

CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY

AND

57 ALEXANDER DEVELOPER LLC

TAX AGREEMENT

Dated as of April 30, 2021

Affected Tax Jurisdictions:

Westchester County
City of Yonkers

Street Address:

47, 57, 65, and 71 Alexander Street
City of Yonkers
Westchester County, New York

Tax Map No(s):

Section 2, Block 2605, Lot 51
Section 2, Block 2610, Lots 50, 53, and 57

TAX AGREEMENT

THIS TAX AGREEMENT (the "Agreement"), dated as of April 30, 2021, by and between **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with its offices located at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701 (the "Agency") and **57 ALEXANDER DEVELOPER LLC**, a State of Delaware limited liability company authorized to do business in the State of New York, having offices c/o Rose Associates, Inc., 777 Third Avenue, 6th Floor, New York, New York 10017 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 83 of the Laws of 1982 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has requested the Agency's assistance with a certain project (the "Project") consisting of: (i) the acquisition by the Agency of leasehold title to certain land located at 47, 57, 65, and 71 Alexander Street, City of Yonkers, New York (collectively, the "Land") and the existing improvements located thereon, consisting principally of 5 industrial warehouse type buildings and one storage shed within the Alexander Street Urban Renewal Area of the City of Yonkers, New York (collectively, the "Existing Improvements"); (ii) the reconstruction, renovation and refurbishment of the Existing Improvements consisting of: (a) an approximately 557,960 gross square foot seven story residential rental building and approximately 149,531 gross square feet of parking with 443 parking spaces; and (b) approximately 25,000 gross square feet of new waterfront public open space including a waterfront walkway (collectively, the "Improvements"); and (iii) the acquisition and installation in and around the Existing Improvements and Improvements of certain items of equipment and other tangible personal property (the "Equipment"; and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility") by the Company, as agent of the Agency, and (iv) the subleasing of the Facility to the Company for use and operation by the Company as a residential rental building, all under a lease or sublease from the Agency; and

WHEREAS, in order to induce the Company to develop the Facility, the Agency is willing to hold title and/or a leasehold interest in the Land, Improvements and personal property constituting the Facility pursuant to the terms of that certain Lease Agreement, dated as of April 30, 2021, by and between the Agency and the Company (the "Company Lease"), and thereafter, the Agency will sublease the Facility back to the Company pursuant to the terms and conditions contained in that certain Leaseback Agreement, dated as of April 30, 2021, by and between the Agency and the Company (the "Leaseback Agreement"; and together with the Company Lease, collectively, the "Lease Agreements"); and

WHEREAS, the Agency has determined that providing the Facility will accomplish, in part, its public purposes; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to acquire, construct and equip the Facility in accordance with the Application filed with the Agency by 57 Alexander JV, LLC, for itself or on behalf of an entity to be formed, namely the Company; and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, other than Special District Charges (as defined by Section 2.1) which shall be paid by the Company outside this Agreement as billed by the respective third parties; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes by the Company to the Agency for the benefit of Westchester County and the City of Yonkers, inclusive of the City of Yonkers Dependent School District (collectively, the "Affected Tax Jurisdictions"); and

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

Section I - Payment in lieu of Ad Valorem Taxes:

Section 1.1 Exemption Application. A.) Subject to the completion and filing by the Agency or its designee at the direction of the Agency on or before the taxable status date **October 15, 2021** (the "Taxable Status Date") of New York State Form RP-412-a Application For Real Property Tax Exemption (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law and Section 874 of the Act and the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review, the Facility shall be exempt from Real Estate Taxes for the periods set forth in Section 1.3. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the County and City, including Real Estate Taxes levied by the City for its Dependent School District. The Company shall provide the Agency with the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Leaseback Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due, specifically including but not limited to Real Estate Taxes for years prior to and after the tax years covered by this Agreement. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from

the denial of an exemption from Real Estate Taxes except to the extent that such denial results solely from the failure of the Agency to file the Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

B.) Agreement to Make Payments. The parties agree and acknowledge that payments made under this Agreement are for purposes of obtaining revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are exempt from the payment of real property taxes pursuant to Section 412-a of the Real Property Tax Law and Section 874 of the General Municipal Law. The Company shall pay to the Agency, on September 1 of each year beginning on September 1, 2022 (for the benefit of the Affected Tax Jurisdictions), as an in lieu of tax payment, an amount equal to the Tax Payments as set forth on Schedule A (the "Tax Payments") for the periods described in Section 1.3.

