

**HARRIS BEACH <sup>PLC</sup>**  
ATTORNEYS AT LAW

December 1, 2023

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**VIA HAND DELIVERY**

Lloyd Tasch, IAO  
Assessor  
City of White Plains  
255 Main Street  
White Plains, New York 10601

***Re: Ginsburg Development Companies, LLC and County of Westchester Industrial Development Agency***

***PILOT Agreement and NYS Form RP-412-a, "Application for Real Property Tax Exemption"***

***Premises: 1-11 Martine Avenue, City of White Plains  
Section 125.74 Block 5 Lot 3.1***

Dear Mr. Tasch:

On behalf of the County of Westchester Industrial Development Agency, I have enclosed for you, the Assessor of the jurisdiction within which the above-referenced project is located, a completed and signed NYS Form RP-412-a "Application for Real Property Tax Exemption" with a signed copy of the related PILOT Agreement.

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

Very truly yours,

Michael V. Curti

MVC/amb  
Enclosures

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

Schedule A

**WESTCHESTER COUNTY**

**Via Certified Mail**

**#70190700000113758706**

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

**Via Certified Mail**

**#70190700000113758713**

Chairman Vedat Gashi  
Westchester County Board of Legislators  
148 Martine Avenue, 8<sup>th</sup> Floor  
White Plains, New York 10601

**Via Certified Mail**

**#70190700000113758720**

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

**Via Certified Mail**

**#70190700000113758737**

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

**Via Certified Mail**

**#70190700000113758744**

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

**CITY OF WHITE PLAINS**

**Via Certified Mail**

**#70190700000113758768**

The Honorable Thomas M. Roach  
Mayor of the City of White Plains  
255 Main Street  
White Plains, New York 10601

**WHITE PLAINS PUBLIC SCHOOLS**

**Via Certified Mail**

**#70190700000113758751**

Dr. Joseph Ricca  
Superintendent of Schools  
White Plains Public Schools  
5 Homeside Lane  
White Plains, New York 10605

**Via Certified Mail**

**#70190700000113758782**

Rosemarie Eller  
President of the Board of Education  
White Plains Public Schools  
5 Homeside Lane  
White Plains, New York 10605



**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 County of Westchester Industrial Development Agency  
Street 148 Martine Avenue, Room 903  
City White Plains, New York 10601  
Telephone no. Day (914 ) 995-2900  
Evening ( ) \_\_\_\_\_  
Contact Joan McDonald  
Title Chairperson

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

(If more than one occupant attach separate listing)

Name MG Martine SPE LLC  
Street 100 Summit Lake Drive Suite 235  
City Valhalla, NY 10595  
Telephone no. Day (914 ) 747-3600  
Evening ( ) \_\_\_\_\_  
Contact Martin Ginsburg  
Title Principal

**3. DESCRIPTION OF PARCEL**

- a. Assessment roll description (tax map no./roll year)  
Section: 125.74; Block: 5; Lot 3.1
- b. Street address 1-11 Martine Avenue
- c. City, Town or Village City of White Plains
- d. School District White Plains
- e. County Westchester
- f. Current assessment n/a
- g. Deed to IDA (date recorded; liber and page)  
Lease to IDA (pending; pending)

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

- a. Brief description (include property use) Construction, improving, maintaining and equipping of mixed use facility including residential space with amenities and parking.
- b. Type of construction Steel, concrete, etc.
- c. Square footage unknown
- d. Total cost approx. \$63,439,001
- e. Date construction commenced October 2019
- f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA)  
June 30, 2034

**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 PILOT Agreement

- b. Projected expiration date of agreement June 30, 2034

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>White Plains</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Village <u>n/a</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
School District <u>White Plains</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

d. Person or entity responsible for payment

Name MG Martine SPE LLC  
 Title Martin Ginsburg, Principal  
 Address 100 Summit Lake Drive  
Valhalla, NY 10595

e. Is the IDA the owner of the property? ☐ Yes ☒ No (check one)

If "No" identify owner and explain IDA rights or interest

Telephone 914-747-3600

in an attached statement. No: Occupant owns the property and leases to IDA.

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 \_\_\_\_\_ assessment roll year \_\_\_\_\_

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

### CERTIFICATION

I, Joan McDonald, Chairperson \_\_\_\_\_ of \_\_\_\_\_  
 Name Title  
County of Westchester Industrial Development Agency hereby certify that the information  
 Organization  
 on this application and accompanying papers constitutes a true statement of facts.

11/17/23  
 Date

Joan McDonald  
 Signature

### 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



COUNTY OF WESTCHESTER INDUSTRIAL DEVELOPMENT AGENCY

and

MG MARTINE SPE LLC

PAYMENT IN LIEU OF TAXES AGREEMENT

DATED AS OF NOVEMBER 30, 2023

Property Location: 1-11 Martine Avenue  
City of White Plains  
Westchester County, New York

Section: 125.74

Block: 5

Lot: 3.1

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Payment in Lieu of Taxes Agreement and is for convenience of reference only.)

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## PAYMENT IN LIEU OF TAXES AGREEMENT

PAYMENT IN LIEU OF TAXES AGREEMENT, dated as of November 30, 2023 (this “PILOT Agreement”), by and between the COUNTY OF WESTCHESTER INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York (the “State”) having an office for the transaction of business at 148 Martine Avenue, White Plains, New York 10601 (the “Agency”), and MG MARTINE SPE LLC, a limited liability company duly organized and existing under the laws of the State of Delaware, having an office at 100 Summit Drive, Suite 235, Valhalla, New York 10595 (the “Company”).

### WITNESSETH:

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

WHEREAS, the Enabling Act, as amended from time to time, authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish real and personal property, whether or not now in existence or under construction, which shall be suitable for, among other things, manufacturing, warehousing, research, civic, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease and to sell its projects, to charge and collect rent therefor, to mortgage any or all of its facilities and to enter into an agreement which includes provisions such as those contained in this PILOT Agreement; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, Chapter 788 of the Laws of 1976 of the State, as amended by Chapter 564 of the Laws of 1983 (said chapter and the Enabling Act, as amended, being hereinafter collectively referred to as the “Act”), the Agency was created for the benefit of the County of Westchester and the inhabitants thereof and is empowered under the Act to undertake projects in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Agency has this day acquired a leasehold title interest in certain real property more particularly described in Schedule “A” attached hereto and the improvements located thereon and improvements or additions to be constructed thereon, together with various items of equipment to be utilized in connection therewith, all in connection with and in reliance upon the application, dated December 7, 2018 (the “Application”), that Ginsburg Development Companies LLC (“GDC”), an Affiliate of the Company, submitted to the Agency for financial assistance which the Agency has previously acted upon by Resolution (as defined in Section 1.1, below), and subject to the Company Lease (as defined in the Project Agreement); and

WHEREAS, the Agency has appointed the Company and MG Main SPE LLC, an affiliate of the Company, to undertake a certain project (the “**Project**”) consisting of taking title, possession or control (by deed, lease, license or otherwise) of the land and improvements located at 50 Main Street also known as SBL: 125.74-5-1 and 1-11 Martine Avenue also known as SBL 125.74-5-3.1 (collectively, the “**Project Property**”); the lease, sublease, or installment sale of the Project Property back to the Company; the construction, improving, maintaining and equipping upon the Project Property of a mixed use facility consisting of: (i) multi-tenant Class A office facilities to be subleased to commercial tenants, with approximately 12,609 square feet of restaurant and retail space at 50 Main Street, (ii) approximately 188 residential units with amenities at 1-11 Martine Avenue (approximately 200,000 square feet), which is currently office space (the “**Residential Units**”), (iii) updated lobbies and entrance facilities at 1-11 Martine Avenue, and (iv) a redesigned and landscaped plaza deck over existing parking facilities connecting the components of the redevelopment (the “**Improvements**”), all as more fully described in the Application submitted on behalf of the Company to the Agency in respect of the Project (the “**Application**”); and

