

**CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**BOYCE THOMPSON CENTER LLC**

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**PAYMENT IN LIEU OF TAXES AGREEMENT**

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**Dated as of February 5, 2016**

**Affected Tax Jurisdictions:  
County of Westchester  
City of Yonkers  
Yonkers City School District**

Section	3
Block	3455
Lot	66

## PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (this "Agreement"), dated as of the 5<sup>th</sup> day of February, 2016, 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 **BOYCE THOMPSON CENTER LLC**, a New York limited liability company, with offices at c/o Simone Development Companies, 1250 Waters Place, Bronx, New York 10461 (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 submitted an application dated February 6, 2014 (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project (the "Project") consisting of: (i) the acquisition by the Agency of leasehold title to a certain parcel or parcels of land located at 1086 North Broadway, Yonkers, New York (the "Land"), and the existing improvements thereon, by lease from the Company, (ii) the restoration, construction, reconstruction, renovation, improving, maintenance and equipping of the existing 60,000 square foot, two (2) story building thereon, the demolition of certain greenhouse structures, and the construction and equipping of an approximately 18,000 square foot, two-story addition to the existing structure and a new free standing two level glass and aluminum building, all intended to contain a combination of uses, including retail stores, banks, offices, medical offices, commercial schools and/or restaurants; (collectively, the "Improvements"), (iii) the purchase and installation of additional furnishings, fixtures and equipment (the "Equipment", and collectively with the Land and the Improvements, the "Facility") by the Company as agent of the Agency, and (iv) the subleasing of the Facility, as so furnished and equipped, to the Company for use and operation by the Company, all under a lease or sublease from the Agency; and

WHEREAS, in order to induce the Company to acquire, renovate, construct and equip the Facility, the Agency is willing to take title to or a leasehold interest in the Facility (the "Company Lease") and thereafter the Agency will leaseback the Facility back to the Company pursuant to the terms and conditions of a certain Agreement of Sublease to be dated on or about the date hereof (the "Agency Sublease" the Company Lease and the Agency Sublease the "Lease Agreements"); 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 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 the County of Westchester, the City of Yonkers and the Yonkers City 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. 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, 2015) (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 1.8. 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.

Section 1.2 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, for the periods described in Section 1.8 below: (i) to the City, on **December 1 of each year beginning on December 1, 2016**, as an in lieu of tax payment, an amount equal to the

PILOT Payment as set forth on Schedule A (the "PILOT Payments") for the periods described in Section 1.8, provided, however, that:

(a) the aggregate PILOT Payments to the City and the County for Year 1 and for Year 2 as set forth in Schedule A shall each be reduced in the amount of one half of the Interim Tax Payment paid by the Company pursuant to Section 1.8 below; and

(b) the aggregate PILOT Payments to the City and the County for Year 4 and for Year 5 as set forth in Schedule A shall each be reduced in the amount of \$50,000.

Each such reduction in subparagraphs (a) and (b) above shall be allocated as set forth in Section 1.6 below.

Section 1.3 All PILOT Payments shall be made by check payable to the Agency at 470 Nepperhan Avenue, Suite 200, Yonkers, NY 10701, or as otherwise directed by the Agency from time to time. The Company hereby agrees to make all such PILOT Payments without further notice or invoice from the Agency or the Affected Tax Jurisdictions.

Section 1.4 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 1.8.

Section 1.5 The Agency and the Company intend to establish a fixed payment schedule of PILOT 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 1.8. Any grievance the Company institutes shall only cause an adjustment in the Special Charges (as defined in Section 2.1) and the Company shall have the right to any refunds related to grievances involving Special Charges.

Section 1.6 Allocation. The PILOT Payments payable hereunder shall be allocated 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.

Section 1.7 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 PILOT Payment. The Agency shall notify the Company of any proposed increase in the PILOT Payment related to such Future Addition. If the

Company shall disagree with the determination of assessed value for any Future Additions made by the Agency, then and in that event 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 PILOT Payment until a different PILOT Payment shall be established. If a lesser PILOT Payment is determined in any proceeding or by subsequent agreement of the parties, the PILOT Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the next succeeding PILOT Payment(s).

