

May 28, 2024

445 HAMILTON AVENUE, SUITE 1206  
WHITE PLAINS, NY 10601  
(914) 683-1200

**ADRIANA M. BARANELLO**  
ASSOCIATE  
DIRECT: 914.298.3023  
FAX: 914.683.1210  
ABARANELLO@HARRISBEACH.COM

**FIRST AMENDMENT TO TAX AGREEMENT**

**VIA FEDERAL EXPRESS**

**#2741-5121-0372**

Ms. Lynette Thomas-Braggs, Assessor  
Assessment Department  
Yonkers City Hall  
40 South Broadway, Room 100  
Yonkers, New York 10701

Re: City of Yonkers Industrial Development Agency and Yonkers BV AMS LLC:  
First Amendment to Tax Agreement  
Property: 41 Buena Vista Avenue, City of Yonkers, New York  
Tax Map Number: Section 1, Block 512, Lot 11

Dear Ms. Thomas-Braggs:

On behalf of the City of Yonkers Industrial Development Agency ("YIDA"), I have enclosed for you, the Assessor of the taxing jurisdiction within which the above-referenced Property is located, a completed and signed copy of First Amendment to Tax Agreement, dated as of May 1, 2024, which has been executed by YIDA and Yonkers BV AMS LLC for the purpose of amending Schedule A of that certain Tax Agreement, dated as of October 29, 2018, by and YIDA and Yonkers BV AMS LLC (the "Original Tax Agreement"). For your convenience, I have enclosed a copy of the Original Tax Agreement that was filed previously with your office.

Should you have questions, please contact me at (914) 298-3023. Thank you.

Very truly yours,

*Adriana M. Baranello*

Adriana M. Baranello

Enclosures

cc: Affected Taxing Jurisdiction Officials  
indicated on Schedule A attached hereto (w/encs. – copies)

Ms. Lynette Thomas-Braggs, Assessor  
May 28, 2024  
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**HARRIS BEACH** PLLC  
ATTORNEYS AT LAW

Schedule A

**Via Certified Mail**

**#9489-0090-0027-6556-7412-33**

The Honorable George Latimer  
Westchester County Executive  
148 Martine Avenue, 9<sup>th</sup> Floor  
White Plains, New York 10601

**Via Certified Mail**

**#9489-0090-0027-6556-7412-57**

County Attorney  
Westchester County Attorney's Office  
Contracts and Real Estate Bureau  
148 Martine Avenue, 6th Floor  
White Plains, New York 10601

**Via Certified Mail**

**#9489-0090-0027-6556-7412-71**

Westchester County Tax Commission  
Attn: Executive Director  
110 Dr. Martin Luther King Jr. Blvd.  
Room L-222  
White Plains, New York 10601

**Via Certified Mail**

**#9489-0090-0027-6556-7412-95**

Yonkers Corporation Counsel  
Yonkers City Hall  
40 South Broadway #300  
Yonkers, New York 10701

**Via Certified Mail**

**#9489-0090-0027-6556-7412-40**

Chairman Vedat Gashi  
Westchester County Board of Legislators  
800 Michaelian Office Building  
148 Martine Avenue, 8th Floor  
White Plains, New York 10601

**Via Certified Mail**

**#9489-0090-0027-6556-7412-64**

Westchester County Department of Finance  
Attn: Commissioner of Finance  
148 Martine Avenue, Suite 720  
White Plains, New York 10601

**Via Certified Mail**

**#9489-0090-0027-6556-7412-88**

The Honorable Michael Spano  
Mayor of the City of Yonkers  
Yonkers City Hall  
40 South Broadway, Room 200  
Yonkers, New York 10701

**Via Certified Mail**

**#9489-0090-0027-6556-7413-01**

Assessment Department  
Yonkers City Hall  
40 South Broadway, Room 100  
Yonkers, New York 10701  
Attn: Assistant Assessor

**CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY**

**TO**

**YONKERS BV AMS LLC**

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**FIRST AMENDMENT TO TAX AGREEMENT**

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**Dated:**

May 1, 2024

**Street Address:**

41 Buena Vista Avenue  
City of Yonkers, NY 10701

**Tax Map No(s):**

Section 1, Block 512, Lot 11

## FIRST AMENDMENT TO TAX AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT (hereinafter the “First Amendment”), dated as of May 1, 2024, is 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 offices at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701, Yonkers, New York 10701 (the “Agency”) and **YONKERS BV AMS LLC**, a New York limited liability company having offices at 1 Bridge Plaza North, Suite 840, Fort Lee, New Jersey 07024 (the “Company”).

