

November 13, 2023

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

VIA CERTIFIED MAIL
#70190700000113758522

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

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

***Re: 1133 Westchester Avenue LLC and County of Westchester Industrial
Development Agency***

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

***Premises: 1133 Westchester Avenue, City of White Plains
Section 131.2, Block 1, Lot 1.12***

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

Michael V. Curti

MVC/amb
Enclosures

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

Schedule A

Via Certified Mail

#70190700000113758447

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

Via Certified Mail

#70190700000113758454

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

#70190700000113758461

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

#70190700000113758478

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

#70190700000113758508

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

Via Certified Mail

#70190700000113758485

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

Via Certified Mail

#70190700000113758492

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

Via Certified Mail

#70190700000113758515

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

[Handwritten notes and stamps]

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 _____	<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 1133 Westchester Avenue LLC
 Title Noam Magence
 Address 1228 Euclid Ave, 4th Fl
Cleveland, OH 44115

If "No" identify owner and explain IDA rights or interest in an attached statement. No: Occupant owns the property and leases to IDA. Telephone _____

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

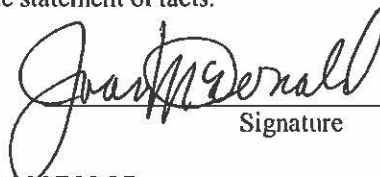
If yes, list the statutory exemption reference and assessment roll year on which granted: exemption _____ assessment roll year _____

7. A copy of this application, including all attachments, has been mailed or delivered on 11/13/23 (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.

November 10, 2023
 Date


 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 as valorem levies for which the parcel is liable:

 Date

 Assessor's signature

COUNTY OF WESTCHESTER INDUSTRIAL DEVELOPMENT AGENCY

and

1133 WESTCHESTER AVENUE LLC

PAYMENT IN LIEU OF TAXES AGREEMENT

1133 WESTCHESTER AVENUE LLC , PROJECT

Dated as of June 24, 2020

TABLE OF CONTENTS

(This Table of Contents is not a part of the
Payment in Lieu of Taxes Agreement and is for convenience of reference only.)

	<u>PAGE</u>
Parties	1
Recitals	1
 ARTICLE I DEFINITIONS	
Section 1.1. Definitions	3
 ARTICLE II REPRESENTATIONS AND WARRANTIES	
Section 2.1. Representations and Warranties of Agency	6
Section 2.2. Representations and Warranties of Company	7
 ARTICLE III COVENANTS AND AGREEMENTS	
Section 3.1. Tax Exempt Status of Project	8
Section 3.2. Payment in Lieu of Taxes	10
Section 3.3. Obligations of Agency	12
Section 3.4. [Reserved]	12
Section 3.5. Assignability by the Company	12
Section 3.6. Review of Assessments	13

ARTICLE IV

LIMITED OBLIGATIONS OF THE PARTIES

Section 4.1.	No Recourse; Limited Obligation of the Agency	14
Section 4.2.	No Recourse; Limited Obligation of the Company	15

ARTICLE V

EVENTS OF DEFAULT

Section 5.1.	Events of Default	16
Section 5.2.	Rights of Notice Lenders	16
Section 5.3.	Remedies on the Company's Default	19
Section 5.4.	Remedies of the Agency; Recording of Deed and Other Documents	19
Section 5.5.	Payment of Attorneys' Fees and Expenses	20
Section 5.6.	Remedies; Waiver and Notice	20

ARTICLE VI

MISCELLANEOUS

Section 6.1.	Term of Agreement	21
Section 6.2.	Form of Payments	21
Section 6.3.	Company Acts	21
Section 6.4.	Amendment of Agreement	21
Section 6.5.	Agreement to Run with the Land	22
Section 6.6.	Notices	22
Section 6.7.	Binding Effect	23
Section 6.8.	Severability	23