Section 1.8 Period of Benefits. The period of tax benefits provided for herein (the "PILOT Abatement Period") shall commence July 1, 2016 and expire June 30, 2021, and shall be deemed to include: (i) the 2<sup>nd</sup> Half 2016 County tax year (July 1 through December 31, 2016) through the 1<sup>st</sup> Half 2021 County tax year (January 1 through June 30, 2021) and (ii) the 2016-2017 City tax year (July 1, 2016, through June 30, 2017) through the 2020-2021 City tax year (July 1, 2020, through June 30, 2021). For all periods prior to the PILOT Abatement Period and after the expiration thereof, the Company shall make payments hereunder in the amounts as if the Agency were not in title to the Facility on the tax lien date with respect to said tax years and the Facility is therefore not exempt from Real Estate Taxes. In respect of the current tax year (City tax year 2015-2016 and County tax year 2016), such taxes shall be determined in accordance with §520 of the Real Property Tax Law, apportioned as of the date of the transfer of title to the Land to the Company by deed from the City of Yonkers (the "Interim Tax Payment"), and shall be timely paid by the Company upon receipt of the tax bill for same issued by the City. **This Agreement shall expire on June 30, 2021.** 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 Charges"), are not included in the amount of the PILOT Payment and are to be paid in full in accordance with normal billing practices.

### 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 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 reasonably 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 notice and period within which said payment can be made without penalty; or (iii) the occurrence and continuance of any events of default under the Lease Agreements 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 9.3.2 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 notice and 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 as 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 notice and 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 Upon the occurrence of an Event of Default hereunder, the liability of the Company hereunder shall be all amounts due to the Agency pursuant to Section I hereof through but not including the date on which the Facility is no longer exempt from Real Estate Taxes, together with all other amounts due to the Agency pursuant to Section 6.2 hereof and clause (d) of Section 7 of that certain PILOT Agreement Mortgage made as of the date hereof by the Agency and the Company, as Mortgagor, to the Agency, as Mortgagee, on behalf of the City of Yonkers, and the County of Westchester (the "PILOT Agreement Mortgage").

6.4 Subject to the rights of Notice Lenders, whenever any Event of Default under Section 6.1 hereof shall have occurred and be continuing with respect to this Agreement, the remedies of the Agency shall be limited to the rights hereunder, under the Lease Agreement and under the PILOT Agreement Mortgage, subject to the rights of Notice Lenders to cure any such Event of Default as set forth in Section IX below.

#### 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 Copy To:

Gregory P. Young, Esq.  
566 Westchester Avenue  
Rye Brook, New York 10573

And To:

Robinson & Cole LLP  
666 Third Avenue  
20<sup>th</sup> Floor  
New York, New York 10017  
Att: Alan D. Fox, Esq.

To the Company:

Boyce Thompson Center LLC  
c/o Simone Development Companies  
1250 Waters Place  
Bronx, New York 10461  
Att: Joseph Simone

With a Copy to:

DelBello Donnellan Weingarten  
Wise & Wiederkehr, LLP  
One North Lexington Avenue  
White Plains, New York 10601  
Att: Janet J. Giris, Esq.

To the Notice Lender:

M&T Bank  
One Fountain Plaza  
Buffalo, New York 14203  
Attention: Office of General Counsel



With a Copy to:

Cuddy & Feder LLP  
445 Hamilton Avenue, 14<sup>th</sup> Floor  
White Plains, New York 10601  
Att: Michael L. Katz, Esq.

And to:

M&T Bank  
120 White Plains Road, 3<sup>rd</sup> Floor  
Tarrytown, New York 10591  
Att: Janet Lorn, Vice President

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 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 PILOT Agreement Mortgage and the term "holder of a mortgage" and "mortgagee" shall not include a holder of the PILOT Agreement Mortgage or the mortgagee thereunder.

9.2 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 or this Agreement under one or more mortgages or security agreements and to assign its interest in this 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 of the PILOT Agreement Mortgage, (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.

9.3 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 (including, without limitation, any lessee of the Company, but only with the Company's prior written consent), shall mortgage or grant a security interest in the Company's interest in this 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 to the Agency, the following provisions shall apply (in respect of such mortgage and of any other mortgages which also comply with the above):

9.3.1 There shall be no renewal, cancellation (except upon the exercise of the Agency's remedies for default by the Company hereunder), surrender, acceptance of surrender, material amendment or modification of this Agreement or the PILOT Agreement Mortgage, without the written consent of all Notice Lenders.