### WITNESSETH:

WHEREAS, Title I 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, in December, 2012, the Agency entered into a certain straight-lease transaction (the “Transaction”) with the Company’s predecessor in interest to facilitate the construction, reconstruction, renovation and rehabilitation of “Teutonia Hall” located at 41 Buena Vista Avenue, Yonkers (also designated on the tax assessment map of the City as Section 1, Block 512, Lot 11) (the “Land”) with a multi-family building containing 361 dwelling units and an associated mechanical and on-grade parking structure containing 365 parking spaces (the “Previously Approved Facility”); and

WHEREAS, the Transaction was assigned to and assumed by the Company as of October 29, 2018 pursuant to certain transaction documents dated as of October 29, 2018 (the “2018 Transaction Documents”), including a certain Tax Agreement, dated as of October 29, 2018 (the “Tax Agreement”) by and between the Agency and the Company, pursuant to which the Company makes a payment-in-lieu-of-taxes in accordance with Schedule A of the Tax Agreement; and

WHEREAS, the Tax Agreement contemplated that construction of the Previously Approved Facility would be completed by year five (5) of the Schedule A, and that the corresponding PILOT Payment due on December 1, 2023, included the increased valuation of the Land with the Facility; and

WHEREAS, to date the Previously Approved Facility has not been constructed; and

WHEREAS, the Company recently received site plan approval from the Planning Board of the City of Yonkers to permit the redevelopment of the Land with a modified project in lieu of the Previously Approved Facility on the Land; and

WHEREAS, by resolution adopted by the Agency on February 29, 2024, the Agency also approved the modifications to the project which now consists of: (A) the Land; (B) the construction, improving and equipping on the Land of a mixed-use transit oriented development, to be constructed in two phases; (C) phase one will consist of a residential tower containing approximately: (i) 510 residential rental units, (ii) related residential amenities, (iii) 544 parking spaces, (iv) 2,200 square feet of ground level retail and commercial space, and (v) 2/3 of the parking podium component; (D) phase two will consist of residential tower containing

approximately: (i) 396 residential rental units, (ii) related residential amenities, (iii) 363 parking spaces, (iv) 700 square feet of ground level retail and commercial space, and (v) the remaining 1/3 of the parking podium; (E) of the residential rental units, the Company will provide 91 units as affordable housing units (or in the alternative, as permitted by the City of Yonkers Zoning Ordinance, the Company may provide affordable housing units in an amount equal to five percent (5%) of the market rate units if a payment-in-lieu contribution is made to the City’s Affordable Housing Trust Fund for the other five percent (5%) not provided on-site. Therefore the Project will provide between 45 and 91 units of affordable housing at the Facility (as defined below) (collectively, the “Improvements”); (F) the acquisition and installation in and around the Land and Improvements of certain items of equipment and other tangible personal property (the “Equipment”, which together with the Land and Improvements are the “Facility”); and

WHEREAS, although the Company intends to commence construction of the Facility in the fall of 2024, the Land is currently is unimproved; and

WHEREAS, the Agency has agreed to amend the Tax Agreement to reflect the unimproved condition of the Land;

NOW THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

Section 1. Definitions. Capitalized terms used in this First Amendment and not heretofore defined shall have the meanings set forth in the Tax Agreement.

Section 2. Amendments. The Tax Agreement is hereby amended as follows:

a. On **Schedule A** to the Tax Agreement, the rows for **PILOT Year 5** and **PILOT Year 6** are amended by deletion and replaced as follows:

5	12/1/23	2023/2024	2023	land only
6	12/1/24	2024/2025	2024	land only

Section 3. Existing Agreement. Except as expressly modified by this First Amendment, all of the terms, conditions, and covenants in the Tax Agreement shall remain in full force and effect. In the event of any conflict between this First Amendment and the Tax Agreement, this First Amendment shall govern.

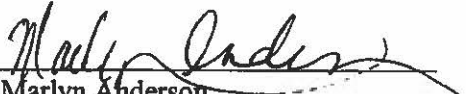
Section 4. Counterparts. This First Amendment may be executed in counterparts, and by different parties hereto on separate counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[The Balance Of This Page Intentionally Left Blank]

[Signature Page to First Amendment]

IN WITNESS WHEREOF, the Agency and the Company have caused this First Amendment to be executed in their respective names, all as of the date first above written.

