

PROJECT AND AGENT AGREEMENT

THIS PROJECT AND AGENT AGREEMENT, made as of the 26th day of November, 2019, is by and between the TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its offices at 6122 South Park Avenue, Hamburg, New York 14075 (the "Agency") and THE OAKS AT SOUTH PARK LLC, a limited liability company duly formed under the laws of the State of New York having offices at 5360 Genesee Street, Suite 201, Bowmansville, New York 14026 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 784 of the Laws of 1986 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project consisting of the acquisition by the Lessee of an approximately 27 acre parcel of land located at 5138 South Park Avenue in the Town of Hamburg, the construction by the Lessee, as agent for the Agency (i) the adaptive re-use of a former school building and re-development the parcel of land for construction of 19 two-story buildings totaling 152 housing units and (ii) installation of baseball and softball fields and other amenities and the acquisition and installation of machinery, equipment, furnishings and fixtures by the Lessee, as agent for the Agency, all for a residential housing complex with additional services (the "Project"). The project will be leased by the Lessee to the Agency for sublease back to the Lessee for sub-sublease to residential tenants which will be the occupants of the project (the real property, the improvements constructed thereon and the equipment acquired and installed in connection with the Project are referred to as the "Facility"); and

WHEREAS, by Resolution adopted on June 25, 2019 (the "Resolution"), the Agency conferred on the Company in connection with the Project certain benefits, exemptions and other financial assistance consisting of: (insert as/if applicable) (a) an exemption from all New York State and local sale and use taxes for purchases incorporated into the Facility or used in the acquisition, construction and equipping of the Facility, (b) an exemption benefit from the mortgage recording tax, and (c) a partial abatement from real property taxes benefit through the year 2028 "payment in lieu of taxes agreement" with the Company for the benefit of each municipality and school district having jurisdiction over the Project, (collectively, the sales and use tax exemption benefit, the mortgage recording tax benefit, and the partial abatement from real property taxes benefit, are hereafter collectively referred to as the "Financial Assistance"); and

WHEREAS, it has been estimated and confirmed by the Company as included within its Application for Financial Assistance (i) that the purchase of goods and services related to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$10,000,000.00, and, therefore, the value of the sales and use tax exemption benefits

authorized and approved by the Agency cannot exceed \$875,000.00, (ii) that the mortgage recording tax exemption amount shall be not more than \$260,000.00, and (ii) that the real property tax abatement benefits to be provided to the Company over the seven (7) year benefit period of the anticipated payment in lieu of tax agreement are estimated to be approximately \$3,828,836.00; and

WHEREAS, the Company proposes to lease the Facility to the Agency, and the Agency desires to rent the Facility from the Company pursuant to the terms of a certain Lease to Agency Agreement dated as of November 1, 2019 (the "Lease Agreement"), by and between the Company and the Agency; and

WHEREAS, the Agency proposes to sublease the Facility to the Company and the Company desires to rent the Facility from the Agency, upon the terms and conditions set forth in a certain Leaseback Agreement dated as of November 1, 2019 (the "Leaseback Agreement"); and

WHEREAS, in order to define the obligations of the Company regarding payments-in-lieu-of-taxes for the Facility, the Agency and the Company will enter into a Payment-in-Lieu-of Tax Agreement, dated as of November 1, 2019 (the "PILOT Agreement"), by and between the Agency and the Company; and

WHEREAS, 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 are hereafter set for in the Project Agreement; and

WHEREAS, the Agency requires as a condition and as an inducement for it to enter into the transactions contemplated by the Resolution, 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; and

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 the 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 Lease Agreement, the Leaseback Agreement and the PILOT Agreement in order to promote, develop, encourage and assist in the acquiring, construction, 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 Town of Hamburg and to otherwise accomplish the public purpose of the Act.

2. PILOT Agreement. The Parties hereto understand and agree that **Exhibit A** to this Agreement contains a copy of the PILOT Agreement to be entered into, or entered into, by and between the Company and the Agency.

3. Termination, Modification and/or Recapture of Agency Financial Assistance. It is understood and agreed by the Parties hereto that the Agency is entering into the Lease Agreement, the Leaseback Agreement and the PILOT 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 makes the following representations and covenants in order to induce the Agency to proceed with the Project/Facility which are deemed to be material factors (the "Material Factors").

