

CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY

AND

YONKERS ECONOMIC DEVELOPMENT CORPORATION

AND

56 PROSPECT HOLDINGS, LLC

collectively, the Mortgagor,

TO

CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY

(on behalf of the City of Yonkers, County of Westchester, and the Yonkers School District¹),
the Mortgagee

TAX AGREEMENT MORTGAGE
Securing a Principal Indebtedness of \$885,904.00

Dated:

As of August 1, 2021

Street Address:

56 Prospect Street, City of Yonkers, New York

Section/Block/Lot:

Section 1, Block 509, Lot 1

***THIS MORTGAGE DOES NOT COVER REAL PROPERTY PRINCIPALLY IMPROVED
OR TO BE IMPROVED BY ONE OR MORE STRUCTURES CONTAINING IN THE
AGGREGATE NOT MORE THAN SIX DWELLING UNITS EACH HAVING THEIR OWN
SEPARATE COOKING FACILITIES.***

¹ The City of Yonkers Industrial Development Agency is the recipient of payments-in-lieu of taxes made by 56 Prospect Holdings, LLC for the benefit of and allocation to the Affected Tax Jurisdictions (as hereinafter defined), pursuant to the terms of that certain Tax Agreement, dated as of August 1, 2021, by and between the City of Yonkers Industrial Development Agency, Yonkers Economic Development Corporation, and 56 Prospect Holdings, LLC, a copy of which is attached hereto as Exhibit B.

TAX AGREEMENT MORTGAGE

THIS TAX AGREEMENT MORTGAGE made as of August 1, 2021 (the “Mortgage”), by and from the **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York with offices at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701 (“Agency”) and **YONKERS ECONOMIC DEVELOPMENT CORPORATION**, a local development corporation of the State of New York with offices at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701 (“Corporation”), **56 PROSPECT HOLDINGS, LLC**, a State of New York limited liability company, having offices at 786 Walt Whitman Road, Melville, New York 11747 (the “Company”; and together with the Agency, the “Mortgagors”), to Agency, on behalf of and for the benefit of the **CITY OF YONKERS** (the “City”), a municipality having offices at City Hall, 40 South Broadway, Yonkers, New York 10701, the **COUNTY OF WESTCHESTER** (the “County”), a municipality having offices at 148 Martine Avenue White Plains, New York 10601, and the **YONKERS PUBLIC SCHOOL DISTRICT** (the “School District”, which with the City, the County and the School District, being sometimes hereinafter collectively referred to as the (“Affected Tax Jurisdictions”), as Mortgagee, both the City, the County, and School District ultimately receiving the payments to be made under Section 3.3 of the Leaseback Agreement and Rider, dated as of August 1, 2021, by and between the Agency and the Company (the “Leaseback Agreement”), and the Tax Agreement, dated as of August 1, 2021, between the Agency and the Company (the “Tax Agreement”).

WITNESSETH, that this Mortgage is solely to secure the obligation of the Company to make all payments and perform all other obligations of the Company for the benefit of Agency, Corporation, and the Mortgagee under Section 3.3 of the Leaseback Agreement, the Tax Agreement, and payment and performance of the obligations described herein (collectively referred to as the “Section 3.3 Obligations”). The Mortgagor hereby mortgages to the Mortgagee all right, title and interest of the Mortgagor in and to the following described property (the “Mortgaged Property”):

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected or to be erected, suited, lying and being at 56 Prospect Street, City of Yonkers, Westchester County, New York, as more particularly described on **Exhibit A** attached hereto;

TOGETHER with all right, title and interest of the Mortgagor in and to the land lying in the streets and roads in front of and adjoining said premises in an amount equal to the aggregate of all unpaid and defaulted Section 3.3 Obligations;

TOGETHER with all right, title and interest of the Mortgagor in and to all fixtures, furnishings, fittings, appliances, machinery, chattels and articles of personal property now or hereafter attached to or used in connection with said premises, together with any and all replacements thereof and additions thereto; and

BEING THE SAME PREMISES and interest therein leased by the Company to the Agency and Corporation pursuant to that certain Lease Agreement and Rider, dated as of August 1, 2021 (the “Lease Agreement”), by and between the Company, as lessor, and the Agency and

Corporation as lessee, and which premises and interests therein are being leased by the Agency and Corporation back to the Company under the Leaseback Agreement; which Lease Agreement and Leaseback Agreement, or memoranda thereof, are intended to be recorded in the office of the Westchester County Clerk prior to or contemporaneously with the recording of this Mortgage.