WHEREAS, the Project constitutes a “project” within the meaning of the Act; and

WHEREAS, said Project is to be used for the purposes set forth in the Project Agreement all in accordance with the Act; and

WHEREAS, the Project is located within the boundaries of the Municipalities (as defined in Section 1.1, below); and

WHEREAS, under the present provisions of the Act and Section 412-a of the RPTL (as defined in Section 1.1, below), the Agency is not required to pay Real Estate Taxes (as defined in Section 1.1, below) upon any of the property acquired by it or under its jurisdiction or supervision or control, such as will occur under the Company Lease and the Agency Sublease; and

WHEREAS, the Agency has made it a condition to its entering into the Project and the Project Agreement that the Company agree to make PILOT Payments (as defined in Section 1.1, below) pursuant to this PILOT Agreement with respect to the Project; and

WHEREAS, the Municipalities rely on future receipt of real property taxes which would be received by the Municipalities but for the involvement of the Agency in the Project, including, without limitation, Real Estate Taxes; and

WHEREAS, the PILOT Payments contemplated by this PILOT Agreement are in lieu of Real Estate Taxes which would be payable with respect to the Project during the term of this PILOT Agreement; and

WHEREAS, the Company is desirous that the Agency enter into the Project Agreement, and the Company is willing to enter into this PILOT Agreement in order to induce the Agency to enter into the Project Agreement;

WHEREAS, this PILOT Agreement only applies to the portion of the Project Property designated as 1-11 Martine Avenue, also known as SBL 125.74-5-3.1 (as defined herein, the “Facility Real Property”). This PILOT Agreement does not apply to 50 Main Street also known as 125.74-5-1 or that portion of 1-11 Martine Avenue known as 125.74-5-3.4011, 125.74-5-3.4012, and 125.74-5-3.4013.

NOW, THEREFORE, in consideration of the matters above recited, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereto formally covenant, agree and bind themselves as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.1. Definitions.** The following words and terms used in this PILOT Agreement shall have the respective meanings set forth below unless the context or use indicates another or different meaning or intent:

“Act” means the Act described in the fourth recital paragraph hereof.

“Affiliate” shall mean a Person which directly or indirectly through one or more intermediaries controls, or is under common control with, or is controlled by, another Person (which includes the Company). The term “control” (including the related terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person (including the Company), whether through the ownership of voting securities, by contract or otherwise.

“Agency” means (A) the County of Westchester Industrial Development Agency and its successors and assigns, and (B) any public benefit corporation or other public corporation resulting from or surviving any consolidation or merger to which the County of Westchester Industrial Development Agency or its successors or assigns may be a party.

“Application” means the Application described in the fifth recital paragraph hereof.

“Assessor” means the individual lawfully appointed by the City to determine the assessment of the Project.

“Company” means MG Martine SPE LLC, a Delaware limited liability company, and its successors and assigns.

“City” means the City of White Plains.

“County” means the County of Westchester.

“Enabling Act” means the Enabling Act described in the first recital paragraph hereof.

“Environmental Laws” means all Federal, state and local environmental laws or regulations having the force of law applicable to the Project.

“Equipment” means the Equipment described in the sixth recital paragraph hereof.

“Event of Default” means, with respect to this PILOT Agreement, any of those events defined as Events of Default by the terms of Article V hereof.

“Facility Real Property” means the property located at 1-11 Martine Avenue, White Plains, New York and designated as 125.74-5-3.1

“Governmental Authority” means the United States, the State, any other state and any political subdivision thereof, and any agency, department, commission, board, bureau or instrumentality of any of them.

“Hazardous Materials” means all hazardous materials including, without limitation, any flammable explosives, radioactive materials, radon, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, *et seq.*), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 9601, *et seq.*), Articles 15 or 27 of the State Environmental Conservation Law, or in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule or regulation having the force of law.

“Municipalities” means the City, the County and the School District.

“Person” shall mean any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or other entity.

“Permitted Mortgagee” shall mean any one or more of the following: (i) a bona fide third-party mortgage lender which is not an Affiliate of the Company, and (ii) LADDER CAPITAL FINANCE I LLC, for itself to the extent of its interest, and on behalf of Series REIT of Ladder Capital Finance I LLC.

“PILOT Agreement” means this payment in lieu of tax agreement, as the same may be amended or supplemented from time to time.

“PILOT Mortgage” means the PILOT Mortgage described in Section 3.2(b), below, as amended from time to time.

“PILOT Payments” means payments in lieu of real estate taxes made pursuant to this PILOT Agreement with respect to the Project.



“Project” means the Project described in the sixth recital paragraph hereof.

“Project Agreement” means that certain Project Agreement by and between the Agency and the Company, dated as of the date hereof, as the same may be amended or supplemented from time to time.

“Project Completion” means the completion of the construction of the improvements to the Facility Real Property as contemplated and described in the sixth recital paragraph of this PILOT Agreement and the issuance by the City of White Plains Building Department of a temporary or permanent Certificate of Occupancy for the Project Facility.

“Project Facility” means the Facility Real Property, the Residential Units and their collective undivided interest in the common elements of 1-11 Martine Avenue, as well as any rights, title and/or interest of the Company in the Improvements.

“Real Estate Taxes” means the real property taxes which would be received by the Municipalities but for the involvement of the Agency in the Project.

“Resolution” means the resolution of the Agency adopted on February 24, 2023, authorizing the transactions contemplated by this PILOT Agreement in accordance with the Act.

“RPTL” means the Real Property Tax Law of the State, as amended.

“Sales Tax Letter” means the Letter of Authorization for Sales Tax Exemption made available to the Company (or to a sub-agent of the Company) by the Agency pursuant to Article II of the Project Agreement.

“School District” means the White Plains City School District.

“Special Levies” means certain special assessments and ad valorem levies.

“State” means the State of New York.

“Substitution Notice” means the Substitution Notice described in Section 3.5, below.

“Taxable Equivalent Assessment” has the meaning ascribed in Section 3.1(e) below.

## **ARTICLE II**

### **REPRESENTATIONS AND WARRANTIES**

#### **Section 2.1. Representations and Warranties of Agency.**

The Agency represents and warrants as follows:

(a) Existence and Power. The Agency has been duly established under the provisions of the Act, has duly adopted the Resolution and has the power to enter into the transactions contemplated by this PILOT Agreement.

(b) Further Assurances. The Agency will execute, acknowledge and deliver, at the sole cost and expense of the Company, all such further deeds, conveyances, mortgages, assignments, estoppel certificates, notices or assignments, transfers, assurances and other agreements as the Municipalities, the Company and/or any Permitted Mortgagee may reasonably require from time to time in order to give further effect to this PILOT Agreement.

(c) Intentions. The Agency intends to provide for the consummation and completion of the Project in accordance with the provisions of the Project Agreement.

(d) Authorization. The Agency is authorized and has the corporate power and authority under the Act, its by-laws and the laws of the State to enter into this PILOT Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this PILOT Agreement. By proper corporate action on the part of its members and without the need for any other actions or consents, the Agency has duly authorized the execution, delivery and performance of this PILOT Agreement and the consummation of the transactions herein contemplated.

