

PROJECT AGREEMENT

THIS PROJECT AGREEMENT (hereinafter, the "Agreement"), effective as of December 17, 2020 by and between the COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL DEVELOPMENT AGENCY (the "Agency"), a public benefit corporation of the State of New York having an address of 5 Warren Street, Glens Falls, New York 12801 and GLENS FALLS JV REDEVELOPMENT PARTNERS, L.P., a limited partnership established pursuant to the laws of the State of New York, having an address of 480 Bedford Road, Chappaqua, New York 10514 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 862 of the Laws of 1971 of the State of New York and pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") is a body corporate and politic and a public benefit corporation of the State of New York; and

WHEREAS, the Company is requesting the Agency's assistance with respect to a certain project (the "Project") consisting of: (i) the acquisition by the Agency of a certain machinery, equipment, furnishings, fixtures and other items of tangible personal property (the "Larose Equipment") to be used in connection with the demolition and new construction of the real property located at 31 Larose Street in the City of Glens Falls, County of Warren, New York (TMP: 309.7-12-19) and commonly known as Larose Gardens, which shall consist of the redevelopment of a 50 unit family development into 54 new family units with a free standing clubhouse pursuant to a HUD Section 18 disposition (the "Larose Improvements"); (ii) the acquisition by the Agency of a certain machinery, equipment, furnishings, fixtures and other items of tangible personal property (the "Towers Equipment" and, together with the Larose Equipment, the "Equipment") to be used in connection with the renovation and redevelopment of the real properties located at: (a) 43 Ridge Street in the City of Glens Falls, County of Warren, New York (TMP: 303.17-16-3.1) and commonly known as Cronin Tower; (b) 23 Jay Street in the City of Glens Falls, County of Warren, New York (TMP: 310.5-2-1) and commonly known as Stichman Tower and (c) 1 St. Pauls Drive, 17 Wall Street and 19 Wall Street in the Town of Kingsbury, Village of Hudson Falls, County of Washington, New York (TMP: 154.9-6-1.2, 154.9-6-5 and 154.9-6-4.2) and commonly known as Earl Tower (said three real properties being hereinafter referred to as the "Towers"), which shall consist of the rehabilitation of 256 units of senior housing resulting in a total of 259 units pursuant to the HUD Rental Assistance Demonstration (RAD) program (the "Towers Improvements" and, together with the Larose Improvements, the "Improvements"); (iii) the acquisition of and installation in and around the aforementioned real properties by the Company of the Equipment (the Equipment, together with the aforementioned real properties and the Improvements, being hereinafter referred to as the "Facility"); and (iv) entering into a lease transaction (within the meaning of subdivision (15) of Section 854 of the Act) with respect to the Equipment, pursuant to which the Agency will retain a leasehold interest in the Equipment for a period of time and sublease such interest in the Equipment back to the Company (the "Equipment Lease Transaction"), all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 862 of the Laws of 1971 of the State of New York (collectively, the "Act"), as amended;

WHEREAS, on December 11, 2020, the Agency conducted a public hearing pursuant to the Act prior to taking official action relating to the Project; and

WHEREAS, on December 11, 2020, the Agency adopted a resolution approving the undertaking of the Project, appointing Glens Falls JV Redevelopment Partners, L.P., agent of the Agency for the purpose of constructing and equipping the Project Facility and authorized the execution and delivery of closing documents by and between the parties (collectively referred to as the "Approval and Closing Resolution"); and

WHEREAS, by the Approval and Closing Resolution, the Agency has conferred on the Company in connection with the Project certain benefits, exemptions and other financial assistance consisting of: (a) an exemption benefit from all New York State and local sales and use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction or equipping of the Facility (the "Financial Assistance"); and

WHEREAS, it has been estimated and confirmed by the Company as included within its Application for Financial Assistance that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$22,176,000.00 and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$1,552,320.00, unless otherwise approved by the Agency; and

WHEREAS, in order to define the obligations of the Company regarding its ability to utilize the Agency's sales and use tax exemption benefit as agent of the Agency to acquire, construct, renovate and equip the Facility and to undertake the Project, the Agency and the Company entered into an Agent and Equipment Lease Agreement, dated as of December 11, 2020 (the "Agent and Equipment Lease Agreement"), by and between the Agency and the Company; and

WHEREAS, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the Approval and Closing Resolutions and the Agent and Equipment Lease Agreement, that the Company provide assurances with respect to the terms and conditions herein set forth; and

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

WHEREAS, no Financial Assistance shall be provided to the Company prior to the effective date of this Agreement.

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

1. Purpose of Project. It is understood and agreed by the parties hereto that the purpose of the Agency's provision of Financial Assistance with respect to the Project is to, and that the Agency is entering into the Agent and Equipment Lease Agreement in order to promote,

develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project Facility to advance job opportunities, health, general prosperity and economic welfare of the people of the Counties of Warren and Washington and to otherwise accomplish the public purpose of the Act.