All Tax Payments shall be mailed to the Agency at: 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701, or as otherwise directed by the Agency. The Company hereby agrees to make all such Tax Payments without further notice or invoice from the Agency or the Affected Tax Jurisdictions. All checks shall be made payable as directed by the Agency from time to time.

(i) The Company hereby waives any and all rights it may have to any refund of prior tax payments for the periods prior to the periods described in Section 1.3.

(ii) The Agency and the Company intend to establish a fixed payment schedule of Tax Payments that are in lieu of real estate taxes with respect to the Facility that, absent a default by the Company or a change in law, shall provide tax certainty for the Company and revenue certainty for the Affected Tax Jurisdictions. The parties hereto acknowledge that the Company shall have all of the rights and remedies of a taxpayer, including the right to institute a grievance with respect to Real Estate Taxes. The Company hereby agrees for the benefit of the Affected Tax Jurisdictions to not seek a refund of any taxes paid or to be paid for periods prior to the periods described in Section 1.3. Notwithstanding the foregoing, the right of the Company to institute a grievance with respect to Real Estate Taxes shall be strictly limited by the terms of this Agreement; and any grievance the Company institutes shall only cause an adjustment in the Special District Charges (as defined in Section 2.1) and the Company shall have the right to any refunds related to grievances involving Special Charges. Except as set forth herein, the Tax Payments as set forth in Schedule A shall not be contested, grieved, or refuted during and for the term of this Agreement and the Company shall not seek a refund of any taxes paid or to be paid.

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

1.2 Valuation of Future Additions to the Facility: If there shall be a future addition to the Facility that has not been described in the Application constructed or added in any manner after the date of this Agreement, the Company shall notify the Agency of such future addition ("Future Addition"). The notice to the Agency shall contain a copy of the Application for a building permit, plans and specifications, and any other relevant evidence that the Agency may thereafter request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the Tax Payment. The Agency shall notify the Company of any proposed increase in the Tax Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Additions made by the Agency, then and in that event that valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the increased Tax Payment until a different Tax Payment shall be established. If a lesser Tax Payment is determined in any proceeding or by subsequent agreement of the parties, the Tax Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the next succeeding Tax Payment(s).

1.3 Period of Benefits.

The tax benefits provided for herein shall be deemed to include: (i) the 2023 County tax year through the 2040 County tax year and (ii) the 2022-2023 City tax year through the 2039-2040 City tax year. **This Agreement shall expire on December 31, 2040** with the understanding that the Company will be making a payment hereunder for the 2041 County tax year and the 2040-2041 City tax year in the amounts as if the Agency were not in title on the tax lien date with respect to said tax years). In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b of the New York Real Property Tax Law ("RPTL"); provided, the foregoing shall not be interpreted to limit the Company and Agency from subsequently agreeing to additional benefits based upon commitments to make additional improvements or changes in use from time to time between the Agency and the Company. It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

Section II - Special District Charges, Special Assessments and other charges.

2.1 *Special District Charges and other payments:* Special district charges, special assessments, special ad valorem levies specifically including but not limited to charges imposed by the City of Yonkers for frontage feet ("CC001"); Housing Units ("CC002"); ETPA Charge ("CC003"); and a Safety Inspection Fee ("CC004") and district charges including but not limited to pure water charges and Westchester County sewer district charges (collectively the "Special

District Charges”), are not included in the amount of the Tax Payment and are to be paid in full in accordance with normal billing practices.

2.2 *Yonkers Downtown Business Improvement District:* The Company shall apply for admission as a “Class A” member of the Yonkers Downtown Business Improvement District (“BID”). The Company shall consent to any action of the City Council or the Mayor of the City of Yonkers to include the Facility in the BID, provided that the Agency contemporaneously adopts the SA Credit and SA Reduction (as defined herein) in accordance with its Uniform Tax Exemption Policy (“UTEP”) or the procedures for deviation from the UTEP as provided for in the Act. Any provision of this Agreement to the contrary notwithstanding and to induce the Company to apply for admission to the BID, the amount of Tax Payments set forth in Section 1.1 (B) hereof, shall be reduced (but not below \$0) by the amount, if any, of the statutory BID special assessment paid by the Company to the City, for the benefit of the BID, relating to the Facility (collectively, “Special Assessments”). The amount of any such reduction of a Tax Payment shall be set forth on the applicable Tax Payment bill issued with respect to such fiscal tax year, if any, but the failure of the Company to receive such bill shall in no event affect the Company’s obligation to pay such Tax Payment. In the event that (i) the amount of Special Assessments for a particular fiscal tax year exceeds the amount of the Tax Payment for such fiscal tax year (such excess is hereinafter referred to as an “SA Credit”), or (ii) the amount of Tax Payments for a particular fiscal tax year are not reduced by the amount of Special Assessments for such fiscal tax year (the amount of such Special Assessments is hereinafter referred to as an “SA Reduction”), then the amount of such SA Credit or SA Reduction, as the case may be, shall be carried over as a credit for the following fiscal tax year(s); provided, however, that if there is an unused SA Credit or SA Reduction at the end of the Term of this Agreement, then the Obligor shall not be entitled to (a) take such SA Credit or SA Reduction against any further payments hereunder or against real property taxes assessed against the Facility, or (b) an extension of the term of this Agreement.