This Mortgage, when recorded, shall constitute a lien against the Mortgagee's right, title and interest in and to the Mortgaged Property (subject to all matters of record as of the date hereof) in an amount equal to any and all unpaid and defaulted Section 3.3 Obligations up to a maximum amount of EIGHT HUNDRED AND EIGHTY FIVE THOUSAND NINE HUNDRED AND FOUR DOLLARS AND 00/100 (\$885,904.00);

AND the Mortgagor covenants and agrees with the Mortgagee as follows:

1. That the Company will timely perform all of its obligations under the Leaseback Agreement and will timely pay all amounts due thereunder. In addition, the Company will maintain or cause to be maintained in good condition and repair the buildings and improvements executed or to be executed on the Mortgaged Property, and shall not commit or permit waste or permit any nuisance to exist thereon. If the Leaseback Agreement is severed this Mortgage shall be severed such that each portion of the Facility (as defined in the Leaseback Agreement) separately developed by a severed version of the Leaseback Agreement are encumbered by the portion of the Mortgage lien that relates to the maximum annual payment to be made under Section 3.3 of the Leaseback Agreement with respect to the severed portion of the Facility to be developed. The aggregate amount secured by all mortgage liens severed hereunder shall not exceed the \$885,904.00 maximum amount originally secured by this Mortgage.

2. That if any action or proceeding be commenced (except an action to foreclose this Mortgage or to collect the debt secured thereby), to which action or proceeding the Mortgagee is made a party, or in which it becomes necessary to defend or uphold the lien of this Mortgage, all sums paid by the Mortgagee for the expense of any litigation to prosecute or defend the rights and lien created by this Mortgage (including reasonable counsel fees and all costs and disbursements incurred in connection with such litigation) shall be paid by the Company, together with late charges and interest, and any such sum and the interest thereon shall be a lien on the Company's right, title and interest in and to said Mortgaged Property, prior to any right, title to, interest in or claim upon said Mortgaged Property attaching or accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage. In any action or proceeding to foreclose this Mortgage, the provisions of law respecting the recovery of costs, disbursements and allowance shall prevail unaffected by this covenant.

3. The Mortgagee's enforcement of its rights under this Mortgage shall be expressly subject to the limitation that no such rights may be exercised until the Company shall be in default in the making of any payment of the Section 3.3 Obligations and the Lender has failed to cure within the periods provided under the terms of the Leaseback Agreement for a period extending beyond the expiration of any applicable cure period.

4. The Company shall name the Agency and the Mortgagee as an additional insured, as its interests may appear, on any policy of hazard insurance required to be carried in connection with the Mortgaged Property, until the amounts secured by this Mortgage are paid in full. Insurance and condemnation proceeds are payable under the priorities described in the Leaseback Agreement.

5. The obligations and agreements of the Agency contained herein and in any other instrument or document executed in connection herewith, and any other instrument or document supplemental hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or be subject to any personal liability or accountability based upon or in respect hereto or of any transaction contemplated hereby. The obligations and agreements of the Agency contained herein shall not constitute or give rise to any obligations of the County or the State of New York, and further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the sale or other disposition of the leasehold interests in the Facility (as defined in the Leaseback Agreement).

Notwithstanding any provision of this Mortgage to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (A) the Agency shall have been requested to do so in writing by the Company or the Affected Tax Jurisdictions, and (B) compliance with such request is not reasonably expected to result in the incurrence by the Agency (or any member, officer, agent (except the Company) or employee of the Agency) of any liabilities, fees, expenses or other costs, unless the Agency shall have received from the Company or the Affected Tax Jurisdictions, as the case may be, security or indemnity satisfactory to the Agency for protection against all such liabilities, however remote, and for the reimbursement of all such fees, expenses and other costs. This Mortgage shall in no way impair or adversely affect the Agency's Unassigned Rights (as defined in the Leaseback Agreement).