**CITY OF YONKERS INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Name: Marlyn Anderson  
Title: Secretary

**YONKERS BV AMS LLC**

By: \_\_\_\_\_  
Name:  
Title:


[Signature Page to First Amendment]

IN WITNESS WHEREOF, the Agency and the Company have caused this First Amendment to be executed in their respective names, all as of the date first above written.

**CITY OF YONKERS INDUSTRIAL  
DEVELOPMENT AGENCY**

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

**YONKERS BV AMS LLC**

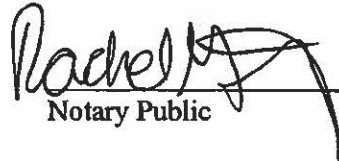
By:  \_\_\_\_\_  
Name: Raymond Hedoya  
Title: Authorized Signatory

[Acknowledgment Page to First Amendment]

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

On the 15 day of May, in the year 2024, before me, the undersigned, personally appeared **MARLYN ANDERSON**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

**RACHEL G KRAVITZ**  
Notary Public, State of New York  
No. 02KR6208854  
Qualified in Westchester County  
Commission Expires July 13, 2025

  
\_\_\_\_\_  
Notary Public

State of New York )  
County of ) ss.:

On the \_\_\_ day of \_\_\_\_\_, in the year 2024, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public



[Acknowledgment Page to First Amendment]

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

On the \_\_\_\_ day of \_\_\_\_\_, in the year 2024, before me, the undersigned, personally appeared **MARLYN ANDERSON**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

<sup>New Jersey</sup>  
State of New York )  
County of Bergen ) ss.:

On the 1<sup>st</sup> day of MAY, in the year 2024, before me, the undersigned, personally appeared Raymond Heffaya, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

**Jennifer Blum Oddo**  
NOTARY PUBLIC  
STATE OF NEW JERSEY  
ID # 50113131  
MY COMMISSION EXPIRES 09/19/2024

*J. Blum Oddo*  
Notary Public

**CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**YONKERS BV AMS LLC**

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**TAX AGREEMENT**

---

**Dated as of October 29, 2018**

**Affected Tax Jurisdictions:**

**Westchester County  
City of Yonkers**

**Project Address:**

**41-65 Buena Vista Avenue  
City of Yonkers**

**Tax Map Number:**

**Section 1, Block 512, Lot 11**

**TAX AGREEMENT**

THIS TAX AGREEMENT (the "Agreement"), dated as of the 29<sup>th</sup> day of October 2018, by and between **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, having its offices at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701 (the "Agency") and **YONKERS BV AMS LLC**, a New York limited liability company having a principal office at 595 Madison Avenue, Suite 1101, 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, in May 2011, Teutonia Buena Vista, LLC ("Teutonia Buena Vista"), of which the TVB Development, LLC ("TVB") is an affiliate, requested the Agency's assistance with respect to a certain project undertaken by TVB, as agent of the Agency, consisting of: (A) the acquisition or retention of fee title to or other interest in approximately 2.04 acres of land located at 92 Main Street, 41-65 Buena Vista Avenue and 66-72 Buena Vista Avenue (formerly identified as tax map numbers Section 1, Block 512, Lots 1, 11, 13, 15, 17, 21 and 23; and Section 1, Block 511, Lots 24, 25 and 27) and the existing improvements located thereon consisting of a two-story masonry building known as "Teutonia Hall" containing in the aggregate approximately 6,098 square feet (the "Teutonia Hall Existing Improvements"); a three-story brick building known as the "Trolley Barn" containing in the aggregate approximately 60,000 square feet (the "Trolley Barn Existing Improvements"); and three existing residential buildings (the "Residential Building Existing Improvements"); (B) the construction, reconstruction, renovation and rehabilitation of (i) the Teutonia Hall Existing Improvements to include in the aggregate 25 stories and approximately 404,000 square-feet of space to accommodate approximately 412 residential multi-family rental housing units, accessory parking located within a state-of-the-art clean-tech garage containing parking spaces for approximately 550 vehicles with a rooftop hydroponic garden, and related improvements, including but not limited to, rooftop amenity space, a fitness room, indoor swimming pool, classroom/conference space, leasing center, refuse and recycling collection area and other mechanical space, (ii) the Trolley Barn Existing Improvements to serve as a live-work building of residential rentable space, and (iii) the facades of the Residential Building Existing Improvements to reflect their original architectural period styles; and

