

## PROJECT AGREEMENT

THIS PROJECT AGREEMENT (hereinafter, the “Project Agreement”), is made as of December 27, 2023, by and between 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 (the “Agency”), and **WY MANOR, L.P.**, a New York limited partnership having offices at 909 Third Avenue, 21<sup>st</sup> Floor, New York, New York 10022 (the “Company”).

### WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the “Enabling Act”) was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York (the “State”); and

WHEREAS, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable; and

WHEREAS, pursuant to and in connection with the provisions of the Enabling Act, Chapter 83 of the Laws of 1982 of the State (hereinafter collectively, the “Act”) created the Agency which is empowered under the Act to undertake the leasing of the facility described below; and

WHEREAS, an affiliated and related entity of the Company, specifically **WHITNEY YOUNG MANOR, L.P.** (“Whitney Young”), previously requested the Agency’s assistance with a certain project (the “2006 Project”) pursuant to which the Agency issued its multi-family housing revenue bonds in a principal amount equal to \$19,800,000 (Whitney Young Manor, L.P. Facility), Series 2006 Bonds (the “2006 Bonds”), for the benefit of Whitney Young, for the purpose of providing funds for financing a portion of the costs of a certain project (the “2006 Project”) consisting of: (A) the acquisition of an approximately 1.75-acre parcel of land located at 352, 354, 356 and 358 Nepperhan Avenue in the City of Yonkers, New York, as more particularly described in **Schedule A-1** attached hereto (the “2006 Land”) and the existing improvements thereon consisting principally of: (i) two 12-story buildings containing in the aggregate approximately 209,692 square feet of space and consisting of approximately 194 affordable multi-family housing units plus one manager's unit, common areas consisting of: community rooms, laundry rooms, hallways and lobbies and approximately 5,168 square feet of ground-floor retail space, (ii) an approximately 30,840 square-foot ancillary two-story parking

garage containing approximately 100 spaces, and (iii) a one-story building containing in the aggregate approximately 7,672 square feet used as community service facility space (the “2006 Existing Improvements”); (B) the renovation, modernization and upgrading of such buildings, including: (i) within the residential units, the repair, replacement and/or installation of new floors, cabinets, appliances, countertops, fixtures, bathroom vanities, sinks, faucets, bath tubs and tiles; (ii) within the common areas, the replacement and/or repair of elevators, doors, windows and boilers, along with parking lot, landscaping and general lobby renovations; and (iii) renovations to the exterior of the 2006 Existing Improvements including the replacement of all or a portion of the windows and doors and renovations to the existing brick façade and roof ((i), (ii) and (iii) above being referred to collectively as the “2006 Improvements”); (C) the acquisition of and installation in and around the 2006 Improvements and 2006 Existing Improvements of certain machinery, equipment, furnishings and other items of tangible personal property (the “2006 Equipment” and, collectively with the 2006 Land, 2006 Existing Improvements, and the 2006 Improvements, the “2006 Facility”) (E) the financing of a portion of the costs of the foregoing by the issuance of the 2006 Bonds; and (F) the lease (with an obligation to purchase the 2006 Facility) or sale of the facilities financed with the 2006 Bonds to Whitney Young or such other person as may be designated by Whitney Young and agreed upon by the Agency; and

WHEREAS, in connection with the issuance of the 2006 Bonds, fee title to the 2006 Facility was conveyed to the Agency by that certain Bargain and Sale Deed, dated December 14, 2006, from Young Manor, Inc. and Young Manor Associates, L.P. to the Agency, which was recorded in the Office of the Westchester County Clerk on January 30, 2007, at Control Number 470020628 (the “Deed”); and

WHEREAS, in connection with the issuance of the 2006 Bonds, the Agency and Whitney Young, entered into, among other things: (i) a certain Lease Agreement, dated as of December 1, 2006, as evidenced by a Memorandum of Lease, dated as of December 1, 2006 and recorded on January 30, 2007 in Control No. 470020653, as amended and restated by the Amended and Restated Lease Agreement dated as of May 3, 2018, as evidenced by a Memorandum of Amended and Restated Lease Agreement dated as of May 3, 2018 and recorded May 18, 2018 in Control No. 58101308 (as so amended and restated, the “2006 Lease Agreement”), pursuant to which the Agency leased its interest in the 2006 Facility to Whitney Young; (ii) a certain Payment In Lieu of Tax Agreement, dated as of December 1, 2006, as amended and restated by the Amended and Restated Payment In Lieu of Tax Agreement, dated as of April 1, 2009, and Second Amended and Restated Payment in Lieu of Tax Agreement, dated May 3, 2018, by and between the Agency and Whitney Young (as so amended and restated, the “2006 Tax Agreement”); (iii) a certain Tax Agreement Mortgage, dated as of December 1, 2006 and recorded January 30, 2007 in Control No. 470020833, as amended and restated by the Amended and Restated PILOT Mortgage, dated as of May 3, 2018 in the maximum amount of \$325,756.00 and recorded May 18, 2018, at Control Number 581373482 (as amended and restated, the “2006 Tax Agreement Mortgage”); (iv) a certain Agency Mortgage, Assignment or Rents and Security Agreement (Acquisition Loan), dated as of December 1, 2006 and recorded January 30, 2007 in Control No. 470020860 (the “Acquisition Loan Mortgage”) in favor of U.S. Bank National Association, as trustee (the “2006 Trustee”), securing a principal amount of \$13,625,000; and (v) a certain Agency Mortgage, Assignment or Rents and Security Agreement (Building Loan), dated as of December 1, 2006 and recorded January 30, 2007 in Control No. 470020883 (the “Building Loan Mortgage”; and, together with the Acquisition Loan Mortgage, the “2006

Mortgages”) in favor of the 2006 Trustee, securing a principal amount of \$6,175,000; (vi) a certain Mortgage Subordination Agreement, dated as of December 1, 2006, by and among the Agency, the Trustee, Whitney Young and New York State Urban Development Corporation d/b/a Empire State Development Corporation and recorded January 30, 2007 in Control No. 470020934; (vii) a certain Tax Regulatory Agreement, dated as of December 1, 2006 and recorded February 7, 2007 in Control No. 470170214 and (viii) related documents; and

WHEREAS, by resolution dated March 22, 2018, the Agency agreed to accommodate Whitney Young's request to redeem the 2006 Bonds and refinance and terminate and/or discharge the 2006 Bonds and the 2006 Mortgages; and

WHEREAS, in connection with the redemption of the 2006 Bonds, and the refinancing of the Facility, the Agency, Whitney Young and RICHMAC Funding LLC entered into, among other things, (i) a certain \$4,392,437.71 Multifamily, Mortgage, Assignment of Rents and Security Agreement, dated as of May 3, 2018, and recorded May 18, 2018 in Control No. 581373484; (ii) a certain Consolidation, Extension and Modification Agreement, dated as of May 3, 2018 and recorded May 18, 2018 in Control No. 581373485; and (iii) related documents (collectively, (i) through (iii) are the “2018 Mortgage Documents”); and

WHEREAS, notwithstanding the redemption of the 2006 Bonds, the 2006 Lease Agreement, the 2006 Tax Agreement, and 2006 Tax Agreement Mortgage, among other things, remained and continue to remain in full force and effect (the “Existing Agreements”); and

WHEREAS, the Company has submitted an application (the “Application”), dated September 6, 2022, as amended October 3, 2023, to the Agency requesting the Agency's assistance with a certain project (the “2023 Project”, which together with the 2006 Project is the “Project”) consisting of: (i) the acquisition or retention of the land commonly known as the 2006 Land (now known as 354 and 358 Nepperhan Avenue) (the “2023 Land”, which together with the 2006 Land is the “Land”) and the existing improvements thereon consisting of two 12-story buildings containing 195 residential rental units (32 studio, 34 one-bedroom, 60 two-bedroom, 54 three-bedroom and 15 four-bedroom units), and a single-story building containing a community facility, daycare, and commercial space (the “2023 Existing Improvements”); (ii) the renovation, modernization and upgrading of the 2023 Existing Improvements including: (1) within the residential units, new apartment interiors, including updated kitchens and bathrooms, microwaves, new light fixtures, new appliances, and updated finishes; (2) the installation of a new Exterior Insulating Façade System that will dramatically improve the buildings’ insulation along with a new centralized heat pump system that will provide heating, cooling and domestic hot water, and the installation of new windows and roof (the “2023 Improvements”, which together with the 2023 Existing Improvements, the 2006 Existing Improvements and the 2006 Improvements are the “Improvements”); (iii) the acquisition and installation in and around the Land and Improvements of certain items of equipment and other tangible personal property (the “2023 Equipment”, which together with the 2006 Equipment, is the Equipment). The Land, Improvements and Equipment are collectively the “Facility”; and

WHEREAS, the Company is a related and affiliate entity of Whitney Young created for the purpose of facilitating the completion of the Project; and

WHEREAS, by letter dated January 10, 2023, Nuveen Global Investments, LLC informed the Agency that it was under contract to purchase (the “Ownership Transfer”) 100% of the ownership interests in Omni Holding Company, LLC (“Omni Holding”), which is the sole member of Omni New York LLC (“Omni New York”) and Mill Plain Properties LLC (“Mill Plain”), which hold a controlling interest in the general partner of Whitney Young, Whitney Young Developers, LLC (the “GP”); and

WHEREAS, Nuveen requested that the Agency consent to the acquisition by Nuveen or a wholly-controlled affiliate of Nuveen (such entity, “Nuveen Purchaser”), of all of the issued and outstanding equity interests of Omni Holding, resulting in the Nuveen Purchaser becoming the indirect owner of a controlling interest in Whitney Young; and

WHEREAS, the Ownership Transfer consisted of (i) the assignment by Mill Plain, a co-manager and 50% interest owner of the GP, of 100% of its interest in the GP to Nuveen Purchaser and (ii) the assignment by Omni New York of 100% of its interest in ONY Whitney Young, LLC, a co-manager and 50% interest owner of the GP, to the Nuveen Purchaser; and

WHEREAS, on March 6, 2023, the Agency consented to the Ownership Transfer by and through the adoption of Resolution 3-2023/2; and

WHEREAS, in connection with the Project, the Company submitted an application to the **CITY OF YONKERS ECONOMIC DEVELOPMENT CORPORATION** (“YEDC”), requesting that YEDC issue its tax-exempt and/or taxable revenue bonds for the benefit of the Company in one or more series in an aggregate principal amount of up to \$42,000,000 (the “2023 Bonds”) for the purpose of paying the costs associated with: (i) the Project, and (ii) funding of a debt service reserve fund, if any, and paying capitalized interest, if any, and certain other costs incidental to the issuance of the 2023 Bonds; and

WHEREAS, on or about May 25, 2023, the Mid-Hudson Regional Economic Council, in furtherance of the Project, approved the allocation to YEDC of additional volume cap in the amount of \$37,809,400; and

WHEREAS, also in furtherance of the Project, by Resolution dated September 28, 2023, the Agency authorized the transfer of its private activity bond volume cap allocation for 2023 to YEDC in the amount of \$4,190,600; and

WHEREAS, by Resolution 11/2023-04, dated November 21, 2023, YEDC has authorized the issuance of the 2023 Bonds (the “YEDC Resolution”); and

WHEREAS, YEDC will issue the 2023 Bonds, on or about even date herewith; and

WHEREAS, the existing loan secured by the 2018 Mortgage Documents shall be satisfied by the proceeds of the 2023 Bonds; and

WHEREAS, the 2006 Lease Agreement, among other things was assigned to the Company, pursuant to that certain Omnibus Assignment and Assumption Agreement, dated as of December 27, 2023, from Whitney Young, as assignor, to the Company, as assignee, and consented to by the Agency; and

WHEREAS, the 2006 Lease Agreement is being amended and restated in its entirety, in accordance with the terms herein; and

WHEREAS, it is contemplated that the Agency will: (i) enter into this Agreement, pursuant to which the Agency will designate the Company as its agent for the purpose of constructing and equipping the Project, (ii) amend and restate the 2006 Lease Agreement to include this Project and extend the existing leasehold interest in the Facility in a manner which is coterminous with the new financing of the Facility (the 2023 Bonds) in the form of this Lease Agreement (the “Amended and Restated Lease Agreement”, and together with the 2006 Lease Agreement, are collectively the Lease Agreement), amend and restate the 2006 Tax Agreement to include this Project and extend the real property tax abatement in a manner which is coterminous with the term of the 2023 Bonds (the “Amended and Restated Tax Agreement” and together with the 2006 Tax Agreement, collectively the “Tax Agreement”) and amend and restate the 2006 Tax Agreement Mortgage to reflect the foregoing (the “Amended and Restated Tax Agreement Mortgage” and together with the 2006 Tax Agreement Mortgage, collectively the “Tax Agreement Mortgage”), (iii) provide “financial assistance”, as such term is defined in the Act, to the Company in the form of: (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Project and (b) an extension of the existing partial real property tax abatement structured through the Tax Agreement (collectively, (a) and (b) are the “Financial Assistance”); and

WHEREAS, pursuant to General Municipal Law Section 859-a, on October 20, 2022, at 2:00 p.m. local time, at the offices of Agency at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701, the Agency held a public hearing with respect to the Project and the proposed Financial Assistance being contemplated by the Agency (the “Public Hearing”) whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views; and

WHEREAS, by Resolution 11/2023-04, dated November 21, 2023, the Agency authorized the Financial Assistance and the assignment of the Existing Agreements (the “Agency Resolution”); 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 and in accordance with Sections 859-a and 874 of the Act, the Agency requires, as a condition and as an inducement for it to provide any Financial Assistance, that the Company enter into this Project Agreement for the purposes of, among other things, to govern administration of and provide assurances with respect to the provision and recapture of said Financial Assistance upon the terms herein set forth; and

WHEREAS, this Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company; and

WHEREAS, no agent status in favor of the Company or any subagent thereof, nor any amount of Financial Assistance shall be provided to the Company by the Agency prior to the effective date of this Project Agreement; 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:

## ARTICLE I. DEFINITIONS

Section 1.1 Definitions of Terms. The words and terms as used in this Project shall have the same meanings as used in **Schedule A** attached hereto and made a part hereof, unless the context or use indicates another or different meaning or intent.

## ARTICLE II. REPRESENTATIONS AND COVENANTS

Section 2.1 Representations and Covenants of the Company. The Company makes the following representations and covenants in order to induce the Agency to proceed with the Project/Facility:

(a) The Company is a limited partnership, validly existing and in good standing under the laws of the State, has the authority to enter into this Project Agreement, and has duly authorized the execution and delivery of this Project Agreement.