6. An "Event of Default" as used herein shall have the meaning as set forth in the Leaseback Agreement.

7. (a) Subject to the provisions of the Leaseback Agreement and the provisions of Section 3 hereof and the rights of Lender, upon the occurrence and during the continuation of an Event of Default hereunder, the Mortgagee may, in addition to any other rights or remedies available to it hereunder at law or in equity, take such action, as may be permitted by applicable law, as is necessary to protect and enforce its rights against the Mortgagor in and to the Mortgaged Property including, but not limited to, the following actions:

(i) Enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys, and dispossess the Mortgagor and its agents, employees and servants therefrom, and thereupon the Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct the business thereat to the same extent and subject to

the limitations applicable to the Company, (B) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property to the same extent and subject to the limitations applicable to the Company, and (C) exercise all rights and powers of the Mortgagor with respect to the Mortgaged Property, whether in the name of the Mortgagor or otherwise; the Mortgagor consents that in such instance the Mortgagee shall be its attorney-in-fact.

(ii) Institute proceedings for the foreclosure of this Mortgage;

(iii) To the extent permitted by applicable law and the liens outstanding against the Mortgaged Property on the date hereof, sell or otherwise dispose of the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of the Mortgagor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, in whole or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue to the full extent permitted by applicable law as a lien on the remaining portion of the Mortgaged Property; or

(iv) Pursue such other remedies as the Mortgagee may have hereunder, under applicable law or in equity.

(b) The avails of any sale or other disposition made under or by virtue of this Section 7, together with any other sums which then may be held by the Mortgagee under this Mortgage, whether under the provisions of this paragraph or otherwise, shall be applied as follows:

First: To payment of the reasonable costs and expenses, including, but not limited to, necessary repairs, improvements, or environmental remediation, of any such sale or other disposition including reasonable out-of-pocket costs of the Mortgagee, its agents and counsel, and of any judicial proceedings wherein the same may be made, and all expenses, liabilities and advances reasonably made or incurred by the Mortgagee under this Mortgage on all advances made by the Mortgagee, and all taxes required to be paid in connection with such sale or other disposition of the Mortgaged Property, except any taxes or other charges subject to which the Mortgaged Property shall have been sold;

Second: To the payment of the Section 3.3 Obligations; and

Third: The surplus, if any to the Mortgagor, or to whomsoever may be lawfully entitled to receive the same if not the Mortgagor upon ten (10) days prior notice to the Mortgagor.

(c) The Mortgagee may adjourn from time to time any sale by it under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for adjourned sale or sales and, except as otherwise provided by any applicable provision of law, the

Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) To the extent permitted by applicable law, no recovery of any judgment by the Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of the Mortgagor shall affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any part thereof or any liens, rights, powers or remedies of the Mortgagee hereunder, but such liens, rights, powers and remedies of the Mortgagee shall continue unimpaired.

(e) Upon the occurrence and during the continuation of the Event of Default hereunder, the Mortgagor, if it is an occupant of the Mortgaged Property or any part thereof, shall upon the Mortgagee's demand immediately surrender possession of the Mortgaged Property (or the portion thereof so occupied) to the Mortgagee.

(f) Prior to exercising any remedy hereunder, any Mortgagee, as defined in Section 6.1(b) of 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.

8. To the extent permitted by applicable law, no remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of the Mortgagee in exercising any right or power accruing upon an Event of Default shall impair any such right or power, or shall be construed to be a waiver of such Event of Default, or any acquiescence therein; and every power and remedy given by that Mortgage to the Mortgagee may be exercised from time to time as often as may be deemed expedient by the Mortgagee. Without limiting the generality of the foregoing, any payment made by the Mortgagee for insurance premiums, taxes, assessments, water rates, sewer rentals, levies, fees or any other charges affecting the Mortgaged Property shall not constitute a waiver of the Mortgagor's obligations in making such payments and shall not obligate the Mortgagee to make any further payments.

9. No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Mortgage should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Agency and the Company or any delay or omission on the part of the Agency in exercising any rights hereunder or under any other document shall operate as a waiver.

