

CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY

AND

1969 CENTRAL PARK AVE LLC

TAX AGREEMENT

Dated as of May 31, 2022

Affected Tax Jurisdictions:

**Westchester County
City of Yonkers**

Street Address:

1969 Central Park Avenue
City of Yonkers
Westchester County, New York

Tax Map No.:

Section 4, Block 4385, Lots 201 and 206

TAX AGREEMENT

THIS TAX AGREEMENT (the “Agreement”), dated as of May 31, 2022, 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 **1969 CENTRAL PARK AVE LLC**, a New York limited liability company having offices 1955 Central Park Avenue, Yonkers, New York 10710 (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, for itself or on behalf of an entity to be formed has submitted an application on or about January 18, 2022, as the same may be supplemented from time to time (as may be so supplemented, the “Application”) to the Agency requesting the Agency’s assistance with a certain project (the “Project”) consisting of: (i) the acquisition or retention of an approximately 1.32 acre vacant parcel commonly known as 1969 Central Park Avenue (Section 4, Block 4385, Lots 201 and 206) (the “Land”); (ii) the construction, renovation, improving, maintaining and equipping on the Land of a five story self-storage facility (approximately 91,181 square feet) and ground floor retail space (5,815 square feet) (the “Improvements”); and (iii) the acquisition and installation in and around the Land and Improvements of certain items of equipment and other tangible personal property (the “Equipment”); which together with the Land and Improvements are the “Facility”); and

WHEREAS, by resolution adopted on March 31, 2022, the Agency determined that the undertaking of the Project will serve the public purposes of the Act by preserving permanent, private sector jobs and/or increasing the overall number of permanent, private sector jobs in the State of New York; and

WHEREAS, in order to induce the Company to undertake the Project, the Agency is willing to take a leasehold interest in the Land, the Improvements and the Equipment constituting the Facility pursuant to the terms and conditions contained in that certain Lease Agreement, dated as of May 31, 2022, by and between the Company and the Agency (the “Lease Agreement”); and

WHEREAS, the Agency will lease its interest in the Facility back to the Company, and the Company desires to rent the Facility from the Agency, upon the terms and conditions of that certain Leaseback Agreement, dated as of May 31, 2022, by and between the Agency and the Company (the “Leaseback Agreement”); and

WHEREAS, the Agency 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, 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

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, 2022** (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 (“Payment Date”) of each year beginning on September 1, 2023 (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 Attention: Executive Director, 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 as provided below. 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.

(iii) Right to Grieve Assessed Value of the Property for Purposes of Calculating Full Taxes. Notwithstanding the foregoing, the Company shall have the 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 the other terms of this Agreement or the tax-exempt status of the Facility during the term of this Agreement. Furthermore, 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.

(iv) Right to Grieve Assessed Value of the Property for Purposes of Calculating

Special Charges. At any time during the term of this Agreement, 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) and the Company shall be limited to the right to refunds related to grievances involving Special Charges.

(v) 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.

(vi) 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 2038 County tax year and (ii) the 2023-2024 City tax year through the 2037-2038 City tax year. **This Tax Agreement shall expire on December 31, 2038** (with the understanding that the Company will be making a payment hereunder for the 2039 County tax year and the 2038-2039 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.

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 with respect to any Special Charges as if and to the same extent as if the Company were the owner of the Facility.

4.2 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 Company Lease Agreement (as defined in the Leaseback Agreement) or 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.

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. 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.

8.2 Notices. All notices, certificates and other communications hereunder shall be in

writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, or to a nationally recognized courier such as Federal Express, addressed as follows:

To the Agency: City of Yonkers Industrial Development Agency
470 Nepperhan Avenue, Suite 200
Yonkers, New York 10701
Attention: President/CEO

With Copy To: Harris Beach PLLC
445 Hamilton Avenue, Suite 1200
White Plains, New York 10601
Attention: Shawn M. Griffin, Esq. and Michael V. Curti, Esq.

To the Company: 1969 Central Park Ave LLC
1955 Central Park Avenue
Yonkers, New York 10710
Attention: Mark Fonte

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.

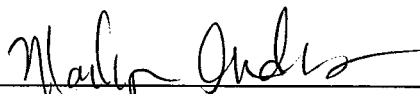
8.4 Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. Neither member of the Agency nor 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

1969 CENTRAL PARK AVE LLC

By: _____

Name: Mark J. Fonte

Title: Authorized Signatory


[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

1969 CENTRAL PARK AVE LLC

By:  _____
Name: Mark J. Fonte
Title: Authorized Signatory

SCHEDULE A

to

Tax Agreement, dated as of May 31, 2022

by and between

City of Yonkers Industrial Development Agency and 1969 Central Park Ave LLC

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 Tax Year	County Tax Year	Estimated Tax Payments	Tax Agreement Payment *
1	2023-2024	2024	\$11,448	100% of Full Taxes ¹
2	2024-2025	2025	\$52,159	25% of Full Taxes
3	2025-2026	2026	\$53,202	25% of Full Taxes
4	2026-2027	2027	\$58,608	27% of Full Taxes
5	2027-2028	2028	\$70,850	32% of Full Taxes
6	2028-2029	2029	\$85,817	38% of Full Taxes
7	2029-2030	2030	\$115,176	50% of Full Taxes
8	2030-2031	2031	\$140,976	60% of Full Taxes
9	2031-2032	2032	\$179,744	75% of Full Taxes
10	2032-2033	2033	\$195,561	80% of Full Taxes
11	2033-2034	2034	\$224,407	90% of Full Taxes
12	2034-2035	2035	\$228,895	90% of Full Taxes
13	2035-2036	2036	\$233,473	90% of Full Taxes
14	2036-2037	2037	\$251,372	95% of Full Taxes