(b) Neither the execution and delivery of this Project Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Project Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The Facility and the operation thereof will conform with all applicable zoning, planning, and building laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this Section 2.1(c).

(d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact the Company's ability to fulfill its obligations under this Project Agreement.

(e) The Company covenants that the Facility will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility, (ii) that the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that no underground storage tanks will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company upon receiving any information or notice contrary to the representations contained in this Section 2.1(e) shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents (other than the Company), representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section 2.1(e). In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, the Company agrees to pay the expenses of same to the Agency upon demand.

(f) Any personal property acquired by the Company in the name of the Agency shall be located in the City of Yonkers, Westchester County, except for temporary periods during ordinary use.

(g) The Company hereby represents to the Agency that facilities and property that are primarily used in making retail sales of goods and services to customers who personally visit the Facility will not constitute more than one-third (1/3) of the total costs of the Facility, except in accordance with State General Municipal Law (the "GML") Section 862.

(h) The Company acknowledges and agrees that, except to the extent of bond proceeds (to the extent bonds are issued by the Agency with respect to the Project), the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder.

(i) The Company covenants and agrees that at all times, it will while a party or guarantor under this Agreement: (i) maintain its existence and not dissolve, (ii) continue to be a limited partnership subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business in the State, (iii) not liquidate, wind-up or dissolve or otherwise sell, assign, or dispose of all or substantially all of its property, business or assets. This Project Agreement may not be assigned in whole or part without the prior written consent of the Agency or otherwise in accordance with the Lease Agreement.

(j) The Company confirms and acknowledges under the penalty of perjury that as of the date hereof, the Company, as owner, occupant, or operator of the Project receiving Financial

Assistance from the Agency in connection with the Project, is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations. The Company agrees that it will, throughout the term of this Project Agreement, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof. Notwithstanding the foregoing, the Company may in good faith contest the validity of the applicability of any requirement of the nature referred to this Section 2.1(j). In such event, the Company, with the prior written consent of the Agency (which shall not be unreasonably conditioned, delayed or withheld) may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom unless the Agency shall notify the Company that it must comply with such requirement or requirements.

(k) The Company represents, warrants and covenants that, unless otherwise approved by the Agency in compliance with the Act, facilities or properties that are primarily used for making retail sales to customers who personally visit such facilities constitute less than one-third ( $\frac{1}{3}$ ) of the total costs of the Project. For purposes of this section, “retail sales” means: (a) sales by registered vendors under Article 28 of the Tax Law of the State primarily engaged in the retail sale of tangible personal property, as defined in Section 1101(b)(4)(i) of the Tax Law of the State; or (b) sales of a service to said customers.

(l) The Company acknowledges receipt of the Agency's Recapture, Suspension, and Discontinuance Policy (the “Policy”), represents that it has reviewed the Policy and understands the terms and conditions set forth therein and agrees to be bound by the terms and conditions thereof.

(m) The Company hereby acknowledges and agrees that the foregoing Agency Financial Assistance constitutes “public funds” unless otherwise excluded under Section 224-a(3) of the State Labor Law (the “Labor Law”), and by executing this Project Agreement, (i) confirms that it has received notice from the Agency pursuant to Section 224-a(8)(d) of the Labor Law and (ii) acknowledges its obligations pursuant to Section 224-a(8)(a) of the Labor Law. Other than the Agency Financial Assistance estimates provided herein and disclosed to the Company, the Agency makes no representations or covenants with respect to the total sources of “public funds” received by the Company in connection with the Project.

(n) The Company represents that the Improvements at the Facility will include: (i) an Exterior Insulating Façade System, new centralized heat pump system, new windows and roof; and (ii) in-unit capital improvements including new apartment interiors, updated kitchens and bathrooms, microwaves, new light fixtures, new appliances, and updated finishes.



ARTICLE III.  
GENERAL

Section 3.1 Purpose of Project. The purpose of the Financial Assistance with respect to the Project is to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Facility to advance job opportunities, health, general prosperity and economic welfare of the people of the City of Yonkers, New York, and to specifically promote the investment commitment, employment commitment, and other commitments of the Company contained herein and in the Application.

ARTICLE IV.  
FINANCIAL ASSISTANCE AND RECAPTURE OF BENEFITS

Section 4.1 In accordance with the Resolution and the cost-benefit analysis (or such other equivalent document or report, as determined by the Agency) (the “CBA”), attached hereto as **Schedule A-2**, the Company further: (i) covenants, with respect to the Sales Tax Exemption, that it shall comply with this Project Agreement, specifically, but not limited to, Section 4.3 hereof; and (ii) confirms that real property tax abatement to be provided to the Company shall conform to those disclosed within the CBA and as contained within the Tax Agreement, a copy of which Tax Agreement is attached hereto as **Exhibit A**.

Section 4.2 Tax Agreement. The parties hereto have executed or will execute the Lease Agreement and Tax Agreement. As provided in the Tax Agreement, a copy of which is attached hereto as **Exhibit A**, the Company agrees to make Tax Payments (as defined in the Tax Agreement) in addition to paying all special ad valorem levies, special assessments or special district taxes and service charges against real property in the jurisdiction where the Facility is located.

Section 4.3 Sales Tax Exemption.

(a) The Agency agrees to acquire, construct, and equip the Facility based on Company specifications. The Agency hereby appoints and confirms its appointment of the Company as the true and lawful agent of the Agency to undertake acquisition, construction and equipping of the Project. Such appointment was made by the Agency pursuant to the Resolution.

(b) The Company, as agent of the Agency, will undertake the Project. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Authorizing Resolution to acts reasonably related to the acquisition, construction, rehabilitation and equipping of the Facility. The right of the Company to act as agent of the Agency shall expire on the earlier of (x) the completion of the Project, or (y) March 31, 2026 (“Termination Date”); provided, however, that the Agency, through its Chair or Executive Director, may extend the Company’s agent appointment at its discretion upon the written request of the Company if such activities and improvements are not completed by such time, and further provided that the Agency shall not unreasonably withhold its consent to the extension of such appointment.

(c) Agency’s Exempt Status. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State, and therefore, in the exercise of its governmental functions, is exempt from the imposition of Sales and Use Taxes. As an

exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required. Notwithstanding the foregoing, the Agency makes no representation to the Company, any Agent (as defined in Schedule B attached hereto) or any third party that any Sales Tax Exemption is available under this Project Agreement.

(d) Scope of Authorization of Sales Tax Exemption. The Agency hereby authorizes the Company, subject to the terms and conditions of this Project Agreement, to act as its agent in connection with the Project for the purpose of effecting purchases and leases of certain items so that such purchases and leases are exempt from the imposition of Sales and Use Taxes. The Agency's authorization with respect to such Sales Tax Exemption provided to the Company and its Agents pursuant to this Project Agreement shall be subject to the following limitations:

(i) The Sales Tax Exemption shall be effective only for a term commencing on the date hereof and expiring upon the earliest of (A) the termination of this Project Agreement, (B) the Termination Date, (C) failure of the Company to file Form ST-340, as described in Section 4.5, (D) the termination of the Sales Tax Exemption authorization pursuant to Section 6.2 or (E) the date upon which the Company received the Maximum Sales Tax Exemption.

(ii) The Sales Tax Exemption authorization set forth herein shall automatically be suspended upon written notice to the Company that the Company is in default under this Project Agreement until such default is cured to the satisfaction of the Agency.

(iii) The Sales Tax Exemption authorization shall be subject to all of the terms, conditions and provisions of this Project Agreement.

(iv) The Sales Tax Exemption shall only be utilized for items which shall be purchased, incorporated, completed or installed for use only by the Company at the Facility or in connection with the Project (and not with any intention to sell, transfer or otherwise dispose of any such item to a person as shall not constitute the Company), it being the intention of the Agency and the Company that the Sales Tax Exemption shall not be made available with respect to any item unless such item is used solely by the Company at the Facility or in connection with the Project.

(v) The Sales Tax Exemption shall not be used to benefit any person or entity, including any tenant or subtenant located at the Facility, other than the Company, without the prior written consent of the Agency.

(vi) By its execution of this Project Agreement, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of the Sales Tax Exemption by the Company or by any Agent is strictly for the purposes stated herein.

(vii) Upon the Termination Date, the Company and each Subagent shall cease being agents of the Agency, and the Company shall immediately notify each Agent in writing of such termination.

(viii) The Company agrees that the aggregate amount of Sales Tax Exemption realized by the Company and by all Agents of the Company, if any, in connection with the Facility shall not exceed in the aggregate the Maximum Sales Tax Exemption.

Section 4.4 Procedures for Appointing Subagents. If the Company desires to seek the appointment of a contractor, a subcontractor or other party to act as the Agency's agent, including, but not limited, to the individuals and entities described on **Schedule B** attached hereto (a "Subagent") for the purpose of effecting purchases which are eligible for the Sales Tax Exemption pursuant to authority of this Project Agreement, it must complete the following steps:

(i) The Company shall have the right to amend **Schedule B** from time to time and shall be solely responsible for maintaining an accurate list of all parties acting as agent for the Agency. The Company's right to appoint Subagents is expressly conditioned upon updating of **Schedule B** attached hereto, along with, for each Subagent, the Company must complete and submit Form ST-60 to the Agency, attached hereto as **Exhibit B**. An Authorized Representative of the Agency must sign the Form ST-60 and return the same to the Company. Following receipt of the signed Form ST-60, the Company must file such Form ST-60 within thirty (30) days of the date that the Agency appoints a project operator or other person or entity to act as a Subagent of the Agency for purposes of extending the Sales Tax Exemption to such Subagent. The Company acknowledges and agrees that it shall be the Company's sole and exclusive responsibility to file a completed Form ST-60 with respect to any Subagent and the failure to timely do so could result in an Event of Default and Recapture Event (as hereinafter defined).

(ii) The Company shall ensure that each Subagent shall observe and comply with the terms and conditions of this Project Agreement.

(iii) Form ST-60 Not an Exemption Certificate. The Company acknowledges that the executed Form ST-60 designating the Company or any Subagent as an agent of the Agency shall not serve as a Sales Tax Exemption certificate or document. Neither the Company nor any other Agent may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN LAW. IN ADDITION, THE USE BY A SUBAGENT, THE COMPANY, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY-EIGHT AND THIRTY-SEVEN OF THE STATE TAX AND FINANCE LAW (THE "TAX LAW"), THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

(iv) Form ST-123 Requirement and Form FT-123 Requirement. As an agent of the Agency, the Company agrees that it will, and will cause each Subagent to, present to each seller or vendor a completed and signed Form ST-123, attached hereto as **Exhibit C-1**, for each contract, agreement, invoice, bill or purchase order entered into by the Company or by any Subagent, as agent for the Agency, for the purpose of undertaking the Project.

As an agent of the Agency, the Company agrees that it will, and will cause each Subagent to, present to each seller or vendor a completed and signed Form FT-123, attached hereto as **Exhibit C-2**, for each contract, agreement, invoice, bill or purchase order for **fuel** entered into by the Company or by any Subagent, as agent for the Agency, for the purpose of undertaking the Project.

Form ST-123 and Form FT-123 require that each seller or vendor accepting Form ST-123 or Form FT-123 identify the Facility on each bill or invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Company, as project operator of the Agency, was the purchaser. For the purposes of indicating who the purchaser is, each bill or invoice should state:

“I, [NAME OF COMPANY OR SUBAGENT], certify that I am a duly appointed agent of the CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY and that I am purchasing the tangible personal property or services for use in the WY Manor LP Project located at 354 and 358 Nepperhan Avenue, City of Yonkers, New York (or at any lands located in the City of Yonkers, New York, and occupied by license or easement during construction or improved by third parties for the benefit of the IDA Project), being IDA OSC Project Number [5507-\_\_-\_\_\_]”.

For convenience purposes, in the instance where the vendor does not print on each invoice the acknowledgment as described in the prior sentence, an “Invoice Rider” (a copy of which is attached hereto as **Exhibit C-3**) can be utilized for record keeping purposes. The Company shall retain copies of all such contracts, agreements, invoices, bills and purchase orders for a period of not less than six (6) years from the date thereof. For each Subagent the Form ST-123 and Form FT-123 shall be completed as follows: (i) the “Project information” section of Form ST-123 and Form FT-123, attached hereto as **Exhibit C-1 and Exhibit C-2** respectively, should be completed using the name and address of the Facility as indicated on the Form ST-60 used to appoint the Subagent; (ii) the date that the Subagent was appointed as indicated on the Form ST-60.

All contracts entered into by the Company and all Subagents thereof as agent for the Agency shall include the language contained within **Schedule C** attached hereto. **Failure by the Company and/or any Subagent thereof to include such language may disqualify the agent status and Sales Tax Exemption derived by virtue of this Project Agreement. The Company, for itself and on behalf of all duly appointed Subagents, hereby agrees that all contracts entered into by the Company and any Subagents thereof shall be available to the Agency for inspection and confirmation of the foregoing mandatory language.**

Section 4.5 Form ST-340 Filing Requirement. The Company shall annually file a statement with the State Department of Taxation and Finance (the “Commissioner”) on “Annual Report of Sales and Use Tax Exemptions” (NYS Form ST-340, a copy of which is attached hereto as **Exhibit D**) regarding the value of Sales Tax Exemption the Company and its Subagents, if any, have claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with General Municipal Law Section 874(8). Please note, the Company is to report only the Sales Tax Exemption derived as a result of the Agency’s participation in the Project and not those received as a result of the other available State exemptions. **For the avoidance of doubt, other State exemptions, which the Company should not report on its NYS Form ST-340, include, but are not limited to, exemptions available to certain manufacturers or those exemptions that apply to capital improvements.** On or before February 15<sup>th</sup> of each year, the Company shall provide a copy of same to the Agency. The Company understands and agrees that the failure to file such annual statement will result in the removal of the Company’s authority to act as agent for the Agency and/or Recapture of Agency Benefits as described in Section 4.8 hereof.

Section 4.6 GML Provisions Relating to Sales Tax Savings.

(a) The Company covenants and agrees to comply, and to cause each of its contractors, subcontractors, Subagents, persons or entities to comply, with the requirements of GML Sections 875(1) and (3) (the “GML Provisions”), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Project Agreement and the GML Provisions, the GML Provisions shall control.