Section 6.9.	Counterparts	24
Section 6.10.	Applicable Law	24
Section 6.11.	Recording	24
Section 6.12.	City, School District and the County as Third Party Beneficiaries	24
Section 6.13.	Consent to Assignment	24
Testimonium	25
Signatures	25
Acknowledgments	26-28
Schedule A - Real Property Description		
Schedule B – Computation of the PILOT Payments		

PAYMENT IN LIEU OF TAXES AGREEMENT

PAYMENT IN LIEU OF TAXES AGREEMENT, dated as of June 24, 2020 (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 the Michaelian Office Building, White Plains, New York 10601 (the “Agency”), and 1133 WESTCHESTER AVENUE LLC, a Delaware limited liability company, having an office at 1228 Euclid Avenue, 4th Floor, Cleveland, Ohio 44115 (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 April 5, 2019 (the “Application”), that 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 project which is the subject of this PILOT Agreement (the "Project") consists of (A)(1) the construction and equipping of residential property located at 1133 Westchester Avenue, White Plains, New York (the "Facility Real Property", including the land and improvements), to include three five story wood frame buildings which will house approximately 303 units in a multifamily residential facility, including nineteen (19) units of affordable housing in accordance with the guidelines of the Affordable Housing Program of the City of White Plains, and associated amenities (including a fitness center, pool, business lounge and pet spa) and 12,000 square feet of on-site public recreation space, leasehold title to which shall be held by the Agency by lease from the Company, and the subleasing thereof by the Agency to the Company, to be used by the Company, all subject to the terms and conditions of a certain Project Agreement dated as of the date hereof and the other Project Documents (as defined in the Project Agreement), and (2) the acquisition and installation at the Facility Real Property of certain machinery and equipment (the "Equipment"; the Facility Real Property and the Equipment being collectively hereinafter referred to as the "Project Facility"), and (B) subleasing of the Project Facility by the Agency to the Company pursuant to an Agreement of Sublease dated as of the date hereof (the "Agency Sublease"); 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 this 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;

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.

“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.

“City” means the City of White Plains.

“Company” means 1133 Westchester Avenue LLC, a Delaware limited liability company, and its successors and assigns.

“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 1133 Westchester Avenue, White Plains, New York.

“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” means an individual, company, corporation, trust, unincorporated organization or Governmental Authority.

“Permitted Transfer” means the sale, conveyance or transfer of the Facility Real Property from the Company or its successors or assigns to any Person that is permitted in accordance with the terms of the Project Agreement, including, without limitation, any such sale, conveyance or transfer to an affiliate of the Company or any mortgage to a Qualified Lender (as hereinafter defined).

“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 Certificate of Occupancy for the Project Facility.

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

“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.

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

“Resolution” means the resolution of the Agency adopted on December 12, 2019, authorizing the transactions contemplated by this PILOT Agreement in accordance with the Act, as amended by the resolutions of the Agency adopted on February 13, 2020, and April 9, 2020.

“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(c) 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 Qualified Lender (as hereinafter defined) may reasonably require from time to time in order to give further effect to this PILOT Agreement. “Qualified Lender” shall mean a bona fide financial institution or other entity, public or private, not an Affiliate of the Company, which is providing financial assistance to the Company in respect of the Project.

(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 Delaware 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 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 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, onto the Project or onto any other property in violation of any Environmental Laws.

(e) No Actions. To the knowledge of the Company, as of the date of this PILOT Agreement, 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 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. 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.

(c) Establishment of Taxable Equivalent Assessment. The parties agree that, for each year commencing June 1, 2019, 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 PILOT 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) The Facility Real Property is part of an office park that was subdivided into two (2) separate parcels pursuant to the subdivision map described in Schedule A hereto, including the parcel that is the Facility Real Property and the parcel comprised of the balance of the land within the office park that has an existing office building (the "Office Property," and together with the Facility Real Property, collectively, the "Office Park"). The Office Park was not legally subdivided into the Facility Real Property and the Office Property as of the date of the assessment roll for the Municipalities in March of 2020 ("2020 Assessment"). As a result of the Office Park not being legally subdivided as of March of 2020, the 2020 Assessment for Office Park was assessed as a single parcel for: (1) the tax year through December 31, 2020 in respect of Real Estate Taxes for the benefit of the County, and (2) the tax year through June 30, 2021 in respect of Real Estate Taxes for the benefit of the City and the School District.

