

CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY

AND

YONKERS PROPERTY MANAGEMENT LLC

(as assignee to Yonkers Contracting Company Inc. (as successor by merger to Yonkers Property Management of New York, Inc.))

**FIRST AMENDMENT TO
TAX AGREEMENT**

Street Address:

969A Midland Avenue
City of Yonkers
Westchester County, New York

Tax Map Number:

Section: 5
Block: 5059
Lots: 20, 90, 116 & 120

Affected Tax Jurisdictions:

Westchester County
City of Yonkers

Dated as of December 29, 2021

FIRST AMENDMENT TO TAX AGREEMENT

THIS FIRST AMENDMENT TO TAX AGREEMENT, dated as of the 29th day of December, 2021 (the "First Amendment"), is by and between the **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York, with offices at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701 (the "Agency") and **YONKERS PROPERTY MANAGEMENT LLC**, a limited liability company duly organized and validly existing under the laws of the State of New York, with offices at 969A Midland Avenue, Yonkers, New York 10701 (the "Company"), as assignee to Yonkers Contracting Company Inc. (as successor by merger to Yonkers Property Management of New York, Inc.; the "Assignor") pursuant to that certain Omnibus Assignment and Assumption Agreement, dated as of June 1, 2021 (the "Assignment"), by and between the Assignor and the Company and consented to by the Agency.

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 Agency previously agreed to undertake a certain project (the "Project") for the benefit of the Company consisting of: (i) the acquisition or retention of certain land located at 969A Midland Avenue, City of Yonkers, Westchester County, New York (Block 5059, Lots 20, 90, 116 & 120) (collectively, the "Land") and the existing improvements located thereon consisting principally of four small metal buildings used for garage storage and vehicle workshops (collectively, the "Existing Improvements"); (ii) the construction, reconstruction, renovation and refurbishment of the Existing Improvements consisting of (a) a new office building and (b) a new maintenance shop and supply buildings (collectively, the "Improvements"); and (iii) the acquisition and installation in and around the Existing Improvements and Improvements of certain items of equipment and other tangible personal property (the "Equipment"; and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); and

WHEREAS, in connection with the undertaking by the Agency of the Project with respect to the Facility, the Agency and Company entered into a "straight-lease transaction" (as defined in the Section 854(15) of the Enabling Act) (the "Straight Lease Transaction"); and

WHEREAS, together with various related documents, the Agency and the Company entered into a certain Tax Agreement, dated as of September 1, 2020, by and between the Agency and the Company (the "Original Tax Agreement") along with the New York State Board of Real Property Services Form RP-412-a (collectively, the "Agency Documents"); and

WHEREAS, pursuant to the Assignment, as of December 9, 2020, the Assignor transferred and assigned to the Company and the Company assumed all of the Assignor's right, title, and interest in, to, and under the Original Tax Agreement and other documents in connection with the Straight Lease Transaction; and

WHEREAS, by correspondence dated August 31, 2021, the Company informed the Agency that due to construction and administrative delays related to the COVID-19 pandemic, unanticipated delays in the design and approval process and other factors, the Project has been delayed, and the Company has requested that the Agency modify the tax benefits under the Original Tax Agreement from (A)(i) the 2022 County tax year through the 2026 County tax year and (ii) the 2021-2022 City tax year through the 2025-2026 City tax year to (B)(i) the 2024 County tax year through the 2028 County tax year, and (ii) the 2023-2024 City tax year through the 2027-2028 City tax year and a corresponding modification to Schedule A to the Original Tax Agreement; and

NOW THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The Original Tax Agreement is amended as follows:

Section 1.3 is hereby deleted in its entirety and replaced with the following:

“1.3 Period of Benefits.

The tax benefits provided for herein shall be deemed to include: (i) the 2024 County tax year through the 2028 County tax year and (ii) the 2023-2024 City tax year through the 2027-2028 City tax year. **This Tax Agreement shall expire on June 30, 2028** (with the understanding that the Company will be making a payment hereunder for the 2029 County tax year and the 2028-2029 City tax year in the amounts as if the Agency were not in title on the tax lien date with respect to said tax years). In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b of the New York Real Property Tax Law (“RPTL”); provided, the foregoing shall not be interpreted to limit the Company and Agency from subsequently agreeing to additional benefits based upon commitments to make additional improvements or changes in use from time to time between the Agency and the Company. It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

The tax benefits provided for herein shall be deemed to not include (i) 2022 County tax year through the 2023 County tax year and (ii) the 2021-2022 City tax year through the 2022-2023 City tax year and therefore the Company shall pay (i) the 2022 and 2023 County tax bill and (ii) the 2021-2022 and 2022-2023 City tax bill in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. For the avoidance of doubt, with regard

to the foregoing tax years, the Company shall pay Full Taxes. "Full Taxes" means all property taxes, not including Special District Charges, payable with respect to the Facility calculated in an amount equal to the amounts that would be paid if the Agency were not in title and no exemption was available. The Company agrees to pay any amended Agency invoice or statement relating to the payment of such Full Taxes, which may be provided on or after the date hereof."