Section III - Transfer of Facility.

3.1 In the event this Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

Section IV - Assessment Challenges.

4.1 The Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Facility, with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any Special District Charges as if and to the same extent as if the Company were the owner of the Facility.

4.3 The Company shall file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers and provide information to the Agency as requested from time to time.

Section V - Changes in Law.

5.1 To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

Section VI - Events of Default.

6.1 The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section I within thirty (30) days of the Payment Date (the "Delinquency Date"); (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; or (iii) the occurrence and continuance of any events of default under the Leaseback Agreement after the expiration of any applicable cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, but subject to the rights of a Notice Lender as set forth in Section 9.1 below, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the General Municipal Law and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

6.2 If payments pursuant to Section I herein are not made by the Delinquency Dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows: (a) with respect to payments to be made pursuant to Section I herein, if said payment is not received by the Delinquency Date defined in Section 6.1 herein, the Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month, and (b) with respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, the Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

6.3 Prior to exercising any remedy hereunder, any Notice Lender, as defined herein, shall be afforded the notice, cure and other rights set forth in Section 9.1.

Section VII - Assignment.

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

Section VIII – Miscellaneous.

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

8.2 Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, or to a nationally recognized courier such as Federal Express, addressed as follows:

To the Agency:

City of Yonkers Industrial Development Agency
470 Nepperhan Avenue, Suite 200
Yonkers, New York 10701
Attention: President/CEO

With Copies To:

Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attention: Shawn M. Griffin, Esq.

To the Company:

57 Alexander Developer LLC
c/o Rose Associates, Inc.
777 Third Avenue, 6th Floor
New York, New York 10017

With a Copy To:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Attention: Peter E. Fisch, Esq.

and

Zarin & Steinmetz
81 Main Street, Suite 415
White Plains, New York 10601
Attention: David Steinmetz, Esq.

To the Notice Lender:

Bank of America, N.A., as Administrative Agent
One Bryant Park, 34th Floor
Mailcode: NY1-100-34-05
New York, New York 10036
Attention: Charles Troyanovski

With a copy to:

Riemer & Braunstein LLP
7 Times Square, Suite 2506
New York, New York 10036
Attention: Ronald N. Braunstein, Esquire

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section. Any notice hereunder may be given by counsel for a party with the same force and effect as if given by such party.

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

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

Section IX -- Rights of Notice Lenders

9.1 Rights of Notice Lenders.

For the purposes of this Agreement, the term “mortgage” shall include any mortgage, leasehold mortgage, purchase money mortgage or other security instrument or instruments secured by the Facility and used in the jurisdiction in which the Facility is located, such as, without limitation, mortgages, deeds of trust, mortgage deeds, security deeds and conditional deeds, as well as financing statements, assignments of leases, rents and/or profits, security agreements and other documentation which a lender may require, and the terms “holder of a mortgage” and “mortgagee” shall mean the secured party under any of the foregoing instruments (including the holders of any mortgage on all of the Company’s right, title and interest under this Agreement) or the prospective secured party if the instruments have not been delivered. Notwithstanding the foregoing, the term “mortgage” shall not include the Tax Mortgage of even date herewith, made by the Company in favor of the Agency (the “Tax Mortgage”) and the term “holder of a mortgage” and “mortgagee” shall not include a holder of the Tax Mortgage or the mortgagee thereunder.