The Agency acknowledges and agrees that Real Estate Taxes for the Office Park for the period through December 31, 2020 (for the benefit of the County) and through June 30, 2020 (for the benefit of the City and the School District), have been paid in full by the Company and/or its predecessor in interest, and notwithstanding anything in this PILOT Agreement to the contrary, such payments satisfied in full the Company's obligation under this PILOT Agreement to make PILOT Payments to the County and to the City and School District for such periods, respectively.

The Company, together with the owner of the Office Property, will remain obligated to pay Real Estate Taxes for the Office Park for the benefit of the City and the School District for the period from July 1, 2020 through June 30, 2021, based on the 2020 Assessment for the Office Park as a whole of \$2,100,000, and notwithstanding anything in this PILOT Agreement to the contrary, payment of such Real Estate Taxes in full shall satisfy the Company's obligation under this PILOT Agreement to make PILOT Payments to the City and School District for such period.

(ii) Notwithstanding the Taxable Equivalent Assessment as determined by the Assessor in accordance with Section 3.1(c) above, for each tax year beginning on or after January 1, 2020 (in respect of PILOT Payments for the benefit of the County) and on or after July 1, 2020 (in respect of PILOT Payments for the benefit of the City and the School District), and continuing through December 31, 2034 (in respect of PILOT Payments for the benefit of the County) and June 30, 2035 (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. The Assessor may amend and correct the Fixed PILOT Assessment set forth on Schedule B when and if:

- (1) there is a revaluation or update of all real property in the City required by State law, in which event the Facility Real Property shall be assessed at an amount no greater than the assessment of a property with a fair market value which would have resulted in the Fixed PILOT Assessment set forth in the attached Schedule B prior to such revaluation;
- (2) the Facility Real Property has been altered by fire, demolition, destruction or similar catastrophe;
- (3) 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, 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.
- (4) the amount of net usable space in the improvements upon the real property constituting the Facility Real Property 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 improvements prior to the Addition and multiplying that amount by the number of net leasable square feet in the Addition.

Any increase or decrease in the Fixed PILOT Assessment made pursuant to the foregoing subparagraphs (1)-(4) 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 PILOT Agreement.

(iii) For each tax year commencing January 1, 2035 (in respect of PILOT Payments for the benefit of the County) and July 1, 2035 (in respect of PILOT Payments for the benefit of the City and the School District), and continuing throughout the term of this PILOT Agreement, the Fixed PILOT Assessment shall be the assessed value determined by the Assessor as if the Facility were privately owned and subject to no exemption from Real Estate Taxes (i.e., the Taxable Equivalent Assessment).

(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 Facility Real Property during the term of this PILOT Agreement in amounts equivalent to the amount of Real Estate Taxes that would have been charged against the Facility Real Property if said Facility Real Property 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 for the period prior to the termination of this PILOT Agreement remaining unpaid as of 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. It should be noted that the Facility Real Property becomes fully taxable as of the date of termination and subject to all real property taxes for the balance of the applicable tax year.

(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 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 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 PILOT 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, Michaelian Office Building, 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 Facility Real Property shall be conveyed by the Agency to the Company (or to an entity designated by the Company) during the term, or upon the termination, of this PILOT Agreement, either at the request of the Company pursuant to Section 4.16 of the Project Agreement, a copy of which is annexed hereto as Exhibit A, or as a consequence of a default beyond applicable notice and cure periods by the Company under this PILOT Agreement or under one or more of the other Project Documents, then the obligations of the Company under this PILOT Agreement (including, without limitation, Section 3.2(a) hereof) shall terminate; provided, however, that the obligation to pay the PILOT Payments due for any period prior to the date of such termination shall survive

such termination, and the last PILOT Payment made or payable prior to the conveyance or termination date shall be reduced to reflect the apportionment of Real Estate Taxes as of the date of conveyance or lease termination. It should be noted that the Facility Real Property becomes fully taxable as of the date of termination and subject to all real property taxes for the balance of the applicable tax 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 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. 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) of the current parties to this PILOT Agreement.