WHEREAS, Teutonia Buena Vista's original planned urban redevelopment special use permit application called for the construction of a building of approximately 410 units and approximately 26 stories; and

WHEREAS, during the environmental review, the City took action to review and amend the zoning code for the downtown area, resulting in a change to the application which called for

## ORIGINAL TAX AGREEMENT

smaller building and fewer units so that it could conform with the recently adopted downtown zoning ordinance; and

WHEREAS, with the change of zoning, a special use permit was no longer required; and

WHEREAS, on September 12, 2012, the Planning Board of the City of Yonkers ("Planning Board") approved a proposed site plan for the construction, reconstruction, renovation and rehabilitation of the Teutonia Hall Existing Improvements at 41-65 Buena Vista Avenue (formerly identified as tax map numbers Section 1, Block 512, 11, 13, 15, 17, 21 and 23 and now more particularly described as Section 1, Block 512, Lot 11) (the "Land") for a 361 dwelling unit multi-family building with associated mechanical and on grade parking for 365 cars (the "Improvements") and the acquisition and installation in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment" and together with the Land and the Improvements, collectively, the "Facility"); and

WHEREAS, on December 28, 2012, the Agency, the TVB, and Teutonia Buena Vista entered into certain Documents (as defined below), related to, among other things, the Facility; and

WHEREAS, in connection with the project and for the purpose of providing the Company with mortgage recording tax exemption, the Agency and Teutonia Buena Vista entered into, among other documents, a certain Lease Agreement (and memorandum thereof) dated as of December 28, 2012 ("Lease Agreement") and the Agency and the TVB entered into a certain Leaseback Agreement (and memorandum thereof) dated as of December 28, 2012 ("Leaseback Agreement") and related documents (collectively, the "Documents"); and

WHEREAS, the Planning Board granted a one-year extension of its approval of the Facility in September 2015; and

WHEREAS, the Planning Board's one-year extension expired in 2016, and the City of Yonkers Zoning Ordinance (Chapter 43 of the Code of the City of Yonkers) required submission of a new application, which was completed in 2017; and

WHEREAS, the Facility no longer incorporates some technologies that were in its earlier designs, such as geothermal wells for heating and cooling (original plan and 2012 approved plan), hydroponic garden with greenhouse using stormwater capture and reuse (original plan), and green roof and greenhouse using stormwater capture and reuse (2012 approved plan), since the Company did not find these systems to be economically viable for the Facility; and

WHEREAS, the Facility will include a storm water harvesting system that is designed to handle 200,000 gallons of runoff and will store and release stormwater at a slow rate into the municipal wastewater system and an automated parking garage which will notably reduce carbon emissions of the project, benefit air quality, reduce noise and reduce fuel usage; and

WHEREAS, the prior application for the Facility also contemplated the Trolley Barn Existing Improvements and the Residential Building Existing Improvements; and

WHEREAS, Teutonia Buena Vista and TVB no longer has ownership of the Trolley Barn or site control of the residential buildings on the east side of Buena Vista Avenue ("Excluded Parcels"), and, consequently the Excluded Parcels are not a component of the Facility; and

WHEREAS, on January 10, 2018, the Planning Board approved the site plan for the Facility ("Site Plan Approval"); and

WHEREAS, the Facility shall contain a minimum number of affordable housing units equal to 10% of the maximum aggregate number of units authorized for construction of the Facility, pursuant to the terms of Article XV, Affordable Housing of Chapter 43 (Zoning) of the Code of the City of Yonkers (the "Affordable Housing Ordinance") and the Company shall pay an impact fee to the Agency in the amount of one million U.S. Dollars (\$1,000,000.00) which shall be paid by the Company to the Agency no sooner than twelve (12) months but no later than thirty (30) months from the date a temporary certificate of occupancy is issued for all or any part of the Facility; and

WHEREAS, although TVB and Teutonia Buena Vista signed the Documents, a tax agreement was never executed; and

WHEREAS, Teutonia Buena Vista has informed the Agency that it negotiated a sale of the Land to AMS Investments LLC, which in turn has assigned its interest in acquiring the Land to the Company; and

WHEREAS, on June 29, 2018, the Agency, by Resolution 06/2018-05, among other things, authorized the execution of a certain tax agreement (the "Tax Agreement") and tax agreement mortgage (the "Tax Agreement Mortgage") with the Agency, and the Agency consents to the transfer to the Company pursuant to an assignment and assumption agreement or similar document (the "Assignment and Assumption Agreement" and with the Tax Agreement and the Tax Agreement Mortgage the "Closing Documents") which relates to, among other things, the Facility; and