10. Anything contained herein to the contrary notwithstanding (i) the Mortgagee hereby agrees that there shall be no recourse against the Company for any liability to the Mortgagee arising in connection with any breach or default under this Mortgage or the Leaseback Agreement by the Company except to the extent the same is enforced against the

rights, title and interest of the Company in the Mortgaged Property, and the Mortgagee shall look solely to the rights, title and interest of the Company relating to the Mortgaged Property in enforcing its rights against the Company under and in connection with this Mortgage or the Leaseback Agreement; provided that (A) the foregoing provisions of this Section 10 shall not constitute a waiver, release or discharge of any of the obligations arising under, or of any of the terms, covenants, conditions, or provisions of, this Mortgage or the Leaseback Agreement, but the same shall continue until fully paid, discharged, observed, or performed, and (B) the foregoing provisions of this Section 10 shall not limit or restrict the right of the Mortgagee to name the Company or any other Person as a defendant in any action or suit for a judicial foreclosure or for the exercise of any remedy under or with respect to this Mortgage or the Leaseback Agreement, or for injunction or specific performance. In addition, nothing contained in this Section 10 shall limit in any way the ability of the Mortgagee to enforce its rights or the rights of the Company against any Person other than the Company under this Mortgage or the Leaseback Agreement.

11. The Agency agrees to cause this Mortgage to be recorded. To the extent the Agency is not exempt from the payment of any of the foregoing costs and expenses, the Company shall pay same.

12. All notices, certificates and other communication hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (A) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by a nationally recognized courier such as Federal Express, or by telecopy or other electronic means of communication, followed by prompt written confirmation thereof, or by such other means as shall provide the sender with documentary evidence of such delivery, or (B) delivery is refused by the addressee, as evidenced by the affidavit of the person who attempted to effect such delivery. The addresses to which notices, certificates and other communication hereunder shall be delivered are as follows:

To the Agency: City of Yonkers Industrial Development Agency
Yonkers Economic Development Corporation
470 Nepperhan Avenue, Suite 200
Yonkers, New York 10701
Attn: Executive Director/President

With Copy To: Harris Beach PLLC
445 Hamilton Avenue, Suite 1206
White Plains, New York
Attn: Michael V. Curti, Esq.

To the Company: 56 Prospect Holdings, LLC
786 Walt Whitman Road
Melville, New York 11747
Attn: Benjamin Heitner, Manager

With Copy To: Veneruso, Curto, Schwartz, & Curto LLP
35 E. Grassy Sprain Road
Yonkers, New York 10710
Attn: James J. Veneruso, Esq.

To Mortgagee: The Honorable Michael Spano
Mayor of the City of Yonkers
Yonkers City Hall
40 South Broadway, Second Floor
Yonkers, New York 10701

To Mortgagee: The Honorable George Latimer
Westchester County Executive
148 Martine Avenue
Michaelian Office Building
White Plains, New York 10601

Any party, by notice given hereunder to each of the other parties, may designate any further or different address to which subsequent notices, certificates or other communications to them shall be sent. Any notice hereunder may be given by counsel for a party with the same force and effect as if given by such party.

13. Terms with capitalized first initials used in this Mortgage shall have the meanings ascribed to such terms in the Leaseback Agreement unless the context otherwise requires. The word "Mortgagor" shall be construed as if it read "Mortgagors" whenever the sense of this Mortgage so requires. The word "Mortgagee" shall be construed as if it read "Mortgagees" whenever the sense of this Mortgage so requires.

14. The Mortgagor agrees that it will not, at any time, insist upon or plead in any way the advantage of any appraisal, valuation, stay, marshaling of assets, extensions, redemption or moratorium law now or hereafter in force and effect so as to prevent, hinder or delay the enforcement of the provisions of this Mortgage or any rights or remedies, including foreclosure proceedings, the Mortgagee may have hereunder or by law or equity.

15. The Company represents and warrants that the Agency has a good and insurable leasehold interest in the Mortgaged Property pursuant to the Lease Agreement and that the Company has a good and insurable leasehold interest therein pursuant to the Leaseback Agreement.