(b) The Company acknowledges and agrees that pursuant to GML Section 875(3), the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Company, Sales Tax Savings taken or purported to be taken by the Company, any Subagent or any other person or entity acting on behalf of the Company to which the Company is not entitled or which are in excess of the Maximum Sales Tax Exemption or which are for property or services not authorized or taken in cases where the Company, any Subagent or any other person or entity acting on behalf of the Company failed to comply with a material term or condition to use property or services in the manner required by this Project Agreement. The Company shall require each Subagent and any other person or entity acting on behalf of the Company, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such Sales Tax Savings and shall promptly pay over any such amounts to the Agency or any other entity that it requests receive the Sales Tax Savings. The failure to pay over such amounts to such recipient shall be grounds for the Commissioner to assess and determine State Sales and Use Taxes due from the Company under Article 28 of the Tax Law, together with any relevant penalties and interest due on such amounts.

Subject to the provisions of Section 4.6 (b) above, in the event that the Company or any Subagent shall utilize the Sales Tax Exemption in violation of the provisions of this Project Agreement, the Company shall promptly deliver notice of same to the Agency, and the Company shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized Sales Tax Savings together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized Sales Tax Exemption was availed

of by the Company or any Subagent (as applicable).

(c) Upon request by the Agency with reasonable notice to the Company, the Company shall make available at reasonable times to the Agency and/or the Independent Accountant all such books, records, contracts, agreements, invoices, bills or purchase orders of the Company and any Agent, and require all appropriate officers and employees of the Company to respond to reasonable inquiries by the Agency and/or the Independent Accountant, as shall be necessary (i) to indicate in reasonable detail those costs for which the Company or any Subagent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (ii) to permit the Agency to determine any amounts owed by the Company under this Section 4.6(c).

Section 4.7 Mortgage Recording Tax Exemption. Section 874 of the Act exempts the Agency from paying certain mortgage recording taxes except for the portion of the mortgage recording tax allocated to transportation districts referenced in Section 253(2)(a) of the New York State Real Property Tax Law. Subject to approval by the Agency on or before December 31, 2023, the Agency grants to the Company exemption from mortgage recording taxes for one or more Mortgages securing an aggregate principal amount not to exceed the Maximum Approved Mortgage Amount, or such greater amount as approved by the Agency in its sole and absolute discretion, in connection with the financing of the Project and any future financing, refinancing or permanent financing of the costs of the Project (the “Mortgage Recording Tax Exemption”). The Company represents and warrants (1) that the real property secured by the Mortgage is located within a transportation district referenced in Section 253(2)(a) of the Tax Law, and (2) that upon recording the Mortgage, the Company shall pay the mortgage recording tax allocated to transportation districts referenced in Section 253(a)(2) of the Tax Law.

Section 4.8 Recapture of Agency Benefits.

(a) It is understood and agreed by the parties hereto that the Agency is entering into this Project Agreement in order to provide the Financial Assistance to the Company for the Facility and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees that if there shall occur a Recapture Event (as defined below) after the date hereof, the Company shall pay to the Agency, or to the State, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, one hundred percent (100%) of the Recaptured Benefits.

(b) The term “Recaptured Benefits” shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Agency’s participation in the transaction contemplated by this Project Agreement, including, but not limited to, the amount equal to 100% of:

- (i) Mortgage Recording Tax Exemption;
- (ii) Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Subagent; and

(iii) real property tax abatements granted pursuant to the Tax Agreement;

which Recaptured Benefits from time to time shall upon the occurrence of a Recapture Event in accordance with the provisions of Section 4.8 (c) below and the declaration of a Recapture Event by notice from the Agency to the Company be payable directly to the Agency or the State if so directed by the Agency within ten (10) days after such notice.

(c) The term “Recapture Event” shall mean any of the following events:

(i) The occurrence and continuation of an Event of Default under this Project Agreement which remains uncured beyond any applicable notice and/or grace period, if any, provided hereunder; or

(ii) The Project shall cease to be a “project” within the meaning of the Act as in effect on the date hereof, through the act or omission of the Company; or

(iii) The Company receives Sales Tax Savings in connection with property or services not authorized by the Agency as part of the Project; or

(iv) The Company receives Sales Tax Savings in connection with the Project in excess of the Maximum Sales Tax Exemption; provided, however, that the foregoing shall constitute a Recapture Event with respect to such excess Sales Tax Savings only. It is further provided that failure to repay the Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recaptured Benefits; or

(v) The Company has made a material false or misleading statement, or omitted any information which, if included, would have rendered any information in the Application or supporting documentation false or misleading in any material respect, on the Application; or

(vi) Failure of the Company to file a copy of the Form ST-340 with the Agency in compliance with Section 4.5 hereof; or

(vii) Failure of the Company to create or cause to be maintained at least six (6) full time equivalent (“FTE”) jobs at the Facility, which is located on real property in the City of Yonkers, commencing after the issuance of a temporary certificate of occupancy for the Facility, which failure is not reflective of the business conditions of the Company or the subtenants of the Company, including, without limitation, loss of major sales, revenues, distribution or other adverse business developments and/or local, national or international economic conditions, trade issues or industry wide conditions.

(viii) Failure of the Company to comply with Section 224-a of the New York Labor Law.

In order to certify and verify the foregoing, the Company shall provide annually, to the Agency, a certified statement and documentation on the form attached hereto as **Exhibit E**: (i) enumerating the FTE jobs retained and the full-time equivalent jobs created as a result of the Financial Assistance, by category, including full-time equivalent independent contractors or employees of independent contractors or affiliates or related companies that work at the Project location or immediately adjacent to the Project location and are directly facilitating the operations of the Company and the Project, (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the Application is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created, and (iii) such other information, as so requested from time to time, to enable the Agency to assess the progress of the Project toward achieving the investment, job retention, job creation, or other objectives of the Project indicated in the Application.

(d) In the event any payment owing by the Company under this Section shall not be paid on demand by the Agency, such payment shall bear interest from the date of such demand at a rate equal to one percent (1%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, until the Company shall have made such payment in full, together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above).

(e) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including, without limitation, reasonable legal fees, incurred with the recovery of all amounts due under this Section 4.8, from amounts received by the Agency pursuant to this Section 4.8.

## ARTICLE V. INSURANCE

Section 5.1 Insurance Required. Effective as of the date hereof and until the expiration or termination of the right of the Company to act as agent of the Agency hereunder, the Company shall maintain, or cause to be maintained by its subagent or subcontractors, certain insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type, and paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company; or as an alternative to the foregoing, the Company may insure the Facility under a blanket insurance policy or policies covering not only the Facility but other properties as well, provided a periodic appraisal is performed and provided to the Agency.

(b) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or the Company is required by law to provide, covering loss



resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Facility.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 7.1 hereof) and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$2,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$2,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workers' compensation law. Such liability limits may be satisfied by any combination of primary and excess liability policies in the aggregate amount of not less than \$10,000,000.

Section 5.2 Additional Provisions Respecting Insurance. (a) All insurance required by Section 5.1(a) hereof shall name the Agency as a named insured and the insurance required by Section 5.1(c) shall name the Agency as an additional insured. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide (i) for payment of the losses of the Company and the Agency as their respective interest may appear, and (ii) that the insurance company shall endeavor to give thirty (30) days' prior written notice or such other notice as the policy provides for, of the cancellation thereof to the Company and the Agency.

(b) All such certificates of insurance of the insurers indicating that such insurance is in force and effect, and all policies (if applicable), shall be deposited with the Agency on the date hereof. Prior to the expiration of any such policy evidenced by said certificates, the Company shall furnish the Agency with evidence that the policy has been renewed or replaced or is no longer required by this Project Agreement.

## ARTICLE VI. EVENTS OF DEFAULT AND REMEDIES

Section 6.1 The following shall each be "Events of Default" under this Project Agreement:

(a) the failure by the Company to observe and perform any covenant contained in Sections 2.1 (e), 2.1 (g), 2.1(i), 2.1 (j), 2.1 (k), 2.1 (l), 2.1 (m), 2.1 (n), 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 5.1, 5.2, 7.1 and 7.6 hereof;

(b) the failure by the Company to pay the Recaptured Benefits on the date due;

(c) the occurrence and continuation of a Recapture Event;

(d) the occurrence of an Event of Default under the Leaseback Agreement or the Tax Agreement or the Tax Agreement Mortgage;

(e) the dissolution or liquidation of the Company; or the failure by the Company to release, stay, discharge, lift or bond within thirty (30) days any execution, garnishment, judgment or attachment of such consequence as may impair its ability to carry on its operations; or the failure by the Company generally to pay its debts as they become due; or an assignment by the Company for the benefit of creditors; or the commencement by the Company (as the debtor) of a case in bankruptcy or any proceeding under any other insolvency law; or the commencement of a case in bankruptcy or any proceeding under any other insolvency law against the Company (as the debtor), wherein a court having jurisdiction in the premises enters a decree or order for relief against the Company as the debtor, or such case or proceeding is consented to by the Company or remains undismissed for forty (40) days, or the Company consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Company for the purpose of enforcing a lien against such Property or for the purpose of general administration of such Property for the benefit of creditors.

#### Section 6.2 Remedies on Default.

(a) Whenever any Event of Default shall have occurred and be continuing beyond applicable notice and cure periods, the Agency may take, to the extent permitted by law, any one or more of the following remedial steps:

- (i) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all due and owing Recaptured Benefits and (B) all other payments due under this Project Agreement; or
- (ii) terminate this Project Agreement and the Sales Tax Exemption authorization; or
- (iii) take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder, and to enforce the obligations, agreements and covenants of the Company under this Project Agreement.

(b) No action taken pursuant to this Section 6.2 (including termination of the Project Agreement) shall relieve the Company from its obligation to make all payments required by the Leaseback Agreement, the Tax Agreement or Recaptured Benefits.

(c) Notwithstanding anything to the contrary herein, the Company's limited partner, identified in Section 7.3 of this Project Agreement, shall have the right but not the obligation, during the Company notice and cure periods, to cure any Event of Default, and the Agency shall accept or reject such cure on the same basis as if tendered by the Company.

Section 6.3 Remedies Cumulative. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Project Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any

right or power accruing upon any default shall impair any such right and power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article VI it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Project Agreement.

Section 6.4 Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Project Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred.

## ARTICLE VII. MISCELLANEOUS

Section 7.1 Hold Harmless Provision. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, directors, members, officers, employees, agents (other than the Company), representatives, successors and assigns harmless from and against, any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or breach by the Company of this Project Agreement or (ii) liability arising from or expense incurred by the Agency's financing, acquiring, constructing, equipping, owning and leasing of the Facility, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective executive director, directors, members, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified.

Section 7.2 This Project 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 Project Agreement and signatures pages by facsimile or portable document format (PDF) transmission shall constitute effective execution and delivery of this Project Agreement as to the parties hereto and may be used in lieu of the original Project Agreement and signature pages for all purposes.

Section 7.3 All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, or by a nationally-recognized overnight courier, 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 1206  
White Plains, New York 10601  
Attention: Michael V. Curti, Esq.

To the Company: WY Manor LP  
909 Third Avenue, 21<sup>st</sup> Floor  
New York, New York 10022  
Attention: Ken Spillberg and Bryan Kaplan, Esq.  
Email: kspillberg@onyllc.com and bkaplan@onyllc.com

And To: WY Manor, L.P.  
730 Third Avenue, 4th Floor  
New York, New York 10017  
Attention: Chris Marshall and Jillian Joseph, Esq.  
Email: Chris.Marshall@nuveen.com and [Jillian.Joseph@nuveen.com](mailto:Jillian.Joseph@nuveen.com)

With Copy to: Nixon Peabody LLP  
55 West 46th Street  
New York, NY 10036-4120  
Attention: Joseph J. Lynch, Esq.

To Limited Partner: CREA Corporate Fund 83, LP  
c/o CREA, LLC  
30 South Meridian Street, Suite 400  
Indianapolis, Indiana 46204  
Attention: Asset Management

With a Copy to: Buchalter  
425 Market Street, Suite 2900  
San Francisco, California 94105  
Attention: Faith Bruins, Esq.

To the Lender: Merchants Bank of Indiana  
410 Monon Boulevard, 4<sup>th</sup> Floor  
Carmel, Indiana 46032  
Attn: Asset Management

With Copy to:           Sidley Austin LLP  
                              787 Seventh Avenue  
                              New York, New York 10019  
                              Aviva Yakren, 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.

Section 7.4 This Project Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State 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.

Section 7.5 The warranties, representations, obligations and covenants of the Company under this Project Agreement shall be absolute and unconditional and shall remain in full force and effect during the term of this Project Agreement, shall be deemed to have been relied upon by the Agency, and shall survive the delivery and termination of this Project Agreement to the Agency, regardless of any investigation made by the Agency. This Project Agreement shall survive any termination or expiration of the Lease Agreement or the Tax Agreement, as described below.

Section 7.6 By executing this Project Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Agency for (a) legal services, including but not limited to those provided by the Agency's general counsel and bond/transaction counsel, (b) other consultants retained by the Agency, if any, in connection with the Project; and (c) with respect to Agency's enforcement of any event of default or failure to comply with the terms of this Project Agreement (including reasonable attorney fees). The Company further covenants and agrees that the Company is liable for payment to the Agency of all charges referred to above, as well as all other actual costs and expenses incurred by the Agency in undertaking the Project notwithstanding the occurrence of any of (i) the Company's withdrawal, abandonment, cancellation or failure to pursue the Project; (ii) the inability of the Agency or the Company to procure the services of one or more financial institutions to provide financing for the Project; or (iii) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.

[Remainder of This Page Intentionally Left Blank]

[Signature Page to the Project Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Project Agreement as of the day and year first above written.

**CITY OF YONKERS INDUSTRIAL  
DEVELOPMENT AGENCY**

By: Marlyn Anderson  
Name: Marlyn Anderson  
Title: Secretary

**WY MANOR, L.P.**, a New York limited  
partnership

By: **WY MANOR GP LLC**, a Delaware  
limited liability company, its general  
partner

By: **WY MANOR DEVELOPERS, LLC**,  
A New York limited liability company,  
its managing member

By: \_\_\_\_\_  
Name: Michael Gilmartin  
Title: Authorized Signer

[Signature Page to the Project Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Project Agreement as of the day and year first above written.

**CITY OF YONKERS INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Name: Marlyn Anderson  
Title: Secretary

**WY MANOR, L.P.**, a New York limited  
partnership

By: **WY MANOR GP LLC**, a Delaware  
limited liability company, its general  
partner

By: **WY MANOR DEVELOPERS, LLC**,  
A New York limited liability company,  
its managing member

By: Michael F. Gilmartin  
Name: Michael Gilmartin  
Title: Authorized Signer

## SCHEDULE A

### SCHEDULE OF DEFINITIONS

“Authorized Representative” means, in the case of the Agency, the Executive Director, the Chairman or the Vice Chairperson, or Secretary and such additional persons as, at the time, are designated to act on behalf of the Agency; and in the case of the Company, the members and such additional persons as, at the time, are designated to act on behalf of the Company.

