

CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY

AND

SFC H and I LLC

TAX AGREEMENT

Dated: December 29, 2015

Section 1, New Block 643, Lot 1

Formerly known as portions of:

Section 1, Block 640, Lot 1	(38,758 square feet of land)
Section 1, Block 640, Lot 25	(8,005 square feet of land)
Section 1, Block 640, Lot 38	(59,516 square feet of land)
Section 1, Block 643, Lot 1	(26,541 square feet of land)
Section 1, Block 643, Lot 24	(14,785 square feet of land)
Section 1, Block 643, Lot 40	(28,909 square feet of land)

TAX AGREEMENT

THIS TAX AGREEMENT (the "**Agreement**"), dated as of the ____ day of December, 2015, 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 **SFC H and I LLC**, a limited liability company organized and existing under the laws of the State of New York with offices at 225 Millburn Avenue, Suite 202, Millburn, NJ 07041 (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, Yonkers Community Development Agency conveyed to the Agency fee title to the Premises described in **Exhibit A** attached hereto (the "**Premises**"), subject to that certain Amended and Restated Financing Lease between the Agency, as lessor, and the Company, as lessee, dated as of the date hereof (the "**Financing Lease**"); and

WHEREAS, the Company, for itself and on behalf of one or more entities to be formed has submitted an amended application (the "**Application**") to the Agency, requesting the Agency's assistance with the redevelopment of the Premises consisting of (i) the acquisition by the Company of fee or leasehold title to or other interest in Premises, and the existing improvements located thereon, if any (the "**Existing Improvements**"); (ii) the acquisition, construction, rehabilitation and/or equipping of the improvements described in Section 2A.1(c) of the Financing Lease (the "**Improvements**") on the Premises; and (iii) the acquisition and installation in and around the Improvements of certain items of equipment and other tangible personal property (the "**Equipment**", and collectively with the Premises and the Improvements, the "**Facility**" and sometimes the "**Project**"); 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 in Section 2.1 below, which charges shall be paid by the Company outside this Tax 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 (the "**County**") and the City of Yonkers (the "**City**"), inclusive of the City of Yonkers "Dependent School District" (collectively, the "**Affected Tax Jurisdictions**"); and

NOW, THEREFORE, in consideration of the covenants contained herein, 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 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, 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.

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. During the periods described in Section 1.3, the Company shall pay to the Agency, on December 1 of each year beginning on December 1, 2016 (the "**Tax Payment Commencement Date**"), for the benefit of the Affected Tax Jurisdictions, as an in lieu of tax payment, the amount set forth on Schedule A (the "**Tax Payments**").

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.**

- (1) Waiver of Prior Refund Rights. 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.
- (2) Appeals and Grievances. The Agency and the Company have established the fixed payment schedule of Tax Payments set forth on Schedule A 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 covered by this Agreement. 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.

- (3) 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 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. No change in the Tax Payments shall be made on account of any Future Additions.

1.1 Period of Benefits. The tax benefits provided for herein shall be deemed to be for the period commencing on the Tax Payment Commencement Date and ending on the thirtieth (30th) calendar year following the Tax Payment Commencement Date (the "**Expiration Date**"). 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 during the term of this Agreement 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; 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 fees ("**CC001**"); Housing Units ("**CC002**"); ETPA Charge ("**CC003**"); and a Safety Inspection Fee ("**CC004**") and district charges including but not limited to pure water charges, Westchester County sewer district charges, and Business Improvement District Charges (collectively the "**Special Charges**"), are not included in the amount of the Tax Payment and are to be paid in full in accordance with normal billing practices. This Tax Agreement relates to City Tax Map Block 643, Lot 1. The Company is obligated to make improvements on adjoining tax parcels (New Street Block 643, Lot 24/City Open Space Block 640, Lot 1, the "Adjoining Parcels to be Improved"). Until such time as the Adjoining

Parcels to be Improved are improved and offered for dedication, the Company shall be obligated to pay the Special Charges on the Adjoining Parcels to be Improved.

Section III – Transfer of Facility.

3.1 In the event this Agreement terminates, the Facility shall thereafter be classified as fully taxable and the Company shall thereafter pay to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessment levied on the Facility as classified as fully taxable.

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, but in no case shall the Company be entitled to receive any adjustment to the Tax Payments outlined in Schedule A hereof as a result of any such challenge.