9.3.2 In the event of any default by the Company under this Agreement or the PILOT Agreement Mortgage, the Notice Lender shall have thirty (30) days for a monetary default and sixty (60) days in the case of any other default, after notice to the Notice Lender of such default (which notice shall be given in the manner set forth in Section 8.2 above) to cure or to cause to be cured the default complained of, 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. In the event of 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 after notice thereof (a) to obtain possession of the Facility (including, at such Notice Lender's option, possession by a receiver) 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 (b) in the case of a 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 Agency Sublease; 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 such acquisition of the Company's interest in the Agency Sublease and this Agreement, it being understood and agreed that the Notice Lender, or its designee, or any purchaser in foreclosure proceedings (including, without limitation, a corporation formed by the Notice Lender) may become the legal owner and holder of the Company's interest under the Agency Sublease and this Agreement through such foreclosure proceedings or by assignment of Lessee's interest under the Agency Sublease and this Agreement in lieu of foreclosure. Each notice of default given by the Agency or any Municipality will state the amounts of any payments herein provided that are then claimed to be in default.

9.3.3 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.

9.3.4 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.

9.3.5 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.

9.3.6 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.

9.3.7 Except after the Notice Lender has succeeded to the interest of the Company in the Facility, no liability for any payments to be made pursuant to this Agreement or the performance of any other of the Company's covenants and agreements under this Agreement shall attach to or be imposed upon the Notice Lender, and if the Notice Lender or its nominee or designee succeeds to the interest of the Company in the Facility, all of the obligations and liabilities of the Notice Lender or its nominee or designee shall be subject to the limitations of liability set forth in Section 10 of the PILOT Agreement Mortgage (as if the Notice Lender were

the Company thereunder) and shall cease and terminate upon assignment of this Agreement and the Agency Sublease, or abandonment of the Facility.

9.3.8 No payment made by the Notice Lender shall constitute an agreement that such payment was, in fact, due under the terms of this Agreement; and the Notice Lender having made any payment to the Agency pursuant to the Agency's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof, provided it shall have made demand therefor not later than one year after the date of such payment and has demonstrated that such notice or demand was in fact wrongful, improper or mistaken.

9.3.9 Notwithstanding any provision of this Agreement, the Agency Sublease or the PILOT Agreement Mortgage to the contrary, foreclosure of a mortgage or any sale of a Company's interest in this 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 and/or the Facility by the Notice Lender or its nominee, and their respective successors and/or assigns, shall not require the consent or approval of the Agency.

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


9.3.11 The Company agrees to provide the Agency and each Municipality notice of any "mortgagee" and its address.

9.3.12 The Agency acknowledges and agrees that M&T Bank, a New York banking corporation, is a Notice Lender.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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: Kenneth W. Jenkins  
Title: President

BOYCE THOMPSON CENTER LLC

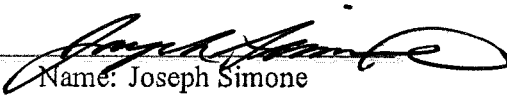
By: \_\_\_\_\_  
Name: Joseph Simone  
Title: Manager

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: Kenneth W. Jenkins  
Title: President

BOYCE THOMPSON CENTER LLC

By:   
Name: Joseph Simone  
Title: Manager

**SCHEDULE A**

TO

PILOT AGREEMENT DATED THE 5<sup>th</sup> DAY OF FEBRUARY, 2016, BY AND BETWEEN CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY AND BOYCE THOMPSON CENTER LLC

Pursuant to the terms of Section 1.2 of this Agreement, and subject to the adjustments set forth in Section 1.2, "PILOT Payments" shall mean an amount per annum equivalent to the amount of Real Estate Taxes that would have been charged against the Facility Realty if the Facility Realty were not tax exempt and was assessed at the assessed value determined by the Assessor in accordance with the following schedule (i.e., the PILOT Annual Assessment):