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 and to any Notice Lender (as defined in Section 5.2), in the same manner and at the same time as if the Company was a taxpayer (or within fifteen calendar days thereof). 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 incurrence 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 direct or indirect 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 direct or indirect 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 direct or indirect 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 direct or indirect 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” or “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 (provided due notice of such amounts owing shall have been given as provided in Section 3.2(c) above), it being understood that an “Event of Default” shall not have occurred hereunder until such time as the applicable notice and cure periods under Section 5.2 shall have expired.

Section 5.2. Rights of Notice Lenders.

For the purposes of this PILOT Agreement, the term “mortgage” shall include any mortgage, leasehold mortgage, purchase money mortgage or other security instrument or instruments secured by the Project and used in the jurisdiction in which the Project is located,

such as, without limitation, mortgages, deeds of trust, mortgage deeds, security deeds and conditional deeds, as well as financing statements, assignments of leases, rents and/or profits, security agreements and other documentation which a lender may require, and the terms “holder of a mortgage” and “mortgagee” shall mean the secured party under any of the foregoing instruments (including the holders of any mortgage on all of the Company’s right, title and interest under this PILOT Agreement) or the prospective secured party if the instruments have not been delivered. Notwithstanding the foregoing, the term “mortgage” shall not include the PILOT Mortgage and the term “holder of a mortgage” and “mortgagee” shall not include a holder of the PILOT Mortgage or the mortgagee thereunder.

The Company and every successor and assignee of the Company is hereby given the right by the Agency in addition to any other rights herein granted, without any requirement to obtain the Agency’s consent, to grant a mortgage or a security interest in the Company’s interest in the Project Facility as provided in Project Agreement, the Project, the Company Lease, the Agency Sublease or this PILOT Agreement under one or more mortgages or security agreements and to assign its interest in this PILOT Agreement as collateral security for such mortgage(s), upon the conditions that all rights acquired under such mortgage(s) shall be subject to: (i) the prior lien of the PILOT Mortgage unless otherwise agreed by the Agency, (ii) each and all of the covenants, conditions and restrictions set forth in this PILOT Agreement, and (iii) all rights and interests of the Agency herein, none of which covenants, conditions and restrictions is or shall be waived by the Agency by reason of this right to mortgage or grant a security interest in the Company’s interest in this PILOT Agreement and the Project, except as expressly provided herein.

If, in accordance with the immediately preceding paragraph, the Company, with respect to all or a portion of the Project and/or the Company’s successors and assigns (including, without limitation, any lessee of the Company, but only with the Company’s prior written consent), shall mortgage or grant a security interest in the Company’s interest in this PILOT Agreement and the Project, and if the mortgagee shall send to the Agency and the City, School District and County (pursuant to the notice provisions of Section 6.6 herein) a true copy of its mortgage, together with written notice specifying the name and address of the mortgagee (a mortgagee giving such notice, a “Notice Lender”; the Permitted Mortgagee set forth under the Project Agreement shall be a Notice Lender), so long as such mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the holder to the Agency, the following provisions shall apply (in respect of such mortgage and of any other mortgages which also comply with the above):

(a) There shall be no renewal, cancellation (except upon the exercise of the Agency’s remedies for default by the Company hereunder), surrender, acceptance of surrender, material amendment or modification of this PILOT Agreement or the PILOT Mortgage, without the written consent of all Notice Lenders.