16. In the case of a foreclosure sale, the Mortgaged Property may be sold in one parcel.

17. This Mortgage may not be effectively waived, discharged, amended, changed, modified, altered or terminated, unless such amendment, change, modification, alteration or

termination is in a writing intended for such purpose and executed by the Mortgagee and the Mortgagor.

18. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Mortgage shall for any reason be finally held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal, or unenforceable shall be deemed separate, distinct and independent, and the remainder of this Mortgage shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by any such holding or adjudication.

19. This Mortgage shall be governed by and construed in accordance with the laws of the State of New York, exclusive of New York's conflict of laws, rules and public policies. This Mortgage constitutes the final expression of the agreement between the Mortgagor and the Mortgagee with respect to its subject matter, and all prior and contemporaneous discussions, negotiations, drafts and agreements are hereby merged into and superseded by this Mortgage. Notwithstanding the foregoing, it is expressly agreed that the Leaseback Agreement and each of the Company's obligations thereunder shall survive the execution, delivery and recording of this Mortgage.

20. If any action or proceeding be commenced by or on behalf of the Mortgagee to foreclose this Mortgage, the Company agrees to pay to the Mortgagee its reasonable attorneys' fees and other expenses incurred in connection with such action or proceeding, and such amounts shall be a lien on the Mortgaged Property prior to any right or title to, or interest in, or claim upon the Mortgaged Property attaching or accruing subsequent to the lien of this Mortgage.

21. The rights of the Mortgagee under this Mortgage are independent of and cumulative to its rights, with respect to the collection of special assessments and special ad valorem levies, if any, lawfully assessed against the Mortgaged Property or any part thereof.

22. This Mortgage constitutes a security agreement under the New York Uniform Commercial Code ("UCC") with respect to any portion of the Mortgage Property which is personal property and the Mortgagee shall have all of the rights and remedies of a secured party thereby in addition to the rights and remedies granted by other applicable law or by this Mortgage. The Mortgagor agrees to execute a UCC-1 Financing Statement to implement this provision.

23. So long as any portion of the obligations of the Company under the Leaseback Agreement shall remain outstanding, the title to the Mortgaged Property and the lien of this Mortgage shall not merge, but shall always be kept separate and distinct.

24. The covenants contained in this Mortgage shall run with the land and bind the Mortgagor, and all subsequent owners, encumbrances, tenants and subtenants of the premises, and shall inure to the benefit of the Mortgagee, the personal representatives, successors and assigns of the Mortgagee and all subsequent holders of this Mortgage.

25. Upon the termination of the Leaseback Agreement and the payment in full of all sums payable thereunder, the Mortgagee by acceptance of this Mortgage agrees to execute and deliver any and all instruments necessary and/or appropriate to discharge the lien of this Mortgage of record.

26. Severability. If this Mortgage contains any unlawful provision not an essential part of this Mortgage and which shall not appear to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from this Mortgage without affecting the binding force of the remainder.

27. Section Headings. Section headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Mortgage and in no way affect this Mortgage.

28. Non-Residential Property. This Mortgage does not cover real property principally improved by one or more structures containing in the aggregate six (6) or fewer residential units having their main separate cooking facilities, and the Company so represents and warrants.

29. Reserved.

30. Maximum Principal Amount Secured by the Mortgage. Anything contained in this Mortgage to the contrary notwithstanding, this Mortgage secures the payment of **\$885,904.00** lawful money of the United States of America, individually or in the aggregate, together with the cost of enforcement of the lien hereof.

31. Discharge. This Mortgage and the lien and security interest created hereby shall be of no further force and effect, and the Agency (in its capacity as grantor of this Mortgage) and the Company shall be released from their respective covenants, agreements and obligations contained in the Mortgage upon the indefeasible payment in full of all of the Section 3.3 Obligations and all other sums secured by this Mortgage, or such earlier date that a letter of credit in form acceptable to the Agency securing the Section 3.3 Obligations is provided.

32. Partial Release. This Mortgage shall be released for parcels being conveyed in a manner that releases them from the Leaseback Agreement. In the event said parcel previously led to a payment obligation under the Section 3.3 Obligation, said payment obligation shall be reduced by the amount previously payable under the Schedule 3.3 Obligation with regard to said parcel.