(e) Validity. The Agency is not prohibited from entering into this PILOT Agreement and performing all covenants and obligations on its part to be performed under and pursuant to this PILOT Agreement by the terms, conditions or provisions of the Act, any other law, any order of any court or other agency or agreement to which the Agency is a party or by which the Agency is bound and this PILOT Agreement is the legal, valid and binding obligation of the Agency, enforceable against the Agency in accordance with its terms. There are no actions, suits or proceedings pending, or to the best knowledge of the Agency, threatened against the Agency, relating to or before any court or other agency or governmental authority which would have a material adverse impact on the ability of the Agency to perform its obligations under this PILOT Agreement.

## **Section 2.2. Representations and Warranties of Company.**

The Company represents and warrants as follows:

(a) Power. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and by proper action has been duly authorized to execute, deliver and perform this PILOT Agreement.

(b) Authorization. The Company is authorized and has the power under the laws of the State of New York to enter into this PILOT Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this PILOT Agreement. The Company is not prohibited from entering into this PILOT Agreement and discharging and performing all covenants and obligations on its part to be

performed under and pursuant to this PILOT Agreement, and the execution, delivery and performance of this PILOT Agreement, the consummation of the transactions contemplated hereby and the fulfillment of the compliance with the provisions of this PILOT Agreement will not conflict with or violate or constitute a breach of or a default under the terms, conditions or provisions of the operating agreement of the Company or any law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this PILOT Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition or any lien of any nature upon any of the property of the Company under the terms of any of the foregoing. This PILOT Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, reorganization, insolvency or other similar laws affecting the enforcement of creditors' rights generally, and by general principles of equity (regardless of whether considered in a proceeding in equity or at law).

(c) Hazardous Materials. The Company has not used Hazardous Materials, asbestos, petroleum or petroleum by-products on, from, or affecting the Project in any manner which violates Federal, state or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, asbestos, petroleum or petroleum by-products, and to the best of the Company's knowledge, without independent investigation and except as set forth in those documents previously delivered to the Agency, no prior tenant or prior owner of the Project or any tenant, subtenant, prior tenant or prior subtenant have used Hazardous Materials, asbestos, petroleum or petroleum by-products on, from or affecting the Project in any manner which violated, at the time of such prior tenant's or owner's actions or omissions, then-controlling Federal, state or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, asbestos, petroleum or petroleum by-products.

(d) Compliance with Environmental Laws. The Company shall not cause or permit the Project Facility or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, asbestos, petroleum or petroleum by-products, other than gas and/or other fuel used for heating, cooking and other ordinary purposes consistent with a multi-unit residential building, except in compliance with all Environmental Laws, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or any tenant or subtenant, a release of Hazardous Materials, asbestos, petroleum or petroleum by-products, other than gas and/or other fuel used for heating, cooking and other ordinary purposes consistent with a multi-unit residential building, except in compliance with all Environmental Laws, onto the Project or onto any other property in violation of any Environmental Laws.

(e) No Actions. To the knowledge of the Company, there are no actions or proceedings pending or threatened against the Company which would have a material effect on the ability of the Company to discharge its obligations hereunder in accordance with the terms hereof.

(f) No Consents Required. Except as otherwise set forth herein, no consent or approval of any third party that has not been obtained is required in order for the Company to execute, deliver and perform this PILOT Agreement in accordance with its terms.

### ARTICLE III COVENANTS AND AGREEMENTS

#### **Section 3.1. Tax Exempt Status of Project.**

(a) Assessment of the Facility Real Property. Pursuant to Section 874 of the General Municipal Law and Section 412-a of the RPTL, upon acquisition of title to and/or a leasehold interest in the Facility Real Property by the Agency, and continuing for the period during which the Agency maintains title to and/or a leasehold interest in the Facility Real Property (it being understood that the Agency is obligated to transfer title and/or terminate or assign its leasehold interest to the Company pursuant to Section 6.1, below), the Facility Real Property shall be assessed as exempt upon the assessment rolls of the Municipalities prepared subsequent to the acquisition by the Agency of title to and/or a leasehold interest in the Facility Real Property, except for Special Levies (hereinafter defined). The Facility Real Property shall be entitled to such exempt status on the assessment rolls of the Municipalities from the first tentative roll date (January 1) following (i) the Agency's acquisition or lease thereof and (ii) the completion and submission of all necessary filings in accordance with Section 412-a (2) of the RPTL (which filings shall be the obligation of the Company). It is the intent of this PILOT Agreement that the Company shall, at all times during its or the Agency's ownership or leasing of the Facility Real Property, be obligated to pay either PILOT Payments or Real Estate Taxes, and that the foregoing obligations shall not be duplicative of each other or otherwise be additive, except to the extent set forth in Sections 3.1(b) and 3.2(f) below. For example, and without limitation, (i) the Company shall be obligated to pay Real Estate Taxes lawfully levied and/or assessed against the Facility Real Property, including Real Estate Taxes and assessments levied for the current tax year and all subsequent tax years until such time as the Agency's exemption with respect to the Facility Real Property lawfully takes effect on the tax rolls of the Municipalities and until all tax payments calculated with respect to prior tax rolls, not reflecting such exemption, shall have been made, and shall be obligated to pay PILOT Payments at all times thereafter until the Agency's exemption with respect to the project is no longer in effect on the tax rolls, and (ii) after the Agency conveys title to, and/or terminates or assigns its leasehold interest in, the Facility Real Property to a non-exempt entity (including, without limitation, the Company), no further PILOT Payments shall be due. In addition, the last PILOT Payment made or payable prior to the conveyance date may be reduced to reflect the apportionment of Real Estate Taxes as of the date of conveyance or lease termination.

(b) Change in Tax Status. To the extent the Facility Real Property or any portion thereof is declared to be subject to taxation or assessment by a final judgment of a court of competent

jurisdiction, an amendment to the Act, or other legislative or administrative change, the obligation of the Company to make PILOT Payments hereunder shall, to such extent only, be replaced by the obligation of the Company to pay Real Estate Taxes at the assessment and tax rates then in effect. To the extent that the foregoing declaration of non-exemption is given retroactive effect, any PILOT Payments previously made by the Company during such retroactive period shall be credited against Real Estate Taxes due for such period. Nothing herein contained shall prohibit the Company from contesting the validity or constitutionality of any such amendment, legislative or administrative change or judicial decision.

(c) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the General Municipal Law and Section 412-a of the Real Property Tax Law may not entitle the Agency to exemption from Special Levies. The Company shall be obligated to pay any Special Levies with respect to which the Agency is not exempt, in addition to the PILOT Payments provided hereunder.

(d) Counsel Fees. The Company will pay in full the reasonable fees and expenses of the Municipalities', or any of their subdivision's, or the Agency's counsel, promptly upon receipt of the statement therefor, which are incurred after the date hereof and which fees and expenses arise in connection with the enforcement of this PILOT Agreement. If any claim is brought by a third party against the Agency and/or a Municipality with respect to any matter related to this PILOT Agreement, then unless such claim is due to the gross negligence or willful misconduct of the Agency or the Municipality, the Company shall defend and hold harmless the Agency and/or any Municipality against such claim with counsel reasonably acceptable to the Agency and/or any Municipality, as applicable.