- (i) the Company agrees to construct/re-develop 19 two-story buildings (the "Construction Commitment").
- (ii) the Company agrees to expend the sum of \$28,700,000.00 towards the acquisition, construction and installation of the Project (the "Investment Commitment").
- (iii) the Company agrees to hire 5 FT and 2 PT employees (the "Employment Commitment").
- (iv) the Company agrees to follow the Agency Local Labor Policy during construction of the Facility (the "Local Labor Commitment").
- (v) the Company agrees that it will occupy the Facility and utilize the Facility as a residential housing complex facility (the "Project Use Commitment").
- (vi) the Company agree that it will comply with the requirements of the Agency to provide annually to the Agency certain information to confirm that the Project is achieving the investment, job retention, job creation and other objectives of the Project (the Project Reporting Requirements of the Agency (the "Project Reporting Commitment").
- (vii) the Company agrees to make the payment-in-lieu-of taxes to the municipalities within the time frame required (the "Payment-in-Lieu-of-Taxes Commitment").
- (viii) the Company agrees to maintain the insurance requirements as required in connection with this Agreement and the Leaseback Agreement and to provide copies to the Agency as required herein (the "Insurance Commitment").

(a) In accordance with Section 875(3) of the New York State General Municipal Law, the policies of the Agency and the Resolution, the Company covenants and agrees that it may be subject to a Recapture Event Determination (as hereinafter defined) resulting in the potential recapture of any and all Financial Assistance from the Agency, if it is determined by the Agency that:

- (1) the Company or its Subagents, if any, authorized to make purchases for the benefit of the Project is not entitled to the sales and use tax exemption benefits; or
- (2) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company or its Subagents, if any; or

(3) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or

(4) the Company has made a material false or misleading statement, or omitted any information which, if included, would have rendered any information in the application or supporting documents false or misleading in any material respect, on its application for Financial Assistance.

(5) The parties agree that the Company shall be required to meet the Construction Commitment, the Investment Commitment and the Local Labor Commitment threshold by December 1, 2020 (the "Project Completion Date") and to meet the Employment Commitment threshold within two years following the Project Completion Date and maintain such employment for a one calendar following the calendar year when the Employment Commitment threshold is met (the period following the achieving of the Employment Commitment threshold and the one year period following being defined as the "Material Terms and Conditions Monitoring Period").

(a) Construction Commitment-the Company must construct the Project substantially in accordance with the provisions of the Company's application for financial assistance but may be subject to modifications as long as the Facility as constructed meets the needs of the Company.

(b) Investment Commitment, the total investment actually made with respect to the Project at the Project Completion Date must equal 85% of the project cost as set forth in the application for Financial Assistance. The Company shall have the right to establish that it did not meet the requirements due to cost savings achieved by the Company and that the benefits that the Company has received have been reduced proportionately in accordance with the reduction in investment.

(c) Employment Commitment-that there will be at least seven (5) FT and (2) PT employees located at, or to be located at the Facility as stated in the Company's application for Financial Assistance (the "Baseline FTE") and if the Company fails to maintain employment at 85% of the total of the Baseline FTE and new FTE. The Company shall have the right to establish that the failure to comply with the Employment Commitment was due to circumstances beyond their control.

(d) Local Labor Commitment-that the Company adheres to and undertakes or has undertaken construction activities in compliance with the Agency's Local Labor Workforce Policy.

(e) Project Reporting Commitment-that the Company must supply the information required by this Agreement to allow the Agency to evaluate whether the Company is in compliance with the requirements of this Agreement. The reporting requirements are set forth in paragraph 4.

(b) **Termination or Modification of Benefits.** In addition to the recapture provisions as set forth in 3. (a) above, the Agency reserves the right to terminate the Lease Agreement and Leaseback Agreement and end the Payment-in-Lieu-of Tax benefits to the Company if the Company fails to comply with the Project Use Commitment, the Project Reporting Commitment, the Payment-in-Lieu-of-Taxes Commitment and the Insurance Commitment. In the event that it is determined that based upon the number of employees created or retained, the Company would have been eligible for Financial Assistance but for a less generous Payment-in-Lieu-of-Tax provision, the Agency reserves the right to modify the benefits to reduce the benefits to the benefits that would have been available based upon the actual employment numbers.

