

CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY

AND

RISING DEVELOPMENT YONKERS – MILL/MAIN, LLC

TAX AGREEMENT

**Phase I Adaptive Reuse of
Properties in Downtown Yonkers**

**"Phase I"
2 Mill Street
13 Main Street
27-29 Main Street**

Dated as of October 1, 2014

**Tax Parcel No.:
2-2003-42
2-2003-48
2-2003-55**

TAX AGREEMENT

THIS TAX AGREEMENT (the "Agreement"), dated as of the 1st day of October, 2014, 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 **RISING DEVELOPMENT YONKERS – MILL/MAIN, LLC**, a New York limited liability company with offices at 945 Summit Avenue, Bronx, New York 10452 (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 (the "Application") to the Agency requesting the Agency's assistance with a certain project (the "Phase I Project") consisting of: (i) the redevelopment and adaptive reuse of three properties located at 2 Mill Street and 13 and 27-29 Main Street, Yonkers, New York (the "Phase I Land") to accommodate up to approximately 28,700 square feet of live/work space and approximately 17,500 square feet of cafes, restaurants and retail shopping (the "Phase I Improvements") and (ii) the acquisition and installation in and around the Phase I Improvements of certain items of equipment and other tangible personal property (the "Phase I Equipment", and collectively with the Phase I Land and the Phase I Improvements, the "Facility"); and

WHEREAS, at this time the Company has requested the Agency's assistance in the acquisition, redevelopment and equipping of the Phase I Improvements to be located on the Phase I Land; and

WHEREAS, in order to induce the Company to acquire, renovate, construct and equip the Phase I Project at the Facility, the Agency is willing to take title to or a leasehold interest in the Facility (the "Lease to Agency") and thereafter the Agency will lease back the Facility to the Company pursuant to the terms and conditions of a certain Leaseback Agreement to be dated on or about the date hereof (the "Leaseback Agreement" the Lease to Agency and the Leaseback Agreement 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 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 and the City of Yonkers, inclusive of the City of Yonkers Dependent School District (collectively, the "Affected Tax Jurisdictions"); and

WHEREAS, the Company contemplates undertaking a second phase to the Project (the Phase II Project") consisting of the redevelopment and adaptive reuse of two properties located at 36 and 38 Main Street, Yonkers, New York (the "Phase II Land") to accommodate up to an additional 12,300 square feet of live/work space (the "Phase II Improvements"); and

WHEREAS, when the Company proceeds with the Phase II Improvements located on the Phase II Land, the Company and the Agency will enter into a Tax Agreement for the Phase II Land; 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, 2014)** (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 Tax 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 properly and timely 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 December 1 of each year beginning on **December 1, 2015** (for the benefit of the Affected Tax Jurisdictions), as in lieu of tax payments, amounts equal to the Tax Payments as set forth on Schedules A-1, A-2, A-3 (the "Tax Payments") for the periods described in Section 1.3.

In the event that the Company has not commenced construction for the redevelopment of 13 Main Street and 27-29 Main Street as of May 31, 2015 then Schedule A-1 shall be replaced with Schedule B-1 and the Company shall immediately pay the Agency any difference between the amounts set forth on Schedule A-1 and Schedule B-1 ("Supplemental Tax Payment"). For purposes of this paragraph the term "commenced construction" shall mean the Company shall (i) have held a ground breaking (official ceremony with designated dates for site work announced); and (ii) begun construction for the redevelopment of 13 Main Street and 27-29 Main Street, which shall thereafter be prosecuted with all reasonable diligence and without interruption with a goal of Substantial Completion (as hereinafter defined) no later than May 31, 2017. "Substantial Completion" shall mean that the City of Yonkers Department of Housing and Buildings has issued a temporary certificate of occupancy therefor for all the elements of the Project. In the event the Company shall fail to pay such Supplemental Tax Payment when due in accordance with the provisions of this Agreement, and such failure shall continue for a period of more than thirty (30) days after written notice by the Agency to the Company of such payment failure then, the Agency shall have the right to terminate this Agreement.

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. 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.

(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 temporary 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 2016 County tax year through the 2025 County tax year and (ii) the 2015-16 City tax year through the 2024-2025 City tax year. **This Tax Agreement shall expire on December 31, 2024** (with the understanding that the Company will be making a payment hereunder for County tax year 2026 and City tax year 2025-2026 in the amounts as if the Agency had no interest in the Phase I Land 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 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 and Westchester County sewer 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.

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 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 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, 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 Mortgagee, as defined in the Leaseback Agreement dated the date hereof, between the Agency and the Company, shall be afforded notice and the cure rights set forth in such section, as if such section were set forth in full herein.

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, conditioned 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: Kenneth Jenkins, President

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

With Copy To: Gregory Young, Esq.
566 Westchester Avenue
Rye Brook, New York 10573

To the Company: Rising Development Yonkers – Mill/Main, LLC
945 Summit Avenue
Bronx, New York 10452
Attn: Nicholas Sprayregen

With Copy To: Goldberg Weprin Finkel Goldstein LLP
1501 Broadway, 22nd Floor
New York, New York 10036
Attn: Aubrey E. Riccardi, Esq.