(b) In the event of any default by the Company under this PILOT Agreement or the PILOT Mortgage, the Notice Lender shall have thirty (30) days for a monetary default and sixty (60) days in the case of any other default, after notice to the Notice Lender of such default (which notice shall be given in the manner set forth in Section 6.6, below) to cure or to cause to be cured the default complained of, at Notice Lender’s sole discretion, and the Agency shall accept such performance by or at the instigation of such Notice Lender as if the same had been

done by the Company. In the event of a default or event of default which is not susceptible of cure by the Notice Lender, or which is not susceptible of cure by the Notice Lender without first obtaining possession of the Project Facility, the Notice Lender shall have a reasonable time after notice thereof (a) to obtain possession of the Project Facility (including, at such Notice Lender's option, possession by a receiver) and, in the case of a default or event of default susceptible of being cured by the Notice Lender, to cure such default after obtaining possession or (b) in the case of a default or event of default not susceptible of being so cured, to institute, prosecute and complete foreclosure proceedings or otherwise acquire the Company's interest under the Agency Sublease; provided, however, the Notice Lender shall not be obligated to continue such possession or to continue such foreclosure proceedings. Any default by the Company not susceptible of being cured by the Notice Lender shall be deemed to have been waived by the Agency upon completion of such foreclosure proceedings or upon such acquisition of the Company's interest in the Agency Sublease and this PILOT Agreement, it being understood and agreed that the Notice Lender, or its designee, or any purchaser in foreclosure proceedings (including, without limitation, a corporation formed by the Notice Lender) may become the legal owner and holder of the Company's interest under the Agency Sublease and this PILOT Agreement through such foreclosure proceedings or by assignment of Lessee's interest under the Agency Sublease and this PILOT Agreement in lieu of foreclosure. Each notice of default given by the Agency or any Municipality will state the amounts of any payments herein provided that are then claimed to be in default.

(c) The Notice Lender shall be given notice by the Agency and the Company of any litigation, arbitration or other proceeding or dispute by or between the parties hereto with respect to this PILOT Agreement, and shall have the right to intervene therein and be made a party to any such arbitration or other proceeding. In any event, the Notice Lender shall have the right to receive notice from the Agency and the Company of, and a copy of, any award or decision made in said arbitration or other proceeding, whether or not the Notice Lender intervened or became a party.

(d) The Company or any assignee of the Company shall cause the name of the Notice Lender to be added to the loss payable endorsement of any and all fire and other casualty insurance policies to be carried by the Company in respect of the Project, and all such policies shall state that the insurance proceeds are to be paid as provided in the mortgage. Any insurance proceeds in respect of the Project shall be paid in the manner specified in the mortgage. If more than one Notice Lender is named as an insured, the insurance proceeds will be paid to the Notice Lender whose mortgage is prior in lien among those so named.

(e) Any award or payment in condemnation or eminent domain in respect of the Project shall be paid to the Notice Lender to be applied in the manner specified in the mortgage. If more than one mortgage is in effect, the funds shall be paid to the Notice Lender whose mortgage is prior in lien among those in effect.

(f) No fire or casualty loss claims shall be settled and no agreement will be made in respect of any award or payments in condemnation or eminent domain except in accordance with the terms of the mortgage.

(g) Except after the Notice Lender has succeeded to the interest of the Company in the Project, no liability for any payments to be made pursuant to this PILOT Agreement or the performance of any other of the Company's covenants and agreements under this PILOT Agreement shall attach to or be imposed upon the Notice Lender, and if the Notice Lender or its nominee or designee succeeds to the interest of the Company in the Project, all of the obligations and liabilities of the Notice Lender or its nominee or designee shall be subject to the limitations of liability set forth in Article IV hereof and shall cease and terminate upon assignment of this PILOT Agreement and the Agency Sublease, or abandonment of the Project.