“Independent Accountant” shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Company and approved by the Agency (such approval not to be unreasonably withheld or delayed).

“Lease Agreement” shall mean that certain Lease Agreement, dated as of December 1, 2006, as amended by the Amended and Restated Lease Agreement, dated as of May 3, 2018, as further amended and restated, and as the same may be assigned, amended, modified restated, or reaffirmed from time to time, by the Second Amended and Restated Lease Agreement, dated December 27, 2023, by and between the Agency and the Company.

“Maximum Approved Mortgage Amount” shall mean **\$225,000**, subject to approval by the Agency, on or before December 31, 2023, pursuant to such additional documents and resolutions as may be required by the Agency.

“Maximum Sales Tax Exemption” shall mean the aggregate maximum dollar amount of Sales Tax Savings that the Company and all Subagents acting on behalf the Company are permitted to receive under this Project Agreement, which shall equal **\$1,346,661.00**, or such maximum dollar amount as may be determined by the Agency pursuant to such additional documents as may be required by the Agency for such increase.

“Mortgage(s)” shall mean any of the (i) that certain Whitney Young NYSERDA EBC Mortgage dated December 27, 2023, by and between the Company, the Agency and **NRE NFP INC.** (the “EBC Grant Mortgage”); (ii) that certain Whitney Young NYSERDA Loan (LCP) Mortgage, dated December 27, 2023, by and between the Company, the Agency and **NRE NFP INC.** (the “LCP Grant Mortgage”); (iii) that certain Seller Mortgage, dated December 27, 2023 (the “Seller Mortgage”), by and between the Company, the Agency and Whitney Young; and (iv) that certain Multifamily Mortgage, Assignment of Rents and Security Agreement. Dated December 27, 2023 (the “Merchants Commitment Fee Mortgage”), by and between the Company, the Agency, and **MERCHANTS CAPITAL CORP.** Mortgage(s) shall not include that certain Acquisition Loan Mortgage (i) that certain Acquisition Loan Mortgage, dated as of December 1, 2023, (the “Acquisition Loan Mortgage”), by and from the Agency and the Company to and for the benefit of YEDC; (ii) that certain Building Loan Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement, dated as of December 1, 2023 (the “Building Loan Mortgage”), by and from the Agency and the Company to and for the benefit of YEDC; nor (iii) that certain Project Loan Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement, dated as of December 1, 2023 (the “Project Loan Mortgage”), by and from the Agency and the Company, to and for the benefit of YEDC.



“Prime Rate” means (i) if no lender, the rate designated by The Wall Street Journal from time to time as its “prime rate”, or (ii) if a lender exists, the rate designated by the lender from time to time as its “prime rate”.

“Sales Tax Exemption” shall mean an exemption from Sales and Use Taxes resulting from the Agency’s participation in the Facility.

“State” shall mean the State of New York.

“Sales and Use Taxes” shall mean local and State sales and compensating use taxes and fees imposed pursuant to Article 28 of the State Tax Law, as the same may be amended from time to time.

“Sales Tax Savings” shall mean all Sales Tax Exemption savings relating to Sales and Use Taxes realized by or for the benefit of the Company, including any savings realized by any Subagent, pursuant to this Project Agreement.

“State Sales and Use Taxes” shall mean sales and compensating use taxes and fees imposed by Article 28 of the State Tax Law but excluding such taxes imposed in a city by Section 1107 or 1108 of such Article 28, as the same may be amended from time to time.

**SCHEDULE A-1**

[Real Property Description]

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, bounded and described as follows:

BEGINNING at a point on the Easterly side of Nepperhan Avenue, distant Southerly 141.75 feet as measured along the Easterly side of Nepperhan Avenue from the corner formed by the intersection of the Easterly side of Nepperhan Avenue with the Southerly side of Ashburton Avenue;

RUNNING THENCE along the Easterly side of Nepperhan Avenue, South 13 degrees 44 minutes 30 seconds West, 110.36 feet and South 20 degrees 16 minutes 00 seconds West, 64.89 feet to lands now of CH SS Fund-Baranof;

THENCE along said lands the following three (3) courses and distances:

1. South 70 degrees 57 minutes 30 seconds East, 126.07 feet;
2. South 20 degrees 42 minutes 24 seconds West, 50.00 feet;
3. South 70 degrees 57 minutes 30 seconds East, 65.00 feet to lands now of Jennifer Rivas;

THENCE along said lands now of Jennifer Rivas, North 71 degrees 45 minutes 22 seconds East, 126.15 feet to the Westerly line of lands now of the City of Yonkers, formerly of Doyle Playground;

THENCE along the Westerly line of lands now of the City of Yonkers, formerly of Doyle Playground, North 7 degrees 38 minutes 00 seconds East, 294.00 feet to the Southerly side of Ashburton Avenue;

THENCE along the Southerly side of Ashburton Avenue, North 71 degrees 00 minutes 00 seconds West, 147.00 feet to the Easterly line of lands now of Gasoline & Car Wash Corp. of Yonkers, formerly of Car Wash of Yonkers;

THENCE along the Easterly and Southerly lines of said lands now of Gasoline & Car Wash Corp. of Yonkers, formerly of Car Wash of Yonkers, the following five (5) courses and distances:

1. South 22 degrees 07 minutes 10 seconds West, 84.87 feet;
2. South 21 degrees 18 minutes 00 seconds West, 29.35 feet;
3. South 71 degrees 32 minutes 40 seconds East, 0.84 feet;
4. South 21 degrees 53 minutes 20 seconds West, 25.00 feet;
5. North 71 degrees 26 minutes 24 seconds West, 87.52 feet to the Easterly side of Nepperhan Avenue, the point or place of BEGINNING.

**SCHEDULE A-2**

[Cost-Benefit Analysis]

**SCHEDULE B**

**LIST OF APPOINTED AGENTS<sup>1</sup>**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_
10. \_\_\_\_\_

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<sup>1</sup> FOR EACH AGENT APPOINTED BY THE COMPANY, A NYS FORM ST-60 MUST BE COMPLETED AND FILED BY THE COMPANY WITH THE NYS DEPARTMENT OF TAXATION AND FINANCE IDA UNIT INDICATING THE APPOINTMENT OF SUCH AGENT OF THE COMPANY.

## SCHEDULE C

### MANDATORY AGENT AND SUBAGENT CONTRACT LANGUAGE

“This contract is being entered into by **WY MANOR, L.P. [OR, NAME OF SUBAGENT]** (the “Agent”), as agent for and on behalf of the **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY** (the “Agency”), in connection with a certain project of the Agency for the benefit of **WY MANOR, L.P.**, consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in certain premises located at 352, 354, 356 and 358 Nepperhan Avenue, City of Yonkers, New York, and any lands located in the City of Yonkers, New York, and occupied by license or easement during construction or improved by third parties for the benefit of the Agency Project (the “Premises”). The acquisition of the machinery, equipment and building materials to be incorporated and installed in the Premises and all services and rentals of equipment related to the acquisition, construction and equipping of the Project shall be exempt from all New York State and local sales and use taxes if the acquisition thereof is effected in accordance with the terms and conditions set forth in the Project Agreement, dated as of December 27, 2023 (the “Project Agreement”), by and between the Agency and WY MANOR, L.P.; and the Agent hereby represents that this contract is in compliance with the terms of the Project Agreement. This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.”

**EXHIBIT A**

**FORM OF TAX AGREEMENT**

**[Attached]**

**CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**WY MANOR, L.P.**

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**THIRD AMENDED AND RESTATED TAX AGREEMENT**

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*Dated as of December 27, 2023*

**Affected Tax Jurisdictions:**

**Westchester County  
City of Yonkers**

**Street Address:**

352, 354, 356 and 358 Nepperhan Avenue  
City of Yonkers  
Westchester County, New York

**Tax Map No.:**

Section: 2  
Block: 2067  
Lot: 100

**Record and Return to:**

Harris Beach PLLC  
445 Hamilton Avenue, Suite 1206  
White Plains, New York 10601  
Attn: Adriana M. Baranello, Esq.



### THIRD AMENDED AND RESTATED TAX AGREEMENT

THIS THIRD AMENDED AND RESTATED TAX AGREEMENT (this “Agreement”), dated as of December 27, 2023, 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 **WY MANOR, L.P.**, a New York limited partnership having offices at, 909 Third Avenue, 21st Floor, New York, New York 10022 (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, an affiliated and related entity of the Company, specifically WHITNEY YOUNG MANOR, L.P. (“Whitney Young”), previously requested the Agency’s assistance with a certain project (the “2006 Project”) pursuant to which the Agency issued its multi-family housing revenue bonds in a principal amount equal to \$19,800,000 (Whitney Young Manor, L.P. Facility), Series 2006 Bonds (the “2006 Bonds”), for the benefit of Whitney Young, for the purpose of providing funds for financing a portion of the costs of a certain project (the “2006 Project”) consisting of: (A) the acquisition of an approximately 1.75-acre parcel of land located at 352, 354, 356 and 358 Nepperhan Avenue in the City of Yonkers, New York, as more particularly described in Exhibit A hereto (the “2006 Land”) and the existing improvements thereon consisting principally of: (i) two 12-story buildings containing in the aggregate approximately 209,692 square feet of space and consisting of approximately 194 affordable multi-family housing units plus one manager's unit, common areas consisting of: community rooms, laundry rooms, hallways and lobbies and approximately 5,168 square feet of ground-floor retail space, (ii) an approximately 30,840 square-foot ancillary two-story parking garage containing approximately 100 spaces, and (iii) a one-story building containing in the aggregate approximately 7,672 square feet used as community service facility space (the “2006 Existing Improvements”); (B) the renovation, modernization and upgrading of such buildings, including: (i) within the residential units, the repair, replacement and/or installation of new floors, cabinets, appliances, countertops, fixtures, bathroom vanities, sinks, faucets, bath tubs and tiles; (ii) within the common areas, the replacement and/or repair of elevators, doors, windows and boilers, along with parking lot, landscaping and general lobby renovations; and (iii) renovations to the exterior of the 2006 Existing Improvements including the replacement of all or a portion of the windows and doors and renovations to the existing brick façade and roof ((i), (ii) and (iii) above being referred to collectively as the “2006 Improvements”); (C) the acquisition of and installation in and around the 2006 Improvements and 2006 Existing Improvements of certain machinery, equipment, furnishings and other items of tangible personal property (the “2006 Equipment” and, collectively with the 2006 Land, 2006 Existing Improvements and the 2006 Improvements, the “2006 Facility”) (E) the financing of a portion of the costs of the foregoing by the issuance of the 2006 Bonds; and (F) the lease (with an obligation to purchase the 2006 Facility) or sale of the facilities financed with the 2006 Bonds to

Whitney Young or such other person as may be designated by Whitney Young and agreed upon by the Agency; and

WHEREAS, in connection with the issuance of the 2006 Bonds, fee title to the 2006 Facility was conveyed to the Agency by that certain Bargain and Sale Deed, dated December 14, 2006, from Young Manor, Inc. and Young Manor Associates, L.P. to the Agency, which was recorded in the Office of the Westchester County Clerk on January 30, 2007, at Control Number 470020628 (the “Deed”); and

WHEREAS, in connection with the issuance of the 2006 Bonds, the Agency and Whitney Young, entered into, among other things: (i) a certain Lease Agreement, dated as of December 1, 2006, as evidenced by a Memorandum of Lease, dated as of December 1, 2006 and recorded on January 30, 2007 in Control No. 470020653, as amended and restated by the Amended and Restated Lease Agreement dated as of May 3, 2018, as evidenced by a Memorandum of Amended and Restated Lease Agreement dated as of May 3, 2018 and recorded May 18, 2018 in Control No. 58101308 (as so amended and restated, the “2006 Lease Agreement”), pursuant to which the Agency leased its interest in the 2006 Facility to Whitney Young; (ii) a certain Payment In Lieu of Tax Agreement, dated as of December 1, 2006, as amended and restated by the Amended and Restated Payment In Lieu of Tax Agreement, dated as of April 1, 2009, and Second Amended and Restated Payment in Lieu of Tax Agreement, dated May 3, 2018, by and between the Agency and Whitney Young (as so amended and restated, the “2006 Tax Agreement”); (iii) a certain Tax Agreement Mortgage, dated as of December 1, 2006 and recorded January 30, 2007 in Control No. 470020833, as amended and restated by the Amended and Restated PILOT Mortgage, dated as of May 3, 2018 in the maximum amount of \$325,756.00 and recorded May 18, 2018, at Control Number 581373482 (as amended and restated, the “2006 Tax Agreement Mortgage”); (iv) a certain Agency Mortgage, Assignment or Rents and Security Agreement (Acquisition Loan), dated as of December 1, 2006 and recorded January 30, 2007 in Control No. 470020860 (the “Acquisition Loan Mortgage”) in favor of U.S. Bank National Association, as trustee (the “2006 Trustee”), securing a principal amount of \$13,625,000; and (v) a certain Agency Mortgage, Assignment or Rents and Security Agreement (Building Loan), dated as of December 1, 2006 and recorded January 30, 2007 in Control No. 470020883 (the “Building Loan Mortgage”; and, together with the Acquisition Loan Mortgage, the “2006 Mortgages”) in favor of the 2006 Trustee, securing a principal amount of \$6,175,000; (vi) a certain Mortgage Subordination Agreement, dated as of December 1, 2006, by and among the Agency, the Trustee, Whitney Young and New York State Urban Development Corporation d/b/a Empire State Development Corporation and recorded January 30, 2007 in Control No. 470020934; (vii) a certain Tax Regulatory Agreement, dated as of December 1, 2006 and recorded February 7, 2007 in Control No. 470170214 and (viii) related documents; and

WHEREAS, by resolution dated March 22, 2018, the Agency agreed to accommodate Whitney Young's request to redeem the 2006 Bonds and refinance and terminate and/or discharge the 2006 Bonds and the 2006 Mortgages; and

WHEREAS, in connection with the redemption of the 2006 Bonds, and the refinancing of the Facility, the Agency, Whitney Young and RICHMAC Funding LLC entered into, among other things, (i) a certain \$4,392,437.71 Multifamily, Mortgage, Assignment of Rents and Security