(e) Establishment of Taxable Equivalent Assessment. The parties agree that, for each year commencing January 1, 2023, and continuing throughout the term of this PILOT Agreement, in order to enable the Agency to comply with its regulatory and reporting obligations under the law, the assessed value of the Facility Real Property shall be determined annually by the Assessor as if the Facility Real Property were privately owned and subject to no exemption from Real Estate Taxes (the "Taxable Equivalent Assessment"). The City and the Company shall provide to the Agency annually in writing, not later than 30 days after the date upon which the City mails real property tax bills to the owners of taxable property, notice of the Taxable Equivalent Assessment.

(f) Establishment of Fixed PILOT Assessment. The parties agree that for the purposes of determining PILOT Payments due under this Agreement in lieu of Real Estate Taxes otherwise due, the Facility Real Property shall be deemed to be assessed as follows (the "Fixed PILOT Assessment"):

(i) Notwithstanding the Taxable Equivalent Assessment as determined by the Assessor in accordance with Section 3.1(e) above, for each tax year beginning on or after January 1, 2023 (in respect of PILOT Payments for the benefit of the County) and on or after July 1, 2023 (in respect of PILOT Payments for the benefit of the City and the School District), and continuing through December 31, 2032 (in respect of PILOT Payments for the benefit of the County) and June 30, 2033 (in respect of PILOT Payments for the benefit of the City and the School District), the Fixed PILOT Assessment shall be the assessed value set forth opposite said year in attached Schedule B (with the understanding that the Company will



be making a payment for the 2033 County tax year and the 2033-2034 School tax year in the amounts as if the Agency were not in title on the tax lien date with respect to said tax years). The Assessor may amend and correct the Fixed PILOT Assessment set forth on Schedule B when and if:

(1) the property has been altered by fire, demolition, destruction or similar catastrophe;

(2) there is a material upgrade of the existing quality and class of improvements upon the real property constituting the Facility Real Property in any one calendar year excluding routine costs, maintenance, updates, rehabilitation, retrofits or modernization of equipment, personalty and furnishings after Project Completion, other than increases in the square footage of the improvements on the Tax Lots which shall be addressed as provided in clause (4) below. In the event of a material improvement of the kind described in the preceding sentence, the Fixed PILOT Assessment shall be increased by an amount equal to the product of the City equalization rate as established by the State and then in effect and the amount expended for such material improvement.

(3) the amount of net usable space in the Facility shall have been increased after the Project Completion as a result of additional construction thereon, in which event the Fixed PILOT Assessment may be increased to reflect such increase in net usable area (the "Addition") in an amount determined by calculating the gross per square foot assessment for the Facility prior to the Addition and multiplying that amount by the number of net leasable square feet in the Addition.

(ii) Any increase or decrease in the Fixed PILOT Assessment made pursuant to the foregoing subparagraphs (1)-(3) of this Section 3.1(f) shall be added to or subtracted from the Fixed PILOT Assessment. Other than as provided in this Section 3.1(f), the Fixed PILOT Assessment shall not otherwise be changed during the term of this Agreement.

(g) Except as otherwise expressly agreed by the County, the City and the School District, the portion of the PILOT Payments allocable to each of the County, the City and the School District shall be the same portions allocable to each Municipality of the Real Estate Taxes that would be taxed against the Project if it were owned by the Company.

### **Section 3.2. Payment in Lieu of Taxes.**

(a) Agreement to Make Payments. The Company agrees to make PILOT Payments for the Project during the term of this PILOT Agreement in amounts equivalent to the amount of Real Estate Taxes that would have been charged against the Project if said Project was not tax exempt and was assessed at the Fixed PILOT Assessment as set forth in Section 3.1(f) of this PILOT Agreement. The Company further agrees that said PILOT Payments shall be paid in the same proportion to the individual Municipalities as Real Estate Taxes would be paid if the Facility Real Property were not tax exempt. Payments due hereunder shall be paid by the Company to the City, by check made payable to "City of White Plains." Upon receipt of such check by the City, the City shall promptly disburse to the other Municipalities their respective portions of the PILOT

Payments as determined by this Section 3.2. The Company shall forward notice to the Agency of the payments made hereunder. The Company acknowledges and agrees that the obligation to make PILOT Payments under this PILOT Agreement is self-executing and absolute and not dependent upon any action or procedure of any other party, including the preparation or transmittal of invoices or bills. The Company shall have an affirmative obligation to secure such invoices or bills that may be necessary to make PILOT Payments under this PILOT Agreement. The time of such payments shall be subject to the provisions of Section 3.2(c). The obligation to make PILOT Payments due under and during the term of this PILOT Agreement shall remain until such payments are made, regardless of any statute of limitations. Any PILOT Payments due under this PILOT Agreement remaining unpaid at the termination of this PILOT Agreement shall remain a continuing obligation of the Company and the obligation to pay such payments shall survive this PILOT Agreement.

(b) Security for Payments in Lieu of Taxes. At the time of the execution and delivery of this PILOT Agreement and the granting of a leasehold interest in the Project to the Agency, the Company and the Agency shall grant a first mortgage (the "PILOT Mortgage") to the City in order to secure the obligations of the Company to make PILOT Payments under this PILOT Agreement. The Company hereby covenants and agrees that it will forever warrant and defend the same to the City, and will forever warrant and defend the validity and priority of the lien of the PILOT Mortgage against the claims of all persons and parties whomsoever other than any governmental or quasi-governmental body, agency or other instrumentality which would be entitled to priority over any lien or claim for Real Estate Taxes assertable by the Agency or the City in the absence of a PILOT Agreement.

(c) Time of Payments. The Company agrees to pay to the City, on or before each April 1 (for payments to be made with respect to the County), and on or before each July 1 and January 1 (for payments to be made with respect to the City and the School District), for the term of this Agreement, the applicable amounts due hereunder on such dates. Without limiting the Company's obligation set forth in Section 3.2(a), the City will send bills for the PILOT Payments to the Company at least thirty (30) days prior to such due dates. Bills regarding the PILOT Payments shall be submitted directly to the Company in such form annexed hereto, or if no form is annexed hereto, in such form as the taxing authority(ies) shall reasonably determine. The City shall forward copies of the bills submitted to the Company to the Agency and to the attention of the Commissioner of Finance, at the Finance Department, County of Westchester, 148 Martine Avenue, Room 720, White Plains, New York 10601.

(d) Method of Payment. All payments by the Company hereunder shall be paid by check or any other payment method as the City and the Company shall agree to, payable to the order of the City in then lawful money of the United States of America. A copy of such check or other evidence of payment shall be given to the Agency as notice of the Company's compliance with the payment provisions of this PILOT Agreement.

(e) Interest and Penalties. If the Company shall fail to make any PILOT Payment required by this PILOT Agreement when due, its obligation to make the payment so in default shall continue as an obligation of the Company until such payment that is in default shall have been made in full, and the Company shall pay the same together with the applicable late payment penalty, as

prescribed by subparagraph “(5)” of Section 874 of the Act, on the amount due, at the time the PILOT Payment is paid. For each month, or part thereof, that the PILOT Payment is delinquent beyond the first month, interest shall accrue to and be paid by the Company on the total amount due plus the late payment penalty, at the applicable rate prescribed by said provision of the Act, until such payment is made.