WHEREAS, in order to induce the Company to develop the Facility, the Agency is willing to take title to or a leasehold interest in the Land, Improvements and personal property constituting the Facility and lease its interest in said Land, Improvements and personal property constituting the Facility back to the Company pursuant to the terms and conditions contained herein; and

WHEREAS, the Agency has determined that constructing and equipping the Facility will further 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 relevant provisions of the application dated May 27, 2011 (the "Application") filed with the Agency (not including the Excluded Parcels) and the Site Plan Approval; and

## ORIGINAL TAX AGREEMENT

WHEREAS, for the purpose of clarity, the term Facility only means 41-65 Buena Vista Avenue (formerly identified as tax map numbers Section 1, Block 512, Lots 11, 13, 15, 17, 21 and 23 and now more particularly described as Section 1, Block 512, Lot 11) and the recitals referenced above that relate to the Excluded Parcels are no longer applicable but are discussed for informational purposes only; and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, other than special charges as defined by Section 2.1 which shall be paid by the Company outside this Tax Agreement as billed by the respective third parties; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes by the Company to the Agency for the benefit of Westchester County and the City of Yonkers, inclusive of the City of Yonkers Dependent School District (collectively, the "Affected Tax Jurisdictions"); and

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

### Section I - Payment in lieu of Ad Valorem Taxes:

#### Section 1.1 Exemption Application.

A) Subject to the completion and filing by the Agency or its designee at the direction of the Agency on or before the taxable status date (**October 15, 2019**) (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 Amended and Restated Leaseback Agreement, of even date herewith ("Amended and Restated Leaseback Agreement"), to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due, specifically including but not limited to Real Estate Taxes for years prior to and after the tax years covered by this Tax Agreement. To the extent the Company pays any Real Estates Taxes, the Company shall be provided a dollar for dollar credit towards its Tax Payments. 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

## ORIGINAL TAX AGREEMENT

of the Facility is not impaired and the Facility continues to qualify as a “project” under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes except to the extent that such denial results solely from the failure of the Agency to file the Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

B) Agreement to Make Payments. The parties agree and acknowledge that payments made under this Agreement are for purposes of obtaining revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are exempt from the payment of real property taxes pursuant to Section 412-a of the Real Property Tax Law and Section 874 of the General Municipal Law. The Company shall pay to the Agency, on December 1 of each year beginning on **December 1, 2019** (for the benefit of the Affected Tax Jurisdictions), as an in lieu of tax payment, an amount equal to the Tax Payments as set forth on Schedule A (the “Tax Payments”) for the periods described in Section 1.3.

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

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

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

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

## ORIGINAL TAX AGREEMENT

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

1.3 Period of Benefits. The tax benefits provided for herein shall be deemed to include: (i) the 2019 County tax year through the 2038 County tax year, and (ii) the 2019/2020 City tax year through the 2038/2039 City tax year. **This Tax Agreement shall expire on June 30, 2039** (with the understanding that the Company will be making a payment hereunder for the 2039 County 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 fees ("CC001"); Housing Units ("CC002"); ETPA Charge ("CC003"); and a Safety Inspection Fee ("CC004") and district charges including but not limited to hotel taxes, pure water charges and Westchester County sewer district charges (collectively the "Special Charges"), are not included in the amount of the Tax Payment and are to be paid in full in accordance with normal billing practices.



# ORIGINAL TAX AGREEMENT

## Section III - Transfer of Facility.

3.1 In the event this Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

## Section IV - Assessment Challenges.

4.1 The Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Facility, with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any Special Charges as if and to the same extent as if the Company were the owner of the Facility.

4.3 The Company shall file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers and provide information to the Agency as requested from time to time.

## Section V - Changes in Law.

5.1 To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

## Section VI - Events of Default.

6.1 The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section I within thirty (30) days of the Payment Date (the "Delinquency Date"); (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; or (iii) the occurrence and continuance of any events of default under the Amended and Restated Leaseback Agreement and the Amended and Restated Lease Agreement, of even date herewith, after the expiration of any applicable cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately upon written notice of non-compliance delivered to the Company by the Agency and the Company's failure to cure the non-compliance within 45 days of delivery of the written

notice of non-compliance (and notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the General Municipal Law and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

6.2 If payments pursuant to Section I herein are not made by the Delinquency Dates, the Company shall pay penalties and interest as follows. With respect to payments to be made pursuant to Section I herein, if said payment is not received by the Delinquency Date defined in Section 6.1 herein, Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

6.3 Prior to exercising any remedy hereunder, any Lender, as defined in the Amended and Restated Leaseback Agreement, between the Agency and the Company, shall be afforded notice and the cure rights set forth in such section, as if such section were set forth in full herein.