Agreement, dated as of May 3, 2018 and recorded May 18, 2018 in Control No. 581373484; (ii) a certain Consolidation, Extension and Modification Agreement, dated as of May 3, 2018 and recorded May 18, 2018 in Control No. 581373485; and (iii) related documents (collectively, (i) through (iii) are the “2018 Mortgage Documents”); and

WHEREAS, notwithstanding the redemption of the 2006 Bonds, the 2006 Lease Agreement, the 2006 Tax Agreement, and 2006 Tax Agreement Mortgage, among other things, remained and continue to remain in full force and effect (the “Existing Agreements”); and

WHEREAS, the Company has submitted an application (the “Application”), dated September 6, 2022, as amended October 3, 2023, to the Agency requesting the Agency's assistance with a certain project (the “2023 Project”, which together with the 2006 Project is the “Project”) consisting of: (i) the acquisition or retention of the land commonly known as the 2006 Land (now known as 354 and 358 Nepperhan Avenue) (the “2023 Land”, which together with the 2006 Land is the “Land”) and the existing improvements thereon consisting of two 12-story buildings containing 195 residential rental units (32 studio, 34 one-bedroom, 60 two-bedroom, 54 three-bedroom and 15 four-bedroom units), and a single-story building containing a community facility, daycare, and commercial space (the “2023 Existing Improvements”); (ii) the renovation, modernization and upgrading of the 2023 Existing Improvements including: (1) within the residential units, new apartment interiors, including updated kitchens and bathrooms, microwaves, new light fixtures, new appliances, and updated finishes; (2) the installation of a new Exterior Insulating Façade System that will dramatically improve the buildings’ insulation along with a new centralized heat pump system that will provide heating, cooling and domestic hot water, and the installation of new windows and roof (the “2023 Improvements”, which together with the 2023 Existing Improvements, the 2006 Existing Improvements, and the 2006 Improvements are the “Improvements”); (iii) the acquisition and installation in and around the Land and Improvements of certain items of equipment and other tangible personal property (the “2023 Equipment”, which together with the 2006 Equipment, is the Equipment). The Land, Improvements and Equipment are collectively the “Facility”; and

WHEREAS, the Company is a related and affiliate entity of Whitney Young created for the purpose of facilitating the completion of the Project; and

WHEREAS, on September 13, 2022, the Agency adopted a resolution with respect to the Project: (i) accepting the Application of the Company, (ii) directing that a public hearing be held, and (iii) describing the Financial Assistance (as hereinafter defined) being contemplated by the Agency with respect to the Project; and

WHEREAS, by letter dated January 10, 2023, Nuveen Global Investments, LLC informed the Agency that it was under contract to purchase (the “Ownership Transfer”) 100% of the ownership interests in Omni Holding Company, LLC (“Omni Holding”), which is the sole member of Omni New York LLC (“Omni New York”) and Mill Plain Properties LLC (“Mill Plain”), which hold a controlling interest in the general partner of Whitney Young, Whitney Young Developers, LLC (the “GP”); and

WHEREAS, Nuveen requested that the Agency consent to the acquisition by Nuveen or a wholly-controlled affiliate of Nuveen (such entity, “Nuveen Purchaser”), of all of the issued and outstanding equity interests of Omni Holding, resulting in the Nuveen Purchaser becoming the indirect owner of a controlling interest in Whitney Young; and

WHEREAS, the Ownership Transfer consisted of (i) the assignment by Mill Plain, a co-manager and 50% interest owner of the GP, of 100% of its interest in the GP to Nuveen Purchaser and (ii) the assignment by Omni New York of 100% of its interest in ONY Whitney Young, LLC, a co-manager and 50% interest owner of the GP, to the Nuveen Purchaser; and

WHEREAS, on March 6, 2023, the Agency consented to the Ownership Transfer by adopting Resolution 3-2023/2; and

WHEREAS, in connection with the Project, the Company submitted an application to the CITY OF YONKERS ECONOMIC DEVELOPMENT CORPORATION (“YEDC”), requesting that YEDC issue its tax-exempt and/or taxable revenue bonds for the benefit of the Company in one or more series in an aggregate principal amount of up to \$42,000,000 (the “2023 Bonds”) for the purpose of paying the costs associated with: (i) the Project, and (ii) funding of a debt service reserve fund, if any, and paying capitalized interest, if any, and certain other costs incidental to the issuance of the 2023 Bonds; and

WHEREAS, on or about May 25, 2023, the Mid-Hudson Regional Economic Council, in furtherance of the Project, approved the allocation to YEDC of additional volume cap in the amount of \$37,809,400; and

WHEREAS, in furtherance of the Project, by Resolution dated September 28, 2023, the Agency authorized the transfer of its private activity bond volume cap allocation for 2023 to YEDC in the amount of \$4,190,600; and

WHEREAS, by Resolution 11/2023-04, YEDC has authorized the issuance of the 2023 Bonds; and

WHEREAS, the 2018 Mortgage Documents will be satisfied, terminated and/or discharged at the time of the issuance of the 2023 Bonds; and

WHEREAS, in furtherance of the Project and in connection with the issuance of the 2023 Bonds, (i) the Company will acquire all of Whitney Young's right, title and interest in the Facility, and (ii) the Existing Agreements will be assigned from Whitney Young to the Company (the “Assignment”), pursuant to a certain Omnibus Assignment and Assumption Agreement, dated as of December 27, 2023 and to be recorded simultaneously herewith in the Office of the Westchester County Clerk (the “Assignment Agreement”); and

WHEREAS, it is contemplated that the Agency will: (i) enter into an agent, financial assistance and project agreement, pursuant to which the Agency will designate the Company as its agent for the purpose of constructing and equipping the Project (the “Agent Agreement”), (ii) amend and restate the 2006 Lease Agreement to include this Project and extend the existing

leasehold interest in the Facility in a manner which is coterminous with the new financing of the Facility (the “Amended and Restated Lease Agreement”, and together with the 2006 Lease Agreement, collectively, the “Lease Agreement”), amend and restate the 2006 Tax Agreement pursuant to this Agreement to include this Project and extend the real property tax abatement in a manner which is coterminous with the new financing of the Facility and amend and restate the 2006 Tax Agreement Mortgage to reflect the foregoing (the “Amended and Restated Tax Agreement Mortgage” and together with the 2006 Tax Agreement Mortgage, collectively the “Tax Agreement Mortgage”), (iii) provide “financial assistance”, as such term is defined in the Act, to the Company in the form of: (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Project and (b) an extension of the existing partial real property tax abatement structured through the Tax Agreement (collectively, (a) and (b) is the “Financial Assistance”); 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 (the “County”) and the City of Yonkers (the “City”), inclusive of the City of Yonkers Dependent School District (“Dependent School District”, which together with the County and City are 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.) Prior to and as of the date hereof, the Facility was subject to an existing payment in lieu of tax or other similar agreement by and between the prior owner and the City. This Agreement shall replace such prior agreement in its entirety. 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, 2024** (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 Lease 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; (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability; and (iv) the non-inclusion of interest on the 2023 Bonds for federal income tax purposes will not be adversely affected. 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.

(i) Payee. As long as the Facility is owned or leased by the Agency, the Company shall pay to the Agency at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701, or such other address as designated by the Agency, as a payment in lieu of taxes, the following: (a) on or before December 31 of each calendar year commencing December, 2007 (the “Base PILOT Payment Date”) through June, 2026, the applicable Base PILOT Payment (as defined and set forth on **Schedule A** attached hereto); (b) on or before May 31 of each calendar year commencing May, 2008 (the “Additional PILOT Payment Date”) through June 2026, the Additional PILOT Payment (as defined and set forth on **Schedule A** attached hereto); and (c) on or before September 1 of each fiscal year commencing July, 2026 (the “New PILOT Payment Date”), the applicable New PILOT Payment (as defined and set forth on **Schedule A** attached hereto). The Base PILOT Payment, Additional PILOT Payment, and the New PILOT Payment shall hereinafter be collectively referred to as the “Total PILOT Payments”. The Base PILOT Payment Date, the Additional PILOT Payment Date, and the New PILOT Payment Date are the “Payment Dates” and each a “Payment Date”. The Company hereby agrees to make all such Total PILOT Payments on or before each Payment Date without further notice or invoice from the Agency or the Affected Tax Jurisdictions.

(ii) 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.

(iii) 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.

(iv) Except as set forth herein, the Total PILOT 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.

(v) 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.

(vi) Company Certificate. The Company shall submit with each Additional PILOT Payment a certificate executed by the Company's chief financial or other similar officer together with any applicable audit or other financial statements showing the Company's gross rental income at the Facility for the prior year (the "PILOT Certificate"). In addition, the PILOT Certificate shall contain an affirmative representation of the Company that it is in material compliance with the HUD Use Agreement. The Company hereby agrees to provide any additional information requested by the Agency or its counsel not contained in the Company Certificate as of its date of submission. The Company covenants to keep accurate records and books of account in accordance with generally accepted accounting principles consistently applied and to have its financial statements examined annually by an independent public accountant. At the request of the Agency or its counsel, the Company will provide the Agency with any such audited financial statements.

(vii) Public Purpose. The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are not on the tax rolls.

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 Total PILOT Payment. The Agency shall notify the Company of any proposed increase in the Total PILOT Payment related to such Future Addition ("Future Addition Payment"). If the Company shall disagree with the determination of the Future Addition Payment, then and in that event such Future Addition Payment shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the Future Addition Payment (and all amounts due hereunder) until a different Future Addition Payment shall be established. If a lesser Future Addition Payment is determined in any proceeding or by subsequent agreement of the parties, the Total PILOT 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 Total PILOT Payment.

### 1.3 Period of Benefits.

The tax benefits provided for herein shall be deemed to include: (i) the 2007 County tax year through the 2044 County tax year and (ii) the 2006-2007 City tax year through the 2043-2044 City tax year. **This Tax Agreement shall expire on December 31, 2044** (with the understanding

that the Company will be making a payment hereunder for the 2045 County tax year and the 2044-2045 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 Total PILOT Payments 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; (iii) the occurrence and continuance of any events of default under the Lease Agreement after the expiration of any applicable cure periods; or (iv) operate the Facility as an income restricted residential building with incidental retail and/or commercial space. 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 Date, 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 Notwithstanding anything to the contrary herein, the Company’s limited partner, identified in Section 8.2 of this Agreement, shall have the right but not the obligation, during the Company notice and cure periods, to cure any Event of Default, and the Agency shall accept or reject such cure on the same basis as if tendered by the Company.

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  
470 Nepperhan Avenue, Suite 200  
Yonkers, New York 10701  
Attention: President/CEO

With Copy To: Harris Beach PLLC  
445 Hamilton Avenue, Suite 1206  
White Plains, New York 10601  
Attention: Michael V. Curti, Esq.

To the Company: WY Manor, L.P.  
909 Third Avenue, 21<sup>st</sup> Floor,  
New York, New York 10022  
Attn: Ken Spillberg and Bryan Kaplan, Esq.

And to: WY Manor, L.P.  
730 Third Avenue, 4<sup>th</sup> Floor  
New York, New York 10017  
Attention: Chris Marshall and Jillian Joseph, Esq.

With Copy To: Nixon Peabody LLP  
55 West 46<sup>th</sup> Street  
New York, NY 10036-4120  
Attention: Joseph J. Lynch, Esq.

To the Limited Partner: CREA Corporate Fund 83, LP  
c/o CREA, LLC

30 South Meridian Street, Suite 400  
Indianapolis, Indiana 46204  
Attention: Asset Management

With Copy to: Buchalter  
425 Market Street, Suite 2900  
San Francisco, California 94105  
Attention: Faith Bruins, Esq.

To the Lender: Merchants Bank of Indiana  
410 Monon Boulevard, 4<sup>th</sup> Floor  
Carmel, Indiana 46032  
Attn: Asset Management

With Copy to: Sidley Austin LLP  
787 Seventh Avenue  
New York, New York 10019  
Aviva Yakren, Esq.

With Copy to: Federal Home Loan Mortgage Corporation  
8100 Jones Branch Drive  
McLean, Virginia 22102  
Attention: Multifamily Operations – Loan Accounting  
Email: mfla@freddiemac.com  
Telephone: (703) 714-4177

With Copy to: Federal Home Loan Mortgage Corporation  
8200 Jones Branch Drive  
McLean, Virginia 22102  
Attention: Managing Associate  
General Counsel Multifamily Legal Division  
Email: guy\_nelson@freddiemac.com  
Telephone: (703) 903-2000

With Copy to: Federal Home Loan Mortgage Corporation  
8100 Jones Branch Drive  
McLean, Virginia 22102  
Attention: Multifamily Operations – Loan Accounting  
Email: mfla@freddiemac.com  
Telephone: (703) 714-4177

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. No director, officer, employee, or attorney 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 (except Company), 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 (except Company), servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Agreement.

8.5 At any time after the Lender receives notice from the Agency of a default by the Company under this Agreement, the Lender may (but will not be obligated to) promptly make any payment, perform any obligation, or take any other action the Company would have the right to pay, perform, or take under this Agreement which the Lender deems necessary or desirable to cure such default. The Lender may exercise its rights under this Section 8.5 immediately after receipt of notice of a default by the Company under this Agreement and without regard to any grace period provided to the Company in this Agreement to cure such default. For purposes of exercising its rights under this Section 8.5, the Lender will not be liable to the Company or the Agency for any action taken or omitted to be taken by the Lender, in good faith, in reliance on any written notice from the Agency stating that a default by the Company under this Agreement has occurred and is continuing even though the Company may question or deny the existence or nature of such default. Notwithstanding anything to the contrary, in the case of an Event of Default, if the Agency serves a notice of default upon the Company, the Company shall serve a copy of such notice upon the Lender. Notwithstanding the foregoing, the Agency may also serve a copy of the notice of default upon the Lender. In the case of an Event of Default by the Company under this Agreement, Lender shall have forty-five (45) days for a monetary default and ninety (90) days in the case of any other default, after notice to Lender of such default, to cure or cause to be cured the default complained of and the Agency shall accept such performance by or at the instigation of such Lender as if the same had been done by the Company, provided that if said non-monetary default can be cured with due diligence but not within such ninety (90) day period, said time period shall be extended as long as Lender continues to exercise due diligence to cure said non-monetary default but in no event shall such extension exceed ninety (90) days. If a non-monetary Event of Default occurs and is continuing, the Agency agrees that it will not exercise any rights or remedies it may have hereunder during the cure periods provided to Lender pursuant to the Section 8.5 so long as Lender has commenced and is diligently proceeding to cure such non-monetary Event of Default. Defined

terms contained in this Section 8.5 not otherwise defined in this Agreement shall have the meaning ascribed to such term in that the Lease Agreement.