The Company and every successor and assignee of the Company is hereby given the right by the Agency in addition to any other rights herein granted, without any requirement to obtain the Agency’s consent, to grant a mortgage or a security interest in the Company’s interest in the Facility under one or more mortgages or security agreements and to assign its interest in each of this Agreement, the Project Agreement, the Lease Agreement and the Leaseback Agreement as collateral security for such mortgage(s), upon the conditions that all rights acquired under such mortgage(s) shall be subject to: (i) the prior lien or priority payment position of the Tax Mortgage or this Agreement unless otherwise agreed by the Agency, (ii) each and all of the covenants, conditions and restrictions set forth in this Agreement, and (iii) all rights and interests of the Agency herein, none of which covenants, conditions and restrictions is or shall be waived by the Agency by reason of this right to mortgage or grant a security interest in the Company’s interest in this Agreement and the Facility, except as expressly provided herein.

If, in accordance with the immediately preceding paragraph, the Company, with respect to all or a portion of the Facility and/or the Company’s successors and assigns (as approved by the Agency to the extent such approval is required in accordance with the terms hereof, and including, without limitation, any lessee of the Company, but only with the Company’s and Agency’s prior written consent), shall mortgage or grant a security interest in the Company’s interest in this Agreement, the Project Agreement, the Lease Agreement, the Leaseback Agreement and the Facility, and if the mortgagee shall send to the Agency (pursuant to the notice provisions of Section 8.2 herein) a true copy of its mortgage, together with written notice specifying the name and address of the mortgagee (a mortgagee giving such notice, a “Notice Lender”), so long as such mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the holder thereof to the Agency, the following provisions shall apply (in respect of such mortgage and of any other mortgages which also comply with the above):

(a) There shall be no renewal, cancellation (except upon the exercise of the Agency’s remedies for default by the Company hereunder that is not timely and diligently cured by Notice Lender in the time periods provided below), surrender, acceptance of surrender, material amendment or modification of this Agreement, the Tax Mortgage, the Project Agreement, the

Lease Agreement or the Leaseback Agreement, in each case, without the written consent of all Notice Lenders.

(b) In the event of any default by the Company under this Agreement, the Tax Mortgage, the Project Agreement, the Lease Agreement or the Leaseback Agreement, or the occurrence of a Recapture Event, the Notice Lender shall have thirty (30) days for a monetary default (including any Recapture Event), and sixty (60) days in the case of any other default, after notice to the Notice Lender of such default and/or Recapture Event, (which notice shall be given in the manner set forth in Section 6.6) to cure or to cause to be cured the default and/or Recapture Event, at Notice Lender's sole discretion, and the Agency shall accept such performance by or at the instigation of such Notice Lender as if the same had been done by the Company. During any such cure period and provided that the Notice Lender shall timely and diligently pursue such cure, the Agency shall take no action to effect a termination of this Agreement, the Lease Agreement, the Leaseback Agreement and/or the Project Agreement. In the event of a Recapture Event, or a default or Event of Default which is not susceptible of cure by the Notice Lender, or which is not susceptible of cure by the Notice Lender without first obtaining possession of the Facility, the Notice Lender shall have a reasonable time, but not to exceed an additional one sixty (60) days, after notice thereof (x) to obtain possession of the Facility and, in the case of a default or Event of Default susceptible of being cured by the Notice Lender, to cure such default after obtaining possession or (y) in the case of a Recapture Event, default or Event of Default not susceptible of being so cured, to institute, prosecute and complete foreclosure proceedings or otherwise acquire the Company's interest under the Leaseback Agreement; provided, however, the Notice Lender shall not be obligated to continue such possession or to continue such foreclosure proceedings. Any default by the Company not susceptible of being cured by the Notice Lender shall be deemed to have been waived by the Agency upon completion of such foreclosure proceedings or upon the acquisition of the Company's interest in the Leaseback Agreement and this Agreement, it being understood and agreed that (x) the Notice Lender, any nominee or designee thereof which is controlled by and/or affiliated with the Notice Lender or (y) subject to the remaining provisions of this Section 9.1(b), any Permitted Developer (as defined below) (each, a "Successor Owner"), may become the legal owner and holder of the Company's interest in the Facility (but not the IDA's leasehold interest in the Facility) and, upon its express assumption of the obligations of the Company under the Leaseback Agreement, the Lease Agreement, the Project Agreement and this Agreement, under each such agreement, through such foreclosure proceedings or by deed or assignment, as applicable, of the Company's interest thereunder in lieu of foreclosure (any such event, a "Foreclosure Event"). Notwithstanding any provision to the contrary, neither Notice Lender (or any nominee or designee thereof which is controlled by and/or affiliated with the Notice Lender) or any Permitted Developer shall be deemed a Successor Owner unless (x) such Person (as defined below) shall have assumed the obligations of the Company under the Lease Agreement, Project Agreement, this Agreement, and Leaseback Agreement, or entered into new agreements with the Agency on the same terms and conditions as the Lease Agreement, Project Agreement, this Agreement, and Leaseback Agreement, respectively, and (y) in the case of a Permitted Developer, the Agency shall have approved the applicable Permitted Developer as a Successor Owner, such approval not to be unreasonably withheld, conditioned or delayed. As used herein, "Permitted Developer" means a Person that: (i) is a Permitted Person (as defined below) and (ii) has at least five (5) years' experience in successfully developing and/or operating properties