6.4 An "Event of Default" shall also include a violation of Section 8.5.

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

## ORIGINAL TAX AGREEMENT

Attention: President/CEO

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

To the Company: Yonkers BV AMS LLC  
595 Madison Avenue, Suite 1101  
New York, New York 10022  
Attn: Menachim Mitnick

With Copy To: Westerman Ball Ederer Miller Zucker & Sharfstein, LLP  
1201 RXR Plaza  
Uniondale, New York 11556  
Attn: Philip L. Sharfstein , Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section. Any notice hereunder may be given by counsel for a party with the same force and effect as if given by such party.

8.3 This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Westchester County, New York.

8.4 Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. Neither member of the Agency nor any person executing this Agreement on its behalf shall be liable personally under this Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Agreement.

8.5 Affordable Housing. Notwithstanding any term to the contrary, the Facility shall contain a minimum number of affordable housing units equal to 10% of the maximum aggregate number of units authorized for construction of the Facility, pursuant to the terms of the Affordable Housing Ordinance. In addition, Company shall pay Agency an affordable housing impact fee of \$1,000,000.00 which shall be paid by the Company to the Agency no sooner than twelve (12) months but no later than thirty (30) months from the date a temporary certificate of

## ORIGINAL TAX AGREEMENT

occupancy is issued for all or any part of the Facility and which funds may be used in the sole discretion of the Agency. All units shall meet the required affordability standards for a term of thirty (30) years from the date of the issuance of a temporary certificate of occupancy for the Facility. This restriction shall run with the land and be monitored by the Agency. The Affordable Housing Ordinance shall be enforced by the City of Yonkers. This provision may not be altered or removed without the express written permission of the Agency. If there is a conflict between the Affordable Housing Ordinance and this Agreement, this Agreement shall prevail and control. The parties agree to execute and deliver any and all such other documents, instruments, certificates, or agreements, and to take such further action in furtherance of and related to this affordable housing obligation, including, without limitation, a declaration of restrictive covenants recorded with the Westchester County Clerk's Office.

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# ORIGINAL TAX AGREEMENT

[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: Wilson Kimball  
Wilson Kimball, Secretary

**YONKERS BV AMS LLC**

By: \_\_\_\_\_  
Menachim Mitnick  
Authorized Signatory

# ORIGINAL TAX AGREEMENT

[Signature Page to Tax Agreement]

IN WITNESS WHEREOF, the Agency and the Company have caused this Agreement to be executed in their respective names, all as of the date first above written.

CITY OF YONKERS INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Wilson Kimball, Secretary

YONKERS BV AMS LLC

By: My Mitnick  
Menachem Mitnick  
Authorized Signatory

# ORIGINAL TAX AGREEMENT

## SCHEDULE A

**TAX AGREEMENT DATED AS OF OCTOBER 29, 2018  
BY AND BETWEEN  
CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY  
AND  
YONKERS BV AMS LLC**

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

PILOT year	Payment Date	City tax Year	County tax year	PILOT Payment
1	12/1/19	2019/2020	2019	land only
2	12/1/20	2020/2021	2020	land only
3	12/1/21	2021/2022	2021	land only
4	12/1/22	2022/2023	2022	land only
5	12/1/23	2023/2024	2023	244,858
6	12/1/24	2024/2025	2024	291,381
7	12/1/25	2025/2026	2025	339,667
8	12/1/26	2026/2027	2026	389,768
9	12/1/27	2027/2028	2027	441,737
10	12/1/28	2028/2029	2028	585,744
11	12/1/29	2029/2030	2029	643,417
12	12/1/30	2030/2031	2030	703,163
13	12/1/31	2031/2032	2031	703,163
14	12/1/32	2032/2033	2032	812,856
15	12/1/33	2033/2034	2033	829,113
16	12/1/34	2034/2035	2034	945,189
17	12/1/35	2035/2036	2035	964,093
18	12/1/36	2036/2037	2036	983,375
19	12/1/37	2037/2038	2037	1,003,042
20	12/1/38	2038/2039	2038	1,076,950