YEAR	CITY YEAR	COUNTY YEAR	PILOT ANNUAL ASSESSMENT
1	2016-17	2016 2 <sup>nd</sup> H 2017 1 <sup>st</sup> H	Assessed as unimproved.
2	2017-18	2017 2 <sup>nd</sup> H 2018 1 <sup>st</sup> H	Assessed as unimproved.
3	2018-19	2018 2 <sup>nd</sup> H 2019 1 <sup>st</sup> H	Assessed as unimproved.
4	2019-20	2019 2 <sup>nd</sup> H 2020 1 <sup>st</sup> H	Assessed at 65% of full assessed value.
5	2020-21	2020 2 <sup>nd</sup> H 2021 1 <sup>st</sup> H	Assessed at 65% of full assessed value.

## **FIRST AMENDMENT TO PILOT AGREEMENT**

This Agreement, made and entered into as of July 1, 2017 (this "Agreement"), 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 **BOYCE THOMPSON CENTER LLC**, a New York limited liability company, with offices at c/o Simone Development Companies, 1250 Waters Place, Bronx, New York 10461 (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, pursuant to resolutions adopted by the Agency on July 22, 2015, August 18, 2015, May 25, 2016, November 30, 2016 and May 31, 2017 (collectively, the "Resolutions"), the Agency authorized a project for the benefit of the Company, to consist of: (i) the acquisition by the Agency of leasehold title to a certain parcel or parcels of land located at 1086 North Broadway, Yonkers, New York (the "Land"), and the existing improvements thereon, by lease from the Company, (ii) the restoration, construction, reconstruction, renovation, improving, maintenance and equipping of the existing 60,000 square foot, two (2) story building thereon, the demolition of certain greenhouse structures, and the construction and equipping of an approximately 18,000 square foot, two-story addition to the existing structure and a new free standing two level glass and aluminum building, all intended to contain a combination of uses, including retail stores, banks, offices, medical offices, commercial schools and/or restaurants; (collectively, the "Improvements"), (iii) the purchase and installation of additional furnishings, fixtures and equipment (the "Equipment", and collectively with the Land and the Improvements, the "Facility") by the Company as agent of the Agency, and (iv) the subleasing of the Facility, as so furnished and equipped, to the Company for use and operation by the Company, all under a lease or sublease from the Agency; 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 charges; and

WHEREAS, pursuant to the Resolutions, the parties hereto have, inter alia, made and entered into a certain Payment in Lieu of Taxes Agreement (the "PILOT Agreement"), dated as of February 5, 2016; and

WHEREAS, the Agency and the Company desire to amend the PILOT Agreement as hereinafter set forth.



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:

1. Section 1.2 of the PILOT Agreement is hereby amended and restated in its entirety as follows:

“Section 1.2 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, for the periods described in Section 1.8 below: (i) to the City, on **December 1 of each year beginning on December 1, 2016**, as an in lieu of tax payment, an amount equal to the PILOT Payment as set forth on Schedule A (the “PILOT Payments”) for the periods described in Section 1.8, provided, however, that:-

“(a) the aggregate PILOT Payments to the City and the County for Year 1 and for Year 2 as set forth in Schedule A shall each be reduced in the amount of one half of the Interim Tax Payment paid by the Company pursuant to Section 1.8 below; and

“(b) the aggregate PILOT Payments to the City and the County for Year 4 and for Year 5 as set forth in Schedule A shall each be reduced in the amount of \$50,000.

“In the event that the computation of any of the reductions described in subparagraphs (a) and (b) above shall result in an amount for an annual PILOT Payment which is less than zero (the amount less than zero being hereinafter referred to as the “Carry-forward Reduction”), then the PILOT Payment for such Year shall be zero, and the PILOT Payment for the next succeeding Year(s) shall be further reduced by the amount of the Carry-forward Reduction until the aggregate reductions in the PILOT Payments taken by the Company pursuant to subparagraphs (a) and (b) above shall equal the sum of \$100,000 plus the Interim Tax Payment.

“Each such reduction in subparagraphs (a) and (b) above shall be allocated as set forth in Section 1.6 below.”

2. Schedule A to the PILOT Agreement, as referenced in Section 1.2 thereof, is hereby amended and restated in its entirety as set forth in Schedule A annexed hereto.