In Company acknowledges and understands that a Recapture Event Determination made with respect to Section 3(a)(4) of this Agreement, will, in addition to requiring the repayment of benefits, 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. **Project Reporting Requirements.** The Company shall comply with the provisions of Section 6 (j) and (k) as set forth hereafter with respect to the filing of NYS Forms ST-340 and ST-123.

The Company shall provide annually, to the Agency a certified statement and documentation: (i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance, by category, including full time equivalent independent contractors or employees of independent contracts that work at the Project location, and (ii) indicating the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. **Exhibit B** contains the form of annual certification as so required as discuss above as well as additional Project assessment information that the Agency requires on an annual basis to be submitted to the Agency by the Company.

The findings made by the Agency with respect to Section 3 (a) (1), (2), (3) and/or (4) and/or the failure to provide written confirmation as required by Section 3(a)(5) with respect to the threshold and requirements as identified in Section 3(a)(5) above, may potentially be determined by the Agency, in accordance with the Town of Hamburg Industrial Development Agency Policy for Recapture, Termination and/or Modification of Financial Assistance or other procedure that provides for the suspension or discontinuance of Financial Assistance or for the modification of any PILOT to require increased payment in accordance with the policies developed by the Town of Hamburg Industrial Development Agency.

5. **Scope of Agency.** The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Resolution to acts reasonably related to the following: the acquisition by the Lessee of an approximately 27 acre parcel of land located at 5138 South Park Avenue in the Town of Hamburg, the construction by the Lessee, as agent for the Agency (i) the adaptive re-use of a former school building and re-development the parcel of land for construction of 19 two-story buildings totaling 152 housing units and (ii) installation of baseball

and softball fields and other amenities and the acquisition and installation of machinery, equipment, furnishings and fixtures by the Lessee, as agent for the Agency, all for a residential housing complex with additional services (the "Project"). The right of the Company to act as agent of the Agency shall expire on June 25, 2020, unless extended as contemplated by the Resolution. The aggregate amount of work performed as Agent for the Agency shall not exceed the amounts described in the Application of the Company in this matter. All contracts entered into by the Company as agent for the Agency shall include the language set forth in **Exhibit C**.

6. Representations and Covenants of the Company. The Company makes the following representations and covenants in order to induce the Agency to proceed with the Project:

(a) The Company is a Limited Liability Company duly formed and validly existing under the laws of the State of New York and duly qualified and authorized to conduct business in New York State (the "State"), has the authority to enter into this Agreement and has duly authorized the execution and delivery of this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The Facility and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (c).

(d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Agreement.

(e) The Company covenants that the Facility will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that no underground storage tanks will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is

threatened, anticipated, or in existence. The Company upon receiving any information or notice contrary to the representations contained in this Section shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents (except the Company), representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, the Company agrees to pay the expenses of same to the Agency upon demand, and agrees that upon failure to do so, its obligation for such expenses shall be deemed to be additional rent.

(f) Any personal property acquired by the Company in the name of the Agency shall be located in the Town of Hamburg, New York, except for temporary periods during ordinary use.

(g) In accordance with Section 875(3) of the New York General Municipal Law, the Company covenants and agrees that, if it receives New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") from the Agency, and it is determined that: (i) the Company is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the sales and use tax exemption benefits are taken in cases where the Company fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project, then the Company will (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands in connection therewith. The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine New York State and local sales and use taxes due from the Company, together with any relevant penalties and interest due on such amounts.

(h) The Company further covenants and agrees 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 the amount up to \$10,000,000.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$875,000.00.

(i) The Agency following the adoption of the Inducement Resolution and the entry into by the parties of this Project Agreement will complete and forward to the State Department of Taxation and Finance the "IDA Appointment of Project Operator or Agent For Sales Tax Purposes" (NYS Form ST-60) for the Project.

(j) The Company further covenants and agrees to file an annual statement with the State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (NYS Form ST-340) regarding the value of sales and use tax exemptions the Company, its agents, subagents, consultants or subcontractors have claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with General Municipal Law Section 874(8). The Company further covenants and agrees that it will, within thirty (30) days of each filing, provide a copy of same to the Agency; provided, however, in no event later than February 15th of each year. The Company understands and agrees that the failure to file such annual statement will result in the removal of the Company's authority to act as agent for the Agency.