33. Trust Fund; Lien Law. This mortgage is subject to the trust fund provisions of the New York Lien Law including, without limitation, Section 13 thereof.

34. Effective Date; Counterparts. This Mortgage shall become effective on August 31, 2021. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

35. Notwithstanding anything contained in this Mortgage to the contrary, YEDC's leasehold interest in the Mortgaged Property expires on December 31, 2021 (the "YEDC Expiration"). Following the YEDC Expiration, the Company and Agency agree to execute and deliver any and all instruments necessary or appropriate to discharge the lien of this Mortgage against YEDC.

[The Balance of this Page Intentionally Left Blank]

[Signature Page to Tax Agreement Mortgage]

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: Marlyn Anderson
Name: Marlyn Anderson
Title: Secretary

**YONKERS ECONOMIC DEVELOPMENT
CORPORATION**

By: Marlyn Anderson
Name: Marlyn Anderson
Title: Secretary

56 PROSPECT HOLDINGS, LLC

By: _____
Name: Benjamin Heitner
Title: Manager

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

Rachelt G Krawitz
RACHELT G KRAWITZ
 Notary Public State of New York
 No. 02KR6208854
 Qualified in Westchester County
 Commission Expires July 13, 2025

State of New York)
County of) ss.:

Notary Public

EXHIBIT A

DESCRIPTION OF PROPERTY

ALL that certain plot, piece or parcel of land, situate, lying and being in the City of Yonkers, County of Westchester, and State of New York, being bounded and described as follows:

BEGINNING at a point on the Westerly side of Hawthorne Avenue (f.k.a. Grinnell Street, f.k.a. Grinell Street) (40 feet wide) at the extreme Southeasterly end of the curve which connects the Westerly side of Hawthorne Avenue with the Southerly side of Prospect Street as widened, said point being distant South 02 degrees 40 minutes 10 seconds West, a distance of 16.10 feet from the intersection of said Westerly side of Hawthorne Avenue with said new Southerly side of Prospect Street (40 feet wide), as extended and from said point of beginning;

RUNNING THENCE along said Westerly side of Hawthorne Avenue, South 02 degrees 40 minutes 10 seconds West, a distance of 95.46 feet;

THENCE North 87 degrees 19 minutes 50 seconds West, a distance of 75.00 feet to a point;

THENCE South 02 degrees 38 minutes 34 seconds West, a distance of 3.50 feet to land now or formerly of Rajan Real Estates LLC;

THENCE along said land North 88 degrees 01 minute 57 seconds West, a distance of 20.12 feet to a point and land now or formerly of 94 Buena Vista, LLC;

THENCE along said land, North 87 degrees 19 minutes 50 seconds West, a distance of 105.00 feet to the Easterly side of Buena Vista Avenue (50 feet wide);

THENCE along said Easterly side of Buena Vista Avenue, North 02 degrees 40 minutes 10 seconds East, a distance of 134.20 feet to the extreme Southwesterly end of the curve which connects the Easterly side of Buena Vista Avenue with the Southerly side of Prospect Street as widened;

THENCE Northeasterly along said curve bearing to the right having a radius of 20.00 feet, a distance of 35.72 feet, said curve having a central angle of 102 degrees 20 minutes 00 seconds, bearing a chord of North 53 degrees 50 minutes 10 seconds East, a chord distance of 31.16 feet to the Southerly side of Prospect Street as widened;

THENCE along said new Southerly side of Prospect Street, South 74 degrees 59 minutes 50 seconds East, a distance of 163.90 feet to the extreme Northwesterly end of the curve first above mentioned;

THENCE Southeasterly along said curve bearing to the right, having a radius of 20.00 feet, a distance of 27.11 feet, said curve having a central angle of 77 degrees 40 minutes 00 seconds, bearing a chord of South 36 degrees 09 minutes 50 seconds East, a chord distance of 25.08 feet to the point or place of BEGINNING

EXHIBIT B

Copy of Signed Tax Agreement

[ATTACHED NEXT PAGE]

CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY

AND

YONKERS ECONOMIC DEVELOPMENT CORPORATION

AND

56 PROSPECT HOLDINGS, LLC

TAX AGREEMENT

Dated:

As of August 1, 2021

Affected Tax Jurisdictions:

Westchester County
City of Yonkers

Street Address:

56 Prospect Street
City of Yonkers
Westchester County, New York

Tax Map No(s):

Section 1, Block 509, Lot 1

TAX AGREEMENT

THIS TAX AGREEMENT (the “Agreement”), dated as of August 1, 2021, by and between **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with its offices located at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701 (“Agency”), **YONKERS ECONOMIC DEVELOPMENT CORPORATION**, a local development corporation of the State of New York with offices at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701 (“Corporation”), and **56 PROSPECT HOLDINGS, LLC**, a State of New York limited liability company authorized having offices at 786 Walt Whitman Road, Melville, New York 11747 (the “Company”).

W I T N E S S E T H :

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 the purposes and powers contained within Section 1411 of the Not-for-Profit Corporation Law of the State of New York, as amended, and pursuant to its certificate of incorporation filed on May 31, 2007, the Corporation was established as a not-for-profit local development corporation of the State with the authority and power to own, lease and sell personal and real property for the purposes of, among other things, acquiring, constructing and equipping certain projects exclusively in furtherance of the charitable or public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, instructing or training individuals to improve or develop their capabilities for such jobs, by encouraging the development of, or retention of, an industry in the community or area, and lessening the burdens of government and acting in the public interest; and

WHEREAS, the Company has requested the Agency’s and Corporation’s assistance with a certain project (the “Project”) consisting of: (i) the acquisition of certain land located at 56 Prospect Street, City of Yonkers, New York (Tax ID 1.-509-1) (the “Land”) and (ii) the construction of a new multi-use residential building located on the corners of Prospect Street, Buena Vista Avenue and Hawthorne consisting of one hundred and twenty-six (126) residential apartments and an indoor parking garage with one hundred and thirty (130) accompanying parking spaces (the “Improvements”), and (iii) the acquisition and installation in and around the Land and the Improvements of certain items of equipment and other tangible personal property (the “Equipment”; and, collectively with the Land and the Improvements, the “Facility”); and

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

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to acquire, construct and equip the Facility in accordance with the Application filed with the Agency; and

WHEREAS, in order to induce the Company to develop the Facility, the Agency and Corporation are willing to hold a leasehold interest in the Land, Improvements and Equipment constituting the Facility pursuant to the terms and conditions contained in that certain Lease Agreement and Rider, dated as of August 1, 2021, by and between the Agency, Corporation and the Company (the "Lease Agreement"); and

WHEREAS, the Agency and Corporation propose to lease the Facility to the Company, and the Company desires to rent the Facility from the Agency and Corporation, upon the terms and conditions hereinafter set forth in that certain Leaseback Agreement and Rider, dated as of August 1, 2021, by and between the Agency and the Company (the "Leaseback Agreement"); 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, Corporation and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes by the Company to the Agency for the benefit of Westchester County and the City of Yonkers, inclusive of the City of Yonkers Dependent School District (collectively, the "Affected Tax Jurisdictions"); and

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

Section I - Payment in lieu of Ad Valorem Taxes:

Section 1.1 Exemption Application. A.) Subject to the completion and filing by the Agency or its designee at the direction of the Agency on or before the taxable status date **October 15, 2021** (the "Taxable Status Date") of New York State Form RP-412-a Application For Real Property Tax Exemption (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law and Section 874 of the Act and the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review, the Facility shall be exempt from Real Estate Taxes for the periods set forth in Section 1.3. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the County and City, including Real Estate Taxes levied by the City for its Dependent School District. The Company shall provide the Agency with the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Leaseback Agreement to the contrary, in the event the

exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due, specifically including but not limited to Real Estate Taxes for years prior to and after the tax years covered by this 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 file the Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

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

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

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

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

and for the term of this Agreement and the Company shall not seek a refund of any taxes paid or to be paid.