[The Balance of This Page Intentionally Left Blank]

[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: Marlyn Anderson  
Name: Marlyn Anderson  
Title: Secretary

**WY MANOR, L.P.,**  
a New York limited partnership

By: **WY MANOR GP LLC**, a Delaware  
limited liability company, its general  
partner

By: **WY MANOR DEVELOPERS, LLC**,  
a New York limited liability company, its  
managing member

By: \_\_\_\_\_  
Name: Michael Gilmartin  
Title: Authorized Signer

[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

**WY MANOR, L.P.,**  
a New York limited partnership

By: **WY MANOR GP LLC**, a Delaware  
limited liability company, its general  
partner

By: **WY MANOR DEVELOPERS, LLC,**  
a New York limited liability company, its  
managing member

By: Michael F. Gilmartin  
Name: Michael Gilmartin  
Title: Authorized Signer

**SCHEDULE A**

to

Tax Agreement

Dated as of December 27, 2023

by and between

City of Yonkers Industrial Development Agency  
and WY Manor, L.P.

For purposes of this Agreement:

- (i) the term “*Base PILOT Payment*” shall be those amounts set forth in Column I below (such Base PILOT Payments to be paid in accordance with Section 1.1(B) of this Agreement); and
- (ii) the term “*Additional PILOT Payment*” shall mean an amount equal to twenty-five percent (25%) of any gross rental income in excess of the amounts set forth in Column II below based upon an audit and after the payment of the Base PILOT Payment, operating expenses, mandatory debt service and deferred developer fee; provided, however, in no event shall any Additional PILOT Payment plus the Base PILOT Payment for such year exceed ten percent (10%) of Shelter Rent (defined below) (such Additional PILOT Payment to be paid in accordance with Section 1.1(B) of this Agreement).
- (iii) the term “*Shelter Rent*” shall mean total rents from the occupants of the Facility minus the cost of providing electricity, gas, heat and Other Utilities (defined below). Total rents shall include subsidies from the federal government, the state or a municipality on behalf of the Facility’s occupants, but do not include interest reduction payments, if any, received under Section 201(a) of the Federal Housing and Urban Development Act of 1968.
- (iv) the term “*Other Utilities*” shall comprise only essential utilities paid by the Company from rent revenues which are necessary to allow Facility tenants to occupy comfortable and sanitary units and shall not include: (i) the cost of any insurance in connection with the Facility or (ii) any utility or related costs incurred by any tenants or other occupants residing at the Facility.
- (v) the term “*Full Taxes*” shall mean all property taxes, not including Special Charges, payable with respect to the Facility calculated in an amount equal to the amounts that would have been paid if the Agency were not in title and no exemption was available.



- (vi) the term “*New PILOT Payments*” shall mean a payment in lieu due to the Agency based on a percentage of Full Taxes.
- (vii) the schedule of “*Estimated New PILOT Payments*” are estimates and are provided for illustrative purposes only.

| <u>PILOT Year</u> | <u>Tax Year</u>              | <u>I<br/>Base Pilot<br/>Payment</u> | <u>II<br/>Projected Gross<br/>Rental Income</u> |
|-------------------|------------------------------|-------------------------------------|---|
| 1                 | 2006-2007 City / 2007 County | \$ 178,745                          | \$ 2,902,200                                    |
| 2                 | 2007-2008 City / 2008 County | \$ 178,745                          | \$ 2,960,244                                    |
| 3                 | 2008-2009 City / 2009 County | \$ 100,000                          | \$ 3,019,449                                    |
| 4                 | 2009-2010 City / 2010 County | \$ 103,000                          | \$ 3,079,838                                    |
| 5                 | 2010-2011 City / 2011 County | \$ 106,090                          | \$ 3,141,435                                    |
| 6                 | 2011-2012 City / 2012 County | \$ 109,273                          | \$ 3,204,263                                    |
| 7                 | 2012-2013 City / 2013 County | \$ 112,551                          | \$ 3,268,349                                    |
| 8                 | 2013-2014 City / 2014 County | \$ 115,927                          | \$ 3,333,716                                    |
| 9                 | 2014-2015 City / 2015 County | \$ 119,405                          | \$ 3,400,390                                    |
| 10                | 2015-2016 City / 2016 County | \$ 122,987                          | \$ 3,468,398                                    |
| 11                | 2016-2017 City / 2017 County | \$ 126,677                          | \$ 3,537,766                                    |
| 12                | 2017-2018 City / 2018 County | \$ 130,477                          | \$ 3,608,521                                    |
| 13                | 2018-2019 City / 2019 County | \$ 134,392                          | \$ 3,680,691                                    |
| 14                | 2019-2020 City / 2020 County | \$ 138,423                          | \$ 3,754,305                                    |
| 15                | 2020-2021 City / 2021 County | \$ 142,576                          | \$ 3,829,391                                    |
| 16                | 2021-2022 City / 2022 County | \$ 146,853                          | \$ 3,905,979                                    |
| 17                | 2022-2023 City / 2023 County | \$ 151,259                          | \$ 3,984,099                                    |
| 18                | 2023-2024 City / 2024 County | \$ 155,797                          | \$ 4,063,781                                    |
| 19                | 2024-2025 City / 2025 County | \$ 160,471                          | \$ 4,145,056                                    |
| 20                | 2025-2026 City/2026 County   | \$ 165,285                          | \$ 4,227,957                                    |

| <u>PILOT Year</u> | <u>Tax Year</u>            | <u>III<br/>New PILOT<br/>Payments</u> | <u>IV<br/>Estimated New<br/>PILOT Payments</u> |
|-------------------|----------------------------|---------------------------------------|--|
| 21                | 2026-2027 City/2027 County | 43% of Full Taxes                     | \$220,267                                      |
| 22                | 2027-2028 City/2028 County | 45% of Full Taxes                     | \$232,817                                      |
| 23                | 2028-2029 City/2029 County | 47% of Full Taxes                     | \$245,596                                      |
| 24                | 2029-2030 City/2030 County | 50% of Full Taxes                     | \$263,885                                      |
| 25                | 2030-2031 City/2031 County | 55% of Full Taxes                     | \$293,177                                      |
| 26                | 2031-2032 City/2032 County | 57% of Full Taxes                     | \$306,876                                      |
| 27                | 2032-2033 City/2033 County | 60% of Full Taxes                     | \$326,258                                      |
| 28                | 2033-2034 City/2034 County | 65% of Full Taxes                     | \$356,980                                      |
| 29                | 2034-2035 City/2035 County | 70% of Full Taxes                     | \$388,285                                      |

|    |                            |                    |           |
|----|----------------------------|--------------------|-----------|
| 30 | 2035-2036 City/2036 County | 73% of Full Taxes  | \$408,975 |
| 31 | 2036-2037 City/2037 County | 75% of Full Taxes  | \$424,381 |
| 32 | 2037-2038 City/2038 County | 77% of Full Taxes  | \$440,055 |
| 33 | 2038-2039 City/2039 County | 80% of Full Taxes  | \$461,772 |
| 34 | 2039-2040 City/2040 County | 83% of Full Taxes  | \$483,880 |
| 35 | 2040-2041 City/2041 County | 85% of Full Taxes  | \$500,495 |
| 36 | 2041-2042 City/2042 County | 85% of Full Taxes  | \$505,500 |
| 37 | 2042-2043 City/2043 County | 95% of Full Taxes  | \$570,620 |
| 38 | 2043-2044 City/2044 County | 100% of Full Taxes | \$606,659 |

**EXHIBIT A**

Land Description

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, bounded and described as follows:

BEGINNING at a point on the Easterly side of Nepperhan Avenue, distant Southerly 141.75 feet as measured along the Easterly side of Nepperhan Avenue from the corner formed by the intersection of the Easterly side of Nepperhan Avenue with the Southerly side of Ashburton Avenue;

RUNNING THENCE along the Easterly side of Nepperhan Avenue, South 13 degrees 44 minutes 30 seconds West, 110.36 feet and South 20 degrees 16 minutes 00 seconds West, 64.89 feet to lands now of CH SS Fund-Baranof;

THENCE along said lands the following three (3) courses and distances:

1. South 70 degrees 57 minutes 30 seconds East, 126.07 feet;
2. South 20 degrees 42 minutes 24 seconds West, 50.00 feet;
3. South 70 degrees 57 minutes 30 seconds East, 65.00 feet to lands now of Jennifer Rivas;

THENCE along said lands now of Jennifer Rivas, North 71 degrees 45 minutes 22 seconds East, 126.15 feet to the Westerly line of lands now of the City of Yonkers, formerly of Doyle Playground;

THENCE along the Westerly line of lands now of the City of Yonkers, formerly of Doyle Playground, North 7 degrees 38 minutes 00 seconds East, 294.00 feet to the Southerly side of Ashburton Avenue;

THENCE along the Southerly side of Ashburton Avenue, North 71 degrees 00 minutes 00 seconds West, 147.00 feet to the Easterly line of lands now of Gasoline & Car Wash Corp. of Yonkers, formerly of Car Wash of Yonkers;

THENCE along the Easterly and Southerly lines of said lands now of Gasoline & Car Wash Corp. of Yonkers, formerly of Car Wash of Yonkers, the following five (5) courses and distances:

1. South 22 degrees 07 minutes 10 seconds West, 84.87 feet;
2. South 21 degrees 18 minutes 00 seconds West, 29.35 feet;
3. South 71 degrees 32 minutes 40 seconds East, 0.84 feet;
4. South 21 degrees 53 minutes 20 seconds West, 25.00 feet;
5. North 71 degrees 26 minutes 24 seconds West, 87.52 feet to the Easterly side of Nepperhan Avenue, the point or place of BEGINNING.

**EXHIBIT B**

**FORM OF NYS FORM ST-60**

**[See Attached Page]**



Department of Taxation and Finance

# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

**ST-60**  
(1/18)

The industrial development agency or authority (IDA) **must** submit this form within **30 days** of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only**

**IDA information**

|  |             |                   |  |  |  |
|--|-------------|-------------------|--|--|--|
| Name of IDA<br>City of Yonkers Industrial Development Agency |             |                   | IDA project number (use OSC numbering system for projects after 1998)<br>5507-23-09A |  |  |
| Street address<br>470 Nepperhan Avenue, Suite 200            |             |                   | Telephone number<br>(914) 509-8651   |  |  |
| City<br>Yonkers  | State<br>NY | ZIP code<br>10701 | Email address (optional)   |  |  |

**Project operator or agent information**

|                                       |       |   |   |  |
|---------------------------------------|-------|---|---|--|
| Name of IDA project operator or agent |       | Mark an X in the box if directly appointed by the IDA: <input type="checkbox"/> | Employer identification or Social Security number   |  |
| Street address                        |       | Telephone number<br>( )   | Primary operator or agent?<br>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |  |
| City                                  | State | ZIP code  | Email address (optional)  |  |

**Project information**

|  |             |  |                          |
|--|-------------|--|--------------------------|
| Name of project<br>WY Manor, L.P. Project  |             |  |                          |
| Street address of project site<br>354 and 358 Nepperhan Avenue   |             | **and any lands located in the City of Yonkers and occupied by license or easement during construction or improved by third parties for the benefit of the Project |                          |
| City<br>Yonkers  | State<br>NY | ZIP code<br>10701  | Email address (optional) |
| Purpose of project<br>The acquisition or retention of an approximately 1.75-acre parcel of land located at 352, 354, 356 and 358 Nepperhan avenue in the City of Yonkers, New York and the existing improvements thereon consisting principally of (i) two 12-story buildings containing 195 residential rental units and a single-story building containing a community facility, daycare, and commercial space, the renovation, modernization and upgrading of such buildings, and the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion thereof, including the installation of a new Exterior Insulating Facade, all for a multifamily, rental residential building. |             |  |                          |

|  |  |  |   |
|--|--|--|---|
| Description of goods and services intended to be exempted from New York State and local sales and use taxes<br>Goods and services, inclusive of fuel and utilities, whether the goods and services are purchased or rented, and notwithstanding that they continue to constitute personal property or the item is used after completion of the Project, or the item is geographically located outside the legal boundaries of the Project Facility; provided there is a reasonable basis to acquire the item to benefit the Project. |  |  |   |
| Date project operator or agent appointed (mmdyy)   | Date project operator or agent status ends (mmdyy) | 123126   | Mark an X in the box if this is an extension to an original project: <input type="checkbox"/> |
| Estimated value of goods and services that will be exempt from New York State and local sales and use tax: 15,173,648.00   |  | Estimated value of New York State and local sales and use tax exemption provided: 1,346,661.00 |   |

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

|   |  |                          |                         |
|---|--|--------------------------|-------------------------|
| Print name of officer or employee signing on behalf of the IDA<br>Marlyn Anderson |  | Print title<br>Secretary |                         |
| Signature<br>   |  | Date<br>12/14/23         | Telephone number<br>( ) |



Department of Taxation and Finance

# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

**ST-60**  
(1/18)

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**For IDA use only**

**IDA information**

|   |                    |                          |   |
|---|--------------------|--------------------------|---|
| Name of IDA<br><b>City of Yonkers Industrial Development Agency</b> |                    |                          | IDA project number (use OSC numbering system for projects after 1998)<br><b>5507-23-09A</b> |
| Street address<br><b>470 Nepperhan Avenue, Suite 200</b>            |                    |                          | Telephone number<br><b>((914) ) 509-8651</b>  |
| City<br><b>Yonkers</b>  | State<br><b>NY</b> | ZIP code<br><b>10701</b> | Email address (optional)  |

**Project operator or agent information**

|                                       |       |   |   |
|---------------------------------------|-------|---|---|
| Name of IDA project operator or agent |       | Mark an X in the box if directly appointed by the IDA: <input type="checkbox"/> | Employer identification or Social Security number   |
| Street address                        |       | Telephone number<br>( )   | Primary operator or agent?<br>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| City                                  | State | ZIP code  | Email address (optional)  |