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

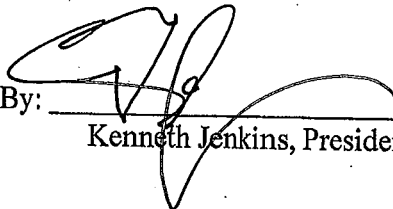
of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents, servants and 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.

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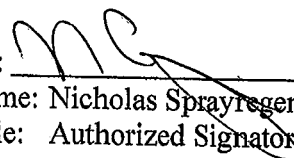
[Signature Page to Tax Agreement]

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: 
Kenneth Jenkins, President

RISING DEVELOPMENT YONKERS -
MILL/MAIN, LLC

By: 
Name: Nicholas Sprayregen
Title: Authorized Signatory

SCHEDULE A-1

2 Mill Street

TO

TAX AGREEMENT DATED AS OF OCTOBER 1, 2014

BY AND BETWEEN

CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY

AND RISING DEVELOPMENT YONKERS – MILL/MAIN, LLC

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

YEAR	CITY YEAR	COUNTY YEAR	PAYMENT DATE	TOTAL TAX PAYMENTS
1	2015-2016	2016	December 1, 2015	\$8,480
2	2016-2017	2017	December 1, 2016	\$8,480
3	2017-2018	2018	December 1, 2017	\$13,590
4	2018-2019	2019	December 1, 2018	\$21,000
5	2019-2020	2020	December 1, 2019	\$30,000
6	2020-2021	2021	December 1, 2020	\$37,000
7	2021-2022	2022	December 1, 2021	\$43,000
8	2022-2023	2023	December 1, 2022	\$53,000
9	2023-2024	2024	December 1, 2023	\$60,000
10	2024-2025	2025	December 1, 2024	\$65,000

SCHEDULE A-2
13 Main Street

TO

TAX AGREEMENT DATED AS OF OCTOBER 1, 2014

BY AND BETWEEN

CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY
AND RISING DEVELOPMENT YONKERS – MILL/MAIN, LLC

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YEAR	CITY YEAR	COUNTY YEAR	PAYMENT DATE	TOTAL TAX PAYMENTS
1	2015-2016	2016	December 1, 2015	\$9,040
2	2016-2017	2017	December 1, 2016	\$9,040
3	2017-2018	2018	December 1, 2017	\$11,000
4	2018-2019	2019	December 1, 2018	\$13,000
5	2019-2020	2020	December 1, 2019	\$17,618
6	2020-2021	2021	December 1, 2020	\$17,970
7	2021-2022	2022	December 1, 2021	\$18,330
8	2022-2023	2023	December 1, 2022	\$18,697
9	2023-2024	2024	December 1, 2023	\$19,070
10	2024-2025	2025	December 1, 2024	\$19,452

SCHEDULE A-3

27 Main Street

TO

TAX AGREEMENT DATED AS OF OCTOBER 1, 2014

BY AND BETWEEN

CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY

AND RISING DEVELOPMENT YONKERS – MILL/MAIN, LLC

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YEAR	CITY YEAR	COUNTY YEAR	PAYMENT DATE	TOTAL TAX PAYMENTS
1	2015-2016	2016	December 1, 2015	\$7,680
2	2016-2017	2017	December 1, 2016	\$13,317
3	2017-2018	2018	December 1, 2017	\$15,981
4	2018-2019	2019	December 1, 2018	\$16,300
5	2019-2020	2020	December 1, 2019	\$16,626
6	2020-2021	2021	December 1, 2020	\$16,959
7	2021-2022	2022	December 1, 2021	\$17,298
8	2022-2023	2023	December 1, 2022	\$17,644
9	2023-2024	2024	December 1, 2023	\$17,997
10	2024-2025	2025	December 1, 2024	\$18,357

SCHEDULE B-1*

2 Mill Street

TO

TAX AGREEMENT DATED AS OF OCTOBER 1, 2014

BY AND BETWEEN

CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY

AND RISING DEVELOPMENT YONKERS – MILL/MAIN, LLC

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YEAR	CITY YEAR	COUNTY YEAR	PAYMENT DATE	TOTAL TAX PAYMENTS
1	2015-2016	2016	December 1, 2015	\$26,445
2	2016-2017	2017	December 1, 2016	\$36,805
3	2017-2018	2018	December 1, 2017	\$44,166
4	2018-2019	2019	December 1, 2018	\$45,050
5	2019-2020	2020	December 1, 2019	\$45,951
6	2020-2021	2021	December 1, 2020	\$46,870
7	2021-2022	2022	December 1, 2021	\$47,807
8	2022-2023	2023	December 1, 2022	\$53,000
9	2023-2024	2024	December 1, 2023	\$60,000
10	2024-2025	2025	December 1, 2024	\$65,000

* In the event that the Company has not undertaken the redevelopment of properties known as 13 Main Street and 27-29 Main Street as of May 31, 2015 then this Schedule B-1 shall replace in its entirety Schedule A-1 and the Company shall immediately pay the Agency any difference between the amounts set forth on Schedule A-1 and Schedule B-1 ("Supplemental Tax Payment").