(k) The Company acknowledges and agrees that all purchases made in furtherance of the Project shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (NYS Form ST-123, a copy of which is attached hereto as **Exhibit D**, and it shall be the responsibility of the Company (and not the Agency) to complete NYS Form ST-123. The Company acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Company acknowledges and agrees that the purchase invoice should state, **"I, certify that I am a duly appointed representative of The Oaks at South Park LLC, a duly appointed agent of the Town of Hamburg Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the following IDA project located at 5138 South Park Avenue, Hamburg, IDA Project Number "1405-19-01A" and that such purchases qualify as exempt from sales and use taxes under my agent agreement with the Town of Hamburg Industrial Development Agency."** For convenience purposes, in the instance where the vendor does not print on each invoice the acknowledgment as described above, an "Invoice Rider" (a copy of which is attached hereto as **Exhibit E** can be utilized for record keeping purposes).

The Company further acknowledges and agrees that the following information shall be used by the Company to identify the Project on each bill and invoice: "the name of the Project, the street address of the Project site, and IDA project number." Until the Project is completed, the Company will forward to the Agency on a semi-annual basis commencing six months following the adoption of the Inducement Resolution by the Agency, a listing of all vendors, costs of purchases and estimated sales/use tax for each vendor. A listing of vendors is attached as **Exhibit F**. The Company will also forward to the Agency all Form ST-123's issued by the Company to sellers to the Agency within 30 days following the issuance of the Form ST-123 by the Company.

(l) The Company acknowledges and agrees that, except to the extent of bond proceeds (to the extent bonds are issued by the Agency with respect to the Project), the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder.

7. Hold Harmless Provision. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the

Agency and its executive director, directors, officers, members employees, agents (except the Company), representatives, successors and assigns harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation, or the use thereof or the presence on, in or about the Facility or breach by the Company of this Agreement or (ii) liability arising from or expense incurred by the Agency's financing, acquiring, rehabilitating, constructing, renovation, equipping, owning and leasing of the Equipment or the Facility, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, officers, agents (except the Company) or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified.

8. Insurance Required. Effective as of the date hereof and until the expiration or termination of the right of the Company to act as agent of the Agency hereunder, the Company shall maintain, or cause to be maintained by its subagent or subcontractors, certain insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type, and paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) (i) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company or (ii) as an alternative to the above requirements (including the requirement of periodic appraisal), the Company may insure the Facility under a blanket insurance policy or policies covering not only the Facility but other properties as well. Such insurance shall have a commercially reasonable deductible.

(b) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Facility.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$5,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$5,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workers' compensation law.

9. Additional Provisions Respecting Insurance. (a) All insurance required by Section 4 hereof shall name the Agency as an additional insured, as its interest may appear. All

insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with commercially reasonable deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Company and the Agency as their respective interest may appear, and (ii) at least thirty (30) days prior written notice of the cancellation thereof to the Company and the Agency, except in the event of non-payment, in which at least ten (10) days prior written notice of the cancellation shall be delivered to the Company and the Agency. All insurance requirements in Section 4 may be satisfied by blanket policies subject to the reasonable approval by the Agency; provided, however, that approval or acceptance by a commercial lender (if any) in connection with the financing of the Project shall not require approval by the Agency. All or some of Section 4 insurance requirements may be satisfied by an Owner Controlled Insurance Program ("OCIP") subject to approval by the Agency; provided, however, that approval or acceptance by a commercial lender in connection with the financing of the Project shall not require approval by the Agency.

(b) All such policies of insurance, or a certificate or certificates of insurance that such insurance is in force and effect, shall be deposited with the Agency on the date hereof. Prior to expiration of any such policy, the Company shall furnish evidence to the Agency that the policy has been renewed or replaced or is no longer required by this Agreement.

10. 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.

11. Counterparts. This Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

12. Notices. All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Agency: TOWN OF HAMURG INDUSTRIAL DEVELOPMENT AGENCY
6100 South Park Avenue
Hamburg, New York 14075
Attention: Sean Doyle, Executive Director

NEILL & STRONG ATTORNEYS and COUNSELORS P.C.
13166 Main Street
Alden, New York 14004
Attention: Jennifer L. Strong, Esq.