Section 1.1 B.) (ii) is hereby deleted in its entirety and replaced with the following:

"(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 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 hereof. 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, except as otherwise provided in Section 4.1 hereof, the Company shall only be entitled to institute a grievance which would cause an adjustment of the Special Charges (as defined in Section 2.1 hereof) and the Company shall be limited to the right to refunds related to grievances involving Special Charges. Except as otherwise provided in Section 4.1, the Tax Payments 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 Tax Payments or taxes paid or to be paid."

Section 4.1 is hereby deleted in its entirety and replaced with the following:

"4.1 Notwithstanding any provision to the contrary, upon the issuance of a temporary certificate of occupancy, the Company shall have five (5) years to exercise its one (1) time right to institute a judicial or other review of the assessed value of the Facility, whether pursuant to the provisions of Article 7 of the RPTL or other applicable law, as the same may be amended from time to time; provided, however, that no such judicial or other review or settlement thereof shall have any effect on the Company's obligations under this Agreement, including, without limitation, the Company's obligation to make the Tax Payments when due. Such judicial or other review shall only be for purposes of setting the assessed value of the Facility as though the Facility was on the tax rolls of each Affected Tax Jurisdiction as taxable real property but shall have no effect on this Agreement or the tax-exempt status of the Facility during the term of this Agreement and the Company shall not seek a refund of any Tax Payments or taxes paid or to be paid and expressly waives and releases its right to seek such refund."

Section 8.3 is hereby amended by adding the following sentence at the end thereof:

"The Agency and the Company hereby agree and intend this Agreement to constitute an existing contract pursuant to Section 6 of Chapter 58 of the Laws of 2020."

2. “Schedule A” attached to the Original Tax Agreement is hereby deleted in its entirety and replaced with **Schedule A** attached hereto.

SECTION 2. Unless otherwise amended pursuant to the terms contained herein, the terms of the Original Tax Agreement shall remain unchanged.

SECTION 3. Prior to the taxable status date of **October 15, 2022**, an amended New York State Board of Real Property Services Form RP-412-a, including an executed copy of this First Amendment, shall be filed with the City of Yonkers Assessor along with the chief elected official of each of the Affected Taxing Jurisdictions (as defined in the Original Project Agreement).

SECTION 4. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or portable document format (PDF) transmission shall constitute effective execution and delivery of this Agreement as to the parties hereto and may be used in lieu of the original Agreement and signature pages for all purposes.

[Signature Page Follows]

[Signature Page to First Amendment to Tax Agreement]

IN WITNESS WHEREOF, the Agency and the Company have caused this First Amendment to Tax 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
Marlyn Anderson, Secretary

YONKERS PROPERTY MANAGEMENT LLC
(as assignee to Yonkers Contracting Company Inc.
(as successor by merger to Yonkers Property
Management of New York, Inc.))

By: _____
Carl E. Petrillo, Managing Member

[Signature Page to First Amendment to Tax Agreement]

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By: _____
Marlyn Anderson, Secretary

YONKERS PROPERTY MANAGEMENT LLC
(as assignee to Yonkers Contracting Company Inc.
(as successor by merger to Yonkers Property
Management of New York, Inc.))

By: Carl E. Petrillo
Carl E. Petrillo, Managing Member

SCHEDULE A

TO

TAX AGREEMENT, DATED AS OF SEPTEMBER 1, 2020, AS AMENDED BY THE FIRST AMENDMENT TO TAX AGREEMENT, DATED AS OF DECEMBER 29, 2021, BY AND BETWEEN THE CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY AND YONKERS PROPERTY MANAGEMENT LLC (AS ASSIGNEE TO YONKERS CONTRACTING COMPANY INC. (AS SUCCESSOR BY MERGER TO YONKERS PROPERTY MANAGEMENT OF NEW YORK, INC.))

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:

TAX AGREEMENT YEAR	CITY YEAR	COUNTY YEAR	PAYMENT DATE	TOTAL TAX PAYMENTS
1	2021-2022	2022	September 1, 2021	Full Taxes (defined below)
2	2022-2023	2023	September 1, 2022	Full Taxes
3	2023-2024	2024	September 1, 2023	40% of Full Taxes
4	2024-2025	2025	September 1, 2024	55% of Full Taxes
5	2025-2026	2026	September 1, 2025	65% of Full Taxes
6	2026-2027	2027	September 1, 2026	75% of Full Taxes
7	2027-2028	2028	September 1, 2027	85% of Full Taxes

The Agency interest in the Facility shall expire on **June 30, 2028**. The Company shall pay the 2029 County tax bill and the 2028-2029 City tax bill and tax bills for all subsequent tax years on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. Tax Payments shall be no less than the Full Taxes paid prior to the Tax Agreement.

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

The tax benefits provided for herein shall be deemed to not include (i) 2022 County tax year through the 2023 County tax year and (ii) the 2021-2022 City tax year through the 2022-2023 City tax year and therefore the Company shall pay (i) the 2022 and 2023 County tax bill and (ii) the 2021-2022 and 2022-2023 City tax bill in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. For the avoidance of doubt, with regard to the foregoing tax years, the Company shall pay Full Taxes. “Full Taxes” means all property taxes, not including Special District Charges, payable with respect to the Facility calculated in an amount equal to the amounts that would be paid if the Agency were not in title and no exemption was available. The Company agrees to pay any amended Agency invoice or statement relating to the payment of such Full Taxes, which may be provided on or after the date hereof.