(f) Conveyance by the Agency and Termination of the Exemption. Notwithstanding anything to the contrary set forth in Section 3.1(a) above, in the event that the property shall be conveyed by the Agency to the Company (or to an entity designated by the Company) during the term of this PILOT Agreement, either at the request of the Company or as a consequence of a default by the Company under this PILOT Agreement or under one or more of the other Project Documents, then except as otherwise expressly agreed in writing by the Agency (which agreement may, at the sole discretion of the Agency, be conditioned upon the consent of the Municipalities), the obligations of the Company under this PILOT Agreement (including, without limitation, Section 3.2(a) hereof) shall continue for the entire term of this PILOT Agreement; provided, however, that the PILOT Payments due in any year shall be reduced (but not below zero) by the amount of Real Estate Taxes payable in respect of the Facility Real Property for such year.

### **Section 3.3. Obligations of Agency.**

The Agency shall forward to the Company a copy of any bill for PILOT Payments or Real Estate Taxes received from the Municipalities, (other than bills for which the Company is already an addressee).

(a) Requirement that any Conveyance or Project Agreements Require Payment in Lieu of Taxes. So long as the Project shall be entitled to the exemption from Real Estate Taxes contemplated by Section 3.1(a) hereof, the Agency agrees, to the extent permitted by law, that it shall not convey or assign the Project to any person or entity which is not exempt from the payment of Real Estate Taxes, except as otherwise expressly permitted hereunder, or make any other agreement regarding real property taxes and/or the Project which would cause or require the payment of Real Estate Taxes or PILOT Payments to be paid to the City in excess of the amounts set forth in Article III hereof.

(b) Requirement that Mortgages Be Subordinate to Payments. The Agency and the Company agree that the lien of each and every Mortgage on the Project (and all advances made from time to time) given by either of them shall be specifically subordinate to the lien of the PILOT Mortgage unless otherwise agreed by the Agency.

### **Section 3.4. [Reserved].**

### **Section 3.5. Assignability by the Company.**

Notwithstanding anything herein to the contrary, the parties agree that if there is or has been a permitted transfer, in accordance with the Project Agreement, of all or part of any of the Company's right, title and interest in and to the Project and an assignment of all or part of the Company's rights in the Project Agreement to a transferee in accordance with the Project



Agreement, and if the transferee has given a Substitution Notice (as herein defined) and if no Event of Default set forth in Section 5.1 hereof has occurred and is continuing (unless such transferee has commenced curing such Event of Default as provided herein), then at such transferee's option, the transferee shall be deemed automatically, and without the need for any further document or instrument, to succeed to the rights of, and be bound by the obligations imposed upon, the Company hereunder with respect to the portion or portions of the Project so transferred, with the same force and effect as if the transferee, and not the Company, had been an original party to this PILOT Agreement. In such event, the Company shall be automatically released from all such obligations so assumed in writing by the transferee. Any obligations not assumed by transferee in writing will remain the obligations of the Company. Nevertheless, the Agency agrees to execute and deliver such amendments hereto as may be reasonably requested by the transferee and/or the Company to evidence such succession. For purposes of this Section 3.5, the term "Substitution Notice" shall mean a written notice given by a transferee, in accordance with Section 6.6 hereof, stating that the transferee is a transferee under the Project Agreement, and has agreed to accept the other obligations thereafter imposed on the Company hereunder, subject, in each case, to the limitations on recourse set forth in Article IV hereof.

Without limiting the generality of the foregoing, nothing in this PILOT Agreement shall restrict in any way any transfer of all or part of the Company's right, title and interest in and to the Project to Affiliates (as defined in the Project Agreement) or any Permitted Mortgagee (as defined in the Project Agreement) of the current parties to this PILOT Agreement. In addition, the Agency agrees that the Permitted Mortgagee shall have the right, but not the obligation to cure any event of default hereunder and the parties hereby agree that such performance shall be accepted as it were completed by the Company.

### **Section 3.6. Review of Assessments.**

As long as this PILOT Agreement is in effect, the Agency and the Company agree that (i) the Agency shall be deemed to be the owner or lessee of the Project subject to the Project Agreement; (ii) the Agency hereby irrevocably appoints the Company as its agent and attorney-in-fact for the purpose of instituting judicial review of any assessment of the real estate with respect to the Project, including, without limitation, the Taxable Equivalent Assessment, pursuant to this PILOT Agreement and the provisions of Article 7 of the RPTL or any other applicable law as the same may be amended from time to time during the term of this PILOT Agreement, such appointment being coupled with an interest; and (iii) the Company shall have sole authority and power to file grievances and protests, protesting any assessment of the Project. In order to undertake the foregoing, the Agency shall provide any written authorization and/or execute any documents required by statute or the applicable taxing authority or reasonably requested by the Company, so long as not prohibited by applicable law.

The Company shall have the right to contest only (i) any Taxable Equivalent Assessment, or (ii) to the extent permitted by Section 3.1(f)(ii) above, any change in the Fixed PILOT Assessments, or the failure to change same, in a proceeding under Article 7 of the RPTL or any other applicable law as the same may be amended from time to time during the term of this PILOT Agreement. During the pendency of any such assessment contest, the Company shall, and as a

condition of instituting such contest, pay and be current regarding all PILOT Payments or Real Estate Taxes assessed or billed against the Facility Real Property.

Upon receipt from the Municipalities of a change in the assessment of any parcel subject to this PILOT Agreement (including, without limitation, the Taxable Equivalent Assessment) pursuant to the applicable portions of the RPTL and this PILOT Agreement, the Agency shall provide a copy thereof to the Company, in the same manner and at the same time as if the Company was a taxpayer. Notwithstanding the foregoing, if the assessment of any real property subject to this PILOT Agreement is reduced as a result of any such grievance, protest or judicial review so that the Company would be entitled to receive a refund or refunds of taxes paid if the Project were not exempt, such reduction shall not result in any change or modification of the PILOT Payments due pursuant to Section 3.2(a) of this PILOT Agreement, and same shall not be recalculated based upon the assessment resulting from such grievance, protest or judicial review, except as expressly set forth in this PILOT Agreement.

## **ARTICLE IV**

### **LIMITED OBLIGATION OF THE PARTIES**

#### **Section 4.1. No Recourse; Limited Obligation of the Agency.**

(a) No Recourse. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this PILOT Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency and not of any member, officer, agent, servant or employee of the Agency in his or her individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this PILOT Agreement, or otherwise based or in respect of this PILOT Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent, servant or employee, as such, of the Agency, the City, the School District, the County or any successor public benefit corporation or political subdivision. It is expressly understood that this PILOT Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent, servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this PILOT Agreement under or by reason of the obligations, covenants or agreements contained in this PILOT Agreement or implied therefrom. Any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent, servant or employee under or by reason of the obligations, covenants or agreements contained in this PILOT Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this PILOT Agreement.

(b) Limited Obligation. The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State or the County, and neither the State or the County shall be liable thereon. Furthermore, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be

derived from this PILOT Agreement, the Project Agreement, the Project generally, or sale or other disposition of the Project.

(c) Further Limitation. Notwithstanding any provision of this PILOT Agreement to the contrary, (i) the Agency shall not be obligated to take any action for the benefit of the Company pursuant to any provision hereof unless the Agency shall have been requested to do so in writing by the Company and (ii) if compliance with such request is reasonably expected to result in the incurrance by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity satisfactory to the Agency for protection against all such liability, and for reimbursement of all such fees, expenses and other costs. Nothing in this paragraph shall be construed as requiring the Agency (or the City, School District or County) to receive any such written request or indemnity as a precondition to the exercise by the Agency (or the City, School District or County) of its rights hereunder.