(h) No payment made by the Notice Lender shall constitute an agreement that such payment was, in fact, due under the terms of this PILOT Agreement; and the Notice Lender having made any payment to the Agency pursuant to the Agency's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof, provided it shall have made demand therefor not later than one year after the date of such payment and has demonstrated that such notice or demand was in fact wrongful, improper or mistaken.

(i) Notwithstanding any provision of this PILOT Agreement, the Project Agreement or the PILOT Mortgage to the contrary, foreclosure of a mortgage or any sale of a Company's interest in this PILOT Agreement and/or the Project in connection with a foreclosure, whether by judicial proceedings or by virtue of or in lieu of foreclosure or other appropriate proceedings, or any conveyance of a Company's interest in this PILOT Agreement and/or the Project by the Notice Lender or its nominee, and their respective successors and/or assigns, shall not require the consent or approval of the Agency.

(j) [Reserved].

(k) The Agency agrees to amend this PILOT Agreement to include any reasonable provisions requested by any Notice Lender with respect to "Rights of Lender" hereunder.

(l) The Company agrees to provide the Agency and each Municipality notice of any "mortgagee" and its address.

Section 5.3. Remedies on the Company's Default.

Subject to the rights of the Notice Lenders set forth herein, whenever any Event of Default under Section 5.1 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, subject to the rights of Notice Lenders set forth in Section 5.2 hereof 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.

Subject to the rights of the Notice Lenders set forth herein, whenever:

- (i) any Event of Default under Section 5.1 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, immediately with respect to (ii) above, and with respect to clauses (i) and (iii) above, upon ten (10) days' notice to the Company and the Notice Lenders, 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 Chairman 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.

(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 earlier of (i) subject to the terms of Section 3.2(f), the first date on which this PILOT Agreement has been terminated either at the request of the Company pursuant to Section 4.16 of the Project Agreement or as a consequence of a default beyond applicable notice and cure periods by the Company under this PILOT Agreement, or (ii) 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.

Section 6.2. [Omitted].

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 5.2(a) above and 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

Notice Lender(s) and 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 City, School District or County shall not withhold its consent to changes requested by a Notice Lender pursuant to Section 5.2. 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:

(a) If to the Agency:

County of Westchester Industrial Development Agency
Michaelian Office Building
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.

(b) If to the Company:

1133 Westchester Avenue LLC
1228 Euclid Avenue, 4th Floor
Cleveland, Ohio 44115
Attention: Noam Magence

With a copy to:

Zarin & Steinmetz
81 Main Street, Suite 415
White Plains, New York 10601
Attention: Michael D. Zarin, Esq.

And with a copy to:

1133 Westchester Avenue LLC
c/o AIG Global Real Estate Investment Corp.
80 Pine Street, 4th Floor
New York, NY 10005
Attention: John Mallinson

(c) If to the City:

City of White Plains
Municipal Building
255 Main Street
White Plains, New York 10601
Attn: Corporation Counsel

(d) If to the School District:

White Plains City School District
Municipal Building
5 Homeside Lane
White Plains, New York 10605
Attn: Superintendent

(e) 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

(f) If to Notice Lender:

Santander Bank, N.A.
45 East 53rd Street, 10th Floor
New York, New York 10022
Attention: Michael Corbett, Senior Vice President
Email Address: mcorbett@santander.us

With a copy to:

Goulston & Storrs
885 Third Avenue, 18th Floor
New York, New York 10022
Attention: Stephen Schweiger, Esq.
Email: sschweiger@goulstonstorrs.com

Failure of the Agency to provide notice to the Notice Lender shall not subject the Agency to any liability whatsoever.

The Agency, the Company, the City, School District, the County and the Notice Lender(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 PILOT Agreement by telecopy, provided that the recipient party consents 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, the Notice Lender(s) 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.

Section 6.10. Applicable Law.

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

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 and Notice Lenders as Third Party Beneficiaries.

The City, the School District, the County and the Notice Lender(s) 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, the County and the Notice Lender(s) 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. Consent to Assignment.

