertaken such legal actions as may be necessary to ensure such authority, to bind the entities of which they are representatives to the full extent permitted by law. Company agrees that, during the term of this Agreement, it shall not allow its corporate existence to lapse or its certificate of authority in the Commonwealth of Virginia to be revoked or cancelled at any time.

9.7 Time of the Essence. Time is of the essence of all obligations set forth herein for which a time is stated.

9.8 Waiver. The failure or delay of any Party to this Agreement to insist upon strict compliance with any term herein shall not be construed to be a waiver of that requirement.

9.9 Intentionally Omitted.

9.10 Integration. This Agreement, including the exhibits hereto, constitutes the full and complete agreement of the Parties respecting its subject matter, and any prior or contemporaneous agreements or understandings, whether written or oral, are hereby merged into and superseded by the provisions of this Agreement. This Agreement may only be amended or supplemented by a subsequent writing of equal dignity except where expressly set forth herein.

9.11 Attorney's Fees. The Parties agree that, except as specifically provided in this Agreement, if any Party pursues legal action to enforce the terms of this Agreement, the American Rule shall apply and each Party shall bear its own attorneys' fees and expert costs and no fee shifting shall occur.

9.12 Choice of Law. This Agreement shall be construed in accordance with the laws of the Commonwealth of Virginia, without giving effect to its principles of conflicts of laws.

9.13 Sovereign Immunity. Nothing in this Agreement is intended to waive, or shall be construed to waive, the sovereign immunity of the Authority or the County.

9.14 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, and all of which together constitute one and the same instrument. Electronic signatures are permitted in accordance with the Virginia Uniform Electric Transactions Act.

9.15 Easement Relocation. The County and the Authority shall reasonably cooperate with Company in respect to the relocation of any existing easements, including, without limitation, those held by third parties as necessary in connection with the development of the Facility.

In witness whereof, see the following signatures:

[Signatures On Following Pages]

Helio Capital LLC, a Delaware limited liability company

By: _____

Name: Carl Bivens

Its: Authorized Signatory

Witness:

By: Sarah Farney

Name: Sarah Farney

[Signatures Continue on Following Pages]

Botetourt County, Virginia,

By: _____

Name: Gary P. Larrowe

Its: County Administrator

Witness:

By: _____

Name: Kimberly Stewart

Approval as to form:

By: _____

Name: Michael W.S. Lockaby

Its: County Attorney

[Signatures Continue on Following Page]

Economic Development Authority of Botetourt County, Virginia,

By: _____

Name: John F. Kilby

Its: Board Chair

Witness:

By: _____

Name: Kimberly Stewart

[End of Agreement]