2. This section is intentionally left blank.

3. Termination, Modification and/or Recapture of Agency Financial Assistance.

(a) It is understood and agreed by the Parties hereto that the Agency is entering into the Agent and Equipment Lease Agreement in order to provide Financial Assistance to the Company for the Facility and to accomplish the public purposes of the Act. The Company hereby covenants and agrees that it may be subject to a Recapture Event (as hereinafter defined) resulting in the potential recapture of any and all Financial Assistance, as set forth in the Agent and Equipment Lease Agreement.

(b) The term "Recapture Event" shall mean any of the following events:

(1) The Company shall have liquidated its operations and/or assets (absent a showing of extreme hardship);

(2) The Company shall have ceased all or a material part of its operations at the Project Facility (whether by relocation to another facility or otherwise unless such facility is located in Counties of Warren and Washington);

(3) The Company shall have affected a material change in the manner, scope, purpose or nature of the operations of the Company at the Project Facility;

(4) The Company shall have subleased all or any portion of the Project Facility in violation of the limitations imposed by this Agreement, without the prior written consent of the Agency, not to be unreasonably withheld or conditioned, other than subleases to residential tenants of the Project, cell carriers and a laundry lease;

(5) The Company shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Project Equipment; or

(6) The Company fails to comply with annual reporting requirements, as required by the Agency within thirty (30) days after notice from the Agency.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct, immediate result of (i) a transfer of the Company's operations at the Project Facility to another facility within the Counties of Warren or Washington due to the inability of the Project Facility to accommodate expansion or growth of the operations or innovations or other changes reasonably necessary to preserve the competitive position of the Company in its industry, or (ii) a taking or condemnation by governmental authority of all or substantially all of the Project Facility, or (iii) the inability at law of the Company after the Project Facility shall have been destroyed or damaged in whole or in part (such occurrence a "Loss Event") to rebuild, repair, restore or replace the Project Facility

to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Company or any Affiliate.

(c) In accordance with the Approval and Closing Resolution the Company further: (i) covenants that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$22,176,000.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 3 of this Project Agreement, cannot exceed \$1,552,320.00, unless otherwise increased by the approval of the Agency.

(c) The Company acknowledges and understands that a Recapture Event determination made with respect to Section 3 of this Project Agreement will, in addition, immediately result in the loss and forfeiture of the Company's right and ability to obtain any and all future Financial Assistance with respect to the Project.

4. Survival. All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Agreement to the Agency regardless of any investigation made by the Agency.

5. Notices. All notices, certificates and other communications under this Agreement shall be in writing and shall be deemed given when delivered personally or when sent by certified mail, postage prepaid, return receipt requested, or by Federal Express, addressed as follows or to such other address as any party may specify in writing to the other:

To the Agency:

Counties of Warren and Washington
Industrial Development Agency
5 Warren Street
Glens Falls, New York 12801
Attention: David O'Brien, Chairman

With Copy to:

FitzGerald Morris Baker Firth P.C.
P.O. Box 2017
68 Warren Street
Glens Falls, New York 12801-2017
Attention: Kara I. Lais, Esq.

To the Company:

Glens Falls JV Redevelopment Partners, L.P.
480 Bedford Road
Chappaqua, New York 10514
Attention: William G. Balter

With Copy to:

City of Glens Falls Housing Authority
23 Jay Street
Glens Falls, New York
Attention: Executive Director

Cuddy & Feder LLP
445 Hamilton Avenue
14th Floor
White Plains, New York 10601
Attention: Kenneth F. Jurist, Esq.

6. Amendments. No amendment, change, modification, alteration or termination of this Agreement shall be made except in writing upon the written consent of the Company and the Agency.

7. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement or the application thereof shall not affect the validity or enforceability of the remaining portions of this Agreement or any part thereof.

8. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State, without regard or reference to its conflict of laws principles.

9. Section Headings. The headings of the several Sections in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Agreement.


{Signature Page to Follow}

IN WITNESS WHEREOF, the Counties of Warren and Washington Industrial Development Agency and the Company have caused this Project Agreement to be effective as of the date first above written.

GLENS FALLS JV REDEVELOPMENT PARTNERS, L.P.

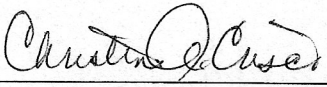
By: Glens Falls JV Redevelopment Partners Manager, LLC, its Managing General Partner

By: WB/DB LLC, its Managing Member

By: 
William G. Balter
Authorized Signatory

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

On the 10th day of December in the year 2020, before me, the undersigned, personally appeared, William, G. Balter 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

Christine A. Crisci
Notary Public, State of New York
LIC # 01CR6365109
Qualified in Westchester County
Comm. Exp. September 25, 2021

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

William G. Balter, being first duly sworn, deposes and says:

1. That I am an authorized representative of WB/DB LLC the Managing Member of Glens Falls JV Redevelopment Partners Manager, LLC, the Managing General Partner of Glens Falls JV Redevelopment Partners, L.P. and that I am duly authorized on behalf of the Company to bind the Company and to execute this Agreement.
2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.



William G. Balter

Subscribed and affirmed to me under penalties of perjury
this 16th day of December, 2020.



(Notary Public)

Christine A. Crisci
Notary Public, State of New York
LIC # 01CR6365109
Qualified in Westchester County
Comm. Exp. September 25, 2021