**Project information**

|  |                    |   |                          |
|--|--------------------|---|--------------------------|
| Name of project<br><b>WY Manor, L.P. Project</b>   |                    |   |                          |
| Street address of project site<br><b>354 and 358 Nepperhan Avenue</b>  |                    | <b>**and any lands located in the City of Yonkers and occupied by license or easement during construction or improved by third parties for the benefit of the Project</b> |                          |
| City<br><b>Yonkers</b>   | State<br><b>NY</b> | ZIP code<br><b>10701</b>  | Email address (optional) |
| Purpose of project<br>The acquisition or retention of an approximately 1.75-acre parcel of land located at 352, 354, 356 and 358 Nepperhan avenue in the City of Yonkers, New York and the existing improvements thereon consisting principally of (i) two 12-story buildings containing 195 residential rental units and a single-story building containing a community facility, daycare, and commercial space, the renovation, modernization and upgrading of such buildings, and the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion thereof, including the installation of a new Exterior Insulating Facade, all for a multifamily, rental residential building. |                    |   |                          |

|   |   |   |   |
|---|---|---|---|
| Description of goods and services intended to be exempted from New York State and local sales and use taxes<br><b>Goods and services, inclusive of fuel and utilities, whether the goods and services are purchased or rented, and notwithstanding that they continue to constitute personal property or the item is used after completion of the Project, or the item is geographically located outside the legal boundaries of the Project Facility; provided there is a reasonable basis to acquire the item to benefit the Project.</b> |   |   |   |
| Date project operator or agent appointed (mmdyyy)   | Date project operator or agent status ends (mmdyyy) | <b>123126</b>   | Mark an X in the box if this is an extension to an original project: <input type="checkbox"/> |
| Estimated value of goods and services that will be exempt from New York State and local sales and use tax: <b>15,173,648.00</b>   |   | Estimated value of New York State and local sales and use tax exemption provided: <b>1,346,661.00</b> |   |

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|  |  |                                 |                         |
|--|--|---------------------------------|-------------------------|
| Print name of officer or employee signing on behalf of the IDA<br><b>Marlyn Anderson</b> |  | Print title<br><b>Secretary</b> |                         |
| Signature<br><i>Marlyn Anderson</i>  |  | Date<br><b>12/14/23</b>         | Telephone number<br>( ) |



Department of Taxation and Finance

# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

**ST-60**  
(1/18)

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| Street address<br><b>470 Nepperhan Avenue, Suite 200</b>            |                    |                          | Telephone number<br><b>((914) ) 509-8651</b>  |
| City<br><b>Yonkers</b>  | State<br><b>NY</b> | ZIP code<br><b>10701</b> | Email address (optional)  |

**Project operator or agent information**

|  |                    |   |   |
|--|--------------------|---|---|
| Name of IDA project operator or agent<br><b>WY Manor, L.P.</b> |                    | Mark an <b>X</b> in the box if directly appointed by the IDA: <input checked="" type="checkbox"/> | Employer identification or Social Security number<br><b>87-4658072</b>                            |
| Street address<br><b>909 Third Avenue, 21st Floor</b>          |                    | Telephone number<br><b>( 646 ) 502-7197</b>   | Primary operator or agent?<br>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
| City<br><b>New York</b>  | State<br><b>NY</b> | ZIP code<br><b>10022</b>  | Email address (optional)  |

**Project information**

|  |                    |   |                          |
|--|--------------------|---|--------------------------|
| Name of project<br><b>WY Manor, L.P. Project</b>   |                    |   |                          |
| Street address of project site<br><b>354 and 358 Nepperhan Avenue</b>  |                    | <b>**and any lands located in the City of Yonkers and occupied by license or easement during construction or improved by third parties for the benefit of the Project</b> |                          |
| City<br><b>Yonkers</b>   | State<br><b>NY</b> | ZIP code<br><b>10701</b>  | Email address (optional) |
| Purpose of project<br>The acquisition of an approximately 1.75-acre parcel of land located at 352, 354, 356 and 358 Nepperhan avenue in the City of Yonkers, New York and the existing improvements thereon consisting principally of (i) two 12-story buildings containing in the aggregate approximately 209,692 square feet of space and consisting of approximately 94 affordable multi-family housing units plus one manager's unit, common areas consisting of: community rooms, laundry rooms, hallways and lobbies and approximately 5, 168 square feet of ground-floor retail space, (ii) an approximately 30, 840 square foot ancillary two-story parking garage containing approximately 100 spaces, and (iii) a one-story building containing in the aggregate approximately 7, 762 square feet used as community service facility space, the renovation, modernization and upgrading of such buildings, and the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion thereof, all for a multifamily, rental residential building. |                    |   |                          |

|   |  |  |  |
|---|--|--|--|
| Description of goods and services intended to be exempted from New York State and local sales and use taxes<br><b>Goods and services, inclusive of fuel and utilities, whether the goods and services are purchased or rented, and notwithstanding that they continue to constitute personal property or the item is used after completion of the Project, or the item is geographically located outside the legal boundaries of the Project Facility; provided there is a reasonable basis to acquire the item to benefit the Project.</b> |  |  |  |
| Date project operator or agent appointed (mmdyyy)   | Date project operator or agent status ends (mmdyyy)<br><b>123126</b> | Mark an <b>X</b> in the box if this is an extension to an original project: <input type="checkbox"/>     |  |
| Estimated value of goods and services that will be exempt from New York State and local sales and use tax:<br><b>15,173,648.00</b>  |  | Estimated value of New York State and local sales and use tax exemption provided:<br><b>1,346,661.00</b> |  |

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

|  |  |                                 |   |
|--|--|---------------------------------|---|
| Print name of officer or employee signing on behalf of the IDA<br><b>Marlyn Anderson</b> |  | Print title<br><b>Secretary</b> |   |
| Signature<br>  |  | Date<br><b>12/14/23</b>         | Telephone number<br><b>( 914 ) 609-8651</b> |





Department of Taxation and Finance

# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

**ST-60**  
(1/18)

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| Street address<br>470 Nepperhan Avenue, Suite 200            |             |                   | Telephone number<br>(914) 509-8651   |
| City<br>Yonkers  | State<br>NY | ZIP code<br>10701 | Email address (optional)   |

**Project operator or agent information**

|                                       |       |   |   |
|---------------------------------------|-------|---|---|
| Name of IDA project operator or agent |       | Mark an X in the box if directly appointed by the IDA: <input type="checkbox"/> | Employer identification or Social Security number   |
| Street address                        |       | Telephone number<br>( )   | Primary operator or agent?<br>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| City                                  | State | ZIP code  | Email address (optional)  |

**Project information**

|  |             |  |                          |
|--|-------------|--|--------------------------|
| Name of project<br>WY Manor, L.P. Project  |             |  |                          |
| Street address of project site<br>354 and 358 Nepperhan Avenue   |             | **and any lands located in the City of Yonkers and occupied by license or easement during construction or improved by third parties for the benefit of the Project |                          |
| City<br>Yonkers  | State<br>NY | ZIP code<br>10701  | Email address (optional) |
| Purpose of project<br>The acquisition or retention of an approximately 1.75-acre parcel of land located at 352, 354, 356 and 358 Nepperhan avenue in the City of Yonkers, New York and the existing improvements thereon consisting principally of (i) two 12-story buildings containing 195 residential rental units and a single-story building containing a community facility, daycare, and commercial space, the renovation, modernization and upgrading of such buildings, and the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion thereof, including the installation of a new Exterior Insulating Facade, all for a multifamily, rental residential building. |             |  |                          |

|  |   |  |   |
|--|---|--|---|
| Description of goods and services intended to be exempted from New York State and local sales and use taxes<br>Goods and services, inclusive of fuel and utilities, whether the goods and services are purchased or rented, and notwithstanding that they continue to constitute personal property or the item is used after completion of the Project, or the item is geographically located outside the legal boundaries of the Project Facility; provided there is a reasonable basis to acquire the item to benefit the Project. |   |  |   |
| Date project operator or agent appointed (mmddyy)  | Date project operator or agent status ends (mmddyy) | 123126   | Mark an X in the box if this is an extension to an original project: <input type="checkbox"/> |
| Estimated value of goods and services that will be exempt from New York State and local sales and use tax: 15,173,648.00   |   | Estimated value of New York State and local sales and use tax exemption provided: 1,346,661.00 |   |

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

|   |                  |                          |  |
|---|------------------|--------------------------|--|
| Print name of officer or employee signing on behalf of the IDA<br>Marlyn Anderson |                  | Print title<br>Secretary |  |
| Signature<br><i>Marlyn Anderson</i>   | Date<br>12/14/23 | Telephone number<br>( )  |  |

**EXHIBIT C-1**

**NYS FORM ST-123 FOR USE BY THE COMPANY**

**[See Attached Page]**



IDA Agent or Project Operator Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

This certificate is not valid unless all entries have been completed.

Note: To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, IDA Agent or Project Operator Exempt Purchase Certificate for Fuel.

Table with seller and agent information including Name of seller, Street address, City, town, or village, State, ZIP code, and Agent or project operator sales tax ID number.

Mark an X in one: [ ] Single-purchase certificate [X] Blanket-purchase certificate (valid only for the project listed below)

To the seller:

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Table with project information including Name of IDA, Name of project, IDA project number, Street address of project site, City, town, or village, State, ZIP code, and dates of appointment and status ends.

Exempt purchases

(Mark an X in boxes that apply)

- [X] A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
[ ] B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
[ ] C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence.

Signature of purchaser or purchaser's representative (include title and relationship) and Date fields.

## Instructions

### To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

**Agent or project operator sales tax ID number** — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter **N/A**.

*Industrial development agencies and authorities (IDAs) are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.*

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

*Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.*

*Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.*

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

### Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

### Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

### To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You **must** identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

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- get information and manage your taxes online
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**EXHIBIT C-1**

**NYS FORM ST-123 FOR USE BY SUBAGENTS OF COMPANY**

**[See Attached Page]**



IDA Agent or Project Operator Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

This certificate is not valid unless all entries have been completed.

Note: To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, IDA Agent or Project Operator Exempt Purchase Certificate for Fuel.

Form with fields for Name of seller, Name of agent or project operator, Street address, City, town, or village, State, ZIP code, and Agent or project operator sales tax ID number.

Mark an X in one: [ ] Single-purchase certificate [X] Blanket-purchase certificate (valid only for the project listed below)

To the seller:

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Form with fields for Name of IDA, City of Yonkers Industrial Development Agency, Name of project, WY Manor, L.P. Project, IDA project number, Street address of project site, 354 and 358 Nepperhan Avenue, City, town, or village, Yonkers, State, NY, ZIP code, 10701, and dates for agent appointment and operator status.

Exempt purchases

(Mark an X in boxes that apply)

- [X] A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
[ ] B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
[ ] C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence.

Form with fields for Signature of purchaser or purchaser's representative (include title and relationship) and Date.



## Instructions

### To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

**Agent or project operator sales tax ID number** — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter **N/A**.

*Industrial development agencies and authorities (IDAs) are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.*

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

*Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.*

*Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.*

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

### Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

### Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

### To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You **must** identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

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(for persons with hearing and speech disabilities using a TTY): (518) 485-5082

**EXHIBIT C-2**

**NYS FORM FT-123 (FUEL)  
FOR USE BY THE  
COMPANY**





IDA Agent or Project Operator Exempt Purchase Certificate for Fuel

This certificate is not valid unless all entries have been completed.

To be completed by the purchaser and given to the seller.

Table with seller and agent information including Name of seller, Street address, City, town, or village, State, ZIP code, Name of agent or project operator, and Agent or project operator sales tax ID number.

Mark an X in one: [ ] Single-purchase certificate [X] Blanket-purchase certificate (valid only for the project listed below)

To the seller:

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the fuel for use in the following IDA project and that such purchases qualify as exempt from excise taxes and sales and use taxes under my agreement with the IDA.

Table with project information including Name of IDA, City of Yonkers Industrial Development Agency, Name of project, WY Manor, L.P. Project, IDA project number, Street address of project site, 354 and 358 Nepperhan Avenue, City, town, or village, Yonkers, State, NY, ZIP code, 10701, and dates of appointment and status ends.

Exempt purchases – Only fuel or residual petroleum product used to complete the project may be purchased by IDA agents or project operators exempt from the fuel excise tax, petroleum business tax, and sales and use tax. Fuel or residual petroleum product used to operate a business after the project is completed does not qualify for this exemption (see instructions).

Mark an X in boxes that apply:

- A. Motor fuel [ ] B. Highway diesel motor fuel [ ] C. Non-highway diesel motor fuel [ ] D. Residual petroleum product [ ]

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that excise taxes and state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and relationship) and Date fields.

## Instructions

### To the purchaser

You may use Form FT-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from excise taxes and sales and use tax as described in the IDA contract.

You may use Form FT-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

**Agent or project operator sales tax ID number** – If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter **N/A**.

*Industrial development agencies and authorities (IDAs)* are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases. However, IDAs do not normally make direct purchases for projects. Commonly, an IDA instead appoints a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax. Purchases made by an agent or project operator to operate a business after the project is completed are subject to tax.

**Example:** *An IDA agreement with its agent, Contractor X, states that Contractor X may make all purchases of materials and equipment necessary for completion of the project as agent for the IDA.*

*Contractor X purchases non-highway diesel motor fuel for use in construction equipment that will be used to prepare the site for construction. Since the fuel is being used to complete the project, Contractor X may purchase the fuel exempt from taxes.*

*When the project is completed, Contractor X purchases motor fuel and highway diesel motor fuel for use in snowplows and other maintenance vehicles used to maintain the parking lots for the business. Contractor X may not purchase this fuel exempt from tax because it is being used to operate, not to complete, the project.*

### Exempt purchases

To qualify for exemption, the purchases must be made within the authority granted by the IDA and used to **complete** the project, but not to **operate** the completed project.

**Box A – Motor fuel** is gasoline, benzol, reformulated blend stock for oxygenate blending, conventional blend stock for oxygenate blending, E85, fuel grade ethanol that meets the ASTM International active standards specification D4806 or D4814, or other product which is suitable for use in the operation of a motor vehicle engine. If you are purchasing motor fuel exempt from tax, mark this box.

**Box B – Highway diesel motor fuel** is any diesel motor fuel that is **not** non-highway diesel motor fuel. If you are purchasing highway diesel motor fuel exempt from tax, mark this box.

**Box C – Non-highway diesel motor fuel** is any diesel motor fuel designated for use other than on a public highway, and is dyed diesel motor fuel. If you are purchasing non-highway diesel motor fuel exempt from tax, mark this box.

**Diesel motor fuel** is No. 1 diesel fuel, No. 2 diesel fuel, biodiesel, kerosene, fuel oil, or other middle distillate, and also motor fuel suitable for operating a diesel engine. Diesel motor fuel does not include any product specifically designated "No. 4 diesel fuel."

**Box D – Residual petroleum product** means the topped crude of refinery operations, including No. 5 fuel oil, No. 6 fuel oil, bunker C, and the special grade of diesel product designated as No. 4 diesel fuel, that is not suitable for use in the operation of a motor vehicle engine. If you are purchasing residual petroleum product exempt from tax, mark this box.

### Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

### To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You **must** identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

### Privacy notification

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**EXHIBIT C-2**

**NYS FORM FT-123 (FUEL)  
FOR USE BY SUBAGENTS OF THE  
COMPANY**



IDA Agent or Project Operator Exempt Purchase Certificate for Fuel

This certificate is not valid unless all entries have been completed.

To be completed by the purchaser and given to the seller.

Form with fields for Name of seller, Street address, City, town, or village, State, ZIP code, Name of agent or project operator, and Agent or project operator sales tax ID number.

Mark an X in one: [ ] Single-purchase certificate [X] Blanket-purchase certificate (valid only for the project listed below)

To the seller:

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the fuel for use in the following IDA project and that such purchases qualify as exempt from excise taxes and sales and use taxes under my agreement with the IDA.

Form with fields for Name of IDA, City of Yonkers Industrial Development Agency, Name of project, Miroza Tower LLC Project, IDA project number, Street address of project site, 354 and 358 Nepperhan Avenue, City, town, or village, Yonkers, State, NY, ZIP code, 10701, and dates.

Exempt purchases – Only fuel or residual petroleum product used to complete the project may be purchased by IDA agents or project operators exempt from the fuel excise tax, petroleum business tax, and sales and use tax.

Mark an X in boxes that apply:

- A. Motor fuel, B. Highway diesel motor fuel, C. Non-highway diesel motor fuel, D. Residual petroleum product

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted.

Form with fields for Signature of purchaser or purchaser's representative and Date.

## Instructions

### To the purchaser

You may use Form FT-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from excise taxes and sales and use tax as described in the IDA contract.

You may use Form FT-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

**Agent or project operator sales tax ID number** – If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter **N/A**.

*Industrial development agencies and authorities (IDAs)* are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

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**Example:** *An IDA agreement with its agent, Contractor X, states that Contractor X may make all purchases of materials and equipment necessary for completion of the project as agent for the IDA.*

*Contractor X purchases non-highway diesel motor fuel for use in construction equipment that will be used to prepare the site for construction. Since the fuel is being used to complete the project, Contractor X may purchase the fuel exempt from taxes.*

*When the project is completed, Contractor X purchases motor fuel and highway diesel motor fuel for use in snowplows and other maintenance vehicles used to maintain the parking lots for the business. Contractor X may not purchase this fuel exempt from tax because it is being used to operate, not to complete, the project.*

### Exempt purchases

To qualify for exemption, the purchases must be made within the authority granted by the IDA and used to **complete** the project, but not to **operate** the completed project.

**Box A** – *Motor fuel* is gasoline, benzol, reformulated blend stock for oxygenate blending, conventional blend stock for oxygenate blending, E85, fuel grade ethanol that meets the ASTM International active standards specification D4806 or D4814, or other product which is suitable for use in the operation of a motor vehicle engine. If you are purchasing motor fuel exempt from tax, mark this box.

**Box B** – *Highway diesel motor fuel* is any diesel motor fuel that is **not** non-highway diesel motor fuel. If you are purchasing highway diesel motor fuel exempt from tax, mark this box.

**Box C** – *Non-highway diesel motor fuel* is any diesel motor fuel designated for use other than on a public highway, and is dyed diesel motor fuel. If you are purchasing non-highway diesel motor fuel exempt from tax, mark this box.

*Diesel motor fuel* is No. 1 diesel fuel, No. 2 diesel fuel, biodiesel, kerosene, fuel oil, or other middle distillate, and also motor fuel suitable for operating a diesel engine. Diesel motor fuel does not include any product specifically designated "No. 4 diesel fuel."

**Box D** – *Residual petroleum product* means the topped crude of refinery operations, including No. 5 fuel oil, No. 6 fuel oil, bunker C, and the special grade of diesel product designated as No. 4 diesel fuel, that is not suitable for use in the operation of a motor vehicle engine. If you are purchasing residual petroleum product exempt from tax, mark this box.

### Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

### To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You **must** identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

### Need help?



Visit our Web site at **[www.tax.ny.gov](http://www.tax.ny.gov)**

- get information and manage your taxes online
- check for new online services and features



**Sales Tax** Information Center:

(518) 485-2889

To order forms and publications:

(518) 457-5431



**Text Telephone (TTY) Hotline**

(for persons with hearing and

speech disabilities using a TTY):

(518) 485-5082

**EXHIBIT C-3**

**INVOICE RIDER FORM**

I, \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_ certify that I am a duly appointed agent of the CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY (the “Agency”) and that I am purchasing the tangible personal property or services for use in the following Agency Project and that such purchases qualify as exempt from sales and use taxes under Project Agreement, dated as of [\_\_\_\_\_] , by and between the Agency and WY MANOR, L.P.

|                                     |  |
|-------------------------------------|--|
| Name of the Project:                | The WY Manor, L.P. Project   |
| Street address of the Project Site: | 352, 354, 356 and 358 Nepperhan Avenue<br>and any lands located in the City of Yonkers, New York, and occupied by license or easement during construction or improved by third parties for the benefit of the Project<br>City of Yonkers, New York |
| IDA OSC project number:             | [5507-__-__]   |

**EXHIBIT D**

**NYS FORM ST-340**

**[See Attached Page]**



Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA)

For period ending December 31, \_\_\_\_\_ (enter year)

Project information

Form with fields for Name of IDA agent/project operator, Employer identification number (EIN), Street address, Telephone number, City, State, ZIP code, Name of IDA, Name of project, IDA project number, Street address of project site, City, State, ZIP code, Date project began, Completion date of project, Actual, Expected, Total sales and use tax exemptions.

Representative information (not required)

Form with fields for Authorized representative, if any, Title, Street address, Telephone number, City, State, ZIP code.

Certification

Certification text: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document. Print name of officer, employee, or authorized representative, Title of person signing, Signature, Date.

If you do not annually file a complete report, we may remove your authority to act as an IDA agent/project operator.

Mail completed report to: NYS TAX DEPARTMENT, IDA UNIT, W A HARRIMAN CAMPUS, ALBANY NY 12227-0866

If not using U.S. Mail, see Publication 55, Designated Private Delivery Services.



# Instructions

## General information

### Who must file

The General Municipal Law (GML) and the Public Authorities Law require the agent/project operator (also known as the *project occupant*) of an Industrial Development Agency or Authority (IDA) to file an annual report with the Tax Department. The agent/project operator required to file this report is the person **directly** appointed by the IDA to act for and to represent the IDA for the project. The agent/project operator is ordinarily the one for whom the IDA project was created.

There is usually only one agent/project operator directly appointed by the IDA for an IDA project. However, if the IDA directly appoints multiple agents/project operators, each agent/project operator must file this form (unless they are related corporations).

Only the agent/project operators directly appointed by the IDA must file Form ST-340. Contractors, subcontractors, consultants, or agents appointed by the agent/project operators should **not** themselves file Form ST-340. However, the agent/project operators must include on Form ST-340 information obtained from such contractors, subcontractors, consultants, and agents, as described below.

### What you must report

The report must show the **total value** of all state and local **sales and use taxes exempted** during the calendar year, as a result of the project's designation as an IDA project. This includes:

- the value of the exemptions the agent/project operator (you) obtained; and
- the value of the exemptions obtained by your contractors, subcontractors, consultants, and others, whether or not appointed as agents of the IDA.

Include only the **total combined** exemptions obtained by the above people. A breakdown of the total is not required. However, since the report must include the value of the exemptions they obtained, you must keep records of the amounts others report to you.

You must make it clear to the contractors, subcontractors, consultants, and others that they must keep accurate tax information and have it available, so that you can comply with the annual reporting requirements.

Do not include on this report the amount of any sales and use tax exemptions from other provisions of the Tax Law (for example, manufacturer's production equipment exemption, research and development exemption, or contractor's exemption for tangible personal property incorporated into a project of an exempt organization).

### When the report is due

You must file Form ST-340 on a calendar-year basis. It is due by the last day of February of the following year. The reporting requirement applies to IDA projects started on or after July 21, 1993.

### Project information

At the top of the form, identify the reporting period by entering the year in the space provided. If an address is required, always include the ZIP code.

**Name of IDA agent/project operator:** Enter your name, address, employer identification number (EIN), and telephone number.

**Name of IDA and IDA project number:** Enter the name and address of the IDA. If more than one IDA is involved in a particular project, you must file a separate report for the tax exemptions attributable to each IDA. Also enter the ID project number.

**Name of project:** Enter the name of the project and the address of the project site. If you are involved in more than one project, you

must file a separate report for each project, even if authorized by the same IDA.

**Date project began:** Enter the date the project started (this means the earliest of the date of any bond or inducement resolution, the execution of any lease, or any bond issuance). Include month, day, and year.

**Completion date of project:** Enter the date installation, lease, or rental of property (for example, machinery or computers) on the project ended, or the date the project is expected to be completed. Mark an **X** in the appropriate box to indicate if the date entered is actual or expected.

**Total sales and use tax exemptions:** Enter the total amount of New York State and local sales and use taxes exempted during the reporting period as a result of the project's receipt of IDA financial assistance (*if none, enter 0*). This includes exemptions obtained at the time of purchase, as well as through a refund or credit of tax paid. Include the sales and use taxes exempted on purchases of property or services incorporated into or used on the exempt project. This includes the taxes exempted on purchases made by or on behalf of the agent/project operator, the general contractor for the project, and any subcontractors, consultants, or others. Do **not** enter total purchases.

### Representative information

If applicable, enter the name, address, title (for example, attorney or accountant), and telephone number of the individual you authorize to submit this report. This section is not required.

### Certification

Enter the name and title of the person signing on your behalf (for example, the IDA agent/project operator's officer, employee, or other authorized representative). Your officer, employee, or authorized representative must sign and date the report.

Mail completed report to:

**NYS TAX DEPARTMENT  
IDA UNIT  
W A HARRIMAN CAMPUS  
ALBANY NY 12227-0866**

If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

## Need help?



Visit our website at **[www.tax.ny.gov](http://www.tax.ny.gov)**

- get information and manage your taxes online
- check for new online services and features

### Telephone assistance

|   |   |
|---|---|
| Sales Tax Information Center:               | 518-485-2889                              |
| To order forms and publications:            | 518-457-5431                              |
| Text Telephone (TTY) or TDD equipment users | Dial 7-1-1 for the New York Relay Service |

### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request for personal information, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our website, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

**EXHIBIT E**

FORM OF ANNUAL EMPLOYMENT AND  
FINANCIAL ASSISTANCE CERTIFICATION LETTER

Company name and address: WY Manor, L.P.  
c/o Omni New York LLP  
909 Third Avenue, 21<sup>st</sup> Floor  
New York, New York 10022

Project Name: **THE WY MANOR, L.P. PROJECT**

**Job Information**

Current number of full-time equivalent employees (“FTE”) retained at the project location, including FTE contractors or employees of independent contractors that work at the project location, by job category:

| Category       | FTE   | Average Salary and Fringe Benefits or Ranges |
|----------------|-------|--|
| Management     | _____ | _____  |
| Professional   | _____ | _____  |
| Administrative | _____ | _____  |
| Production     | _____ | _____  |
| Other          | _____ | _____  |
| Other          | _____ | _____  |

Current number of full-time equivalent employees (“FTE”) created at the project location, including FTE contractors or employees of independent contractors that work at the project location, by job category:

| Category       | FTE   | Average Salary and Fringe Benefits or Ranges |
|----------------|-------|--|
| Management     | _____ | _____  |
| Professional   | _____ | _____  |
| Administrative | _____ | _____  |
| Production     | _____ | _____  |
| Other          | _____ | _____  |
| Other          | _____ | _____  |

A copy of the NYS 45 form for the project location is required to be submitted with this report. If the NYS 45 form is not available for the specific project location or the form does not accurately reflect the full time jobs created, an internal payroll report or other appropriate documentation verifying the total jobs by employment category as outlined above at the location is required with this submission.

Financing Information

Has the Agency provided project financing assistance (generally through issuance of a bond or note) Yes      No

If financing assistance was provided, please provide:  
Original principal balance of bond or note issued \$ \_\_\_\_\_

Outstanding principal balance of such bond or note as of December 31 \$ \_\_\_\_\_

Outstanding principal balance of such bond or note as of December 31 \$ \_\_\_\_\_

Final maturity date of the bond or note \_\_\_\_\_

Sales Tax Abatement Information

Did your Company or any appointed subagents receive Sales Tax Abatement for your Project During the prior year? Yes      No

If so, please provide the amount of sales tax savings received by the Company and all appointed subagents \$ \_\_\_\_\_

(Attach copies of all ST-340 sales tax reports that were submitted to New York State by the Company and all subagents for the reporting period. Please also attached all ST-60's filed for subagents for the reporting period)

Mortgage Recording Tax Information

Did your company receive Mortgage Tax Abatement on your Project during the prior year? Yes      No

(note this would only be applicable to the year that a mortgage was placed upon the Project, so if the Agency did not close a mortgage with you during the reporting period, the answer should be no)

The amount of the mortgage recording tax that was exempted during the reporting period: \$ \_\_\_\_\_

PILOT INFORMATION:

County Real Property Tax without PILOT \$ \_\_\_\_\_

City/Town Property Tax without PILOT \$ \_\_\_\_\_

School Property Tax without PILOT \$ \_\_\_\_\_

TOTAL PROPERTY TAXES WITHOUT PILOT \$ \_\_\_\_\_

Total Tax Payments made for reporting period: \$ \_\_\_\_\_

Whether paid separately or lump sum to Agency for distribution, please provide break down of allocation of Tax Payment to individual taxing jurisdictions:

|                 |          |
|-----------------|----------|
| County PILOT    | \$ _____ |
| City/Town PILOT | \$ _____ |
| Village PILOT   | \$ _____ |
| School PILOT    | \$ _____ |
| TOTAL PILOTS    | \$ _____ |

Net Exemptions \$ \_\_\_\_\_  
(subtract Total PILOTS from TOTAL property taxes without PILOT)

I certify that to the best of my knowledge and belief all of the information on this form is correct. I further certify that the salary and fringe benefit averages or ranges for the categories of jobs retained and the jobs created that was provided in the Application for Financial Assistance is still accurate and if not, I hereby attach a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. I also understand that failure to report completely and accurately may result in enforcement of provisions of my agreement, including but not limited to voidance of the agreement and potential claw back of benefits.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_  
(Authorized Company representative)

Date: \_\_\_\_\_