similar to the Project within the State of New York. The term "Permitted Person" shall mean any Person (which term shall include, for purposes of this definition, such Person's principals, shareholders, partners, members, managers, directors and officers, as the case may be) that: (A) is not in default or in breach, after written notice as applicable and beyond any applicable grace period, of its obligations under any written agreement with any Affected Tax Jurisdictions and/or the Agency involving an amount individually or collectively in excess of Fifteen Thousand Dollars (\$15,000.00), unless such default or breach has been cured or waived in writing by any Affected Tax Jurisdictions and/or the Agency; (B) has not been convicted of a felony in the preceding ten (10) years; (C) has not received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony; (D) has not received written notice of default in the payment to the State of New York or any municipality thereof any taxes or impositions in excess of Fifteen Thousand Dollars (\$15,000.00), unless such default or breach has been cured or satisfied; (E) is not on a United States Treasury Department Office of Foreign Assets Control list; (F) has a business and financial reputation satisfactory to the Agency in its reasonable discretion, which may include a background check commissioned by the Agency (and with respect to which such Person shall reasonably cooperate); (G) has relevant comparable qualifications to those of the Borrower (and its principals), as determined by the Agency in its reasonable discretion, (H) has financial net worth satisfactory to the Agency in its reasonable discretion and (I) is not controlled by a Person who does not or cannot meet the standards set forth in the foregoing clauses (A) through (E). "Person" shall mean any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or other entity.

(c) The Notice Lender shall be given notice by the Agency and the Company of any litigation, arbitration or other proceeding or dispute by or between the parties hereto with respect to this Agreement, and shall have the right to intervene therein and be made a party to any such arbitration or other proceeding. In any event, the Notice Lender shall have the right to receive notice from the Agency and the Company of, and a copy of, any award or decision made in said arbitration or other proceeding, whether or not the Notice Lender intervened or became a party. In addition, the Agency agrees to promptly provide the Notice Lender with all notices of default and/or of the occurrence of a Recapture Event to the address of Notice Lender set forth in Section 7.3 of the Project Agreement. Each notice of a Recapture Event, default or Event of Default, as the case may be, given by the Agency will state the amounts of any payments herein provided that are then claimed to be in default.

(d) The Company or any assignee of the Company shall cause the name of the Notice Lender to be added to the loss payable endorsement of any and all fire and other casualty insurance policies to be carried by the Company in respect of the Facility, and all such policies shall state that the insurance proceeds are to be paid as provided in the mortgage. Any insurance proceeds in respect of the Facility shall be paid in the manner specified in the mortgage. If more than one Notice Lender is named as an insured, the insurance proceeds will be paid to the Notice Lender whose mortgage is prior in lien among those so named.

(e) Any award or payment in condemnation or eminent domain in respect of the Facility shall be paid to the Notice Lender to be applied in the manner specified in the mortgage.

If more than one mortgage is in effect, the funds shall be paid to the Notice Lender whose mortgage is prior in lien among those in effect.

(f) No fire or casualty loss claims shall be settled and no agreement will be made in respect of any award or payments in condemnation or eminent domain except in accordance with the terms of the mortgage.

(g) Except after the Successor Owner has succeeded to the interest of the Company in the Facility and expressly assumed the obligations of the Company under this Agreement, the Lease Agreement, the Leaseback Agreement and the Project Agreement, no liability for any payments to be made pursuant to any such agreement or the performance of any other of the Company's covenants and agreements hereunder or thereunder shall attach to or be imposed upon the Successor Owner, and if the Successor Owner succeeds to the interest of the Company in the Facility, all of the obligations and liabilities of the Successor Owner shall be subject to the limitations of liability set forth in this Agreement.

(h) Reserved.