¹ Full Taxes shall mean all property taxes, not including Special District Charges, payable with respect to the Facility calculated in an amount equal to the amounts that would have been paid if the Agency did not have a leasehold interest in the Facility and no real property tax exemption was available hereunder.

15	2037-2038	2038	\$256,400	95% of Full Taxes
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- The Agency' leasehold interest in the Facility shall expire on **December 31, 2038**. The Company shall pay the 2039 County tax bill and the 2038-2039 City tax bill and tax bills for all subsequent tax years on the dates and in the amounts as if the Agency did not hold a leasehold interest in the Facility on the tax status date with respect to said tax years.
- Tax Payments in Tax Agreement Year 1 shall be no less than the Full Taxes paid prior to the Tax Agreement.
- The schedule of Estimated Tax Payment sums are estimates and are provided for illustrative purposes only.

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

EXHIBIT A

Legal Description of Land

ALL that certain plot piece or parcel of land, situate, lying and being designated as Parcel No. 602 on Map No. 477-C, situate in the City of Yonkers, County of Westchester and State of New York, and described as follows:

BEGINNING at a point on the westerly boundary of the existing City of Yonkers: Central Park Avenue Arterial Highway, said point being 71 feet distant westerly, measured at right angles, from station 116+69+- of the hereinafter described survey baseline for the reconstruction of the City of Yonkers: Central Park Avenue Arterial, State Highway No. C68-6;

THENCE through the property of the People of the State of New York (reputed owner) the following three (3) courses and distances:

- (1) South 16 degrees 32 minutes 01 seconds west, 220+- feet to a point 98.22 feet distant westerly, measured at right angles, from station 114+49.84 Forward Tangent Produced Back (F.T.P.B.) of said baseline;
- (2) South 85 degrees 31 minutes 13 seconds west, 36.00 feet to a point 133.17 feet distant westerly, measured at right angles, from station 114+41.22 (F.T.P.B.) of said baseline; and
- (3) South 36 degrees 27 minutes 43 seconds west, 126+- feet to a point at the intersection of the westerly boundary of said existing highway with the northwesterly boundary of existing Heights Drive, the last-mentioned point being 190+- feet distant westerly, measured at right angles, from station 113+29+- (F.T.P.B.) of said baseline;

THENCE northwesterly along the westerly boundary of said existing City of Yonkers: Central Park Avenue Arterial the following six (6) courses and distances:

- (1) Northwesterly, 45+- feet to a point 215+- feet distant westerly, measured at right angles, from station 113+67+- (F.T.P.B.) of said baseline;
- (2) Northerly, 44+- feet to a point 226+- feet distant westerly, measured at right angles from station 114+09+- (F.T.P.B.) of said baseline;
- (3) Westerly, 74+- feet to a point 299+- feet distant westerly, measured at right angles, from station 114+24+- (F.T.P.B.) of said baseline;
- (4) Northeasterly, 115+- feet to a point 250+- feet distant westerly, measured at right angles, from station 115+28+- of said baseline;
- (5) Northerly, 176+- feet to a point 211+- feet distant westerly, measured at right angles, from station 117+00+- of said baseline; and

(6) Easterly, 144+- feet the point of beginning, being 46,941 square feet or 1.078 acre more or less;

Being a portion of the property acquired in fee by virtue of Parcel No. 177 on Map No. 134 and a portion of the property acquired in fee by virtue of Parcel No. 176 on Map No. 133R-1, which maps were filed in the Office of the Department of Transportation on June 3, 1968 and June 23, 1969 and in the Office of the Clerk of Westchester County on September 6, 1968 and July 18, 1969, respectively;

The above-mentioned survey baseline is a portion of the 2013 survey baseline for the reconstruction of the City of Yonkers: Central Park Avenue Arterial, State Highway No. C68-6, as shown on a map and plan on file in the Office of the State Department of Transportation and described as follows:

BEGINNING at a station 114+75.360;

THENCE north 9 degrees 22 minutes 32.0 seconds east to station 120+84.430

All bearings referred to TRUE NORTH at the 74 degrees 30 minute meridian of west longitude;

Westchester County Map Index System: City of Yonkers, Sheet No. 33, Block No. 3647.

FOR INFORMATION ONLY: Premises known as Arterial aka 1969 Central Park Avenue, Yonkers, NY a/k/a Central Park Avenue Arterial, Yonkers, NY.