To the Company: THE OAKS AT SOUTH PARK LLC
5138 South Park Avenue

Hamburg, New York 14075
Attention: Anthony Cutaia

With Copy To: RANE PROPERTY MANAGEMENT LLC
Elise Hake
Director of Finance
5360 Genesee Street, Suite 201
Bowmansville, NY 14026

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when received or delivery of same is refused by the recipient or personally delivered in the manner provided in this Section.

13. Future Agreements. The parties are contemplating that the Agency will negotiate and enter into Lease to Agency (the "Lease to Agency") and a Leaseback Agreement (the "Leaseback Agreement") with the Company, which Leaseback Agreement and will provide for Payment-in-Lieu-of-Taxes as attached as Schedule A. in connection with the original construction and equipping of a data center facility and an Mortgage (the "Mortgage") in connection with the acquisition and installation of the Project. At any time prior to the execution of the Lease to Agency and the Leaseback Agreement, the Agency can transfer title to the Company of all assets acquired by the Company as agent for the Agency. Additionally, at any time prior to execution of the Lease to Agency and the Leaseback Agreement, the Company can demand that the Agency transfer title to the Company with respect to all assets acquired by the Company as agent for the Agency, provided all amounts owed the Agency have been paid current and the Agency shall transfer title to such assets to the Company by a bill of sale.

14. Agreement to Pay Agency Fees and Expenses. By executing this Project Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Agency for (i) legal services in connection with the Project, including but not limited to those provided by the Agency's Counsel, and (ii) other consultants retained by the Agency in connection with the Project; with all such charges to be paid by the Company at the closing or, if the closing does not occur, within ten (10) business days of receipt of the Agency's invoices therefore. The Company is entitled to receive a written estimate of fees and costs of the Agency's Counsel in accordance with the fee schedule of the Agency.

The Company further covenants and agrees that the Company is liable for payment to the Agency of all charges referred to above, as well as all other actual costs and expenses incurred by the Agency in undertaking the Project notwithstanding the occurrence of any of (i) the Company's withdrawal, abandonment, cancellation or failure to pursue the Project; (ii) the inability of the Agency or the Company to procure the services of one or more financial institutions to provide financing for the Project; or (iii) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.

15. 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.

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

17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Erie County, New York.

18. 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.


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[Signature Page to Agent Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Dated: Nov 26, 2019

TOWN OF HAMBURG INDUSTRIAL
DEVELOPMENT AGENCY]

By: 
Sean Doyle,
Executive Director

Dated: _____, 2019

THE OAKS AT SOUTH PARK LLC

By: _____
Anthony Cutaia,
Member

[Signature Page to Agent Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Dated: _____, 2019

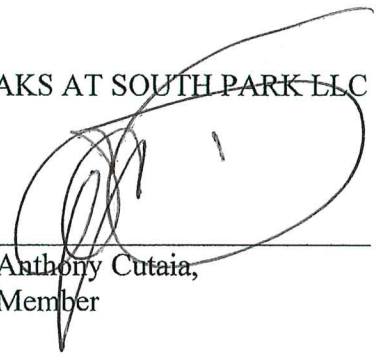
TOWN OF HAMBURG INDUSTRIAL
DEVELOPMENT AGENCY]

By: _____
Sean Doyle,
Executive Director

Dated: November 26, 2019

THE OAKS AT SOUTH PARK LLC

By: _____
Anthony Cutaia,
Member



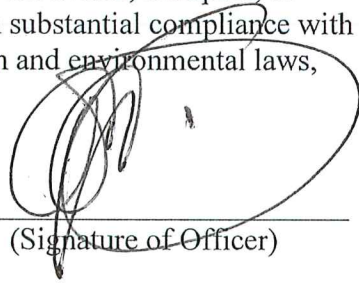
CERTIFICATION

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

Anthony J. Cutaia, being first duly sworn, deposes and says:
Cutaia South Park NY LLC

1. That I am the Manager of a member of the Company and that I am duly authorized on behalf of the Company to bind the Company and to execute this Agreement on behalf of the Company.

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 law, worker protection and environmental laws, rules and regulations.



(Signature of Officer)

Subscribed and affirmed to me under the penalties of perjury
this 26th day of November, 2019.