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 Financing Lease after the expiration of any applicable cure periods, including any cure periods available to a “leasehold mortgagee” or a “Lender” thereunder (provided that if there are no cure periods stated, then the Company will have thirty (30) days to cure such default, unless the default is of such nature that it is not susceptible to cure within thirty (30) days, in which case the Company shall have such additional time as is reasonable to effect such cure). Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the

Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the 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. 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, Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, 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 "Approved Mortgagee", as defined in the Tax Agreement Mortgage dated as of the date hereof securing payment obligations hereunder (the "Tax Mortgage"), shall be afforded notice and the cure rights set forth in Section 10(b)(iv) of the Tax Mortgage.

Section VII – Assignment.

7.1 Except as permitted under the Financing Lease, 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 but in all events shall be conditioned upon the continuation of obligations to pay the amounts described hereunder.

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
87 Nepperhan Avenue, Suite 408
Yonkers, New York 10701
Attention: President/CEO

With a copy to:

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

To the Company:
SFC H and I LLC
225 Millburn Avenue, Suite 202
Millburn, NJ 07041

With a Copy to:
DelBello Donnellan Weingarten Wise & Wiederkehr, LLP
One North Lexington Avenue
White Plains, New York 10601
Attn: Peter J. Wise, Esq.

If to Mortgagee:
Send to Agency (at address above)

With a Copy to:
City of Yonkers
Yonkers City Hall
40 South Broadway
Second Floor
Yonkers, New York 10701
Attn: Mayor and CFO

-and to-

Westchester County
148 Martine Avenue
Michaelian Office Bldg.
White Plains, New York 10601
Attn: County Executive and CFO

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.

8.5 The obligations of the Company under this Agreement, are subject to the non-recourse provisions set forth in Section 9 of the Tax Mortgage, which are incorporated herein by this reference and made a part hereof.


8.6 Notwithstanding anything to the contrary contained herein, the Company shall be entitled to a credit against the Tax Payments in an amount equal to amounts actually paid, related to any fines, damages, penalties, costs, charges and expenses, including, without limitation, reasonable attorneys' fees and disbursements ("SAC Expenses"), which may be imposed upon or incurred by the Company at any time related to any repayment obligation contained in that certain State Assistance Contract ("SAC") No. C300984 between New York State Department of Environmental Conservation, the City of Yonkers and Yonkers Community Development Agency recorded in the Westchester County Clerk's office on April 3, 2001, as Control Number 410860346, with a corrected version recorded on June 25, 2001, as Control Number 411660452 (the "SAC Credit") including without limitation Section 2(f) and 2(g) of the SAC. The SAC Credit shall be applied annually against the Tax Payments in any year in which the Company incurs any SAC Expenses; provided the Company delivers to the Agency reasonable documentary evidence of actual payment of the SAC Expenses when the SAC Credit is applied.

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[Signature Page to Tax Agreement]

IN WITNESS WHEREOF, the Agency and the Company have caused this Agreement to be executed in their respective names, all as of the date first above written.

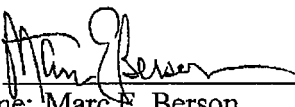
CITY OF YONKERS INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Kenneth Jenkins, President

SFC H & I LLC

By: SFC Yonkers, LLC, Sole Member

By: SF Yonkers LLC, Managing Member

By: 
Name: Marc E. Berson
Title: Managing Member

[Acknowledgment Page to Tax Agreement]

State of New York)
County of Westchester) ss.:

On the 23 day of December in the year 2015, before me, the undersigned, personally appeared March DeLu, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

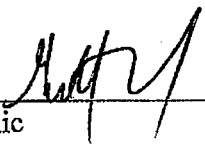


Notary Public

DAVID M ROTHMAN
NOTARY PUBLIC-STATE OF NEW YORK
No. 02RO6184852
Qualified in Westchester County
My Commission Expires April 07, 2016

State of New York)
County of Westchester) ss.:

On the 29 day of December in the year 2015, before me, the undersigned, personally appeared Marc E. Belson, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public



EXHIBIT A

LEGAL DESCRIPTION



DATE: December 11, 2015
BCG Proj. 080239

DESCRIPTION OF A PARCEL OF LAND SITUATED IN THE CITY OF YONKERS,
WESTCHESTER COUNTY, NEW YORK.