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

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

1.3 Period of Benefits.

The tax benefits provided for herein shall be deemed to include: (i) the 2023 County tax year through the 2037 County tax year, (ii) the 2022-2023 City tax year through the 2036-2037 City tax year and (iii) the 2022-2023 School District tax year through the 2036-2037 School District tax year. **This Tax Agreement shall expire on December 31, 2037** with the understanding that the Company will be making a payment hereunder for the 2038 County tax year, the 2037-2038 City tax years, and the 2037-2038 School District tax years in the amounts as if the Agency were not in title on the tax lien date with respect to said tax years). In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b of the New York Real Property Tax Law ("RPTL"); provided, the foregoing shall not be interpreted to limit the Company and Agency from subsequently agreeing to additional benefits based upon commitments to make additional improvements or changes in use from time to time between the Agency and the

Company. It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

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

2.1 *Special District Charges and other payments:* Special district charges, special assessments, special ad valorem levies specifically including but not limited to charges imposed by the City of Yonkers for frontage feet (“CC001”); Housing Units (“CC002”); ETPA Charge (“CC003”); and a Safety Inspection Fee (“CC004”) and district charges including but not limited to pure water charges and Westchester County sewer district charges (collectively the “Special 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 Leaseback Agreement after the expiration of any applicable cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, 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 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
Yonkers Economic Development Corporation
470 Nepperhan Avenue, Suite 200
Yonkers, New York 10701
Attention: Executive Director/President

With Copies To:

Harris Beach PLLC
445 Hamilton Avenue, Suite 1200
White Plains, New York 10601
Attn: Michael V. Curti, Esq.

To the Company:

56 Prospect Holdings, LLC
786 Walt Whitman Road
Melville, New York 11747
Attn: Benjamin Heitner, Manager

With a Copy To:

Veneruso, Curto, Schwartz, & Curto LLP
35 E. Grassy Sprain Road
Yonkers, New York 10710
Attn: James J. Veneruso, 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: 
Name: Marlyn Anderson
Title: Secretary

**YONKERS ECONOMIC DEVELOPMENT
CORPORATION**

By: 
Name: Marlyn Anderson
Title: Secretary

56 PROSPECT HOLDINGS, LLC

By: _____
Name: Benjamin Heitner
Title: Manager

SCHEDULE A

Pursuant to the terms of Section 1.1 of this Tax Agreement, “Tax Payments” shall mean an amount per annum equal to the following amounts for the period designated, with the term “Full Taxes” meaning all property taxes payable with respect to the Facility calculated in an amount as though the Agency were not in title and no exemption were available:

TAX YEAR	CITY YEAR	COUNTY YEAR	TAX PAYMENTS (% of Full Taxes)	ESTIMATED TAX PAYMENT	TAX PAYMENT DUE DATE
1	2022-2023	2023	Unimproved	\$29,544	September 1, 2022
2	2023-2024	2024	Unimproved	\$30,135	September 1, 2023
3	2024-2025	2025	Unimproved	\$30,738	September 1, 2024
4	2025-2026	2026	25%	\$178,125	September 1, 2025
5	2026-2027	2027	30%	\$218,025	September 1, 2026
6	2027-2028	2028	40%	\$296,514	September 1, 2027
7	2028-2029	2029	50%	\$378,055	September 1, 2028
8	2029-2030	2030	60%	\$462,740	September 1, 2029
9	2030-2031	2031	70%	\$550,660	September 1, 2030
10	2031-2032	2032	75%	\$601,793	September 1, 2031
11	2032-2033	2033	80%	\$654,751	September 1, 2032
12	2033-2034	2034	85%	\$709,586	September 1, 2033
13	2034-2035	2035	90%	\$766,353	September 1, 2034
14	2035-2036	2036	95%	\$825,107	September 1, 2035
15	2036-2037	2037	100%	\$885,904	September 1, 2036

The Agency interest in the Facility shall expire on **December 31, 2037**. The Company shall pay the 2038 County tax bill and the 2037-2038 City tax bill and tax bills for all subsequent tax years on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. Notwithstanding anything contained herein to the contrary, Tax Payments shall be no less than the full taxes paid prior to Tax Agreement Year 1 (i.e. City Year 2021-2022, County Year 2022).

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