Catherine M. Moteyunas
(Notary Public)

CATHERINE M. MOTEYUNAS
No. 01MO6290115
Notary Public, State of New York
Qualified in Niagara County
My Commission Expires Oct. 7, 2021

EXHIBIT A

PILOT Agreement

EXHIBIT B

Form of Annual Employment and Salary and Fringe Benefits and Related Project Information
Certification Letter

_____, 2019

Re: New Project Verification

Dear:

The Town of Hamburg Industrial Development Agency (the "Agency") is currently providing assistance in connection with the project in the (Municipality).

The Agency is required to file an annual report with the New York State Comptroller providing information on its activities, and the activities of projects that are assisted by the Agency. In order for the Agency to compile that report, it is necessary that we obtain information relating to assistance provided and benefits derived from all entities that receive such assistance. Failure by the Agency to file the report information required by New York State could result in the Agency losing its ability to provide further assistance or the entity suffering claw-back provisions and forfeiting benefits previously received. Therefore, it is important that this information be provided in an accurate and timely manner.

Attached please find a questionnaire to be completed and returned to the Agency by _____. If you have any questions regarding the required information, please do not hesitate to call our office.

We appreciate your assistance in this matter. A self-addressed stamped envelope is enclosed for your convenience.

Very truly yours,

Company name and address:

Project Name:

Company contact:

Contact phone number:

(Please correct any information above)

Financing Information

Has the Agency provided project financing assistance through issuance of a bond or note?

Yes No

If financing assistance was provided, please provide:

- Original principal balance of bond or note issued _____
- Outstanding principal balance of such bond or note at 12/31/19 _____
- Principal paid during 2019 _____
- Outstanding principal balance of such bond or not at 12/31/19 _____

Interest rate on mortgage as of December 31, 2019 _____

Final maturity date of the bond or note _____

Is the Company a not-for-profit _____

Sales Tax Abatement Information

Did your company receive Sales Tax Abatement on your Project during 2019?

Yes No

If so, please provide the amount of sales tax savings received _____

(A copy of the ST-340 sales tax report submitted to New York State for the reporting period is required to be attached with this report)

Mortgage Recording Tax Information

Did your company receive Mortgage Tax Abatement on your Project during 2019?

Yes No

(NOTE: Only by applicable the year that a mortgage was placed upon the project)

The amount of the mortgage recording tax that was abated during 2019 _____

Job Information

Number of full time equivalent employees ("FTE") existing jobs by category and average hourly wage for each **before IDA status**

Category	FTE	Average Hourly Wage
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____

Current number of FTE employees for 2019 by category and average hourly wage

Category	FTE	Average Hourly Wage
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____

Number of FTE jobs created during 2019 as a result of the assistance received through the Agency by category and average hourly wage

Category	FTE	Average Hourly Wage
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____

Number of FTE jobs retained during 2019 by category and average hourly wage

Category	FTE	Average Hourly Wage
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____

Total annual payroll for 2019

A copy of the NYS 45 form for the project location is required to be submitted with this report. If the NYS 45 form is not available for the specific project location or the form does not accurately reflect the full time jobs created, an internal report verifying the total jobs by employment category as outlined above at the location is required with this submission.

Number of FTE construction jobs created during 2019 _____

Number of FTE construction jobs during 2019 _____

2019 Capital Investment

I certify that to the best of my knowledge and belief all of the information on this form is correct. I also understand that failure to report completely and accurately may result in enforcement of provisions of my agreement, including but not limited to avoidance of the agreement and potential claw back of benefits.

Signed: _____
(authorized company representative)

Date: _____

EXHIBIT C

FORM OF SALES TAX LETTER

SALES TAX LETTER

[ON OR AFTER JUNE 1, 2014]

[NAME OF COMPANY]
[ADDRESS OF COMPANY]

Re: Town of Hamburg Industrial Development Agency and [Name of Company]

Ladies and Gentlemen:

Pursuant to a resolution duly adopted on _____ (the "Resolution"), the Town of Hamburg Industrial Development Agency (the "Agency") appointed [NAME OF COMPANY] (the "Company") the true and lawful agent of the Agency to undertake a certain project (the "Project") consisting of: [PROJECT DESCRIPTION].