BEING NEW TAX LOT 1, BLOCK 643, A PORTION OF FORMER BLOCK 640 LOTS 1, 25,
38 AND BLOCK 643 LOTS 1, 24, 40, CITY OF YONKERS, WESTCHESTER COUNTY, NEW
YORK.

BEGINNING at a point along the northerly lot line of Tax Lot 1 Block 625 said point being North
87° 02' 24" West, 40.00 feet along said division line from a point where the same is intersected by
the westerly right-of-way line of the New York Central Railroad Company, and running, thence

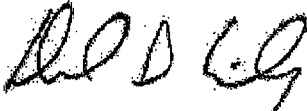
- 1) Along said line, North 87° 02' 24" West a distance of 175.78 feet to a point in same; thence the
following 9 courses along a new line
- 2) Along a curve to the left having a radius of 157.00 feet, an arc length of 143.20 feet, the chord of
which bears North 53° 22' 51" West, 138.29 feet to a point of reverse curve in same; Thence
- 3) Along a curve to the right having a radius of 32.00 feet, an arc length of 14.24 feet, the chord of
which bears North 66° 45' 51" West, 14.12 feet to a point of non-tangency in same; Thence
- 4) North 12° 13' 48" East, a distance of 248.54 feet to an angle point in same; thence
- 5) North 32° 58' 32" East a distance of 63.42 feet to an angle point in same; thence
- 6) North 04° 02' 40" East a distance of 38.06 feet to an angle point in same; thence
- 7) North 04° 18' 15" East a distance of 51.28 feet to an angle point in same; thence
- 8) South 89° 01' 20" East a distance of 88.02 feet to an angle point in same; thence
- 9) North 01° 50' 41" East a distance of 144.90 feet to an angle point in same; thence
- 10) North 03° 19' 54" East a distance of 39.52 feet to a point in the division line between said new Lot
1, Block 643 and Tax Lot 7, Block 2600; thence
- 11) Along said division line, North 12° 40' 23" East a distance of 142.84 feet to a point where the same
is intersected by the southerly lot line of Tax Lot 4, Block 2600; thence

Bowman Consulting Group, Ltd.
54 Horsehill Road • Cedar Knolls, NJ 07627
Phone: 973.359.8400 • www.ohlnd.com • www.bowmanconsulting.com

- 12) Along said division line, South 78°40' 50" East a distance of 29.67 feet to an angle point in same; thence
- 13) Still along said line, South 82°57' 56" East a distance of 77.27 feet to a point where the same is intersected by the westerly line of Tax Lot 2, Block 2600; thence
- 14) Along said westerly line, South 02°07' 28" West a distance of 85.00 feet to an angle point in same; thence
- 15) Still along said line, South 84°16' 04" East a distance of 3.01 feet to a point in same; Thence
- 16) Parallel and distant 40.00 feet westerly of the aforementioned westerly right-of-way line of New York Central Railroad, South 02° 07' 28" West, 704.44 feet to a point where the same is intersected by the northerly lot line of Tax Lot 1 Block 625 and the PLACE OF BEGINNING

Containing 162,173 square feet or 3.7230 acres

Prepared by:



David B. Dixon, PLS Lic 050509

Bowman
CONSULTING

SCHEDULE A

PILOT Year	Payment due 12/1 of City Tax year
1 (2016/17 City; 2017 County)	Land Tax*
2	Land Tax*
3	Land Tax*
4	Land Tax*
5	\$60,642
6	\$61,854
7	\$63,092
8	\$64,353
9	\$65,640
10	\$200,860
11	\$273,169
12	\$417,949
13	\$497,359
14	\$507,307
15	\$517,453
16	\$603,202
17	\$615,266
18	\$784,464
19	\$800,154
20	\$1,469,082
21	\$1,664,959
22	\$1,698,259
23	\$1,732,224
24	\$1,766,868
25	\$1,802,206
26	\$1,838,250
27	\$1,875,015
28	\$1,912,515
29	\$1,950,765
30	\$1,989,781

*Land Tax means the assessed value of the Premises, and not any improvements thereon, on the date this Agreement is first approved, times the respective tax rates of the City and County. In all events special district charges and assessments are payable in addition to the scheduled amounts.

Payments are subject to credits under Section 8.6 but otherwise are payable without set off or counterclaim.