

December 29, 2023

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

**MICHAEL V. CURTI**  
MEMBER  
DIRECT: 914.298.3026  
FAX: 914.683.1210  
MCURTI@HARRISBEACH.COM

**TAX AGREEMENT**

**CERTIFIED MAIL**

**#70190700000113759024**

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

Re: WY Manor, L.P. ("Company") and City of Yonkers Industrial Development  
Agency: Tax Agreement and NYS Form RP-412-a, "Application for Real  
Property Tax Exemption"

Section 2, Block 2067, Lot 100, City of Yonkers, New York

Dear Ms. Thomas-Braggs:

On behalf of the City of Yonkers Industrial Development Agency, I have enclosed for you, the Assessor of the jurisdiction within which the above-referenced Premises is located, a completed and signed original "Application for Real Property Tax Exemption" on NYS Form RP-412-a with a copy of the underlying executed Tax Agreement.

Should you have questions, please contact me at (914) 298-3026. Thank you.

Very truly yours,

*Michael V. Curti*

Michael V. Curti

Enclosures

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

Schedule A

**Via Certified Mail**

**#70190700000113759048**

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

**Via Certified Mail**

**#70190700000113759055**

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**

**#70190700000113759062**

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

**Via Certified Mail**

**#70190700000113759079**

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

**Via Certified Mail**

**#70190700000113759086**

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**

**#70190700000113759031**

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

**Via Certified Mail**

**#70190700000113758966**

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**

**#70190700000113758973**

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



**NYS DEPARTMENT OF TAXATION & FINANCE  
OFFICE OF REAL PROPERTY TAX SERVICES**

RP-412-a (1/95)

**INDUSTRIAL DEVELOPMENT AGENCIES  
APPLICATION FOR REAL PROPERTY TAX EXEMPTION  
(Real Property Tax Law, Section 412-a and General Municipal Law, Section 874)**

**1. INDUSTRIAL DEVELOPMENT AGENCY (IDA)**

Name City of Yonkers Industrial Development Agency  
Street 470 Nepperhan Ave., Suite 200  
City Yonkers  
Telephone no. Day (914) 509-8651  
Evening ( ) \_\_\_\_\_  
Contact Jaime McGill  
Title Executive Director

**2. OCCUPANT (IF OTHER THAN IDA)**

(If more than one occupant attach separate listing)

Name WY Manor, L.P.  
Street 909 Third Avenue, 21st Floor  
City New York  
Telephone no. Day ( 646 ) 502-7197  
Evening ( ) \_\_\_\_\_  
Contact Eugene Schneur  
Title Managing Director

**3. DESCRIPTION OF PARCEL**

- a. Assessment roll description (tax map no./roll year)  
Section 2, Block 2067, Lot 100
- b. Street address 352 Nepperhan Avenue
- c. City, Town or Village City of Yonkers Industrial Dev
- d. School District Yonkers Public Schools
- e. County Westchester
- f. Current assessment \_\_\_\_\_
- g. Deed to IDA (date recorded; liber and page)  
12/14/2006; Control No. 470020628

**4. GENERAL DESCRIPTION OF PROPERTY (if necessary, attach plans or specifications)**

- a. Brief description (include property use) existing multifamily rental facility containing 195 residential units and related amenities.
- b. Type of construction n/a - already constructed
- c. Square footage 76,3600
- d. Total cost n/a - already constructed
- e. Date construction commenced \_\_\_\_\_
- f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA) \_\_\_\_\_

**5. SUMMARIZE AGREEMENT (IF ANY) AND METHOD TO BE USED FOR PAYMENTS TO BE MADE TO MUNICIPALITY REGARDLESS OF STATUTORY EXEMPTION**

(Attach copy of the agreement or extract of the terms relating to the project).

- a. Formula for payment See attached Third Amended and Restated Tax Agreement  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- b. Projected expiration date of agreement December 31, 2044

c. Municipal corporations to which payments will be made

	Yes	No
County <u>Westchester</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Town/City <u>Yonkers</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Village _____	<input type="checkbox"/>	<input type="checkbox"/>
School District <u>Yonkers</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

d. Person or entity responsible for payment

Name WY Manor, L.P.  
 Title Eugene Schneur, Managing Direc  
 Address 909 Third Avenue, 21st Floor  
New York, NY

e. Is the IDA the owner of the property? ☒ Yes ☐ No (check one)  
 If "No" identify owner and explain IDA rights or interest in an attached statement.

Telephone \_\_\_\_\_

6. Is the property receiving or has the property ever received any other exemption from real property taxation? (check one) ☒ Yes ☐ No

If yes, list the statutory exemption reference and assessment roll year on which granted:  
 exemption RPTL Sec. 412-a/GML Sec. 874 assessment roll year 2006-Present

7. A copy of this application, including all attachments, has been mailed or delivered on 12/29/23 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

### CERTIFICATION

I, Marlyn Anderson, Secretary of \_\_\_\_\_  
 Name Title  
City of Yonkers Industrial Development Agency hereby certify that the information  
 Organization  
 on this application and accompanying papers constitutes a true statement of facts.

12/29/23  
 Date

Marlyn Anderson  
 Signature

Clear Form

### FOR USE BY ASSESSOR

1. Date application filed \_\_\_\_\_
2. Applicable taxable status date \_\_\_\_\_
- 3a. Agreement (or extract) date \_\_\_\_\_
- 3b. Projected exemption expiration (year) \_\_\_\_\_
4. Assessed valuation of parcel in first year of exemption \$ \_\_\_\_\_
5. Special assessments and special ad valorem levies for which the parcel is liable:  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Assessor's signature

**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 fees ("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 CREA Corporate Fund 83, LP  
Partner: 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  
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By: \_\_\_\_\_  
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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 Base Pilot Payment</u>	<u>II Projected Gross 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 New PILOT Payments</u>	<u>IV Estimated New 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.