This appointment includes authority to purchase on behalf of the Agency all materials to be incorporated into and made an integral part of the Facility and the following activities as they relate to any construction, erection and completion of any buildings, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of such buildings: (1) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with construction and equipping, (2) all purchases, rentals, uses or consumption of supplies, materials, utilities and services of every kind and description used in connection with construction and equipping and (3) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs), installed or placed in upon or under such building or facility, including all repairs and replacements of such property.

This agency appointment includes the power to delegate such agency, in whole or in part to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses, as is set forth in the Agent Agreement, dated as of _____, by and between the Agency and the Company (the "Agent Agreement"). As further set forth in the Agent Agreement, the Agency will complete "IDA Appointment of Project Operator or Agent For Sales Tax Purposes" (NYS Form ST-60) for the Company and the Agency will execute said form forward said form to the New York State ("State") Department of Taxation and Finance within thirty (30) days of appointment.

As further set forth in the Agent Agreement, in order to be entitled to use the exemption from New York State Sales and Use Taxes ("Sales Tax"), the Company, its agents, subagents, contractors and subcontractors should present to the supplier or vendor of materials for the Project, a completed "IDA Agent or Project Operator Exempt Purchase Certificate" (NYS Form ST-123), to show that the Company, its agents, subagents, contractors and subcontractors are each acting as agent for the Agency in making the purchases of tangible personal property or services for use in the Project, thereby relieving such vendor or seller from the obligation to collect Sales Tax with respect to the construction and installation and equipping of the Facility. In connection therewith, it is necessary for the Company to identify the Project on each bill or invoice and indicate thereon which of the Company, its agents, subagents, contractors and subcontractors acted as agent for the Agency in making the purchases. Copies of each NYS Form ST-123 issued by the Company to a seller shall be forwarded to the Agency within thirty (30) days following the issuance by the Company.

As further set forth in the Agent Agreement, the Company is required to file an annual statement with the State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (NYS Form ST-340) regarding the value of sales and use tax exemptions the Company, its agents, consultants or subcontractors have claimed pursuant to the agency conferred on the Company by the Agency with respect to this Project, and the Company is required to provide a copy of same to the Agency within thirty (30) days of each filing; provided, however, in no event later than February 15th of each year.

The agency conferred on the Company by the Agency is limited to the Project, and will expire on **[DATE OF EXPIRATION OF AGENT STATUS]**. The Company may apply to extend this agency authority by showing good cause; *provided, however, the exemption for leases executed prior to said date shall continue through the term or extended term of said lease and any acquisition of said leased property.* Should the agency authority be extended beyond such date, the agency created will continue for as long as the period of the Agency resolution approving such extension.

This letter is provided for the sole purpose of describing the exemption from Sales Tax for this Project only. No other principal/agent relationship is intended or may be implied or inferred by this letter.

With respect to registered vehicles acquired by the Company in the name of the Agency, the Agency shall transfer title to such vehicles immediately back to the Company, or as soon thereafter as reasonable practicable; and any personal property acquired by the Company in the name of the Agency shall be located in the Town of Clarence, New York, except for temporary periods during ordinary use.

This letter is being issued pursuant to the Agent Agreement. All agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project should be aware of the Agent Agreement and obtain a copy thereof.

As further set forth in the Agent Agreement, except to the extent of bond proceeds (to the extent bonds are issued by the Agency with respect to the Project), the Agency is not liable,

either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company is the sole party liable thereunder.

Very truly yours,

TOWN OF HAMBURG INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Name:
Title:

EXHIBIT D

NYS Form ST-123

EXHIBIT E

INVOICE RIDER

(To be completed and attached to each invoice)

I, _____, the
_____ of _____

certify that I am a duly appointed agent of the Town of Hamburg Industrial Development Agency (the "Agency") and that I am purchasing the tangible personal property or services for use in the following Agency Project and that such purchases qualify as exempt from sales and use taxes under the Project and Agent Agreement, dated as of _____, by and between the Agency and _____.

Name of Project: _____ Project

Street address of Project Site: 5138 South Park Avenue
 Town of Hamburg
 Erie County, New York

IDA OSC project number: 1405-19-01A _____

EXHIBIT F

LIST OF APPOINTED AGENTS¹

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