(i) Notwithstanding any provision of this Agreement, the Tax Agreement, the Lease Agreement or the Leaseback Agreement to the contrary, the foreclosure by Notice Lender of a mortgage or any transfer of the Company's interest in this Agreement, the Tax Agreement, the Lease Agreement, the Leaseback Agreement and/or the Facility in connection with a foreclosure, whether by judicial proceedings or by virtue of or in lieu of foreclosure or other appropriate proceedings, or any conveyance of a Company's interest in this Agreement, the Tax Agreement, the Lease Agreement, the Leaseback Agreement and/or the Facility by the Notice Lender or any nominee or designee thereof which is controlled by and/or affiliated with the Notice Lender, shall not, in and of itself, require the consent or approval of the Agency or constitute a default or Recapture Event under this Agreement, the Tax Agreement, the Lease Agreement or the Leaseback Agreement, as applicable. For the avoidance of doubt, this subsection shall not apply to any Person except for a Notice Lender or any nominee or designee thereof which is controlled by and/or affiliated with the Notice Lender. The Agency shall attorn to any Successor Owner once it has consented to the Successor Owner to the extent such consent is required in accordance with the terms hereof.

(j) Reserved.

(k) The Agency agrees to amend this Agreement to include any reasonable provisions requested by any Notice Lender with respect to "Rights of Notice Lenders" hereunder.

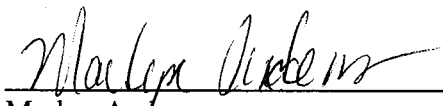
(l) The Agency acknowledges and agrees that Bank of America, N.A., in its capacity as administrative agent for itself and certain other lenders, is a Notice Lender.

[THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

[Signature Page to Tax Agreement]

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

**CITY OF YONKERS INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: Marlyn Anderson
Title: Secretary

57 ALEXANDER DEVELOPER LLC

By: _____
Name:
Title:

[Signature Page to Tax Agreement]

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

**CITY OF YONKERS INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: Marlyn Anderson
Title: Secretary

57 ALEXANDER DEVELOPER LLC

By:  _____
Name: Marc Ehrlich
Title: Vice President

SCHEDULE A

to

Tax Agreement

Dated as of April 30, 2021

by and between

City of Yonkers Industrial Development Agency
and 57 Alexander Developer LLC

Pursuant to the terms of Section 1.1 of this Agreement, "Tax Payments" shall mean an amount per annum equal to the following amounts for the period designated:

TAX AGREEMENT YEAR	CITY YEAR	COUNTY YEAR	PAYMENT DATE	ESTIMATED TAX PAYMENTS	% of Full Taxes
1	2022-2023	2023	September 1, 2022	\$115,511	Unimproved
2	2023-2024	2024	September 1, 2023	\$117,821	Unimproved
3	2024-2025	2025	September 1, 2024	\$120,178	Unimproved
4	2025-2026	2026	September 1, 2025	\$592,500	25%
5	2026-2027	2027	September 1, 2026	\$725,220	30%
6	2027-2028	2028	September 1, 2027	\$863,012	35%
7	2028-2029	2029	September 1, 2028	\$1,006,025	40%
8	2029-2030	2030	September 1, 2029	\$1,154,414	45%
9	2030-2031	2031	September 1, 2030	\$1,308,336	50%
10	2031-2032	2032	September 1, 2031	\$1,601,403	60%
11	2032-2033	2033	September 1, 2032	\$1,905,670	70%
12	2033-2034	2034	September 1, 2033	\$2,221,466	80%
13	2034-2035	2035	September 1, 2034	\$2,407,514	85%
14	2035-2036	2036	September 1, 2035	\$2,600,115	90%
15	2036-2037	2037	September 1, 2036	\$2,652,117	90%
16	2037-2038	2038	September 1, 2037	\$2,855,446	95%

17	2038-2039	2039	September 1, 2038	\$2,912,555	95%
18	2039-2040	2040	September 1, 2039	\$2,970,806	95%

The Agency interest in the Facility shall expire on **December 31, 2040**. The Company shall pay the 2041 County tax bill and the 2040-2041 City tax bill and tax bills for all subsequent tax years on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. Tax Payments shall be no less than the Full Taxes paid prior to the Tax Agreement. Full Taxes means all property taxes payable with respect to the Facility calculated in an amount equal to the amounts that would be paid if the Agency were not in title and no exemption was available. Tax Payments shall be based on the percentage of Full Taxes, estimated tax payments are provided for illustrative purposes only.

* Does NOT include Special District Charges - City will send separate bill.
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