3. Section 1.8 of the PILOT Agreement is hereby amended and restated in its entirety as follows:

“Section 1.8 Period of Benefits. The period of tax benefits provided for herein shall commence July 1, 2016 and expire December 31, 2021, and shall be deemed to include: (i) the 2017 County tax year (January 1 through December 31, 2017) through the 2021 County tax year (January 1 through December 31, 2021) (the “County Tax Abatement Period”); and (ii) the 2016-2017 City tax year (July 1, 2016, through June 30, 2017) through the 2020-2021 City tax year (July 1, 2020, through June 30, 2021) (the “City Tax Abatement Period”, and collectively with the County Tax Abatement Period, the “PILOT Abatement Period”). For all periods prior to the PILOT Abatement Period and after the expiration thereof, the Company shall make payments hereunder in the amounts as if the Agency were not in title to the Facility on the tax lien date with respect to said tax years and the Facility is therefore not exempt from Real Estate Taxes. In respect of the current tax year (City tax year 2015-2016 and County tax year 2016), such taxes shall be determined in accordance with §520 of the Real Property Tax Law, apportioned as of the date of the transfer of title to the Land to the Company by deed from the City of Yonkers (the “Interim Tax Payment”), and shall be timely paid by the Company upon receipt of the tax bill for same issued by the City. **This Agreement shall expire on December 31, 2021.** 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.”

4. Except as otherwise expressly modified herein, the PILOT Agreement remains in full force and effect.

**[SIGNATURE PAGES FOLLOW]**

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

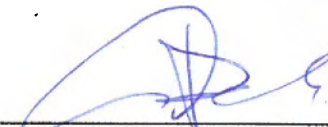
CITY OF YONKERS INDUSTRIAL  
DEVELOPMENT AGENCY

By: Wilson Kimball  
Name: WILSON KIMBALL  
Title: Authorized Representative

**Acknowledgment**


STATE OF NEW YORK                    )  
  ) ss.:  
COUNTY OF WESTCHESTER        )

On the 24th day of May in the year 2018 before me, the undersigned, a Notary Public in and for said State, personally appeared Wilson Kimball, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public  
ALAN D. FOX  
Notary Public - State of New York  
No. 02F06062492  
Qualified in Kings County  
My Commission Expires Aug 6, 2021

**[ADDITIONAL SIGNATURE PAGE FOLLOWS]**


BOYCE THOMPSON CENTER LLC

By:   
Name: Joseph Simone  
Title: Manager

**Acknowledgment**

STATE OF NEW YORK                    )  
                                  Bronx                    ) ss.:  
COUNTY OF ~~WESTCHESTER~~                    )

On the 13<sup>th</sup> day of November in the year 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared Joseph Simone, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

**DINA TOLIA GUPTA**  
Notary Public, State of New York  
No. 02GUS330707  
Qualified in New York County  
Commission Expires 09/21/2019

**SCHEDULE A**

TO

PILOT AGREEMENT DATED THE \_\_\_\_ DAY OF FEBRUARY, 2016, BY AND BETWEEN CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY AND BOYCE THOMPSON CENTER LLC

Pursuant to the terms of Section 1.2 of this Agreement, and subject to the adjustments set forth in Section 1.2, "PILOT Payments" shall mean an amount per annum equivalent to the amount of Real Estate Taxes that would have been charged against the Facility Realty if the Facility Realty were not tax exempt and was assessed at the assessed value determined by the Assessor in accordance with the following schedule (i.e., the PILOT Annual Assessment):

YEAR	CITY YEAR	COUNTY YEAR	PILOT ANNUAL ASSESSMENT
1	2016-17 (7/01/16 – 6/30/17)	2017 (1/01/17 – 12/31/17)	Assessed as unimproved.
2	2017-18 (7/01/17 – 6/30/18)	2018 (1/01/18 – 12/31/18)	Assessed as unimproved.
3	2018-19 (7/01/18 – 6/30/19)	2019 (1/01/19 – 12/31/19)	Assessed as unimproved.
4	2019-20 (7/01/19 – 6/30/20)	2020 (1/01/20 – 12/31/20)	Assessed at 65% of full assessed value.
5	2020-21 (7/01/20 – 6/30/21)	2021 (1/01/21 – 12/31/21)	Assessed at 65% of full assessed value.