In addition to any other rights granted herein, the Company may, upon the written consent of the Notice Lender(s) (if required by any document to which the Company and the Notice Lender are parties), (i) assign its respective rights and obligations hereunder to any Affiliate (as

defined in the Project Agreement) of the Company and (ii) otherwise assign its respective rights and objections hereunder with the written consent of the Agency (such consent not to be unreasonably withheld). Notwithstanding the foregoing to the contrary, written consent of the Agency shall not be required for any assignment of the Company's rights and obligations under this PILOT Agreement to a transferee in connection with a Permitted Transfer.

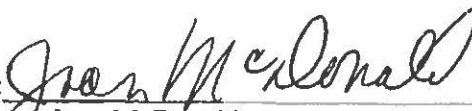
Within fifteen (15) days after the written request of the Company, the Company, City and Agency shall certify by a written instrument, duly executed and acknowledged, to any purchaser or proposed purchaser, or mortgagee or proposed mortgagee, or any other party specified in the request: (i) whether this PILOT Agreement has been supplemented or amended, and if so, the nature of the supplement or amendment; (ii) to such party's actual knowledge, whether there exists any default under this PILOT Agreement, and if so, a description of that default; (iii) to such party's actual knowledge, whether there exists any offset, defense or counterclaim on the part of the certifying party as to the performance of its obligations under this PILOT Agreement, and if so, a description of the nature and amount of any such offset, defense or counterclaim; (iv) the amount of any PILOT Payments and unpaid PILOT Payments hereunder; and (v) such other matters as may reasonably be requested.

[Signatures appear on the following page.]

[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 ___ day of June, 2020.

COUNTY OF WESTCHESTER INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Name: Joan McDonald
Title: Chairperson

1133 WESTCHESTER AVENUE LLC

By: _____
Name: Noam Magence
Title: Authorized Signatory

ACKNOWLEDGED BY:

CITY OF WHITE PLAINS

By: _____
Name:
Title:

[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 ___ day of June 2020.

COUNTY OF WESTCHESTER INDUSTRIAL
DEVELOPMENT AGENCY

By: _____

Name: Joan McDonald

Title: Chairperson

1133 WESTCHESTER AVENUE LLC

By: _____

Name: Noam Magence

Title: Authorized Signatory

ACKNOWLEDGED BY:

CITY OF WHITE PLAINS

By: _____

Name:

Title:

[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 ___ day of June, 2020.

COUNTY OF WESTCHESTER INDUSTRIAL
DEVELOPMENT AGENCY

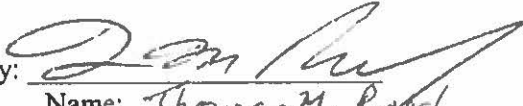
By: _____
Name: Joan McDonald
Title: Chairperson

1133 WESTCHESTER AVENUE LLC

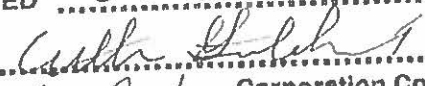
By: _____
Name: Noam Magence
Title: Authorized Signatory

ACKNOWLEDGED BY:

CITY OF WHITE PLAINS

By: 
Name: Thomas M. Rauch
Title: Mayor

APPROVED AS TO FORM

DATED 6/23/2020

Sr. Asst Corporation Counsel

Acknowledgments

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

ANDREW J. FERRIS
NOTARY PUBLIC-STATE OF NEW YORK
No. 01FE6304818
Qualified in Westchester County
My Commission Expires June 02, ~~2018~~
2022

On the 22nd day of June, in the year 2020, 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 OHIO)
) ss.:
COUNTY OF CUYAHOGA)

On the ___ day of June, in the year 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared Noam Magence, in his capacity as Authorized Signatory of 1133 Westchester Avenue LLC, 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 as Authorized Signatory of 1133 Westchester Avenue LLC, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

This is an acknowledgment certificate; no oath or affirmation was administered to the signer with regard to this notarial act.