**Section 4.2. No Recourse; Limited Obligation of the Company.**

(a) No Recourse. All covenants, stipulations, promises, agreements and obligations of the Company contained in this PILOT Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Company and not of any partner, member, officer, agent, servant or employee of the Company in his or its individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this PILOT Agreement, or otherwise based or in respect of thereof, shall be had against any past, present or future partner, member, officer, agent, servant or employee, as such, of the Company or any successor thereto or any person executing this PILOT Agreement on behalf of the Company or any partner in the Company, either directly or through the Company or any successor thereto or any person so executing this PILOT Agreement. It is expressly understood that this PILOT Agreement is an obligation of the Company, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such partner, member, officer, agent, servant or employee of the Company or any partner in the Company or of any successor thereto or any person so executing this PILOT Agreement under or by reason of the obligations, covenants or agreements contained in this PILOT Agreement or implied therefrom. Any and all such personal liability of, and any and all such rights and claims against, every such partner, member, officer, agent, servant or employee under or by reason of the obligations, covenants or agreements contained in this PILOT Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this PILOT Agreement.

(b) Limited Obligation. The obligations and agreements of the Company contained herein shall not constitute or give rise to an obligation of any partner, member, director, officer or employee in the Company, and no such partner, member, director, officer or employee, shall be liable therein.

## ARTICLE V

### EVENTS OF DEFAULT

#### **Section 5.1. Events of Default.**

The terms "Event of Default" shall mean, whenever they are used in this PILOT Agreement, any failure of the Company to pay any amount due and payable by it pursuant to this PILOT Agreement within ten (10) days after its receipt of notice from the City, or the Agency, that such amount is due and has not been paid and any failure of the Company to perform any material nonmonetary obligation hereunder within thirty (30) days (provided that if said non-monetary default can be cured with due diligence, but not within such 30-day period, said time period shall be extended as long as the Company continues to exercise best efforts and due diligence to cure said non-monetary default and provided due notice of such default shall have been given as provided in Section 6.6 below), it being understood that an "Event of Default" shall not have occurred hereunder until such time as the applicable notice and cure periods to the Permitted Mortgagee under Section 5.2 shall have expired.

#### **Section 5.2. Permitted Mortgagee Right to Cure.**

Notwithstanding anything to the contrary in this PILOT Agreement, in the case of an Event of Default, if the Agency or City serves a notice of default upon the Company, the Agency or City shall simultaneously serve a copy of such notice upon any Permitted Mortgagee. In the case of an Event of Default by the Company under this PILOT Agreement, any Permitted Mortgagee shall have forty-five (45) days for a monetary default and sixty (60) days in the case of any non-monetary default, after notice to Permitted Mortgagee 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 Permitted Mortgagee 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 sixty (60) day period, said time period shall be extended as long as Permitted Mortgagee continues to exercise due diligence to cure said non-monetary default, but in no event shall such extension exceed ninety (90) days. The Agency shall accept such performance by or at the instigation of such Permitted Mortgagee as if same had been done by the Company.

#### **Section 5.3. Remedies on the Company's Default.**

Whenever any Event of Default under Section 5.1 (subject to applicable notice and cure periods) shall have occurred and be continuing with respect to this PILOT Agreement, remedies of the Agency shall be limited to the rights hereunder and under the PILOT Mortgage, and the right to convey the Project to the Company as set forth in Section 5.4.

#### **Section 5.4. Remedies of the Agency; Recording of Termination Instrument and Other Documents.**

Whenever:

- (i) any Event of Default under Section 5.1 (subject to applicable notice and cure periods) shall have occurred and be continuing with respect to this PILOT Agreement,
- (ii) the lien of the PILOT Mortgage shall not be a first lien, other than with respect to any governmental or quasi-governmental body, agency or other instrumentality which would be entitled to priority over any lien for Real Estate Taxes assertable by the Agency or the Municipalities in the absence of a PILOT Agreement, or
- (iii) the Agency conveys the Project to the Company pursuant to this PILOT Agreement or the Project Agreement,

the Agency may, upon ten (10) days-notice to the Company and Permitted Mortgagee, record an assignment of lease, or termination of lease (each a "Termination Instrument") and any other necessary documents in the appropriate County Clerk's office conveying the Agency's leasehold interest in the Facility Real Property and the Project to the Company or its successor or assign and declare any and all amounts due and owing to the Agency hereunder immediately payable.

The recording of such Termination Instrument shall constitute delivery to the Company of title to or surrender and termination of the Agency's leasehold interest in, the Project. In order to facilitate such transfer of title or surrender of the Agency's leasehold interest, the Company hereby irrevocably appoints severally, the Chairperson or Executive Director of the Agency (or his or her designee) as its agent, such appointment being coupled with an interest, who is authorized to execute and deliver all documents necessary to allow the transfer of fee or leasehold title to the Project from the Agency to the Company, including, without limitation, transfer tax returns.

#### **Section 5.5. Payment of Attorneys' Fees and Expenses.**

If the Company should default in performing any of its obligations, covenants and agreements under this PILOT Agreement, and the Agency or any Municipality should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation or agreement on the part of the Company herein, the Company agrees that it will, on demand therefor, pay to the Agency, or the City, School District or County as the case may be, the reasonable fees and disbursements of such attorneys and such other reasonable expenses so incurred in connection with the exercise of the remedies provided for herein.

#### **Section 5.6. Remedies; Waiver and Notice.**

(a) Remedy Exclusive. Notwithstanding anything herein to the contrary, the remedies available to the Agency as a result of an Event of Default hereunder are limited to those set forth in Sections 5.3 and 5.4 hereof, and the Agency hereby waives every other remedy now or hereafter existing at law or in equity or by statute in connection with any Event of Default.

(b) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be



construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(c) Notice Not Required. In order to entitle the Agency or the City, School District or County to exercise any remedy reserved to it in this PILOT Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this PILOT Agreement, including as set forth in Sections 5.1 and 5.2 herein.

(d) No Waiver. In the event any provision contained in this PILOT Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this PILOT Agreement shall be established by conduct, custom or course of dealing.

## **ARTICLE VI**

### **MISCELLANEOUS**

#### **Section 6.1. Term of Agreement.**

This PILOT Agreement shall become effective and the obligation of the Company and the Agency shall arise absolutely and unconditionally on the date hereof. This PILOT Agreement shall continue until the first date on which all monetary and non-monetary obligations hereunder have been fully satisfied and the PILOT Payments fully paid after the date on which title (including leasehold title theretofore held by the Agency) to the Project is transferred to the Company or any other non-exempt person or entity, including any Permitted Mortgagee.

#### **Section 6.2. [Reserved].**

#### **Section 6.3. Company Acts.**

Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished by others with the same force and effect as if done or accomplished by the Company.

#### **Section 6.4. Amendment of Agreement.**

(a) Subject to Section 6.4(b) below, this PILOT Agreement may not be amended, changed, modified, altered or terminated, unless such amendment, change, modification, alteration or termination is in writing and signed by the Agency and the Company, and further, if such amendment, change, modification or alteration materially changes the terms and conditions of this PILOT Agreement, then, and only in such instances, shall execution by the Municipalities and their successors and assigns, if any, be also required.

(b) No amendment, modification, termination or waiver or any provision of this PILOT Agreement or the PILOT Mortgage or any consent to any departure therefrom may be made which materially and adversely affects the City, School District or County without the prior written consent of the adversely affected Municipality. The Company shall promptly provide the City, School District or County with copies of all such proposed amendments, modifications, terminations and waivers and a copy of same as adopted or agreed upon.

**Section 6.5. Agreement to Run with the Land.**

This PILOT Agreement shall run with the land, both as respects benefits and burdens created herein, and shall be binding upon and inure to the benefit of the successors and assigns of the respective parties.

**Section 6.6. Notices.**

All notices, certificates or other communications hereunder shall be sufficient if sent (a) by certified United States mail, postage prepaid, (b) by a nationally recognized overnight delivery service, charges prepaid, or (c) by hand delivery, addressed, as follows:

If to the Agency: County of Westchester Industrial Development Agency  
148 Martine Avenue  
White Plains, New York 10601  
Attn: Chairperson

With a Copy to: Oxman Law Group, PLLC  
120 Bloomingdale Road, Suite 100  
White Plains, NY 10605  
Attn: John W. Buckley, Esq.

And to: Harris Beach PLLC  
445 Hamilton Avenue, Suite 1206  
White Plains, New York 10601  
Attn: Michael V. Curti, Esq.

If to the Company: MG Martine SPE LLC  
c/o Ginsburg Development Companies LLC  
100 Summit Drive, Suite 235  
Valhalla, New York 10595  
Attn: Douglas Ramsay

With a Copy to: Ginsburg & Redmond, P.C.  
245 Saw Mill River Road  
Hawthorne, New York 10532  
Attn: Mark D. Ginsburg, Esq.

If to the City:	City of White Plains 255 Main Street White Plains, New York 10601 Attn: Corporation Counsel
If to the School District:	White Plains School District 5 Homeside Lane White Plains, New York 10605 Attn: Superintendent
If to the County:	Commissioner of Finance Westchester County 148 Martine Avenue – Room 720 White Plains, New York 10601
With a Copy to:	County Attorney Westchester County 148 Martine Avenue White Plains, New York 10601
If to the Permitted Mortgagee:	LADDER CAPITAL FINANCE I LLC, for itself to the extent of its interest, and on behalf of Series REIT of Ladder Capital Finance I LLC 320 Park Avenue, 15 <sup>th</sup> Floor New York, New York 10022 Attention: Mark Ableman
With a copy to:	LADDER CAPITAL FINANCE I LLC, for itself to the extent of its interest, and on behalf of Series REIT of Ladder Capital Finance I LLC 320 Park Avenue, 15 <sup>th</sup> Floor New York, New York 10022 Attention: Kelly Porcella
With a copy to:	Bryan Cave Leighton Paisner LLP 1290 Avenue of the Americas New York, New York 10104 Attention: William Campbell, Esq.
With a copy to:	Wells Fargo Bank National Association Commercial Mortgage Servicing MAC D1050-084 401 South Tryon Street, 8 <sup>th</sup> Floor Charlotte, North Carolina 28202 Attention: Asset Management



Failure of the Agency to provide notice to the Permitted Mortgagee shall not subject the Agency to any liability whatsoever.

The Agency, the Company, the City, School District, the County and the Permitted Mortgagee(s) may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given (i) three (3) Business Days following posting if transmitted by mail, (ii) one (1) Business Day following sending if transmitted by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder. Notices may also be given in compliance with this Agreement by telecopy, provided that the recipient party consents in writing to the use of telecopy transmissions for giving of notices hereunder and receipt of any such telecopy transmission is confirmed by the transmitting party.

**Section 6.7. Binding Effect.**

This PILOT Agreement shall inure to the benefit of the Agency, the Municipalities, and the Company, and shall be binding upon the Agency and the Company, and their respective successors and assigns.

**Section 6.8. Severability.**

If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this PILOT Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this PILOT Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

**Section 6.9. Counterparts.**

This PILOT Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The parties hereto expressly agrees that if the signature of either on this PILOT Agreement is not an original, but is a digital, mechanical or electronic reproduction (such as, but not limited to, a photocopy, fax, e-mail, PDF, Adobe image, JPEG, telegram, telex or telecopy), then such digital, mechanical or electronic reproduction shall be as enforceable, valid and binding as, and the legal equivalent to, an authentic and traditional ink-on-paper original wet signature penned manually by its signatory.

**Section 6.10. Applicable Law.**

This PILOT Agreement shall be governed by and construed in accordance with the laws of the State of New York.

**Section 6.11. Recording.**

The PILOT Mortgage shall be filed by the Company, as agent for the Agency, in the Office of the Westchester County Clerk, Division of Land Records of the County of Westchester pertaining to the real property described in Schedule "A" hereto. In addition, the Company shall cause all filings to be made under Section 412-a (2) of the RPTL and Section 858(15) of the Act.

**Section 6.12. City, School District, County as Third-Party Beneficiaries.**

The City, the School District, the County shall be third party beneficiaries of all of the obligations of the Company and of the rights and obligations of the Agency hereunder and the City, the School District, and the County shall have the right to enforce their respective rights and remedies in their own names and without consent of the Agency. For purposes of the foregoing sentence, and without limitation, "obligations" shall include all covenants, representations and warranties of the respective parties. The Agency shall not be authorized to waive, modify or forgive any of the Company's obligations to the Municipalities hereunder in any material respect, and any such acts by the Agency, without the prior written consent of the City, the School District and the County, shall not in any way affect the City's, the School District's and the County's rights hereunder.

**Section 6.13. PILOT Agreement for Lot 3.1 Only.**


This Agreement applies to the portion of 1-11 Martine Avenue known as 125.74-5-3.1 only. No real property tax exemption is provided for 50 Main Street also known as 125.74-5-1 ("Lot 1") and the Company is obligated to pay full taxes to the affected tax jurisdictions with respect to Lot 1 since Lot 1 is on the non-exempt side of the tax roll.

[Remainder of This Page Intentionally Left Blank]

[Signature page to Payment in Lieu of Taxes Agreement]

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

**COUNTY OF WESTCHESTER INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Name: Joan McDonald  
Title: Chairperson

**MG MARTINE SPE LLC**

By: \_\_\_\_\_  
Name: Douglas Ramsay  
Title: Authorized Signatory

**ACKNOWLEDGED BY:**

**CITY OF WHITE PLAINS**

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

**Acknowledgments**

STATE OF NEW YORK       )  
  ) SS.:  
COUNTY OF WESTCHESTER )

On the 17<sup>th</sup> day of November in the year 2023, before me, the undersigned, personally appeared **Joan McDonald**, 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

STATE OF NEW YORK       )  
  ) SS.:  
COUNTY OF WESTCHESTER )

ROSA C RAMON  
Notary Public, State of New York  
No. 01RA6343316  
Qualified in Westchester County, 24  
Commission Expires June 6, 20

On the \_\_\_\_ day of November in the year 2023, before me, the undersigned, personally appeared **Douglas Ramsay**, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

[Signature page to Payment in Lieu of Taxes Agreement]

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

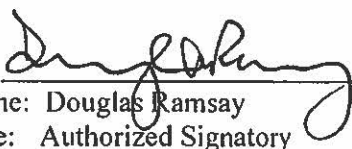
**COUNTY OF WESTCHESTER INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_

Name: Joan McDonald

Title: Chairperson

**MG MARTINE SPE LLC**

By:  \_\_\_\_\_

Name: Douglas Ramsay

Title: Authorized Signatory

ACKNOWLEDGED BY:

CITY OF WHITE PLAINS

By: \_\_\_\_\_

Name:

Title:

**Acknowledgments**

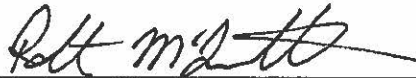
STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF WESTCHESTER )

On the \_\_\_\_ day of November in the year 2023, before me, the undersigned, personally appeared **Joan McDonald**, 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

STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF WESTCHESTER )

On the 27 day of November in the year 2023, before me, the undersigned, personally appeared **Douglas Ramsay**, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_

Notary Public

ROBERT MCDERMOTT  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01MC6349023  
Qualified in Westchester County  
My Commission Expires 10-11-~~2026~~  
2024

[Signature Page to PILOT Mortgage]

IN WITNESS WHEREOF, this Mortgage has been duly executed by the Mortgagor as of the day and year first above written.