Notary Public

SCHEDULE A

REAL PROPERTY DESCRIPTION

19.242 acre parcel denominated as Lot 2 on the subdivision map entitled "Minor Subdivision Map, 1133 Westchester Avenue, LLC, 1133 Westchester Avenue, Lot 1.1, Block 1, Section 131.20, City of White Plains, Westchester County, State of New York". Tax lot number of said property: Section 131.20, Block 1, Lot 1.12.

SCHEDULE B

**DETERMINATION OF
PAYMENTS IN LIEU OF TAXES**

Project: 1133 Westchester Avenue LLC
SBL: 131.20-1-1.12
Description: 303 Apartments / 476 Parking Spaces

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.

		Fixed PILOT Assessment
2020	Year 1	\$375,000
2021	Year 2	\$375,000
2022	Year 3	\$375,000
2023	Year 4	\$550,000
2024	Year 5	\$650,000
2025	Year 6	\$750,000
2026	Year 7	\$825,000
2027	Year 8	\$925,000
2028	Year 9	\$1,100,000
2029	Year 10	\$1,275,000
2030	Year 11	\$1,450,000
2031	Year 12	\$1,550,000
2032	Year 13	\$1,600,000
2033	Year 14	\$1,700,000
2034	Year 15	\$1,800,000

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

For the avoidance of doubt, the parties acknowledge and agree that the PILOT Payments for the final Year 15 (calculated using the Fixed PILOT Assessment for Year 15 set forth in Schedule B above) shall be (i) in the case of PILOT Payments for the benefit of the County, for the period from January 1, 2034 through December 31, 2034, and (ii) in the case of PILOT Payments for the benefit of the City and the School District, for the period from July 1, 2034 through June 30, 2035.

EXHIBIT A

SECTION 4.16 OF THE PROJECT AGREEMENT

SECTION 4.16: Termination.

(a) Option to Terminate.

(1) Subject to the terms and conditions hereinafter set forth, the Company shall have the option to terminate this Agreement at any time. The Company shall exercise such option by delivering to the Agency a written notice of an Authorized Representative of the Company to an Authorized Representative of the Agency stating that the Company has elected to exercise its option under this Section 4.16(a) and the date (the "**Termination Effective Date**") on which such termination is to be effective and the payment required under Section 4.16(a)(2) is to be made.

(2) Upon the termination of this Agreement by the Agency pursuant to Section 3.2(a) above, or upon the termination of this Agreement by the Company pursuant to this Section 4.16(a), on the Termination Effective Date: (A) the Agency shall sell and convey, and the Company shall purchase, the Agency's interest in the Project Equipment for a purchase price of one dollar (\$1.00); (B) the Company shall pay to the Agency any and all amounts due from the Company hereunder by reason of such termination or otherwise; and (C) this Agreement and the other Project Documents shall automatically terminate. This Section 4.16(a)(2) shall survive termination of this Agreement.

(b) Conveyance on Termination. Upon the termination of this Agreement for any reason, or upon the expiration of this Agreement on the Project Expiration Date (as hereinafter defined), the Agency will deliver or cause to be delivered to the Company all necessary documents conveying to the Company all of the Agency's right, title and interest in and to the Facility Realty and the Project Equipment, and evidencing the termination of the Project Documents, which delivery obligation shall survive the termination of this Agreement.

(c) Expenses of the Agency. The Company shall pay the reasonable expenses of the Agency, including any reasonable fees and disbursements incurred by the Agency's Project Counsel and/or the Agency's general counsel, in connection with the transactions contemplated under this Section 4.16.

(d) Survival of Company's Obligations. Upon conveyance of the Agency's interest in the Facility Realty and the Project Equipment pursuant to this Section, this Agreement and all obligations of the Company hereunder shall be terminated, other than its obligations under Sections 2.2(f), 2.3, 2.4, 2.5, 3.4 and 4.7 hereof, which shall survive such termination.