COUNTY OF WESTCHESTER INDUSTRIAL  
DEVELOPMENT AGENCY

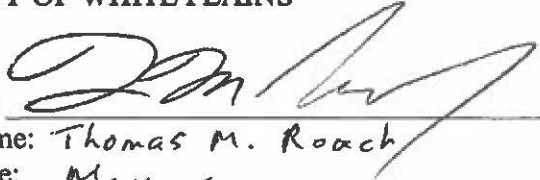
By: \_\_\_\_\_  
Name: Joan McDonald  
Title: Chairperson

MG MARTINE SPE LLC

By: \_\_\_\_\_  
Name: Douglas Ramsay  
Title: Authorized Signatory

ACKNOWLEDGED BY:

CITY OF WHITE PLAINS

By:  AG  
Name: Thomas M. Roach  
Title: Mayor

## **SCHEDULE A**

### **REAL PROPERTY DESCRIPTION**

[Attached]

#### **AS TO PARCEL II (LOT 3.1 — 1-11 Martin Ave):**

**ALL** that certain plot, piece or parcel of land, situate, lying and being in the City of White Plains, County of Westchester, State of New York, bounded and described as follows:

Condominium Units described and known as Units C-2, C-3, C-4, C-5, C-6, C-7, C-8, C-9, C-10, C-11, in the Condominium known as 1-11 Martine Avenue Condominium, established pursuant to that Condominium Declaration and Condominium By-Laws dated 8/26/1987 and recorded with the Westchester County Clerk's Office (Division of Land Records) in liber 8977 of conveyances at page 49 on 9/29/1987, which units have been constructed upon that certain plot, piece or parcel of land, situate, lying and being in The City of White Plains, County of Westchester and State of New York, known and described as Delivery Parcel No. 3, Delivery Parcel No. 7 and Delivery Parcel No. 8 on a certain map entitled "Location Plan of Fee Parcels And Fee Planes, Disposition Parcel Nos. 24 and 25, Central Renewal Project N. Y. R. 37, situated in The City of White Plains, Westchester County, New York", made by James W. Delano dated 9/22/1983 and filed in The Westchester County Clerk's Office (Division Of Land Records) on 6/5/1984 as Map No. 21579;

Said land upon which such units are located is also known and described as follows:

**ALL** that certain plot, piece or parcel of land situate, lying and being in The City of White Plains, County of Westchester, State of New York, and which is bounded by and lies within that certain plot or parcel which begins at a point on the easterly right of way line of Bank Street, South 05° 56' 26" East 256.00 feet from a point on the southerly right of way line of Main Street, which is the southerly end of a curve connecting the easterly Right Of Way Line of Bank Street with the southerly Right Of Way line of Main Street, as shown on a map entitled, "Location Plan of Fee Parcels and Fee Planes, Disposition Parcel Nos. 24 And 25", prepared by James W. Delano, L. S. dated 9/22/1983 and filed in the Westchester County Clerk's Office (Division Of Land Records) as Filed Map No. 21579 on 6/5/1984 and proceeding:

**THENCE** along lands now or formerly of Robert Martin Company, the following courses and distances:

1. North 39° 03' 34" East 35.355 feet;
2. North 84° 03' 34" East 33.000 feet;
3. South 50° 56' 26" East 35.355 feet;
4. North 84° 03' 34" East 174.500 feet;



5. South 05° 56' 26" East 163.557 feet, to a point on the northerly Right Of Way Line of Martine Avenue;

**THENCE** along the northerly Right Of Way line of Martine Avenue, South 83° 19' 23" West 196.745 feet to a point of curvature;

**THENCE** westerly along a curve to the right, having a radius of 60.000 feet and a central angle of 90° 44' 11" a distance of 95.019 feet to a point of tangency on the easterly Right Of Way line of Bank Street;

**THENCE** along the easterly Right Of Way Line of Bank Street, North 05° 56' 26" West 106.091 feet to the point or place of **BEGINNING.**

Such units are also designated as follows on The Floor Plans of The Condominium, certified By Matthew J. Warshauer Architects, P.C. on 9/15/1987 and filed simultaneously with the Condominium Declaration in The Westchester County Clerk's Office (Division of Land Records) as Map No. 22940:

**TOGETHER WITH** each unit's respective undivided interest in the Common Elements of the property described in said condominium declaration as follows:

UNIT C-2: 7.78%  
UNIT C-3: 8.00%  
UNIT C-4: 8.00%  
UNIT C-5: 8.00%  
UNIT C-6: 8.00%  
UNIT C-7: 8.00%  
UNIT C-8: 8.00%  
UNIT C-9: 7.43%  
UNIT C-10: 7.43%  
UNIT C-11: 7.43%

**TOGETHER WITH** the Provisions, including but not limited to the Easements created thereby of the Deed-Disposition Parcels 24 and 25, made and delivered as of July 5, 1984, by The White Plains Urban Renewal Agency to Robert Martin Company, said deed having been recorded in The Office of The Westchester County Clerk (Division of Land Records) on July 10, 1984 in Liber 7937 of Deeds at Page 113, as modified by Reassignment Agreement in Liber 8917 Cp 345 and by Certificates Of Completion recorded in Liber 9063 Cp 54 and Liber 10478 Cp 91.

**TOGETHER WITH** the Easements created, and Owner's Right to Use The Parking Spaces in The Parking Facility serving said Condominium and other property, in accordance with the provisions of both The Maintenance Declaration 24/2S Maintenance Association, Inc. made and delivered on 2/25/1987 by Robert Martin Company, recorded with The Westchester County Clerk's Office (Division of Land Records)

On 2/26/1987 in Liber 8744 at Page 287 as re-recorded with said Office on 8/7/1987 in Liber 8918 at Page 1 and said Condominium Declaration.

**TOGETHER WITH** other Rights and Easements granted or to be granted to Owner the provisions of said Condominium Declaration, By-Laws and Floor Plans of said Condominium.

**TOGETHER WITH** other Rights granted or to be granted to Owner and the provision of said Maintenance Declaration.

For Information Only:

1-11 Martin Avenue, Units C-2 thru C-11; Section: 125.074 Block: 5 Lots: 3.1

## SCHEDULE B

### DETERMINATION OF PAYMENTS IN LIEU OF TAXES

The Company will make PILOT payments for the Project during the term of the PILOT Agreement in amounts equivalent to the amount of Real Estate Taxes that would have been charged against the Project real property if the Project real property was not tax exempt and assessed (the “**Fixed PILOT Assessment**”) as set forth below.

The time of such payments shall be subject to the provisions of Section 3.2(c) of this PILOT Agreement.

		CWP 10 Yr. PILOT Lot 2 Assessed Value
Year 1	2023	675,000
Year 2	2024	700,000
Year 3	2025	750,000
Year 4	2026	800,000
Year 5	2027	850,000
Year 6	2028	900,000
Year 7	2029	975,000
Year 8	2030	1,050,000
Year 9	2031	1,125,000
Year 10	2032	1,250,000